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**(2019) 11 DEL CK 0108**

**In the Delhi High Court**

**Case No : Civil Writ Petition No. 9817 Of 2019**

Abhishek Mourya

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

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**Date of Decision : 14-11-2019**

**Acts Referred:**

**Citation : (2019) 11 DEL CK 0108**

**Hon'ble Judges : Rajiv Shakdher, J**

**Bench : Single Bench**

**Advocate : G.K. Kaushik, Abhinav Kaushik, Abhishek Verma, Saurabh Sharma, Dilbag Singh, Arun Tewatia, Mohinder J.S. Rupal, Kousik Ghosh, Sunil Agarwal, S.D. Sharma**

**Final Decision : Disposed Of**

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## **Judgement**

Rajiv Shakdher, J

Preface: -

1. The petitioner seeks admission to the 2019 LL.M. course in the academic session 2019. Respondent No.2 i.e. the National Law University, New Delhi (hereafter referred to as 'NLUD') resists the petition on the ground that on the date when the orientation of candidates was held i.e. on 13.08.2019 which included the petitioner, he had not obtained the basic qualification.

1.1. The eligibility criteria which the NLUD had put in place for the 2019 LL.M. course required that a candidate should have passed the LL.B. course or obtained an equivalent degree from a recognised university with not less than 55% marks, in aggregate, which in case of reserved categories such as Scheduled Caste (SC), Scheduled Tribes (ST), and Persons with Disability (PWD) is scaled down to 50%.

1.2. The fact of the matter is that the petitioner did ultimately pass the LL.B. course, albeit, on a date which fell beyond the date on which orientation for candidates who were given provisional admission qua the 2019 LL.M. course was

held.

2. Therefore, the core issue which arises for consideration in this case is: Whether the NLUD is right in rejecting the petitioners claim to the 2019 LL.M. course on the ground that on the date when orientation was held, he had not qualified the LL.B. course?

Background: -

3. In order to adjudicate on this issue, the following broad facts are required to be noticed.

3.1. In July-August 2016, the petitioner obtained admission in the 3-year LL.B. course with respondent No.1 i.e. the University of Delhi (hereafter referred to as "University").

3.2. Each academic year comprised two semesters. The petitioner sailed through 5 semesters without a hitch.

3.3. However, in the 6th semester, the petitioner had trouble knowing from the University as to whether or not he had cleared one of the five papers i.e. paper bearing number LB-6031 concerning Interpretation of Statutes. This situation obtained on 31.07.2019 when the University uploaded online the 6th semester result.

3.4. In the interregnum, the petitioner sat for the All India Law Entrance Test 2019 (in short 'AILET 2019') conducted by the NLUD for academic session 2019-2020, which, inter alia, formed the basis of seeking granting admission to the 2019 LL.M. course.

3.5. Although the petitioner, at that point in time did not meet the eligibility criteria for grant of admission to the 2019 LL.M. course, he along with other candidates was allowed to take the AILET 2019 in view of the provisions contained in regulation 3(b) of the LL.M. programme regulations framed by the NLUD.

3.6. Since regulation 3(b) is important for the purposes of adjudication the same is adjudicated hereafter:

"3. ADMISSION PROCEDURE:

xxx xxx xxx

b. Candidates awaiting results of the qualifying examination can appear for the Entrance Test subject to a condition that they produce proof of having passed the qualifying examination at the time of admission."

3.7. In the AILET 2019, the petitioner obtained 42.25 marks. The petitioner, who had applied under the SC category, was shortlisted for spot-counselling on 08.06.2019 for grant of provisional admission to the 2019 LL.M. course by the NLUD.

3.8. Pursuant to the counselling, on 24.06.2019, the petitioner obtained a provisional admission letter (in short 'PAL') qua the 2019 LL.M. course offered by the NLUD. As per the terms of the PAL, the petitioner deposited the requisite course fee.

3.9. On 01.08.2019, the NLUD via the concerned department sent a common email to all those candidates who had been given provisional admission to attend the orientation programme on 13.08.2019.

4. On receipt of this mail, the petitioner wrote to the NLUD, albeit, via email that he is given further time to submit the result of his LL.B. course as his result had been delayed by the University due to technical glitches.

4.1. I may indicate at this juncture that across the bar the counsel for the NLUD has referred to an email dated 10.08.2019 which had been apparently sent to all candidates who had been granted provisional admission including the petitioner whereby not only were they informed that the orientation programme would be held on 13.08.2019 but also that verification of original documents would be carried out before commencement of the orientation programme.

4.2. Pertinently, there is no reference to this mail in the counter-affidavit filed on behalf of the NLUD and therefore the petitioner had no opportunity to deal with the same. I will advert to this mail in the latter part of my judgement.

4.3. Continuing with the narrative, since the petitioner had not been able to secure the LL.B. result, he once again wrote to the NLUD (this time via the Vice-Chancellor) for being given an extension for submitting the LL.B. result.

4.4. The petitioner, in order to expedite the process of declaration of his LL.B. result, wrote to the University via the Dean (Examination) on 14.08.2019.

4.5. In this communication, the petitioner requested the Dean (Examination) that the date scheduled for the supplementary examination qua Interpretation of Statutes should not be postponed as his admission to the 2019 LL.M. course offered by the NLUD was dependent on him qualifying the LL.B. course.

4.6. Though the petitioner got no response to his emails dated 10.08.2019 and 13.08.2019, addressed to the NLUD, he received a group mail dated 20.08.2019 from the NLUD informing him about the roll number that he had been allotted. Via this mail, the petitioner was informed that he had been allotted the roll number "1LL.M.19".

4.7. Given this glimmer of hope which the petitioner had received in form of the group mail dated 20.08.2019, he applied to the University on 21.08.2019 for not only rechecking qua the concerned paper i.e. Interpretation of Statutes but also took the decision to sit for the supplementary exam scheduled qua the said paper.

4.8. Accordingly, on 27.08.2019, the petitioner sat for the supplementary exam held for the Interpretation of Statutes.

4.9. The petitioner was in for a rude shock when on 26.08.2019, he received communication that his provisional admission to the 2019 LL.M. course had been cancelled as he had not passed the qualifying exam on the date when orientation qua the 2019 LL.M. course was held.

5. The petitioner did the next best thing which was to approach this Court via the instant petition. The instant petition was filed on 06.09.2019.

5.1. The petition was listed for the first time in Court on 11.09.2019 when the respondents in the matter, which included the University, were represented by the Counsel.

5.2. Mr. Rupal who appeared for the University on that date had indicated that since the petitioner had sat for the supplementary exam, his request for rechecking made qua the paper concerning Interpretation of Statutes will not be considered.

5.3. On that date, the matter was re-notified for 18.10.2019 and an interim order was issued that one seat will be kept reserved for the petitioner.

5.4. On 18.10.2019 when Mr. Rupal stated that he would produce the original result of the petitioner concerning the 6th semester exam.

5.5. Finally, at request, the matter was re-notified for 31.10.2019.

5.6. The matter was finally heard on 06.11.2019 when the judgement was reserved in the matter.

Analysis and Reasons: -

6. Given this backdrop, my prima facie view was that since the petitioner had not met the eligibility criteria i.e. had not attained the basic qualification on the date when orientation qua the 2019 LL.M. course was held, he could not have sought, as of right, admission to the said course.

6.1. This view, like in another matter which concerned admission to the 2019 LL.M. course, albeit, in the University of Delhi [i.e. Judgement dated 08.11.2019, passed in W.P. (C) 10629/2019, titled Umang Bharadwaj vs. University of Delhi] underwent a change when my attention was drawn to the Division Bench judgement of this Court in the matter of University of Delhi vs. Varun Kapur, 2011 SCC OnLine Del 2077 : ILR (2011) 4 Del 565 : (2011) 179 DLT 549 (DB). As in that case, the argument on behalf of the candidates was that the result of the supplementary exam should relate to the outcome of the main exam given the fact that there was nothing to the contrary stated in the LL.M. regulations.

6.2. On the other hand, the argument advanced by Mr. Sunil Agarwal, Advocate on behalf of the NLUD was that the petitioner was required to produce proof of having passed the qualification exam at the time of admission.

6.3. On being queried as to whether the date of admission was notified by the NLUD either in the regulations or in the information bulletin/prospectus, Mr.

Agarwal submitted that the date of orientation was the date of admission.

7. To my mind, the two dates cannot be conflated. Even if I were to assume that this was so, it still did not meet the test enunciated by the Division Bench in Varun Kapur's case.

7.1. Since I alluded to the principle enunciated by the Division Bench in Varun Kapur's case in Umang Bharadwaj's case, it would be helpful to advert to some passages from the same case.

"13.5. In the supplementary exam, both candidates attained success. The results of the supplementary exam were, however, declared after the cut-off date fixed for the concerned academic session i.e. 2010-2011.

13.6. The cut-off date by which the candidates were required to produce documents to establish that they fulfilled the eligibility criteria (i.e. had acquired the basic qualification) was 31.08.2010.

13.7. The Division Bench while dealing with these facts and the issue that arose before it for consideration, which was, whether the result of the supplementary exam would relate to the date when the result for the main exam was declared, made the following observations in paragraph 7 to paragraph 12 of the judgement.

"7. There is merit in the plea sought to be urged by learned counsel for the University that if a cut-off date is prescribed by which eligibility has to be secured, an eligibility secured at a later date would be inconsequential, but the argument ignores the fact that where law requires something deemed to have come into existence, one cannot boggle down the consequence thereof and whatever logically flows from the deemed existence of a thing having come into being, the same has to be treated as having come into being.

8. In our opinion the University not having clarified, as observed by the learned Single Judge, that eligibility must be acquired at the main examination and not the supplementary, the alternative reasoning of the learned Single Judge merits acceptance.

9. If the University has any issue on the second reasoning, it is easily capable of being rectified inasmuch as the University can, in future, clearly stipulate in the bulletin information that eligibility, de-jure as also de-facto, has to be obtained by the cut-off date and that those who are placed in compartment would be treated as ineligible. Further, we see no reason why the University should not scrutinize the cases of provisional admissions by the cut-off date and bring an end to the issue the day next.

10. Learned counsel for the appellants concedes that it is too late in the day for the University to fill up the two vacant seats if respondents are held ineligible candidates on the ground as urged by the University, notwithstanding that both of them have cleared the supplementary examination and are deemed to be

candidates having obtained Graduate degree at par with the rest.

11. Why should we not be situationalist [sic: situationist] Judges and not rationalist Judges? We think we should. It is not a case where wholly ineligible persons or persons who have obtained admission by dubious means would continue as students of the University of Delhi in the Faculty of Law. If we hold against the respondents, two seats would go abegging [sic: begging], and this in our opinion would be contrary to public interest and thus the compulsion of the situation compels us to be situationalist [sic: situationist] Judges and uphold the view taken by the learned Single Judge.

12. For the future years, the University of Delhi can certainly incorporate a clause in the bulletin information as observed by us in para 9 above."

(Emphasis is mine)

7.2. A perusal of the Division Bench judgement in Varun Kapur's case would show that unless the information bulletin/prospectus makes it crystal clear that the result of the supplementary exam would not relate to the main exam, the benefit has to be given to the candidate.

7.3. Besides this, in this case, what goes in favour of the petitioner is that on 20.08.2019, he was issued a roll number along with those candidates who had been provisionally admitted to the 2019 LL.M. course, which was much after the date when the orientation programme had been held.

7.4. As alluded to hereinabove, the orientation programme was held on 13.08.2019. Therefore, the petitioner was entitled to believe that the request for extension of time that he had made vide applications dated 10.08.2019 and 13.08.2019 had persuaded the concerned authority in the NLUD to grant him an extension to submit his LL.B. course result.

7.5. I must also indicate that an argument was sought to be raised on behalf of the NLUD that the petitioner had never informed that he had failed in one paper and therefore was required to sit in a supplementary exam.

7.6. This argument, in my view, has little merit as the petitioner's averment that his result concerning Interpretation of Statutes was not known by him when the University on 31.07.2019 generally uploaded the result of all students qua the 6th semester has not been denied in the counter-affidavit filed on behalf of the University.

7.7. The petitioner, therefore consistent with his understanding of the situation, had not only applied for rechecking but also taken steps to sit for the supplementary exam qua that very paper.

7.8. Therefore, my sense is that there was no attempt by the petitioner to keep back the information. The petitioner, on the other hand, was keen that his result qua the paper concerning Interpretation of Statutes should be declared as this was an impediment in this passing the LL.B. course and consequently obtaining

admission in the 2019 LL.M. course.

8. On the core issue that the result of the supplementary exam would relate to the main exam, the petitioner would necessarily succeed in view of the judgement of the Division Bench in Varun Kapur's case.

8.1. Judicial propriety commends that I apply the dicta of the Division Bench judgement and therefore relief, as prayed for, would have to be granted in this case as was granted by me in Umang Bharadwaj's case.

9. Accordingly, the NLUD will grant admission to the petitioner against one seat reserved for him.

9.1. The NLUD will make suitable adjustments with regard to the classes the petitioner has missed in the meanwhile.

9.2. In this behalf, if found necessary, the NLUD will arrange for extra classes for the petitioner. The petitioner will attend those classes without fail.

9.3. Furthermore, the petitioner will also comply with the requisite formalities stipulated by the NLUD for admittance to the 2019 LL.M. course.

10. The writ petition is disposed of in the aforesaid terms.