
(2014) 08 DEL CK 0100

In the Delhi High Court

Case No : LPA No. 473/2014 and CM No. 11258/2014

Bidisa Chakraborty

APPELLANT

Vs

Indira Gandhi National Open University (IGNOU)

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 08 DEL CK 0100

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Jayant K. Mehta, Indranil Ghosh and Biswajit Choudhury, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 30th April, 2014 of dismissal of W.P.(C) No.8097/2012 preferred by the appellant.

2. The facts, not in dispute, are as under:-

(i) The appellant / writ petitioner, in January, 2004 admission cycle, was admitted to the Distance Learning Programme in Management Studies of the respondent University and took her first end semester examination in June, 2004;

(ii) the span period for completing the aforesaid course is eight years and which expired in January, 2012; (iii) the appellant / writ petitioner however had not completed her course and was yet to clear the examination in the subject of MS-8 (Quantitative Analysis for Managerial Applications);

(iv) the appellant / writ petitioner on 9th June, 2012 appeared in the examination conducted by the respondent University in the said subject; and,

(v) the respondent University however did not declare the result of the appellant / writ petitioner of the said examination, for the reason of the maximum span period provided for completing the course having lapsed in

January, 2012 i.e. prior to the date when the appellant / writ petitioner took the examination. Aggrieved from the same, the writ petition from which this appeal arises was filed.

3. The case of the appellant / writ petitioner before the learned Single Judge was that the appellant / writ petitioner, prior to appearing in the examination on 9th June, 2012 had checked her admission status on the website of the respondent University and which was showing her admission year as July, 2004 and her admission as valid up to June, 2012. It was further the case of the appellant / writ petitioner that she had prior to appearing in the examination on 9th June, 2012 also met the Assistant Regional Director of the respondent University in the month of December, 2011 and in which meeting also she was assured that since her registration was valid till June, 2012 she could appear in the examination in the said subject in June, 2012. It was yet further the case of the appellant / writ petitioner that upon the appellant having filled up her examination form online on 11th March, 2012, she was issued an admit card and allowed to take the examination. The appellant/writ petitioner thus contended that the respondent University in these facts was bound to declare her result.

4. The learned Single Judge dismissed the writ petition observing/holding (i) that according to the respondent University it had a window of 21 days to issue all admit cards and the same are issued on the basis of self certification by the candidates of their being eligible to take the examination; (ii) that the admit card is thus issued only on a provisional basis and the complete scrutiny of particulars is done before declaration of results and not before issuance of admit card; (iii) that oral assurance or issuance of admit card or estoppel shall not apply to a written stipulation restricting the maximum duration of the course to eight years; and, (iv) that since the span period of eight years for completion of MBA course had expired in December, 2011, the respondent University was justified in not declaring the appellant's/writ petitioner's result.

5. The appeal came up first before this Bench on 18th July, 2014 when we invited the attention of the counsel for the appellant / writ petitioner to the dicta of the Supreme Court in *Maharshi Dayanand University Vs. Surjeet Kaur*, laying down that principle of estoppel does not apply in such matters and that the Court neither has competence to issue a direction contrary to law, nor can direct an authority to act in contravention of statutory provision and a student even if wrongfully admitted without being eligible, should not be permitted to continue with the course and misplaced sympathy should not be shown in total breach of rules. Attention of the counsel for the appellant / writ petitioner was also drawn to the recent dicta of this Bench in *Shri Birender Singh Vs. Union of India*. On request of the counsel for the appellant / writ petitioner for time to study the said judgments, the matter was adjourned to 22nd July, 2014.

6. On 22nd July, 2014 the counsel for the appellant / writ petitioner was heard in extenso and judgment reserved. The counsel, besides attempting to distinguish the two judgments to which his attention was invited, also referred to:-

- (a) Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, ;
- (b) Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, ;
- (c) A. Sudha Vs. University of Mysore and Another, ;
- (d) Sanatan Gauda Vs. Berhampur University and others, ;
- (e) Arshdeep d/o Gurudeo Singh Puri Vs. Maharashtra State Board of Secondary and Higher Secondary Education, Nagpur Divisional Board (1990) SCC Online Bom. 167;
- (f) Bal Krishna Tiwari Vs. Registrar of Awadhesh Pratap Singh, University, Rewa;
- (g) Board of Technical Education Vs. Anupama Goyal (1999) SCC Online Raj. 86;
- (h) Arvind Kumar Das Vs. Ranchi University (2005) SCC Online Jhar. 328; and,
- (i) Smt. Chandra Kanti Singh Vs. University of Kanpur, all on the proposition that candidate's result cannot be withheld in case when the University / Institution fails to exercise due care and diligence in scrutinizing the necessary details; (j) Monika Ranka Vs. Medical Council of India (2010) 10 SCC 233;
- (k) Deepa Thomas and Others Vs. Medical Council of India and Others, ; and,
- (l) Rajan Purohit and Others Vs. Rajasthan University of Health Science and Others, . all on the proposition that equities are in favour of the appellant and sympathy should be shown to the appellant and,
- (m) Archana Vs. University of Mysore, - on the proposition that the High Courts in exercise of jurisdiction under Article 226 can also do equity.

7. Maharishi Dayanand University and Birender Singh (supra) are sought to be distinguished by contending that in both of them a fraud had been practiced by the student concerned; on the contrary the appellant / writ petitioner here is innocent and acted on the basis of the website of the respondent University itself continuing to show the admission of the appellant / writ petitioner as valid till July, 2012. It is further contended that the appellant / writ petitioner is not inherently ineligible and has not indulged in any suppression and was rather led by the conduct of the respondent University itself to take the examination.

8. We are unimpressed. A judgment is a precedent on the ratio laid down therein and not on the facts of the case before the Court. The Supreme Court in Maharishi Dayanand University has unequivocally reiterated that promissory estoppel does not apply against the statute and the government / authorities cannot be barred from enforcing a statutory prohibition. It was further held that promissory estoppel being an equitable doctrine must yield when the equity so requires. It was observed that the conduct of the University in allowing the student to pursue a course even though the student had no statutory or vested right to pursue the same cannot by any logic be treated to be a conduct which can confer any such right on the student. The Supreme Court further held that

the rules and regulations cannot be allowed to be defeated merely because the student was mistakenly allowed to appear in the examination. Following the said and other judgments, we in Birender Singh also held that the conduct of the University in that case of admitting the student who was not eligible and even allowing the student to appear in the examination did not confer any right on the student to continue in the course, for admission whereto the student was not eligible.

9. The aforesaid ratio decidendi of the judgments supra clearly applies to the matter in controversy before us and the factual differences highlighted by the counsel for the appellant / writ petitioner do not make the same inapplicable.

10. Of the plethora of other referred judgments, the counsel for the appellant / writ petitioner has read only paras 6 and 7 of Shri Krishnan supra. However Shri Krishnan was concerned with a candidate being allowed to take examination notwithstanding not having the requisite attendance and notwithstanding having not submitted the NOC from his employer for pursuing the course. It was in this context that it was held that the power to stop a candidate from taking examination cannot be exercised after the candidate had appeared in the examination. It cannot also be lost sight of that Shri Krishnan is a judgment of an era when the Courts were very liberal in condoning the criteria of attendance laid down by educational institutions. Moreover the reasoning which prevailed with the Supreme Court in Shri Krishnan was in view of the Ordinance of University in that case and the language of which Ordinance was interpreted as empowering the University to withdraw the candidature of the student only before the student took the examination and not after having taken the examination. One of us (Rajiv Sahai Endlaw, J.) in Rohit Rakesh Vs. Indira Gandhi National Open University and Others has in fact distinguished Shri Krishnan on the said basis; no appeal is found to have been preferred thereagainst.

11. In Rajendra Prasad Mathur and A. Sudha (supra), the students even after the ineligibility was discovered, were allowed to continue their studies by the University and under the interim orders of High Court respectively and it is in these circumstances that the Supreme Court allowed the students therein to continue. Similarly, in Sanatan Gauda (supra), the University raised the objection to the ineligibility of the appellant therein after the appellant had pursued his studies for two years and was in his final year of the course. The said judgments are not found laying down anything contrary to Maharishi Dayanand University supra and are rather on their own peculiar facts, which were different from the case before us. We do not feel the need to deal with the bunch of other judgments aforesaid handed over to us.

12. We may add that the appellant / writ petitioner herein has not disputed that she took admission in January, 2004 and it is not her case that the rule regarding maximum period in which she could complete the course was not known to her and as per which the period in which she could complete the course expired in

December 2011 / January 2012. The appellant / writ petitioner still filled up the form for taking the exam on a date after the expiry of the said period. The appellant / writ petitioner clearly acted in violation of the rule of the respondent University which was known to her and is thus equally guilty. The object of the principle of estoppel which is sought to be invoked is to prevent fraud and secure justice between the parties by promotion of honesty and good faith. The appellant / writ petitioner was fully in the know of the rule and cannot herself be said to have acted honestly.

13. As far as the argument of the counsel for the appellant / writ petitioner of the need for this Court showing sympathy to the appellant / writ petitioner is concerned, the Supreme Court has repeatedly held that the Courts cannot, showing misplaced sympathy issue directions contrary to the rules and regulations particularly of educational institutions. Reference in this regard can be made to Mahatma Gandhi University and Another Vs. Gis Jose and Others, and Director (Studies) and Others Vs. Vaibhav Singh Chauhan, .

14. We therefore do not find any merit in the appeal which is dismissed. No costs.