

(2010) 10 DEL CK 0123

In the Delhi High Court

Case No : Writ Petition (C) No. 6721 of 2010

Isha Wadhawa

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Citation : (2010) 120 DRJ 406

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Ravi Gupta, Gaurav Gupta and Deepak Vohra, for the Appellant; Mukul Talwar, for R 1, Laliet Kumar, for R 2 and Aditi Gupta, for R 3., for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner seeks admission in the second year of B. Tech course either in the Respondent No. 2 (Maharaja Agrasen Institute of Technology) or the Respondent No. 3 (Surajmal Institute of Technology) both affiliated to the Respondent No. 1 University. During the pendency of the petition, application being CM No. 13567/2010 has been filed by five others, also claiming admission in second year. Though no formal order has been made allowing impleadment but the counsel for applicants being same as of the Petitioner, the applicants have also been heard. It is inter alia the case of the Petitioner/s that the Respondent No. 1 University has not put for counselling all the seats available for admission in the second year. The counsels for the Respondents 2 & 3 appearing on advance notice on 1st October, 2010 when notice was issued in the petition had stated that there were 30 vacant seats in the second year in the Respondent No. 2 Institute and some vacant seats in the Respondent No. 3 Institute also.

2. The admission to the second year of B. Tech course is described in the Admission Brochure as Lateral Entry. The said Lateral Entry is available for Diploma holders and B. Sc. Graduates. The University in its Admission Brochure for the academic year 2010-11 advertised 60 & 48 seats as available for Lateral

Entry in the Respondent No. 2 & 3 Institute respectively. The position as emerges on completion of pleadings and during hearing is that the All India Council for Teacher Education (AICTE) in its Approval Process Handbook has prescribed for such Lateral Entry upto a maximum of 10% of the sanctioned intake. The 60 & 48 seats for Lateral Entry in the Respondents 2 & 3 advertised in the Admission Brochure aforesaid represent the said 10% of the sanctioned intake in the Respondents 2 & 3. However, AICTE in Clause 70.2 of the Handbook further provides that in addition to the said 10%, other vacant seats in the second year "may also be available to Diploma holders and B. Sc. Degree holders for Lateral Entry". A formula has been prescribed for arriving at the number of vacant seats so available for Lateral Entry in addition to 10% of the sanctioned intake.

3. During the course of hearing, the counsel for the Respondent No. 2 has stated that there is no vacancy in the 10% seats aforesaid for Lateral Entry. Since the counsel for the Respondent No. 3 at the time of hearing had no instructions in this regard, an opportunity was given to file an additional affidavit in this regard. From the said additional affidavit, it transpires that there are no vacant seats in the 10% category in the Respondent No. 3 Institute also.

4. We are thus concerned only with the additional seats, if any, for Lateral Entry. According to the counsels for both Respondents 2 & 3, the vacant seats in the second year in each of their Institutes are available for granting admission to Diploma holders and B. Sc. graduates. However, both admit that the Respondent No. 1 University in the past also has never been considering the said seats for admission.

5. The counsel for the University has opposed the petition in so far as qua the additional seats inter alia on the ground of laches. It is contended that in the Admission Brochure no provision was made for admission to additional seats in Lateral Entry and the challenge now is barred by laches. I find considerable merit in the said contention of the counsel for the University. Neither the Petitioner nor the Respondents 2 & 3 who have supported the Petitioner, at any time made grievance that the Admission Brochure of the University was not providing for all seats available for Lateral Entry. The petition came up first only on 1st October, 2010 when the counselling had ended and academic session begun. The Petitioner in the rejoinder affidavit handed over after the conclusion of hearing has opposed the argument of laches by contending, firstly that the seats provided in the Admission Brochure for Lateral Entry were "tentative" and thus the Petitioner had expectation that additional seats also as per availability will be added and secondly that the "Open House" counselling for vacant seats though provided in the Admission Brochure was not held. No merit is found in either contention. In view of the admission that the additional seats were never in the past also provided for admission in Lateral Entry, there could be no expectation of the same being made available this year. Had the University intended to provide for additional seats, it would have been so stated in the Brochure. The University has also after conclusion of hearing filed additional affidavit affirming

that Open House counselling for 10% seats in Lateral Entry was held on 16th September, 2010. In the circumstances, even if finding the University to be bound to provide for admission for such additional seats and the said additional seats having not been put to counselling, it is not deemed proper to direct the University to mid-session make further admissions in the second year.

6. However, since arguments were heard also on whether the Respondent No. 1 University can be compelled to make admission for the additional seats in Lateral Entry, it is deemed expedient to deal with the said aspect for the next academic year even if not available for the current academic year.

7. Clause 70 in Chapter XII titled "Norms & Requirements" of the Approval Process Handbook of AICTE published in January, 2010 is as under:

70. Lateral Entry to second year of Degree courses in Engineering / Technology, Pharmacy, Architecture & Town Planning

70.1 Diploma holders and B. Sc. Degree holders shall be eligible for admission to second year Engineering degree courses up to a maximum of 10% of sanctioned intake, which will be over and above, supernumerary to the approved intake.

Provided that Students who have completed Diploma course in Architectural Assistantship & Town Planning shall be eligible for admission to second year Architecture degree courses up to a maximum of 10% of sanctioned intake, which will be over and above, supernumerary to the approved intake.

Provided further that students who have completed Diploma course in Pharmacy shall be eligible for admission to second year Pharmacy degree courses up to a maximum of 10% of sanctioned intake, which will be over and above, supernumerary to the approved intake.

70.2. In addition to above, vacant seats (S) in a course, $S = S1 - (SI - C - F + B)$, and if $S > 0$, may also be available to Diploma holders and B. Sc Degree holders for lateral entry where,

SI=Sanctioned Intake
 C^* =No. of cancellations at the first year level
 F^* =No. of students not eligible for admission to second year as per rules / rules by affiliating University
 B^* =No. of students who belong to earlier batches who have become eligible for admission to second year as per rules / rules by affiliating University.

Students admitted against any type of supernumerary seat/s shall not be considered in C, F or B.

70.3 The concerned Admission Authority shall decide modalities for these admissions.

8. The counsel for the University has contended that it is not mandatory for the University to make available for admission in Lateral Entry the seats as provided for in Clause 70.2 above. Strong reliance is placed on the word "may" in Clause

70.2 to contend that it is not mandatory to make the said seats available and it is in the discretion of the University.

9. The senior counsel for the Petitioner on the contrary has urged that the Approval Process Handbook of AICTE is binding on the University. Reliance in this regard is placed on judgment dated 30th June, 2010 of the Madras High Court in a batch of writ petitions with the lead petition being W.P.(C) No. 3656/2010 titled Srinivasa Institute of Engineering & Technology v. All India Council for Technical Education and Ors.

10. Though I have in judgment dated 13th August, 2010 in W.P.(C) No. 4771/2010 titled Gitarattan Institute of Advanced Studies & Training v. Director, Higher Education held that recognition by AICTE does not mandate grant of affiliation unless the University is satisfied of fulfillment of its own parameters but with respect to Lateral Entry, the said question does not arise. Lateral Entry specially qua additional seats is concerned merely with filling up of vacant seats in the second year. Such vacancy may arise owing to the students who had taken admission in the first year not joining, dropping out, migrating etc. The University having already granted affiliation for a particular intake of students, cannot be heard to say that it will not comply with the said direction of the AICTE. I have recently in judgment dated 18th October, 2010 in WP(C) No. 6641/2010 titled Dhruv Singhal v. Guru Gobind Singh Indraprastha University and which petition in fact was heard with the present petition, held that we are a country where seats to engineering colleges are at a premium with the practice of capitation fee being paid therefore being rampant; the seats available in the Colleges are far below the number of applicants therefore. Reliance was placed on Charles K. Skaria and Others Vs. Dr. C. Mathew and Others, observing that the Courts must see that no costly seat for advanced studies in which the community as a whole has stake, is wasted. Reference can also be made to Ajay Pradhan Vs. State of Madhya Pradesh and Others, observing that when a seat falls vacant in any particular academic year, there is a corresponding duty cast on the Authorities to take immediate steps to fill up the same.

11. Having held so, the only question which remains is whether Clause 70.2 (supra) by use of the word "may" leaves it to the discretion of the University to make available or not the additional seats for Lateral Entry in accordance therewith.

12. In my view the word "may" has been used because the availability of additional seats under Clause 70.2 is dependent upon the number of cancellations at the first year level and not to leave the availability of the seats in the discretion of the University. Even otherwise there is no justification for the stand of the University for not filling up the said vacant seats in the second year of the course as per the formula given in Clause 70.2 (supra) or for keeping the said seats vacant. Rather the counsel for the University during the course of hearing handed over the Circular of the University expressing concern with respect to the students who take admission and report initially but afterwards

without any intimation stop attending classes. This Court in Himanshu Pathak v. NCT of Delhi 135 (2006) DLT 130 and Prakash Kumar Ashiyana and Others Vs. NCT of Delhi and Others, has held that the University is bound by the directions of AICTE. I however find that another Single Judge in W.P.(C) No. 2293-94/2006 titled Abhijay v. AICTE decided on 3rd May, 2007 also relating to Lateral Entry held the role of AICTE vis-?-vis the Universities constituted under the Central Act to be only advisory. However, the Respondent University has not been established under a Central Act but under a State Act. Thus, I choose to follow the other two judgments. Moreover it is not as if the University is not permitting Lateral entry; it is permitting under Clause 70.1 and there is no reason for not permitting under Clause 70.2.

13. I therefore allow the petition to the extent of holding that the University is bound to in accordance with Clause 70 (supra) provide for admission by Lateral Entry in second year not only in accordance with Clause 70.1 but also in accordance with Clause 70.2, with effect from the next academic session. The University is also directed to evolve a procedure for the various Colleges / Institutes affiliated to it, intimating to it the number of cancellations at the first year level and the number of students belonging to the earlier batches who have become eligible for second year as per Rules of the University, to enable the University to hold counselling for the additional seats provided for in Clause 70.2 (supra).

14. With the aforesaid direction, the petition is disposed of with no order as to costs.