
(2012) 03 DEL CK 0574
In the Delhi High Court
Case No : Writ Petition (C) 9120 of 2011

Madhvi Dua

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Citation : (2012) 4 AD 239 : (2012) 190 DLT 20

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Amarjit Singh Bedi, with Mr. Dinesh Kumar and Ms. Neha Kapoor, for the Appellant; Mohinder Rupal, Advocate with Ms. Shawana Bari, Advocate for R1, Ms. Avnish Ahlawat, with Ms. Urvashi Malhotra, for R-2 and R-3, for the Respondent

Judgement

Hima Kohli, J.—The petitioner is aggrieved by the communication dated 23.09.2011 addressed to her by respondent No. 2/Institute informing her that due to a clerical error, she had been allotted IT Branch in a Four year course but on subsequent detection of the error, she was re-assigned a seat in the ICE Branch. The petitioner has also assailed the letter dated 14-15.12.2011 issued to her by the respondent No. 2, informing her that the Admission Committee had considered her representation dated 29.09.2011 and that she had been advised to continue with the ICE Branch in the B.E. Admission, 2011, as communicated to her earlier. In a nutshell, the facts of the case are that the petitioner had passed her 12th class examinations in June, 2011 wherein she had secured 96% marks. Her ranking in the All India Engineering Entrance Examination (AIEEE) was 14843. Thereafter, the petitioner had applied to various colleges/institutes for admission. On 17.06.2011, she was admitted in the Economics (Hons.) course in Shri Ram College of Commerce, affiliated with the University of Delhi. On the same date, the petitioner proceeded to deposit her fee for the first quarter and she was issued an I-Card by the college.

2. The petitioner had also applied to various institutes for admission in B.E.

course including respondent No. 2/Institute and had given her preference in three subjects, namely, Computer Engineering, Electronics & Communication Engineering and Information Technology. Between July-August, 2011, respondent No. 2 had conducted five rounds of counselling for the B.E. course. Admittedly, the petitioner did not succeed in any of the five rounds of counselling. However, on 25.08.2011, respondent No. 2 issued a notice for manual counselling that was fixed for 30.08.2011. For candidates to be eligible to participate in the manual counselling the four conditions stipulated were as below:

- i. Physical reporting
- ii. AIEEE ranking upto 25,000/-
- iii. Candidates were required to have marked their attendance on 25.07.2011.
- iv. Candidates were required to have not been allotted any seat upto the 5th round of counselling.

3. As the petitioner fulfilled the aforesaid four conditions, she appeared before the Admission Committee on 30.08.2011 for manual counselling. While participating in the said manual counselling, the petitioner was assigned IT stream as per one of the options that had been given by her. On the same date, the petitioner was issued an admission slip (Annexure P-6 to the writ petition) and an identity card (Annexure P-4 to the rejoinder). By 05.09.2011, the admission process was closed in all other colleges. Having secured admission in respondent No. 2/Institute, on 15.09.2011, the petitioner applied to Shri Ram College of Commerce for withdrawal of her admission and for refund of the fee deposited by her. The said fee amount was refunded by the aforesaid college on 21.09.2011.

4. It is the case of the petitioner that on 28.09.2011, she received a letter dated 23.09.2011 from respondent No. 2 informing her as below:

Dear Student,

On the last date of counselling, i.e., 30.08.2011 which was held manually you were, due to clerical error, allotted IT Branch. However, subsequently on detection of error, a revised list of allotment of branch was displayed and you were reassigned/re-allotted a seat of the ICE branch keeping in view your AIEEE rank, i.e., 14843.

Since branch wise study shall start in the month of January, 2012, therefore, any change in branch shall not affect your on going studies.

Therefore, you are advised to convey your acceptance of a seat in the ICE Branch latest by 29.09.2011 (Thursday). In case you are not willing to accept the same your admission shall stand cancelled with effect from 03.10.2011 (Monday).

Inconvenience caused is regretted.

Yours Sincerely

Sd/-

(Prof.A.P.Mittal)

(Chairman, B.E. ADMISSION COMMITTEE -2011)

5. Immediately upon receiving the aforesaid communication, the petitioner replied thereto on 29.09.2011 stating inter alia that she had given three choices of preference while submitting her application for admission in the B.E. course and none of the three choices had included ICE Branch. She also pointed out that after a period of one month from the date of her admission, respondent No. 2 could not turn around and claim that she had been allotted IT Branch due to a clerical error and that she should accept ICE Branch by 29.09.2011. She questioned the decision of respondent No. 2 to assign her ICE Branch when she had never opted for the said branch. She also stated that if at all there was an error of assignment, it was not on account of any mistake on her part and, therefore, she requested respondent No. 2 to re-consider its decision.

6. From 29.09.2011 till 16.12.2011, respondent No. 2 did not bother to reply to the representation of the petitioner. Finally on 16.12.2011, the petitioner received a letter dated 15.12.2011 from respondent No. 2 informing her that the Admission Committee had considered all the facts and circumstances of her case and advised her to continue with the ICE Branch. In other words, the request of the petitioner for permission to continue with the IT Branch was declined by respondent No. 2.

7. Aggrieved by the aforesaid decision, the petitioner filed the present petition on 24.12.2011. The petition was listed before the vacation bench on 28.12.2011 and notice was issued to the respondents returnable on 29.02.2012. On the interim application filed by the petitioner, it was ordered that till the next date of hearing, the respondents would maintain status quo.

8. Admittedly, the petitioner continued attending her classes on the strength of the aforesaid interim order till the first week of January, 2012 when she approached this Court by filing a contempt petition registered as Contempt Case No. 20/2012 stating inter alia that on 06.01.2012 when the petitioner checked her name in the revised list of allotted branches prepared by respondent No. 2/ Institute, she found that against her name, "ICE Branch" had been displayed with the word "subjudice" mentioned alongside. It was, therefore, urged that the respondents were in contempt of the interim order dated 28.12.2011.

9. Notice was issued in the aforesaid contempt petition on 09.01.2012. At the same time, it was directed that the petitioner would not be prevented from attending her classes in IT Branch in the respondent No. 2/Institute but the same would not create any special equities in her favour and the parties would be finally governed by the decision to be taken in the writ petition.

10. A counter affidavit has been filed by the respondents wherein it is stated that during the academic year 2011-12, the Institute had invited all candidates who

had been declared successful by the AIEEE in its examination held in the year 2011 to register online with the Institute as per their merit, category and sub-categories and their choices. Thereafter, admissions were granted to candidates as per their merit rank, categories and choices. During the course of admission, the Admission Committee had received a communication dated 05.08.2011 from the Govt. of NCT of Delhi, whereunder, the quota of OBC was increased from 15% to 21%, thus, resulting in an increase in the total seats from 619 to 685. This necessitated the Admission Committee of the respondent No. 2/Institute to conduct an additional counselling, including a manual counselling on 30.08.2011, after issuing a public notice.

11. It is averred by respondent No. 2/Institute that the allotment of a seat to a candidate of any category is based primarily on his/her merit and then on the preference of choices and it was for this reason that the petitioner was neither allotted a seat of her choice, due to her lower rank in merit, nor had she been allotted a seat in other branches due to the non-indication of other branches in her list of choices, though other candidates with a lower rank in merit got admission in other branches during online allotment upto the fifth round of counselling. In the manual counselling that was held on 30.08.2011, the petitioner and another candidate by the name of Vaibhav Goel were wrongly allotted IT Branch and ICE Branch respectively even though they were far below on merits. When the aforesaid error in allotment was brought to the notice of respondent No. 2/Institute by other candidates present at the time of counselling, the same was rectified by respondent No. 2 and the revised merit list was displayed on 01.09.2011. As per respondent No. 2, there were 30 candidates, who had secured higher ranks in the merit list than the petitioner had and they were waiting to be upgraded into the I.T. Branch in the event of any vacancy in seats.

12. Counsel for respondent No. 2/Institute submits that the other candidate, namely, Vaibhav Goel, who had been inadvertently allotted ICE Branch, which was withdrawn in the corrected list, had accepted the revised branch, i.e., MPAE, which was one of his options of choices and he had submitted a letter of acceptance to the respondent No. 2/Institute on 28.09.2011. However, the petitioner did not agree to shift to ICE Branch. It is further stated that the reason for issuing the impugned letter dated 23.09.2011 by respondent No. 2 is that a decision was taken by the Admission Committee in its meeting held on 06.09.2011 wherein it was mentioned that two candidates, namely, the petitioner herein and Vaibhav Goel had been inadvertently given IT Branch and ICE Branch respectively and the said error was corrected and they were given branches as per their eligibility. With respect to the petitioner, the Committee was of the opinion that as she had been wrongly offered a seat in the IT Branch, after rectification of this error, she may now be allotted a seat in the ICE branch though she had not opted for the same. It is asserted that from the beginning, the petitioner and her parents were telephonically informed about the status of her admission and they were well aware of the developments in this regard,

though, admittedly, written intimation of the decision taken to shift the branch of the petitioner was conveyed to her only on 28.09.2011, vide letter dated 23.09.2011.

13. In rebuttal, counsel for the petitioner submits that if the Admission Committee of respondent No. 2/Institute had held its meeting on 06.09.2011, there was no occasion for the respondents to have revised the list one week prior thereto on 01.09.2011, as contended by them. He contends that no plausible explanation has been offered by the respondents for the inordinate delay in responding to the representation made by the petitioner on 29.09.2011, till as late as on 16.12.2011. He further states that even as late as on 05.10.2011, the respondents had certified that the petitioner was a student of 1st year in B.E. (I.T.) course since 01.09.2011. In support of the aforesaid submission, counsel for the petitioner relies on the certificate dated 05.10.2011 issued by the Deputy Registrar (Academic) of respondent No. 2/Institute (Annexure P-5 to the rejoinder).

14. Lastly, it is submitted by learned counsel for the petitioner that even as per the Prospectus for the year 2011-12 circulated by respondent No. 2, it was informed that no change of branch would be permitted after commencement of the second semester even if some seats fall vacant in some of the branches during the course of the second semester and therefore, the submission made on behalf of the respondents that there are 30 candidates who are merit wise senior in rank to the petitioner and are waiting to be accommodated against the one seat in the IT Branch that would fall vacant upon change of branch of the petitioner, is only a bogey raised by the respondents to overcome their default.

15. This Court has heard the counsels for the parties, carefully perused the pleadings and considered their respective submissions.

16. There is no dispute as to the facts of the case. It is an admitted case that the petitioner had appeared before the Admission Committee of respondent No. 2/ Institute on 30.08.2011 for manual counselling in respect of the B.E. course and in the course of the said counselling, she had been assigned IT stream. Thereafter, the petitioner had started to attend classes in the IT stream but was confronted with the letter dated 23.09.2011 issued by respondent No. 2/ Institute, informing her that due to a clerical error, she had been allotted the IT branch. While it is the case of respondent No. 2/Institute that the aforesaid error was noticed by the Institute on 01.09.2011 and the revised admission list was displayed on the notice board on the very same day, it has not been denied that the written intimation of the same was issued to the petitioner only on 28.9.2011, vide letter dated 23.09.2011. A perusal of the aforesaid letter dated 23.09.2011 reveals that respondent No. 2/Institute had not mentioned the date on which the revised list of allotment of branch had been displayed on its notice board. Instead, only a mention has been made in the said letter of having displayed the revised list of allotment of branch and the explanation offered for the same was that it occurred due to a clerical error.

17. The aforesaid error committed on the part of respondent No. 2/Institute has undoubtedly jeopardized the academic career of the petitioner. This is not a case where the petitioner can in any way be held responsible for the predicament in which she finds herself. Rather, the blame lies entirely at the door of respondent No. 2/Institute. The records reveals that upon being granted admission by respondent No. 2/Institute, the petitioner had approached Shri Ram College of Commerce and she had withdrawn the admission granted to her in the B.A. Economics (Hons.) course and requested the college to refund her fee, thus, irreversibly altering her position. Now, if the respondent No. 2/Institute is permitted to renege from the promise of admission extended to the petitioner for the branch of her choice, she would suffer irreparable loss and injury, entirely to her detriment.

18. The explanation offered by the counsel for respondent No. 2/Institute that the Institute had erroneously assigned IT branch to the petitioner, which had resulted in her being admitted to the said branch in the B.E. course though she was not eligible for admission to the said branch, is unacceptable for the reason that a duty was cast on respondent No. 2/Institute to have meticulously scrutinized the application forms of all the candidates before calling them to participate in the manual counselling and then filled up the vacancies on a rank wise basis, as per the available seats. If a mistake has been committed by the respondent No. 2/Institute, for which the petitioner is neither directly nor indirectly responsible, then she cannot be made to suffer the consequences thereof.

19. It has been held by the Supreme Court in a catena of decisions that in the cause of furtherance of justice, the Court is empowered to come to the aid and assistance of the citizens to save them from the vagaries of administrative and executive action by issuing suitable directions so as to undo the wrong and minimize the injustice perpetrated on a citizen, who is not to be blamed for the circumstances, in which he/she finds himself in. In the case of Punjab Engineering College (supra), while finding fault with the procedure adopted by the concerned authorities in making spot admissions, the Supreme Court had observed as below:-

4. Cases like these in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students, who are wrongly or purposefully left out.....

20. After making the aforesaid observations, directions were issued by the Supreme Court to the authorities to create additional seats to accommodate eligible candidates in the following manner:-

6. It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made. (Emphasis added)

21. In this context, reference may also be made to decision of the Supreme Court in the case of *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, wherein, the Court had held that students ought not to be made to suffer for the sins of the authorities.

22. For the counsel for respondent No. 2/Institute to claim that this is not a case where the petitioner is being asked to vacate the seat and is left without admission but, is only a case where the branch allotted to her is being changed, is not acceptable for the simple reason that the branch sought to be assigned to the petitioner, namely, ICE branch, was never one of her options of choice as given by her at the time of her admission. Further, merely because another student, who found himself in the same predicament as the petitioner, had chosen to accept the offer made by respondent No. 2/Institute, cannot be held against the petitioner, more so when the branch offered to the said student in lieu of the branch allotted to him earlier, was one of the choices given by him in his application.

23. It is also not a case where the petitioner can be accused of making a false statement and/or suppressing relevant facts. Rather, it is a case where respondent No. 2/Institute has admittedly erred in taking due care and caution in scrutinizing the application forms and drawing up the list of successful candidates upon their participation in the manual counselling held for the course in question on 30.8.2011. It may be noted that had respondent No. 2/Institute declined to admit the petitioner in the branch in question in the B.E. course, she would still have had the option of pursuing her higher education in a premiere college of Delhi University, where she had already been granted admission in the B.A. Economics (Hons.) course. However, on account of failure on the part of respondent No. 2/Institute to have diligently scrutinized the list of successful candidates in the manual counselling, not only has the petitioner been deprived of the branch of her choice, she has also lost a valuable opportunity to pursue her studies in the Shri Ram College of Commerce, where she had secured a seat and deposited the fee. In such circumstances, this Court has no hesitation in holding that the decision of the respondent No. 2/Institute calling upon the petitioner to opt for the ICE branch in the B.E. course and declining to grant her

permission to continue in the IT branch is unsustainable and liable to be struck down.

24. The Court cannot overlook the fact that respondent No. 2/Institute had taken its own sweet time to decide the representation of the petitioner made on 29.9.2011. Even as per respondent No. 2/Institute, it had issued a written intimation to the petitioner for the first time only on 23.09.2011, i.e., after almost one month from the date of her admission in the IT branch of the B.E. course, and when the petitioner submitted a reply on 29.9.2011, respondent No. 2/Institute slept over the said representation for a period of three months and finally turned down her request as late as on 15.12.2011, by informing her that the Admission Committee had considered her case and had advised her to continue with the ICE branch.

25. It may be emphasized that in matters pertaining to academics, each and every day is precious and it is very difficult for a student to make up for the missed classes and the lost time. This factor ought to have weighed with respondent No. 2/Institute when it chose to drag its feet in first intimating the petitioner as to the change of the branch after almost one month from the date of her admission and then in deciding her representation after an inordinate and inexplicable delay of three months. By the time respondent No. 2/Institute declined the request of the petitioner at the end of December, 2011, the first semester had almost come to an end.

26. The explanation offered by respondent No. 2/Institute that the first semester was common to the students studying in all the branches in B.E. course and that it was only in the second semester that branch-wise studies were to be conducted, would not be of much assistance. Had respondent No. 2/Institute put the petitioner to notice as early as in September 2011 with regard to the change of branch and had not delayed in responding to her representation till as late as the end of December 2011, perhaps the petitioner could not have claimed that she has been left in the lurch wondering where she stood. But the facts reveal otherwise.

27. It was under the aforesaid circumstances that the petitioner had to approach this Court in early January, 2012 by filing a contempt petition stating inter alia that despite the status quo order dated 28.12.2011, in the revised list of allotted branches circulated by respondent No. 2/Institute on 06.01.2012, she had found that the allotted branch against her name was mentioned as "ICE branch". As a result, vide order dated 09.01.2012, respondent No. 2/Institute had to be directed not to prevent the petitioner from attending her classes in the IT branch without prejudice to the rights and contentions of the respective parties.

28. As regards the contention of the counsel for respondent No. 2/Institute that there are 30 other candidates, who are merit-wise senior in rank to the petitioner and are well entitled to lay a claim on the one seat of the IT branch being occupied by her, it is not denied that as per the prospectus of respondent No. 2/

Institute, no change of branch is permitted after commencement of the second semester even if seats fall vacant in some of the branches during the course of the second semester. In such circumstances, when the second semester has commenced, the 30 candidates who are allegedly senior in rank to the petitioner, cannot be accommodated against the one seat in IT branch that the institute wants the petitioner to vacate, there is still no justification for this Court to consider the aforesaid submission for declining the request of the petitioner to permit her to continue in the IT Branch.

29. The facts of the case as noted above clearly reveal that the petitioner cannot be held responsible for the situation she finds herself in. The said situation is entirely the making of respondent No. 2/Institute and therefore it has to make up for its lapse. The present petition therefore succeeds. Directions are issued to respondent No. 2/Institute to permit the petitioner to continue studying in the IT branch in the B.E. course in terms of her initial admission as granted to her on 30.08.2011. It is further directed that the result of the internal examinations for which the petitioner was permitted to sit from 01.03.2012, shall be declared by the respondent No. 2/Institute alongwith the other students of her batch. The petition is disposed of while leaving the parties to bear their own costs.