
(2010) 12 DEL CK 0276

In the Delhi High Court

Case No : Writ Petition (C) No. 2146 of 2010

Mr. Tarun Kapoor

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-12-2010

Acts Referred:

Constitution of India, 1950 — Article 142

Citation : (2010) 12 DEL CK 0276

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sanjay Mishra, for the Appellant; Neeraj Chaudhary, CGSC, Mohit Auluck, for R-1, Elgin Matt John, for Anju Bhattacharya, for R-2 and Mukul Talwar, for R-3 GGSIPU, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the letter dated 23rd November, 2009 of the Respondent Guru Gobind Singh Indraprastha University cancelling the admission of the Petitioner to Bachelor of Computer Application (BCA) Programme for the session 2009-2010 in the Respondent No. 6 Institute of Information & Technology affiliated to the Respondent University.

2. The eligibility criteria for admission to the BCA Programme is minimum 50% marks in the class 10+2 examination. The Petitioner had appeared for his class XII examination in the year 2009. Even prior to the declaration of the result of the said examination, he was allowed to appear in the admission test held by the Respondent University for admission to the BCA Programme. The Petitioner secured rank of 2536 in the admission/entrance test held. By then the result of the class XII examination had also been declared. The Petitioner had secured only 49.50% marks therein. The Petitioner however while filling up the form for participating in the counselling for admission to the BCA Programme, filled up the percentage of marks obtained by him in class XII examination as 50% by rounding off 49.50% to 50%. The Petitioner in counselling was allotted the

Respondent No. 6 Institute of Information & Technology as aforesaid. However the Respondent University to which documents of admission of the Petitioner including the certificates of class XII marks were forwarded, on perusal thereof and realizing that the Petitioner had 49.50% marks, vide letter dated 23rd November, 2009 (supra) cancelled the admission of the Petitioner. The Petitioner and his mother continued to represent there against and it is the case of the Petitioner that in the meanwhile he was also permitted by the Respondent No. 6 Institute to sit in the first semester end term examination. However when the representations of the Petitioner to the Respondent University did not meet with any success and the Petitioner was being barred from sitting in the second semester end term examination, the present writ petition was filed.

3. This Court vide order dated 6th April, 2010 while issuing notice of the writ petition, as an interim measure allowed the Petitioner to appear in the second semester end term examination and to continue to attend classes. It was however made clear that no special equities will flow in favour of the Petitioner for the said reason.

4. Though no counter affidavit has been filed but the counsels have been heard. The counsel for the Respondent University has invited attention to the Admission Brochure published by the University for the academic session 2009-2010 for professional courses (including BCA Programme) wherein it is clearly provided that "there will be no rounding-off of percentage of marks of qualifying examination while deciding the basic eligibility of any candidate for admission." It is contended that the Petitioner intentionally concealed the said provision in the Admission Brochure and did not file the relevant page while filing other extracts from the Admission Brochure.

5. The counsel for the Petitioner relies upon the judgment dated 22nd February, 2010 of this Court in titled Dr. Ravinder Singh v. Medical Council of India W.P.(C) No. 2877/2003 on the concept of rounding-off. However a perusal of the said judgment does not show that there was any bar/prohibition in the Admission Brochure in that case to rounding off as has been pointed out in the Admission Brochure in the present case.

6. The counsel for the Petitioner also relies on State of U.P. and Another Vs. Pawan Kumar Tiwari and Others, where it was observed that the Rule of rounding-off is based on logic and common sense i.e. if part is one-half or more, its value is to be increased to one and if part is less than half then its value is to be ignored. 46.50% in that case was held to be entitled to be rounded-off to 47%. However that was in the context of determining the seats available in different categories and it was held that where as per percentage there were to be 46.5% seats in one category, it should be rounded-off to 47 seats.

7. The counsel for the Petitioner next relies on Rajul Arora v. Jai Narain Vyas University 2006 RLW 2 1054 where a Single Judge of the Rajasthan High Court rounded-off 44.83% marks to 45% for the purpose of admission to LLB course.

From a perusal of the said judgment also it does not transpire that there was any prohibition against rounding-off in that case also as in the present case.

8. The counsel for the Petitioner also relies on *Y. Manimegalai Vs. The Director, Teacher Education, Research and Training and Correspondent, Duraimurugan Teacher Training Institute*, wherein a Single Judge of the Madras High Court rounded-off 44.6% marks in the higher secondary examination to 45% enabling the Petitioner in that case to obtain admission.

9. Attention of the counsel for the Petitioner has however been invited to judgment dated 23rd March 2010 of another Single Judge of this Court in titled *Km. Anamika v. The Principal, Daulat Ram College W.P.(C) No. 1945/2010(W)* the facts whereof are more akin to the facts of the present case. The Petitioner therein had filled the percentage secured by her in B.A.(Hons.) as 45% though she had 44.7%. The prospectus in that case also contained a provision as in the present case prohibiting rounding-off. This Court held the Petitioner guilty of misrepresentation and did not allow rounding-off.

10. However, it was also informed to the counsels that this Bench in judgment dated 23rd November, 2010 in W.P.(C) No. 12475/2009 titled *Aditya N. Prasad v. University of Delhi* has distinguished *Km. Anamika (supra)* as having turned on the reasoning that between 44.7% and 50% there may be other candidates who had been denied admission. It was held that the said reasoning would not apply to the case of an admission test as the case in the present case also. Attention of counsels was also invited to *Selin Mary Mammen v. Mahatma Gandhi University (2008) 17 SCC 615* where also the Apex Court applied the principle of rounding-off to the case of admission and inspite of prohibition against rounding-off contained in the Rules. Of course, the same was paraphrased, having been done in exercise of jurisdiction under Article 142 of the Constitution of India and in view of the facts and circumstances of that case and without creating a precedent for other cases.

11. The counsel for the Respondent University then referred to *Mahatma Gandhi University v. Gis Jose (2008) 17 SCC 611* (which remained unnoticed in my judgment (*supra*) in *Aditya N. Prasad*) to contend that the view in *Selin Mary Mammen (supra)* had not found favour with the Supreme Court. I am however unable to hold so. *Gis Jose (supra)* was not a case of rounding off. In that case the percentage secured was 53.3% only and as against the required of 55%. The question in that case was whether the student having been admitted should be permitted to so continue the course. In this context, it was observed that the misplaced sympathy should not have been shown in total breach of the Rules.

12. The view in *Selin Mary Mammen* of rounding-off notwithstanding the prohibition there against thus remains undisturbed in the judgment in *Gis Jose*.

13. Having already taken a view in *Aditya N. Prasad (supra)* that *Km. Anamika* would not apply to a case of admission test, the only question which remains is whether the Petitioner is not entitled to any relief for the reason of having

misrepresented his marks as 50% instead of making a clean breast of the state of affairs. Though the Petitioner has pleaded that he had shown his original certificates and mark-sheets at the time of counselling and the concerned officials were aware of his having 49.50% marks only and not 50% marks but in view of the Petitioner having filled up 50% instead of the correct figure of 49.50% in the application form, the said plea cannot be accepted. It is a well known fact that hundreds if not thousands of candidates appear for counselling; the officials of the University at that time do not have the time to scrutinize the documents and proceed on the basis of forms filled up by the candidates. The Petitioner cannot be said to be unaware of the specific prohibition in the Admission Brochure against rounding-off. The Petitioner notwithstanding the same took a chance by rounding-off. The Petitioner also did not file the page of the Admission Brochure prohibiting rounding-off before this Court. The Petitioner is thus found to have misrepresented and practiced deceit and is not entitled to any relief on this ground alone.

14. Though the Petitioner by now must be in the 4th Semester of the course but the facts remain that the situation in which the Petitioner today is, is of the own making of the Petitioner. It is not as if there was any delay on the part of the Respondent University. The Respondent University, immediately upon documents being sent to it by the Respondent No. 6 Institute to which the Petitioner had taken admission and on scrutiny thereof and well before even the first semester end term examination, cancelled the admission of the Petitioner. The Petitioner however chose to pursue the matter and on being unsuccessful, he cannot be heard to say that he should be granted relief merely because he has completed the course substantially.

15. The writ petition therefore fails. The classes attended by the Petitioner and the examination taken by the Petitioner under the orders of this Court are cancelled. No order as to costs.