

(2011) 02 DEL CK 0487

In the Delhi High Court

Case No : Writ Petition (C) 2435 of 2010 and CM No. 4871 of 2010

Mrs. Anshumitra Dasgupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0487

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Nitin Bhatia, for the Appellant; Akshat Goel, Aditya Singh for R-2 and Yashmeet Kaur, for R3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the letters dated 15th March, 2010 and 1st April, 2010 of the Respondent No. 2 Guru Nanak Dev University holding the Petitioner not eligible for admission to the P.G. Diploma course in Textile Design for the Academic Year 2009-2010 with the Respondent No. 3 Apeejay Institute of Design affiliated to the said University. Notice of the petition was issued and vide order on the application of the Petitioner for interim relief, the Petitioner was permitted to appear in the end term examination of the one year course, without prejudice to the rights and contentions of the parties and without creating any equities in favour of the Petitioner.

2. The prospectus of the Respondent No. 2 University regarding admission to the said course prescribes the eligibility for admission to the said course as a Degree in B.A./B. Com/B. Sc. and B. Sc.(Home Science) examination of the Guru Nanak Dev University, Amritsar or any other examinations recognized by the said University as equivalent thereto. 3. The Petitioner had passed her class XI Ith examination in the year 1994 and has in the year 1996 completed B. Com two year pass course from the Malda College affiliated to the University of North Bengal. The Petitioner claiming to be a graduate and thus fulfilling eligibility criteria, applied to the Respondent No. 3 Institute for admission and was

admitted in the said course in July, 2009.

4. The Respondent No. 3 Institute as per the terms of its affiliation with the Respondent No. 2 University is required to forward the eligibility documents of each candidate to the Respondent No. 2 University for scrutiny. The Respondent No. 3 Institute claims to have so forwarded the said documents including of the Petitioner on 24th August, 2009.

5. The Respondent No. 2 University vide its letter dated 29th October, 2009 called upon the Respondent No. 3 Institute to furnish the detailed mark sheet of B.A. course II DMC of the Petitioner to the Respondent No. 2 University.

6. It is the case of the Respondent No. 3 Institute that on receipt of the aforesaid communication from the Respondent No. 2 University, it had disclosed the same to the Petitioner and in response thereto, the Petitioner furnished to the Respondent No. 3 Institute a certificate dated 16th January, 2010 of Malda College and supplied remaining documents to the Respondent No. 3 Institute under cover of letter dated 5th March, 2010 and which were forwarded by the Respondent No. 3 to the Respondent No. 2 University.

7. The Respondent No. 2 University finding that the two year graduation done by the Petitioner from Malda College of North Bengal University to be not equivalent to the graduation of the Respondent No. 2 University, issued the communications impugned in this petition holding the Petitioner ineligible for admission. The Respondent No. 2 University along with its counter affidavit has filed the extracts of the decision of the meeting of 8th April, 1992 of Equivalence Committee of its Academic Council, where only the three year graduation degrees are recognized as equivalent to the graduation degree of the Respondent No. 2 University.

8. There is no challenge to the eligibility criteria laid down by the Respondent No. 2 University or to the minutes of the Equivalence Committee of the Respondent No. 2 University. There is thus no dispute that the Petitioner was ineligible. Once it is held that she was ineligible for admission, the legal position is no longer *res integra*.

9. The Supreme Court in *Maharishi Dayanand University v. Surjeet Kaur* JT 2010 (7) SC 179 held that the Court has no competence to issue a direction contrary to law, nor the Court can direct an authority to act in contravention of statutory provisions. It was held that the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory Rules & Regulations. It was further held that there can be no estoppel/promissory estoppel to debar a public authority from enforcing a statutory provision. The mistake on the part of the University in that case in allowing an applicant to appear in the examination was held to be conferring no right in the applicant if not entitled under the Rules & Regulations to pursue a course. It was held that the Rules & Regulations cannot be allowed to be defeated merely because the University erroneously allowed a candidate to appear in the examination.

10. Similarly in *Mahatma Gandhi University v. Gis Jose* (2008) 17 SCC 611 it was held that a student even if wrongly 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.

11. The Respondent No. 2 University cannot be directed to admit the Petitioner contrary to its rules & regulations, notwithstanding default if any of Respondents in admitting the Petitioner.

12. The counsel for the Petitioner has however contended that the Respondents having admitted the Petitioner after complete disclosure by the Petitioner and the Petitioner having completed the course and having also been allowed to appear in the end term examination, ought not to be now deprived of the fruits of her labour. Reliance in this regard is placed on *Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another*, where inspite of the student having been found to be ineligible for admission, was allowed to complete the course.

13. However a perusal of the said judgment shows that the student in that case had also been allowed to appear in the examination and was issued the admit ticket. On the contrary, the counsel for the Respondent No. 3 Institute has drawn attention to the admission form of the Respondent No. 3 Institute which itself provides for admission given by the Institute to be provisional and subject to ratification by the University. There is also a dispute as to whether the Institute at the time of admission was expressly made aware that the graduation done by the Petitioner was of two years and not of three years as is the norm. Moreover, it is not as if the Petitioner was allowed to continue. Though the ultimate letter was issued only on 15th March, 2010 i.e. nearing the close of the course but the Petitioner in October, 2009 itself i.e. within three months of the commencement of the course had been made aware of the doubts raised by the Respondent No. 2 University as to her eligibility. The Petitioner however persisted in continuing with the course and submitted the required documents only in January, 2010 and in March, 2010. The Petitioner is thus found equally responsible for the delay. Moreover the Petitioner well before the examination was informed of her ineligibility. Thus the facts in the present case cannot be said to be comparable with that in the case of *Sanjay Kumar Katwal* (supra) for this Court to exercise the discretion in favour of the Petitioner as exercised in that case. Rather it appears that the Petitioner throwing caution to wind obtained admission when ought to have clarified the position in the beginning only. The Petitioner thus cannot be granted the relief claimed.

14. However the Petitioner though having attended the classes and availed the services/education of the Respondent No. 3 Institute but having not benefited therefrom, the Respondent No. 3 Institute is liable to refund to the Petitioner all amounts received from the Petitioner. The counsel for the Respondent No. 3 states that part of the fee was forwarded to the Respondent No. 2 University also. The Respondents are directed to refund the amounts received from the Petitioner within six weeks of today.

Save for the aforesaid direction, the petition is dismissed.