
(2006) 09 DEL CK 0241

In the Delhi High Court

Case No : Writ Petition (Civil) No. 3234 of 2006

Ms. Indrani Sarma

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 04-09-2006

Acts Referred:

Citation : (2006) 09 DEL CK 0241

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Arijit Ganguly, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.

Rule

1. The parties to the petition dispense with further pleadings and affidavits. With the consent of the parties the writ petition is disposed of finally.
2. The Petitioner has claimed quashing of Rule I of the General Rules of Examination under Ordinance X of the Delhi University calendar and also sought quashing of cancellation letter No.MD/2006/9124 dated 17th February, 2006 by which the admission of the petitioner to MA (Prev.) Music course has been cancelled on the ground that she was ineligible for admission.
3. Brief facts to comprehend the controversy is that the petitioner completed her degree in BA (Hons.) (Hindustani) Music Examinations in the year 2004 securing approximately 48.7% marks. After completing BA (Hons.) in Hindustani Music, the petitioner applied for improvement of her performance for which she appeared in the examination in 2005. In the meanwhile, during the year 2004-05, the petitioner also successfully completed her diploma in Sangeet Shiromani in Hindustani Music and secured 60% marks. In June, 2005 the petitioner submitted her application form for admission to MA (Prev.) Hindustani

Music. The eligibility condition for admission to the MA (Prev.) Hindustani Music were as under:

ELIGIBILITY CONDITIONS AND COURSE REQUIREMENT FOR ADMISSION TO MASTER OF ARTS (VOCAL/INSTRUMENTAL) (HINDUSTANI/KARNATAK) MUSIC COURSE

Examination passed : Minimum percentage of Marks Required For Hindustani Music

1. B.A.(Hons.) (Hindustani) Music Examination of Delhi University 50% marks in aggregate or an examination recognized as equivalent thereto.

2. B.A. (pass) Examination of Delhi University with Music as one of 45% marks in aggregate the elective subjects or on 60% marks in the subject examination recognized as Music equivalent thereto.

3. B.Music (Hons.)(Vocal or Sitar/ 50% marks in aggregate Sarod) Examination from Indira Kala Sangeet Viswavidyalaya Khairagarh;

4. B.A./B.Sc./B.Com. Examination of 45% marks in aggregate Delhi University or an examination recognized as equivalent thereto and also having passed anyone of the following examinations:

Sangeet Shiromani Diploma 60% marks in aggregate (Hindustani) Examination of Delhi University

Sangeet Visharad/Kovid/Vid/ 60% marks in aggregate Prabhakar

4. The petitioner contended that she was under the bonafide belief that she will secure more than 50% marks in BA (Hons.) Hindustani Music, minimum eligibility for admission to MA (Prev.) course after she had reappeared in papers V, VI, VII and VIII. On 2nd July, 2005 and 4th July, 2005 auditions were held for suitable candidates for MA (Prev.) course and petitioner's performance was found to be satisfactory entitling her for admission to MA (Prev.). In the first list of eligible candidates, a list of 32 candidates was declared for the 40 seats available in MA (Prev.) course, however, the name of the petitioner did not appear. The petitioner contended that as her result had been declared for BA (Hons.) Hindustani Music, 2005 where she had appeared for improvement of performance in which she had scored only 46.1% marks, however, since she had also obtained a diploma in Sangeet Siromani Diploma, she would be eligible for admission under heading 4 of the eligibility criteria. The petitioner was, however, asked to furnish an undertaking that her admission is provisional and if the University will cancel the admission, she would have no claim over her seat/candidature and consequently she was granted provisional admission in the second list which was declared on 17th or 18th July, 2005.

5. Second list of eligible candidates was published which had the name of the petitioner. The petitioner also got the revised marks sheet of BA (Hons) Hindustani Music course with 46.1% marks. On 27th July, 2005 petitioner was

enrolled in MA course in Respondent No. 3 college. The petitioner attended classes from August, 2005 and on 5th October, 2005 she filled up the University examination form and paid the prescribed fees and she appeared in her Internal Assessment Practical Examination in December, 2005 and in Internal Assessment Theory papers on 13th and 16th January, 2006.

6. The petitioner contended that on 16th February, 2006, she was summoned to the office of respondent No. 2 and was informed that her admission is still provisional and since she did not obtain an aggregate of 50% marks in BA (Hons.) Hindustani Music, the admission of the petitioner is liable to be cancelled. Thereafter on account of petitioner not obtaining 50% marks under the eligibility heading I, on 22nd February, 2006 her admission was cancelled and she was informed telephonically. It is asserted by the petitioner that she was not even given the cancellation letter and that was supplied only after an application requesting for issue of cancellation letter was given.

7. The petitioner in the circumstances has challenged the Ordinance X of the Rule Book of Delhi University (General Rules for Examinations) whereby the Vice-Chancellor may on being satisfied, after such enquiry as he may deem fit, withdraw retrospectively prior to the publication of the final result of a candidate in course, the permission granted to such candidate to pursue that course or to appear at a University Examination on the ground of any ineligibility coming to the notice within four months of the final result.

8. The petitioner has contended that she has not committed any fraud and misrepresentation or concealment and in taking such a strict action of cancellation of her admission to MA (Prev.) where if not in category I, she is eligible in category IV as she has 46.1% marks in her graduation though it may not be for Science or Commerce and since she has also completed a diploma which was also awarded by the respondent which is considered for grant of admission where she has 60% marks, Therefore, she is eligible and her admission could not be cancelled. The petitioner has also impugned the action of cancellation of her admission on the ground that she obtained her marks sheets BA (Hons.) (Hindustani) and Sangeet Siromani Diploma on 4th July, 2005 and had given the same to the respondents and thereafter she was given admission, fees of the course was accepted and she was allowed to appear in the internal examinations and Therefore the respondents are estopped from canceling her admission to the MA (Hindustani Music) course in February, 2006.

9. The petition is contested by the respondents on the ground that the petitioner has only 46.1% marks in BA (Hons.) (Hindustani Music) and in terms of eligibility criteria heading I, she was not eligible and consequently her admission to MA (Prev.) course had to be cancelled. Since the petitioner has disclosed in her admission form that she is awaiting the result of her degree course, she was given provisional admission and on her name appearing in the second list for admission, she was granted admission. According to the respondent notice was published on 17th November, 2005 asking the petitioner to meet the office for

verification of certificates which was put up on the notice board and another notice was put up on 9th January, 2006 and as petitioner submitted her provisional certificate dated 10th February, 2006 on 13th February, 2006 from which it was noticed that she had got 461 marks out of 1000 which is 46.1% less than minimum marks required for admission, Therefore, her admission was cancelled. The eligibility of a candidate under heading IV under which a candidate of Arts, Science and Commerce stream only with 45% marks in aggregate and having Sangeet Shiromani diploma with 60% marks in aggregate is eligible, was not considered and can not be considered as the petitioner had not indicated her eligibility under heading IV in her admission form and under that category a candidate having a pass course degree in Science, Commerce and Arts can be considered and not a candidate having a honors degree in Music and Therefore, it was not considered and could not be considered.

10. I have heard learned Counsel for the parties and also perused the petition and the counter affidavit and affidavits and the documents filed by the parties. No doubt that under heading I of the eligibility conditions of MA music course, a candidate of BA (Hons.) in Music has to obtain 50% marks in aggregate to become eligible for admission to Master of Arts (Vocal/Instrumental) (Hindustani/ Karnatak) Music Course but under the eligibility condition IV even a student of Science, Arts and Commerce stream with only 45% marks in aggregate along with a Sangeet Shiromani diploma with 60% marks in aggregate is eligible for admission. The petitioner had relied on Kanishka Aggarwal Vs University of Delhi, 43 (1991) DLT 670 to contend that the respondents are estopped from canceling her admission to MA course in the facts and circumstances.

11. The admission was given to the petitioner in July, 2005 and her fees was accepted and she was allowed to take Internal examinations. On what basis the admission was given to the petitioner in July, 2005. Whether it was given merely on the basis of alleged undertaking alleged to had been given by her or after considering her marks in B.A (Hons.) music 2005 where she had scored 46.1% marks along with her performance in Diploma in Sangeet Siromani Diploma with 60% marks.

12. The petitioner had filled her application form for admission on 30.6.2005 in which she had stipulated that her BA (Hons.) music 2005 result is awaited. The learned Counsel for the respondents contended that the petitioner had not stated in her application form for admission to M.A music course that she had done Sangeet Shiromani diploma course and had obtained 60% marks and she is eligible on the basis of B.A(Hons) improvement of performance result. The result of the petitioner of B.A (Hons.) 2005 was declared on 1.7.2005 where her performance instead of improving had deteriorated and she secured only 46.1% marks. The contention of the petitioner is that she was given admission to M.A(Music) course on 27.7.2005 and though in the admission form she had only given the qualification of B.A (Hons.) Music, as the result had come on 1st July, 2005, as she was confident that she will score more than 50% marks and will be

eligible for admission in category I. The petitioner had got the marks sheet of said course and of Sangeet Siromani Diploma on 4th July, 2005. Since she had already got the marks sheet for the two courses, the same were given by her to the respondents because of which her name had appeared in second list and she was given admission to the course. The petitioner contended that the respondents are estopped from canceling her admission and have relied on 43 (1991) DLT 670 Kanishka Aggarwal Vs University of Delhi. Per contra the contention of the respondent is that the petitioner did not submit documents pertaining to Sangeet Shiromani Diploma nor sought admission on the basis of the same nor she had submitted her marks sheet for BA (Hons)(Hindustani) Music for 2005 examination and consequently the name of the petitioner was shown in the list of candidates pm 17th November, 2005 and 9th January, 2006 who had to get verified their certificate and on production of provisional certificate in February, 2006 they came to know that the petitioner had obtained only 46.1% marks in B.A (Hons.) Music and she was ineligible for admission to MA course. According to the respondent the petitioner had not produced the relevant certificates despite a notice dated 17.11.2005 and another reminder notice displayed on the notice board on 9.1.2006. The provisional/character certificate dated 10.2.2006 is alleged to have been produced only on 13.2.2006.

13. No doubt the provisional character certificate dated 10.2.2006 could not be produced earlier, however, if the marks sheet for B.A(Hons), 2004 examination was issued to the petitioner on 1.7.2005 and was received by her on 4th July, 2005 there is apparently no reason for the petitioner not to produce the same. What is also apparent is that the name of the petitioner did not appear in the first merit list and it was only in the subsequent second list of 10 eligible candidates the name of the petitioner appeared and she was given provisional admission. Since the petitioner had already finished her Sangeet Shiromani Diploma and had been awarded the same by the respondents on 27.6.2005 prior to consideration of eligibility of petitioner to M.A (Previous), not to produce the same before the respondents is unconceivable. The petitioner had sought admission in the same Faculty/department which had declared the result of BA (Hons.) 2005 in Hindustani Music. It is unbelievable that the petitioner had been given admission on the basis that the result of B.A (Hons.) Hindustani Music, 2005 was awaited. There is no reason for the petitioner not to produce the marks sheet of B.A (Hons). Hindustani Music, 2005 when the same was given to her on 4th July,2005 as contended by her. Considering the entire facts and circumstances it is apparent that the marks sheet of the petitioner for BA (Hons) Music, 2005 had been issued to her on 4.7.2005 and she had also been granted Sangeet Shiromani Course diploma on 27.6.2005 and that marks sheet was also received by the petitioner on 4th July,2005. If the diploma and the result of B.A(Hons) Music, 2005 were available with the petitioner, there is no plausible reason for the petitioner not to produce the same before the respondents before she was admitted on 27.7.2005. The name of the petitioner must have been included in the second list of 10 eligible candidates which were put up on

17th /18th July, 2005 after considering both the marks sheets though the petitioner had not mentioned about Sangeet Siromani Diploma in her admission form as the admission form was filled by her was prior to declaration of result of B.A (Hons.) music, 2005. Before admission of the petitioner to M.A(previous) the result of the petitioner for B.A(Hons), 2005 and Sangeet Shiromani Diploma must have been seen by the respondents especially since the petitioner was seeking admission in the same department. It does not stand to reason that the petitioner will be given admission merely on the basis of her result being awaited without considering whether she is eligible for admission or not. The petitioner was not only given admission to M.A(Previous), however, she was allowed to attend the classes and even the Annual examination form along with prescribed fees was taken and she was allowed to appear in the internal assessment practical and also in internal assessment theory papers.

14. This is also true that before confirming the admission of any student, the respondents require a character certificate from the college from where a candidate has done his/her graduation. Therefore the character certificate dated 10th February, 2006 which was submitted by the petitioner on 13th February,2006 could not be given by the petitioner to the respondents earlier and Therefore, the admission of the petitioner was provisional and not because the petitioner had not produced the marks sheet of B.A (Hons) music, 2005 or that the marks obtained by the petitioner in B.A (Hons) music, 2005 were not considered by the respondents. Therefore what is more probable that since the character certificate was not submitted by the petitioner, her name appeared in the lists of candidates which were put up on 17.11.2005 and 9.1.2006 for verification of certificates. In the present facts and circumstance it is not probable to infer that the petitioner had not shown her marks in B.A(Hons) Music, 2005 and her marks of Sangeet Siromani Diploma before 27th February,2005 when she was admitted to the M.A music course. The name of the petitioner appeared in the notice put on 17.11.2005 and 9.1.2006 because the character certificate from the college concerned had not been submitted by the petitioner. If that be so, can the respondents cancel her admission in February,2006 after petitioner was admitted to the course, allowed to attend classes and deposit her examination form and fees and allowed to appear in internal practical and theory examination. Are the respondents not estopped from canceling her admission to the M.A music course"

15. In Kanishka Aggarwal (Supra) a Division Bench of this Court had held that for invoking estoppel, the onus placed on the party raising the plea of estoppel is very light and there need not be express representation as the form of representation is not material. It was held that mere raising of an expectation would be sufficient and a minimum of conduct is normally required. In the said case the professor-in-charge had made provisional admission as there was no waiting list and as many as 72 vacancies were filled up on the last day of admission. The fees were deposited and the receipts were issued. In the circumstances it was inferred that before provisional admission was given all

requisite qualifications must have been considered and even the original documents and certificates must have been seen. The petitioner in this case was even issued an identity card and he was assigned one of the seven sections and had started attending the lectures and later on in all the communications of the University he was shown to have been provisionally admitted. In these circumstances it was held that the facts reflected a representation and the plea of estoppel was held to be available. The relevant observations of the Division Bench are as under:

31. Although Mr. Rao wanted us to place very heavy onus on the petitioner and although, according to him, the conduct on the part of the University must be shown to have been clear, unambiguous and pronounced [the same being, according to him, central to the plea] to satisfy the requirement of estoppel and although he also wanted us to believe that the representation must be express and unerringly leading to the act of the petitioner, the legal position now appears to be as follows:

- (i) The onus placed on the party raising the plea of estoppel is very light,
- (ii) There need be no express representation,
- (iii) Form of representation is not material. The effect is. A mere raising of an expectation would suffice,
- (iv) Acquiescence or standing by would be sufficient [per Lord Kingsdown in *Ramsden*, *supra*],
- (v) A very minimum of conduct is normally requirement.

33. What do we find in this case" It is the Professor-in-charge who may make provisional admissions. It is he, who, as the so-called Convener, may admit provisionally even those who do not find their names in any of the Lists. There was no Waiting List and as many as 72 vacancies were crying to be filled up on the very last date of admissions. The petitioner was there. So were the like of him. They were all waiting in the wings with money in their wallets to pay admission fees. They were invited. They paid the fees. [It was argued by Mr. Rao that the petitioner must have named the person who had invited him to pay the fees. We regard it immaterial. There was some Brakes somewhere who was willing a la David Copper field. And, then how could fees be deposited without the other side willing to accept" Have we not heard and heard again that line from the Goblin Market: "One may lead a horse to water, twenty cannot make him drink""]. They were issued regular receipts for the same. Let us not forget that as per Clause IX of the Bulletin fees is to be paid only by an "applicant selected for admission". Let us also not forget that before the payment of fees, the applicants admitted provisionally have to produce all the requisite certificates in original and their confirmation is to be made by none other than the Professor-in-charge himself, and as per the applicant, he had actually produced those certificates. [See Clause VI1 (c)] As per Clause IX(3). The applicant also

furnished two copies of his latest passport size photograph, the same being essential to "effect his/her admission by payment of fees". He was allotted a roll number. He was issued even the requisite identity card. He was also assigned to one of the seven sections. He even started attending the lectures. And later, in all the communications of the University he was shown to have been provisionally admitted. Does all this not constitute a representation" What is all this if not the requisite "conduct" Was the applicant not justified, under the circumstances, to raise the assumption" (See : Sanatan Gauda Vs. Berhampur University and others,

35. Mr. Rao spoke of "detriment". We do not know if this expression has ever been defined. However, what we do know is that it is very much at the discretion of the Court in individual instances. If that be so, has the "representation" and the "conduct" of the University not led the applicant to burn his boats" He could easily have looked out for other equally greener pastures. He has lost one full academic year. What is this, if not "detriment""

36. We hold that the plea of estoppel is available and applicable

16. The Apex Court in Rajendra Prasad Mathur v. Karnataka University, 1986 Supp. SCC 740; Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, and Ashok Chand Singhvi Vs. University of Jodhpur and Others, had protected the interests of the students though students were found to be initially ineligible for admission.

17. Inevitably more probable inference is that the respondents found the petitioner eligible for admission to the M.A course and Therefore, gave her admission and subsequently after she had attended classes, filled the examination form, paid the examination fees and appeared in internal practical and theory examination, cancelled the admission on giving a narrow interpretation of the eligibility criteria for admission and as the petitioner had not disclosed about her qualification of Sangeet Siromani Diploma in her admission form. In the circumstances, the respondents are estopped from canceling her admission to the M.A course.

18. The other logical question is whether the narrow interpretation of eligibility criteria given by the respondents is rational and sustainable. According to the respondents the qualification of Sangeet Siromani Diploma with 60% marks can be considered only for B.A/B.Sc/B.Com graduates with 45% marks and not for those graduates who have secured 45% of marks in B.A (Hons.) Hindustani Music or B.A (Pass) with music as one of the elective subject.

19. This is not the case of the respondents that the Sangeet Siromani Diploma is meant only for B.A/B.Sc/B.Com graduates of Delhi University or candidates having passed examinations equivalent thereto. If that be so, can other candidates, who are graduates with 45% marks can be denied consideration of eligibility on having obtained Sangeet Siromani Diploma for admission to M.A course under eligibility criteria IV.

20. If a student who has not done music as subject or course in graduation is entitled to admission to M.A course in music after doing Sangeet Siromani Diploma on obtaining 60% marks in Diploma, then to hold that the graduates of Music Courses, Honors or Pass, on doing Sangeet Siromani Diploma and obtaining 60% marks will not be eligible, does not seem to be rational. Such an interpretation of eligibility criteria as resorted to by the respondents is too narrow and hyper-technical. If the Sangeet Siromani Diploma for music graduates was not to be considered for music, Honors or pass, graduates then they ought not to have given admission to the graduates of music course in the said Diploma course. The respondents are also unable to give any rational for not admitting the music graduates with Sangeet Siromani Diploma vis a vis other graduates who have Sangeet Siromani Diploma except that eligibility criteria does not say so specifically.

21. The inevitable logical inference in the facts and circumstances is that a candidate who has B.A (Hons) music with 45% marks and Sangeet Siromani Diploma with 60% marks will also be eligible for admission to the M.A music course even though such a candidate has less than 50% marks in B.A (Hons) music because such a candidate will become eligible on the basis of Sangeet Siromani Diploma. Therefore, I have no hesitation to hold that the Petitioner was eligible to get admission in M.A music course as she had more than 45% marks in B.A (Hons) music and 60% in Sangeet Siromani Diploma. The respondent must have considered this before admitting her in M.A music course though she had not disclosed about Sangeet Siromani Diploma in her admission form.

22. The learned Counsel for the petitioner has not advanced any argument about validity of Rule I of the General Rules of Examination under Ordinance X of the Delhi University calendar. In the circumstances in can not be held that the said rule is not valid.

23. In the fact and circumstances of this case Therefore, the petitioner is eligible for admission to the M.A music course and the respondents are estopped from canceling the admission of the petitioner in M.A music course.

24. For these reasons the rule is made absolute and the writ petition is allowed and the letter No.MD/2006/9124 dated 17.2.2006 canceling the admission of the petitioner in M.A(Music) course is set aside. The petitioner has already appeared in M.A(Previous) examination pursuant to the interim order dated 17.3.2006 passed by this Court. Consequently the result of the petitioner for M.A(Previous) Music course be declared forthwith. The petitioner shall also be entitled for all the consequences of declaration of her result of M.A(Previous) Music course. Parties are left to bear their own costs in the facts and circumstance.