

(2018) 12 DEL CK 0316

In the Delhi High Court

Case No : Civil Writ Petition No. 9718, 10266, 10409, 10583, 10592, 10638, 11161, 11480, 11826, 12929 Of 2018 & Civil Miscellaneous Application No. 37885, 37886, 40523, 40576, 41275, 41444, 41445, 45820, 46914, 46917, 47128 Of 2018

Ms. Saumya Chopra

APPELLANT

Vs

University Of Delhi And Ors

RESPONDENT

Date of Decision : 18-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 12 DEL CK 0316

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Vandana Sehgal, Iqram Govind Singh, Mohinder J.S. Rupal, Slomita Rai, Rakesh Tikku, Subhash Garg, Naveen Kr. Singh, Deepali Gupta, Shivendra Singh, Atul Kr. Sharma, Utkarsh Jaiswal, M P Srivignesh

Final Decision : Allowed

Judgement

1. Common issues of fact and law arise in these writ petitions which are, therefore, being taken up and decided by a common judgment. Initial reference would, for the sake of convenience, be made to the facts in W.P. (C) 12929/2018 (Saumya Chopra v. University of Delhi).

2. Having passed her Class XII examination from the Convent of Jesus and Mary School, and, thereafter, having acquired a B.A. (Hons) degree in History from the Hansraj College, University of Delhi, the petitioner Saumya Chopra, responding to a Press Release issued by the University, applied for admission to the three-year LL.B. Course of the University, on 20th May, 2018. In the examination, which took place on 18th June, 2018, the petitioner scored 221 marks out of 396, and was placed at the 104th rank. The number of seats in the General category (to which the petitioner belonged), for which applications were invited was, admittedly, 1167, as reflected in the PG Bulletin for information for

admission for the LL.B. course. The said Bulletin also contained the following Clause (iii), on which the petitioner relies:

"Those Applicants, who do not report to the "Reporting Centre" within the scheduled time limit of the given "Admission list", irrespective of the fact whether all other criteria of admission are fulfilled, shall NOT be considered for Admission in any of the subsequent lists."

3. The process of counselling, after the declaration of the results (in which, as already noted hereinabove, the petitioner was placed at the 104th rank) took place from 25th to 27th July, 2018. 1167 General category students - i.e., students for all the notified seats - were called for counselling, from whom 823 seats were filled and 344 General category seats, therefore, remained vacant. The second round of counselling took place from 31st July to 2nd August, 2018, in which, against the 344 vacant seats, 312 students were called, from which 235 seats were filled and 109 seats remain vacant. Against these 109 vacant seats, in the third round of counselling, 72 students were called, from whom 45 seats were filled, leaving 64 vacant seats. At each stage, the petitioners point out, the number of students called for the next round of counselling, i.e. to prepare the next Admission List, were short of the number of seats remaining unfilled.

4. At this stage, the University issued the following Notice:

"NOTICE: Postgraduate Admissions 2018

Last opportunity to those students who were unable to report earlier.

The candidates whose names appeared in the first, second or third admission lists for Admission to Postgraduate programs for the academic year 2018-19, but who were unable to report during the stipulated period of time at concerned Faculty/Department for verification of the documents, are now being given a last opportunity to seek admission subject to availability of seats in respective courses and categories.

Such Candidates are required to log in into their Admission Portal and "OPT" online by selecting the option "RECONSIDER MY APPLICATION". The admission portal shall be opened to OPT for the same from 13th August till 16th August 2018.

Such candidates will be considered during the fourth Admission List, provided the seats are vacant in the respective Department in category.

The admission will be granted in the order of the names appearing in the respective admission lists as per minutes and subject to the availability of seats in their respective categories. It may not be possible to allot such students the colleges of their choice. Please note that mere OPTING on the portal for "Reconsideration of Admission" does not guarantee admission.

The admission will depend on the availability of seat in the course and category,

provided all other eligibility criteria are fulfilled."

5. A fourth round of counselling took place between 18th and 22nd August, 2018, in which 27 General Category (and 18 reserved category candidates) were selected, all of whom had earlier been called, in the first three Admission Lists, and had not turned up for counselling, for one reason or the other. This was followed by a fifth Admission List, in which 55 candidates were called, all of whom belonged to the General category. Of these, 8 candidates were those who had been called in the earlier Admission Lists, and who had not turned up for counselling. For ease of reference, these 27 students who were called in the fourth round of counselling, and 8 students who were called in the fifth round of counselling, whose name had figured in the first three Admission Lists, in the General Category, would be referred to, hereinafter, as "no show" candidates/students.

6. In other words, 35 "no show" General Category candidates were included in the fourth and fifth Admission Lists, who had been called earlier and who had not turned up for counselling. This fact is candidly acknowledged by Mr. Rupal, learned counsel for the University, and is, indeed, clear from a bare comparison of the said five Admission Lists, as is noted by me in my order dated 10th December, 2018 passed in this case.

7. All the students belonging to the General Category, in this batch of writ petitions, claim to come within the next 35 students, after the last student who was admitted, namely Aashi Garg, with 222 marks. Had, therefore, 35 students, who had earlier been included in the first three Admission Lists, and who had not turned up for counselling, not been given a second chance, to figure in the fourth and the fifth Admission Lists, 35 more general category students, who had cleared the entrance examination, would have had a chance for admission to the LL.B. course conducted by the University. These 35 students, therefore, it is contended, were denied the right to secure such admission only because of the illegal act, of the University, in giving a second chance to students whose names had already figured in the first three Admission Lists, contrary, as they would contend, to the afore- extracted Clause (iii) of the Admission Bulletin issued by the University.

8. The submissions of Mr. Rupal, in response to the case sought to be set up by the petitioners, may be enumerated thus:

(i) The cut-off date of 31st August, 2018, was sacrosanct, as held by this Court in its judgment dated 3rd May, 2016 in WP(C) 3835/2016 (Pooja Verma v. Guru Gobind Singh Indraprastha University). The petitioners could not, therefore, seek a mandamus, to the University, to continue calling students for admission even after the fifth Admission List, after the cut-off date of 31st August, 2018.

(ii) The University had not defaulted in filling up the number of notified seats, inasmuch as 1167 students had, indeed, been called against the 1167 notified General Category seats. The same situation had obtained in respect of Reserved

Category seats. If, therefore, some seats remained unfilled because the students, who had been called, did not turn up, the petitioners had no right to be accommodated against the said seats. For this proposition, Mr. Rupal relies on *Neelu Arora v. U.O.I.*, (2003) 3 SCC 366 and *Rajeev Kumar v. U.O.I.*, MANU/DE/1752/2014.

(iii) The petitioners were guilty of delay and laches. The Notice, extracted in para 3 hereinabove, had been issued by the University before the fourth Admission List. The petitioners, despite being well aware of the Notice, chose not to challenge it and, indeed, approached this Court only in September, 2018, when nearly two months of classes had already taken place. In such a case, the challenge of the petitioners did not deserve to be considered on merits, and, instead, merited rejection on the ground of laches. Reliance was placed, for this proposition, on the judgements of this Court in *Maharaja Agrasen Institute of Technology v. Guru Govind Singh Indraprastha University*, MANU/DE/1176/2004 and *Yusra Hashmi v. University of Delhi*, 2014 SCC Online Del 6481.

(iv) It was further sought to be submitted that the decision to give a second chance, to students whose names had been included in the first three Admission Lists, but who had not turned up for counselling or responded, was on account of a judgment of this Court in *Farheen Jahan v. University of Delhi*, 2017 SCC Online Del 10135.

(v) Mr. Rupal further submits, in this regard, that the Admission Bulletin of the University, relating to Undergraduate Admissions contained a specific disclaimer, reading thus:

"The University reserves the right to suitably modify, update or delete any part of the Bulletin without any prior notice."

The Notice, extracted in para 3 hereinabove, Mr. Rupal would submit, amounted to a modification of the Admission Bulletin, which was permissible, as per the afore-extracted clause in the Admission Bulletin itself. The decision of the University to grant a second chance to students who had failed to report, after their names were included in the first three Admission Lists did not, therefore, Mr. Rupal would contend, infract any provision of the Admission Bulletin. Reliance was placed, by Mr. Rupal, for this contention, on the judgment in *National Board of Examinations v. G. Anand Ramamurthy*, (2006) 5 SCC 515.

(vi) Apropos the petitioner's submission that, for each subsequent Admission List, the number of students called was less than the number of unfilled seats, Mr. Rupal would submit that this could be because some of the students, who were called, did not turn up.

9. In fine, Mr. Rupal would submit, the University had followed a transparent method of filling up the seats, and no scope for interference, by a writ court, exercising jurisdiction under Article 226 of the Constitution of India, existed.

10. Responding to Mr. Rupal's contention that the petitioners were guilty of delay

and laches, the petitioners would submit that, though classes commenced in the first week of August, 2018, the last date for closing admissions was itself 31st August, 2018, so that, in approaching this Court in September 2018, the petitioners could not be held to be guilty of laches or delay. Even so, it is sought to be pointed out, the petitioners had, initially, sought to represent to the University, before seeking judicial redressal. The petitioners also point out that, even at this stage, were they to succeed in the writ petitions and be allowed to take admission to the second semester, they could still secure admission to the third semester, if they cleared all the five papers in the second semester. As such, except for the aspect of attendance - for which, they submit, they could not be blamed - they were not too late, even now, to be entitled to relief.

11. It may be noted that one of the petitioners in these batch of writ petitions belongs to the OBC category, i.e. Saravena Raghul. Except for this fact, the nature and character of the challenge, by the said candidate, is similar to that put forth by the General Category candidates. In other words, the said candidate contends that he would also be entitled to admission, if the "no show" OBC candidates, who had been called for the fourth counselling (as there were no Reserved Category candidates in the fifth Admission List) were not so called.

12. I have heard learned counsel appearing for the petitioners and Mr. Rupal, learned counsel for the University, at length.

13. The attack, by the petitioners, to the impugned decision of the University, is founded principally on the contention that, in calling, for the fourth and for part of the fifth counselling, students who had been included in the first three Admission Lists, but who had failed to turn up for counselling, the University acted in violation of the Clause, contained in its Admission Bulletin, extracted in para 2 hereinabove.

14. Mr. Rupal has, in response to the first of the above two submissions of the petitioners, i.e., regarding the justification for having invited, in the fourth round of counselling, and, in fact, in part of the fifth round of counselling, students whose names were included in the first three Admission Lists, giving them a second chance, sought to rely on (i) the "Disclaimer Clause", contained in the Admission Bulletin, preserving the right, to the University, to modify, alter or delete any part of the Bulletin and (ii) the judgment of a learned Single Judge of this Court in Farheen Jahan (supra).

15. Neither of these defences can, however, in my opinion, come to the aid of Mr. Rupal.

16. Insofar as the "Disclaimer Clause", contained in the Admission Bulletin, is concerned, it empowers the University to "suitably modify, update or delete any part of the Bulletin without any prior notice". Mr. Rupal has not been able to place, before me, any modification of Clause (iii) of the Admission Bulletin, which expressly prohibited grant of a second chance to candidates who did not turn up, despite their names having been included in the first three Admission Lists issued

by the University. The Notice issued by the University after the third Admission List, granting a "last opportunity to those students who were unable to report earlier" is, quite clearly, not a modification, but is, rather, an infraction, of Clause (iii) of the Admission Bulletin. It can hardly lie in the mouth of the University to argue that, by violating the Clause contained in its Bulletin, the Clause itself stood modified. Neither could the University seek to contend that it could modify the Clause by violating it. It might, perhaps, have been open, to the University, to modify the said Clause, by invoking the afore-extracted 'Disclaimer Clause' contained in the Admission Bulletin. That, however, has not happened; instead, the University chose, with impunity, to violate the above-mentioned Clause (iii), by inviting, once again, students whose names figured in the first three Admission Lists, and who had not turned up for counselling. The submission, of Mr. Rupal, that this was necessitated owing to exigencies in which the said students may have been placed, is neither here nor there, depending, as it does, on imponderables, for its acceptance.

17. Neither, in my view, can Mr. Rupal seek to derive any advantage from the judgment in *Farheen Jahan* (supra). That case dealt with an individual instance in which, owing to her having to take care of her 3-month-old baby who was suffering from severe diarrhoea and vomiting, the student could not report for counselling by the due date. Significantly, this Court, while deciding the said case, relied on an earlier decision, which, like the case before it, dealt with a student who missed out on counselling as he was suffering from a bout of jaundice. The fact that, in such cases, the court, in exercise of its equity jurisdiction, preferred to grant relief to the candidate concerned by allowing her, or him, to attend counselling, cannot afford a carte blanche to the University to, in clear violation of Clause (iii) of its Admission Bulletin, extend, wholesale, to all candidates, who had failed to report for counselling despite their names having been included in the first three Admission Lists, a second chance.

Such an act, on the part of the University, partakes of the character of a fraud on its own Admission Bulletin which, needless to say, cannot be tolerated in law.

18. In view of the above, it becomes unnecessary to address the submission, of Mr. Rupal, that no candidate had a vested right to claim admission merely because seats remained vacant even after the cut-off date for effecting admissions. To that proposition, there can possibly be no cavil. The case of the petitioners is not, however, required to be pitched so high as, in their submission, had the "no show" candidates of the first three Admission Lists, not been granted a second chance in the fourth, and the fifth Admission Lists, the petitioners would have secured admission, given their merit position.

19. Addressing, now, the plea, of Mr. Rupal, that the petitioners deserved to be non-suited on the ground of delay and laches, learned counsel for the petitioners has rejoined, correctly, that the mere issuance of the Notice, inviting the "no show" candidates of the first three Admission Lists, to apply again, may not have prompted them to rush to the court, as they were unaware how many such

candidates were there and, whether, even if such candidates were to re-apply, their turn would come, or not. The cause of action, insofar as the petitioners were concerned would, indeed, have arisen only when, after the admission process was over, they found that they had not managed to secure admission. When, at that stage, they came to know that "no show" candidates, of the first three Admission Lists, had occupied the entire fourth Admission List, as well as 8 seats in the fifth Admission List, the petitioners, in my view, certainly had a right to agitate their claim before this Court. They cannot, in such circumstances, be non-suited, either on the ground of delay and laches, or even for the reason that classes have already commenced and continued for two months. Learned counsel for the petitioners has also correctly contended, in this regard, that, though classes commenced in the first week of August 2018, the admission process continued till 31st August, 2018 (admittedly the cut-off date) and that, therefore, there could be no question of the petitioners approaching the Court before 31st August, 2018, when the admission process came to a close, and they found themselves left in the lurch. They have approached this Court within a reasonable period of the said date, i.e. within less than a month and cannot, therefore, be thrown out, without addressing their grievance on merits. Even otherwise, applying the principle of *lis pendens*, the fact that classes may have commenced, and continued for two months, cannot afford a ground to deny relief to the petitioners.

20. It would be appropriate, before closing this judgment, to deal with two of the decisions, on which Mr. Rupal placed reliance, i.e. *Neelu Arora v. U.O.I.*, (supra) and *National Board of Examinations v. G. Anand Ramamurthy*, (supra).

21. *Neelu Arora* (supra) was a case in which the petitioners' claim was that, against the vacancies which had arisen owing to failure, of the selected candidates to join, a third round of counselling ought to have taken place, so that they would have secured a chance to obtain admission. The Supreme Court observed that Clause 14 of the Scheme which applied in that case was to the effect that, if the Dean or the Principal of the college concerned did not notify the vacancy position due to non-joining of candidate or candidates in the first round of counselling before the date indicated therein, the seats allotted to the college would be treated as vacant. Para 6 of the judgment is itself a pointer as to why the said decision cannot apply to the facts of the present case:

"When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the Scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do

not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the all-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in *Medical Council of India v. Madhu Singh* [(2002) 7 SCC 258] has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled, that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind, we do not think any reliefs as sought for by the petitioners can be granted under these petitions."

(Emphasis supplied)

22. Quite clearly, the italicised words, in the above-extracted passage, from Neelu Arora (*supra*), indicate that the said judgment cannot be of any assistance, insofar as the controversy in issue in the present case is concerned. Had the petitioners limited their case to a bald claim to the vacancies which had remained unfilled, after the fifth round of counselling was over, and the cut-off date expired, solely on the ground that all unfilled seats ought to have been filled up, then, perhaps, Neelu Arora (*supra*) might have stood in their way. The petitioners do not, however, as has already been noted herein above, pitch their case that high. Their claim is to the vacancies remaining unfilled after the third round of counselling and before the arrival of the cut off date for effecting admissions. Their case is that, had these vacancies not been filled up by inviting the earlier "no show" candidates, they would have succeeded in securing admission, by dint of merit. The reliance, by Mr. Rupal, on Neelu Arora (*supra*) has, therefore, to be rejected as misconceived.

23. Equally misconceived, in the opinion of this Court, is Mr. Rupal's reliance on National Board of Examinations (*supra*). In that case, in exercise of the power, reserved in its Admission Bulletin, to effect changes in the schedule of examinations, the National Board of Examinations (NBE) changed the schedule of Examinations from their being conducted twice a year, in June and December, for all disciplines, to conducting of such biannual examinations only in those streams in which the number of candidates was more than 100. The Supreme Court, while holding this change to be unexceptionable in law, held that the High Court could not have directed the petitioner-NBE to act contrary thereto. In the present case, I have already opined, hereinabove, that the University did not exercise the power, vested in it by the Admission Bulletin, to modify the various clauses of the Bulletin but preferred, instead, to act in violation thereof. This, in my view, was wholly impermissible in law.

24. As the petitioners are, thus, found to succeed on facts, it is not necessary to

address the various other judicial authorities, on which both sides have placed reliance, and which enunciate principles which are, more or less, well-settled.

25. Resultantly, the act of the University in inviting, for its fourth and fifth counselling, candidates who had not shown up, despite their names having figured in the first three Admission Lists, has to be held as illegal and arbitrary, and starkly violative of Clause (iii) of its own Admission Bulletin. The University would necessarily have, therefore, revisit the said decision. At the same time, it would not be in the interests of anyone - far less, in the interests of justice - to direct the entire exercise of fourth and fifth counselling to be held afresh. Neither would it be in the interests of justice to interfere with the admissions of the students who had not shown up consequent to the first three Admission Lists, despite their names having figured therein, and who obtained admission pursuant to the fourth or the fifth Admission Lists. These students cannot be faulted for having responded to the Notice put up by the University, even if the Notice were, *ex facie*, contrary to the Admission Bulletin. As sufficient vacancies, apparently, still remain unfilled, both in the General as well as the OBC categories, to accommodate the petitioners before this Court, creation of any supernumerary seats, for the said purpose, may not be necessary.

26. This Court, however, deems it appropriate to limit the relief to the petitioners before this Court, and not to extend it to candidates who may have been sitting on the fence, waiting for the outcome of these proceedings. The present petitioners have approached this Court within a reasonable period of the cut-off date for admissions and are, therefore, entitled to equitable relief, guaranteed to them by Article 226 of the Constitution of India.

Conclusion

27. Resultantly, the present writ petitions are allowed in the following terms:

(i) All such petitioners, in these writ petitions, who would have been entitled to counselling, were the "no show" candidates eliminated from the fourth and fifth Admission Lists, would be counselled and granted admission, to the second semester of the LL.B. course as, owing to no fault of theirs, they have been prevented from attending the first semester and appearing in the first semester examinations.

(ii) This shall not, however, absolve the petitioners from appearing in the first semester examinations altogether. The petitioners would be required to appear in the first semester "repeat" examinations, to be held by the University to cater to students who, for unavoidable reasons, could not appear in the first semester examinations held in November-December 2018.

(iii) Further advancement, of the petitioners, to the third semester, would be dependent on clearing the papers in the first and second semesters.

(iv) These directions are limited to the petitioners in these writ petitions, and would not constitute a precedent to enable students who have yet to approach

this Court, to seek similar reliefs.

28. There shall be no order as to costs.