

(2009) 09 DEL CK 0165

In the Delhi High Court

Case No : Writ Petition (Civil) No. 10716 of 2009

Nikhil Jain

APPELLANT

Vs

Jawahar Lal Nehru University (JNU)

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0165

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; S.C. Dhanda, for the Respondent

Judgement

Anil Kumar, J.—The petitioner seeks direction to Jawahar Lal Nehru University (JNU) to admit him in the M.A. (Pol. Science) course 2009-2010 pursuant to deferred admission granted to him on 7th August, 2008 on his application for the same date.

2. The petitioner applied for admission to the course of M.A. (Pol. Science) in April 2008 and appeared in the entrance examination on 18th May, 2008 for the said course.

3. The result of the entrance examination was declared in July 2008 and the petitioner was selected. The eligibility condition for admission to M.A. (Pol. Science) course of JNU contemplated last date for payment of fees as 5th August, 2008. For getting admission in the course, a candidate had to join the program by stipulated date, i.e., 5th August, 2008. In case of non-declaration of the result of the qualifying examination, the candidate had to submit his acceptance of admission along with the bank draft of the required amount by 5th August, 2008. The relevant eligibility condition stipulated in the prospectus for 2008- 2009 of Jawahar Lal Nehru University is as under:

Such of the selected candidates who are not in a position to join the programme by stipulated date i.e 5th August, 2008 owing to non-declaration of their result but submit their acceptance along with the Bank draft of the required amount by

5th August, 2008 will be permitted to complete their registration requirements on or before 14th August, 2008.

It may be noted that such of the selected candidates who have given their acceptance along with the Bank Draft of the required amount and have appeared in the qualifying examination before 14th August, 2008 but fail to join the programme by August 14, 2008 may, in case, if they so desire, apply in writing to the Assistant Registrar (Admissions) in the prescribed form requesting for deferred admission in the Winter Semester (beginning January 2009) or during the next academic year, as may be accepted by the University. University reserves the right not to grant deferred admission.

Candidates who are not able to report for registration along with all relevant documents including original marks sheets of qualifying examination by August 14, 2008 due to non declaration of the result of the qualifying examination are advised not to come for admission to the University after 14th August, 2008 which is the deadline for admission to the University in the semester. No relaxation/extension of time for admission shall be granted beyond 14th August, 2008 for any reason whatsoever.

4. The petitioner had applied for admission to M.A. (Pol. Science) course of Jawahar Lal Nehru University on the basis of qualifying examination from University of Delhi. The petitioner has disclosed that he was placed in supplementary in one of the papers of the qualifying course and his result of supplementary examination was not declared prior to 14th August, 2008, therefore, according to eligibility condition the petitioner sought for deferred admission for the winter semester of 2009/next year and for which a form dated 7th August, 2008 was filled by the petitioner according to the prospectus of the respondent, which was accepted by the respondent.

5. Since the result of the petitioner in the qualifying examination was declared after 14th August , 2008 and the request of the petitioner for deferred admission was accepted, therefore, on the basis of the deferred admission petitioner sought admission to M.A. (Pol. Science) course 2009-2010 and gave a letter dated 29th July, 2009 stating that since he had got a supplementary in one of the papers for the qualifying course and the paper in which supplementary was awarded to the petitioner was cleared by him after 14th August, 2008 and he was granted deferred admission, therefore, he be admitted to M.A. (Pol. Science) course for the session 2009-2010. The petitioner also asserted that the necessary form for admissions duly signed by the Head of the Department of Political Science was issued but the petitioner has been denied admission necessitating filing the present petition.

6. The petitioner along with the petition also produced the copies of his statement of marks for B. A. (Programme) of University of Delhi dated 25th February, 2009 showing his marks as 540 out of 1200 and the petitioner having passed in the B.A. Programme of the University of Delhi. The petitioner has also

produced a certificate issued by the Principal, Sri Aurobindo College, University of Delhi, certifying that the petitioner had appeared in all the papers of B.A. third year examination before 14th August, 2008 and his result was declared after 14th August, 2008. The petitioner has also produced the copy of the receipt No. 50265 dated 7th August, 2008 depositing fees for M.A. (Pol. Science) course with Jawahar Lal Nehru University.

7. Pursuant to the request of the petitioner for deferred admission for the M.A. (Pol. Science) Course 2009-2010, he received a communication dated 6th July, 2009 intimating him that he has been permitted to join M.A. (Pol. Science) Course during the Monsoon semester 2009-2010 beginning from July 2009 subject to production of evidence that the petitioner fulfils eligibility requirement for admission to the said course and that the petitioner had appeared in all the papers including practicals, if any, of qualifying examination and the result of the qualifying examination was declared after 14th August, 2008.

8. The petition is contested by the respondent and an affidavit of Shri V.K. Jain, Acting Registrar, Jawahar Lal Nehru University, has been filed contending inter alia that the facility of deferred admission is available only to those candidates whose results have not been declared by their respective Boards/Universities/ Institutions prior to 14th August, 2008 and such candidates who have appeared in all their papers including practicals, if any, of the qualifying examination before 14th August, 2008. According to the respondent, petitioner had applied for deferred admission on the plea that his result had not been declared. The petitioner is alleged to have submitted an undertaking that he had completed all the papers of the qualifying examination before 14th August, 2008 and his result would be declared after 14th August, 2008. A copy of the undertaking given by the petitioner, which in fact is an application for deferment of admission dated 7th August, 2008 has also been produced. The said application categorically stipulates that all the papers of the petitioner including practical examination had been completed on or before 14th August, 2008 and the result of the qualifying examination would be declared after 14th August, 2008.

9. According to the respondent, the petitioner approached for admission on 22nd July, 2008 when it transpired that the petitioner had been placed in supplementary in one of the papers of the qualifying examination prior to 14th August, 2008 and he had appeared in the supplementary examination held after 14th August, 2008. On this ground, it is contended that the petitioner is not entitled for admission though he had qualified the entrance examination for admission to M.A. (Pol. Science) Course of J.N.U. and he has also obtained minimum 45% marks in the qualifying examination. It is contended by the respondent that though the petitioner was granted deferred admission on 7th August, 2009 and his application and his fees had also been accepted but the eligibility is considered when the candidate comes to complete the formalities of admission and tenders his original documents because at the time of the entrance examination eligibility is not considered. An additional affidavit has also

been filed by the respondent contending that dates are notified in the prospectus approved by Academic Council of the University. According to the respondent the dates are fixed keeping in view the teaching programme in each semester. It was further contended that in JNU it is not only the performance at the end of the semester which matters but there is continuous internal evaluation of the students. Referring to clause 20 it was asserted that the candidates appear in the entrance examination at their own risk and they would be entitled for admission provided they secure minimum percentage in the qualifying examination.

10. The respondent, however, admitted the facility of deferred admission in case of those students whose result is not declared up till the date notified by the respondent/University. Respondent emphasized that the admission is granted by the admission branch of the University after scrutinizing all the relevant documents produced by the candidates. According to the respondent the role of faculty chairperson becomes relevant only after admission, as the folio of admission is to be taken to the chairperson of the department only after the eligibility is verified by the admission branch. It was pleaded that no document is examined when the request for deferred admission is accepted as at the time all the documents are not available and the result is not declared.

11. Regarding the endorsement of the chairperson of the department on the folio of the petitioner, it was submitted that the chairperson does not examine any admission paper. It was also contended that no official of the admission branch has signed the admission folio of petitioner. The requirement of endorsement by the chairperson of the centre is only after admission is granted by the admission branch. In the circumstances it was contended that on the basis of folios produced by the petitioner which had been duly endorsed by the chairperson of the department, it cannot be inferred that the petitioner had already been granted admission.

12. The arguments have been heard by this Court. Though the learned Counsel for the respondent has very emphatically contended that since the petitioner appeared in one of the papers in which he was placed in supplementary examination after 14th August, 2008, however, learned Counsel is unable to show as to on what basis such an inference has been drawn by the University. The petitioner has filed a certificate dated 16th July, 2009 from the Principal of Sri Aurobindo College, University of Delhi categorically stipulating that the petitioner had appeared in all the papers of B.A. third year examination before 14th August, 2008 and his result was declared after 14th August, 2008. The said certificate has not been denied by the respondent in the counter affidavit filed by the respondent. In the circumstances, the plea of the respondent that the petitioner had appeared in the qualifying examination of the graduation course after 14th August, 2008 is based on their own assumption. Merely because the petitioner was placed in the supplementary for one paper of the B.A. Course, it could not be assumed by the respondent that the petitioner had not appeared in the papers of qualifying examination prior to 14th August, 2008. There is nothing

on record to show that the petitioners had appeared in one of the paper of the qualifying examination after he was placed in supplementary after 14th August, 2008. What is the basis for such an assumption has not been disclosed by the respondent. In view of the certificate dated 16th July, 2009 which is annexed as Annexure P-3 to the petition, the respondent ought to have produced something to contend that the said certificate is not correct or should have averred in the counter affidavit as to the date on which the petitioner appeared in the supplementary examination of one paper.

13. The other reason which impels this Court to reject the contention of the respondent is that the petitioner did appear in the examination of qualifying course prior to 14th August, 2008 in all the papers. The eligibility condition as detailed in the prospectus is that the candidate must have appeared in the qualifying examination before 14th August, 2008. The condition is not that the candidate should have passed all the papers of the qualifying examination after appearing in them prior to 14th August, 2008. The principal of the college from where the petitioner had appeared in the qualifying examination has certified that the petitioner appeared in all the papers of the qualifying examination before 14th August, 2008. This also cannot be refuted by the respondent that if a candidate is placed in supplementary in one of the papers, it cannot be stated that the candidate has failed in the qualifying examination. The deferred admission is for those candidates who have qualified the entrance examination of the respondent/University but whose result qualifying the examination is not declared prior to 14th August, 2008. In the circumstances if a candidate after appearing in the qualifying examination prior to 14th August, 2008 reappears in one of the papers of his qualifying examination for any reason including that such a candidate was placed in a supplementary, it cannot disentitle such a candidate for deferred admission. The application for deferred admission dated 7th August, 2008 has a statement of the petitioner, only to the effect that all the papers of qualifying examination including practical examination had been completed before 14th August, 2008. Completing all the papers of qualifying examination including practical examination does not connote that the a student should have passed all the examinations. Consequently on the basis that in a supplementary examination in one paper of the qualifying examination, the candidate had appeared after 14th August, 2008, the deferred admission already granted on 7th August, 2008 even by accepting the fees of the course for the winter semester, 2009, could not be cancelled.

14. An eligibility condition that even in a supplementary examination, the candidate should have appeared prior to 14th August, 2008 cannot be read, if it has not been specified by the respondent. Another reason not to accept the plea of the respondent University is that there appears to be no rationale for insisting that a candidate should have passed in the qualifying examination prior to 14th August, 2008. A deferred admission is given to the candidates qualifying the qualifying course after 14th August, 2008. The date of 14th August, 2008 for appearing in the examination would be relevant if no admission is to be given

after 14th August, 2008. However, in case the admission is given on the basis of the result declared after 14th August, 2008 on account of JNU's policy for deferred admission, the alleged condition that the candidate should have passed in all the papers of the qualifying examination prior to 14th August, 2008 is without any rationale.

15. Learned Counsel for JNU has contended that the rationale for insisting for a candidate to have passed in all the papers prior to 14th August, 2008 is that such a candidate cannot write that he has qualified the graduate course. This rationale given by the learned Counsel for the respondent does not appear to be logical because even those candidates who appear in all the papers or some of the papers after 14th August, 2008 would also be unable to contend that they have qualified the graduate course unless their result is declared and they pass the examination. The deferred admission is given on the basis of the declaration of the result of the qualifying examination after 14th August, 2008. If the deferred admission is given on the basis of result declared after 14th August, 2008, then in these circumstances the insistence that the candidate should have passed in all the papers prior to 14th August, 2008 is without any justification and does not have any nexus for which the alleged classification has been created by the respondent/JNU. The respondent is unable to show as to how appearing before 14th August, 2008 sub served any fair and logical objective as the candidates whose results were declared after said date had been given deferred admission. The discretionary power of the respondent had to be exercised keeping in view the purpose for which it was conferred. The decision to cancel the deferred admission on the assumption that the petitioner did not appear in all the papers of qualifying examination prior to 14th August, 2008 is irrational and not based on sound reason rather no reason has been disclosed except that the decision has been taken by the respondent in accordance with its rules. The decision in the facts and circumstances is arbitrary and cannot be sustained and the deferred admission of the petitioner cannot be cancelled.

16. In the facts and circumstances, the respondent is unable to substantiate its plea that the petitioner does not fulfill the eligibility condition. The petitioner had been granted deferred admission as his application for deferred admission on 7th August, 2008 was accepted and even his fees was accepted. Not only in August 2008, the steps for deferred admissions were completed, even forms for deferred admissions were allowed to be filled by the respondent in July 2009 and the Head of the Department of Political Science has endorsed the necessary admission forms duly counter signed by him. Learned Counsel for the respondent is unable to show as to how the University shall be prejudice in case the deferred admission of the petitioner is not cancelled because allegedly he did not appear in one of his subject paper of qualifying examination before 14th August, 2008.

17. Therefore, for the foregoing reasons, the writ petition is allowed. The respondent is directed to admit the petitioner in M.A. (Political Science) forthwith and allow the petitioner to join the classes immediately. Considering the facts

and circumstances, the parties are however, left to bear their own costs.

Dasti under the signature of the Court Master