

(2013) 10 DEL CK 0332
In the Delhi High Court
Case No : WP (C) No. 5221 of 2013

Nitish Sharma and Others

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0332

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Mukul Talwar and Mr. Vipin Singh for R-1, Ms. Anubha Agrawal, for R 2, Mr. Amitesh Mumar, Ms. Mamta Tiwari and Mr. Shashank Shekhar for R-3 and Mr. Yashpal, for R-4, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.

CM No. 11816/2013 (Exemption)

Allowed subject to just exceptions.

WP(C) No. 5273/2013

1. Respondent No. 4-Global Educational & Social Trust, situated in Faridabad, Haryana applied to respondent No. 1-Guru Gobind Singh Indraprastha University (for short "GGSIPU") seeking affiliation to the said University for its MBA Course for the academic year 2011-2012. In terms of the requirement of Statute 24 of its Statutes, GGSIPU required respondent No. 4 to obtain a No Objection from the State of Haryana before its application seeking affiliation could be considered. The NOC, however, was refused by the State of Haryana. The respondent No. 4 thereupon filed WP (C) No. 5218/2011 which came to be disposed of vide judgment dated 18.8.2011 whereby a learned Single Judge of this Court directed the State of Haryana to issue the requisite NOC for starting MBA course for the academic year 2011-2012. Being aggrieved from the said

judgment, the State of Haryana filed LPA No. 756/2011. When the aforesaid appeal came up for admission on 15.9.2011, a Division Bench of this Court, as an interim measure directed that the name of respondent No. 4-College shall be included in the counseling list but no admission shall be given without leave of the Court. It was further directed that the students shall be so notified and warned by GGSIPU. Vide subsequent interim order dated 23.9.2011, the Division Bench, permitted admission by respondent No. 4 on provisional basis. When the aforesaid LPA came up for hearing on 27.9.2011, it was stated on behalf of the GGSIPU that it required certain undertakings to be furnished by the students. The Division Bench, therefore, directed the students to furnish the undertakings subject to final adjudication in the appeal. It was further directed that if any part of the undertaking is in the realm of unreasonability the same shall be adverted to.

2. The LPA came to be disposed of vide order dated 27.8.2012 whereby the order passed by the learned Single Judge was set aside. Taking note of the interim arrangement in LPA No. 756/2011 whereby the provisional affiliation was granted to respondent No. 4 with respondent No. 1-GGSIPU, and it was permitted to admit students, the Division Bench directed the Government of Haryana to take over the students already admitted by respondent No. 4, in the MD University, which is a different University situated in Haryana.

3. The petitioners before this Court took admissions with respondent No. 4 in the academic year 2011-2012, pursuant to the interim orders passed in LPA No. 756/2011 whereupon respondent No. 4 was granted provisional affiliation and was permitted to admit students, subject to final outcome of the appeal. The petitioners appeared in the examinations in the first and second semesters of their MBA course conducted by GGSIPU. The petitioners filed an application, being CM No. 10901/2013, for being impleaded as a party to LPA No. 756/2011. In the said application they also sought direction to GGSIPU to allow them to complete the remaining course. The aforesaid application, however, was dismissed as withdrawn on 19.7.2013 but the petitioners were granted liberty to file a writ petition claiming the reliefs which had been sought in the application filed by them. They have accordingly filed the present writ petition claiming the following reliefs:

(1) Issue an appropriate writ order or direction in the nature of a writ of mandamus directing the Respondent No. 1 to accommodate the petitioners within its affiliated College/Institutes for the purpose of completion of their MBA regular course without any disturbance or further gap.

(2) Issue an appropriate writ order or direction in the nature of a writ of mandamus directing the Respondents to complete the MBA of students, schedule the due examinations and not to charge any further fee.

4. The petitioners had also filed a Special Leave Petition, being SLP (C) No. 21152/2012, against the order dated 27.8.2012 in LPA No. 756/2011 passed by

a Division Bench of this Court. In the said SLP they had also sought permission to appear in the examinations of the third semester. The aforesaid SLP was dismissed as withdrawn on 27.11.2012 with liberty to intervene in SLP (C) No. 27253/2012 which respondent No. 4 herein had filed against the aforesaid judgment of the Division Bench of this Court in LPA No. 756/2011.

5. The contention of the petitioners, who have appeared in person and on whose behalf arguments have been advanced by petitioner No. 1 despite an opportunity being given to them to take an adjournment and have the benefit of arguments by their counsel, is that since they took admission pursuant to the counseling held by respondent No. 1-GGSIPU and have also appeared in the examinations conducted by the said University for semester I and semester II, they cannot be penalized for withdrawal of the provisional affiliation, which the said University had granted to respondent No. 4 for the academic year 2011-2012 and consequently they should be accommodated in some other college affiliated to GGSIPU where they can pursue the remaining part of their MBA course. The learned counsel for respondent No. 1-GGSIPU, however, submits that since the counseling was conducted and admission was granted only on a provisional basis subject to the final outcome of LPA No. 756/2011, the petitioners are entitled to take admission only in MD University in terms of the final order dated 27.8.2012 passed by the Division Bench of this Court in LPA No. 756/2011. In this regard the learned counsel for respondent No. 1-GGSIPU also drew my attention to the undertakings submitted by the petitioners while taking admission to respondent No. 4-College during the academic year 2011-2012.

6. It is an undisputed position that respondent No. 1-GGSIPU had declined to grant affiliation to respondent No. 4-Global Educational & Social Trust, unless it produced NOC from the State of Haryana. Admittedly the said respondent was not able to obtain NOC from the State of Haryana and consequently affiliation could not be granted to it by GGSIPU. The order of the learned Single Judge dated 18.8.2011 directing the State of Haryana to grant NOC to respondent No. 4 has been set aside by the Division Bench thereby accepting the stand of the University that in the absence of NOC from the State of Haryana respondent No. 4 was not entitled to be affiliated to the said University.

7. As noted earlier, the order dated 15.9.2011 as well as order dated 23.9.2011 were interim orders and respondent No. 4 was permitted to make admissions only on a provisional basis, subject to final outcome of the appeal. Therefore, the admissions made by respondent No. 4 for the academic year 2011-2012, on the strength of the aforesaid interim orders must necessarily abide by the final decision in the aforesaid appeal and no legal right to pursue studies in a college/institution affiliated to respondent No. 1/GGSIPU accrued to the petitioners on the strength of such provisional admissions.

8. A perusal of the counseling notice dated 24.9.2011 issued by GGSIPU would show that it was clearly stated in the said notice that the counseling was being permitted pursuant to the interim orders dated 15.9.2011 & 23.9.2011 passed

by this Court in LPA No. 756/2011 and that the admissions would be on a provisional basis and subject to further order(s) of the Court in the said LPA. The students were required to furnish an undertaking to this effect, to the University. The notification dated 24.9.2011 issued by the University also clearly stipulated that the special counseling was being conducted in view of the interim orders passed in the aforesaid LPA and the admissions would be provisional and subject to further order(s) in the aforesaid LPA. Therefore, the students who took admission with respondent No. 4 in the academic year 2011-2012 including the petitioners before this Court, were fully aware that they were taking admission on the strength of interim orders passed by the Court and their admission would be purely provisional and subject to further orders in the said LPA. In fact, the petitioners also furnished undertakings stating therein that they clearly understood that the admission was purely provisional and temporary and subject to final orders of this Court in LPA No. 756/2011. They also acknowledged that they would not be entitled to regular admission merely on the basis of the aforesaid provisional and temporary admission and would have no objection to the final decision taken by the University in this regard. Therefore, having clearly understood the implications of taking admissions on a provisional basis. Having agreed to abide by the decision of the University in this regard, the petitioners can have no grievance if on account of the aforesaid LPA having been allowed, GGSIPU has refused to grant them admission for completing their MBA course with the said University.

9. It is not as if the Division Bench while deciding LPA No. 756/2011 did not take care of the interest of the petitioners and other students who were similarly situated. A direction was issued to the Government of Haryana to accommodate all such students in MD University which is a University situated in Haryana. The petitioners, however, are unwilling to pursue the remaining course of their study in MD University. Since the Division Bench, in its wisdom, did not direct GGSIPU to allow the petitioners to continue the remaining course and rather directed the State of Haryana to admit them in MD University, the petitioners have no legal right to pursue the remaining course in a college affiliated to respondent No. 1- GGSIPU.

10. The petitioners drew my attention to the following observation made by the Division Bench in LPA No. 756/2011 in para 18 of the judgment and contended that the petitioners are required to be accommodated in a college/institution affiliated to GGSIPU:

18. ...The grant of affiliation by GGSIPU is also coupled with the right of withdrawal of affiliation and it is the general principle that such withdrawal of affiliation attributable to the erring College/Institution is not to be to the prejudice of the students already admitted and such students have to be accommodated in other Colleges/Institutions of the University or of its other affiliates. However such transposition of students is also bound to pose a problem where the affiliated College/Institution is situated in a territory outside

the State which has established the University...

I, however, find no merit in the contention of the petitioners. This is not a case where the University, of its own, first grants affiliation to a college and then at a later date withdraws such affiliation. In the case before this Court, GGSIPU did not at all grant affiliation to respondent No. 4-Global Educational & Social Trust and it was only pursuant to the interim orders of this Court that provisional admission was granted to the petitioners and other students who are similarly situated. Therefore, the above-referred observations do not apply to the petitioner and that precisely could be the reason why the Division Bench did not direct GGSIPU to permit the petitioners to complete their course in a college affiliated to the said University and rather directed the State of Haryana to accommodate them in MD University.

The primary grievance of the petitioners was against the order of the Division Bench which instead of directing GGSIPU to permit the petitioners to complete their course from another college affiliated to GGSIPU, directed the Government of Haryana to admit them in MD University. The petitioners availed of the remedy available to them in law by filing a Special Leave Petition. That SLP was, however, withdrawn by them. Though the Division Bench vide order dated 19.7.2013 permitted them to file a fresh petition, that would be of no consequence since the view taken in the order dated 27.8.2012 passed by the Division Bench cannot be given a go-bye in the present writ petition. In any case, the petitioners have no legal right to continue the remaining course in a college affiliated to GGSIPU since they took provisional admission knowing fully well that in the event of the final order in the LPA No. 756/2011 going against them they would have no benefit of such provisional admission. Moreover, the petitioners were accommodated by the Division Bench by directing their admission in MD University. Having not availed of the benefit of the aforesaid direction given by the Division Bench, the petitioners cannot succeed unless they are able to show that their plight is attributable to some wrongful act on the part of respondent No. 1-GGSIPU. No such case, however, has been made out by the petitioner.

For the reasons stated hereinabove the writ petition is dismissed.

No orders as to costs.