

(2018) 02 DEL CK 0597

In the Delhi High Court

Case No : Civil Writ Petition No. 9944, 10211 Of 2017, Civil Miscellaneous No. 40514, 41681, 41682, 41688 Of 2017

Preeti Umarao & Ors

APPELLANT

Vs

Jawaharlal Nehru University & Ors

RESPONDENT

Date of Decision : 26-02-2018

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2018) 02 DEL CK 0597

Hon'ble Judges : Rekha Palli, J

Bench : Single Bench

Advocate : Govind Jee, Surabhi Kumari, Monika Arora, Girish Pande, Ravinder Agarwal

Final Decision : Disposed Of

Judgement

Rekha Palli, J

1. Both the present writ petitions are based on similar facts and seek similar prayers and are accordingly being decided vide this common order.

2. The petitioners, 18 in number having taken admission in M.Phil/Ph.D.(Master in Philosophy/Doctorate in Philosophy) in the respondent

no.1/University in the academic session 2016-17, have filed the present petition under Article 226 of the Constitution of India seeking quashing of the

circulars dated 21.09.2017, 25.09.2017 & 24.10.2017 issued by respondent no.1/University.

3. Learned counsels for the petitioners submit that the respondent no.1/University had on 08.02.2016 issued the prospectus inviting applications for the

said course for academic session 2016-17 and the said prospectus clearly stated that admissions pursuant thereto would be governed by the UGC

(Minimum Standards and Procedures for Awards of M.Phil/Ph.D Degree) Regulations 2009, which had been issued on 01.06.2009.

4. Learned counsels for the petitioners further submit that based on this prospectus, all the petitioners had applied for admission in the respondent no.1/University. They further submit that, however, before the petitioners could actually take admission in respondent no.1/University, the UGC had amended its regulations on 05.05.2016 and the same were notified on 05.07.2016 and are hereinafter being referred to as UGC (Minimum Standards & Procedure for Award of M.Phil/Ph.D Degree) Regulations, 2016. Learned counsels for the petitioners submits that based on these regulations issued by the UGC in 2016, the respondent no.1/University had vide the impugned circulars imposed the condition as incorporated in the Regulations of 2016, even though they had all taken admission pursuant to prospectus issued in February 2016, which was based on the Regulations of 2009. Learned counsels for the petitioners have drawn my attention to circular dated 14.07.2017 in support of their contention, that after seeking clarification from its Legal Cell, the respondent no.1/University had itself clarified that the UGC Regulation, 2016 would be applicable to the scholars getting enrolled for the academic year 2017-18 onwards and therefore the UGC Regulation, 2016 could not have been applied to the petitioners as they had admittedly taken admission in the academic year 2016-17.

5. Learned counsel for the petitioner places reliance on a decision of this Court in Varun Kumar Agarwal v. Union of India & Ors. reported as (2011) 179 DLT 24 (DB) to contend that once the respondents had issued a prospectus clearly pointing out that the admission will be governed based on the UGC Regulations 2009, the conditions of the petitioners' admission could not be altered at a subsequent stage. Learned counsel for the petitioners, therefore, submits that in view of the well settled legal position that the students are to be governed by the conditions of the prospectus pursuant whereto they had taken admission, the respondent no.1/University could not have applied the UGC Regulations of 2016 to the petitioners.

6. Ms.Monika Arora, learned counsel for the respondent no.1/University fairly submits that in view of the aforesaid legal position, she does not oppose the present petitions and states that all the petitioners and other students who have taken admission in respondent no.1/University in the academic year

2016-17 would be governed by the UGC Regulations of 2009.

7. Ms.Monika Arora, also relies on a decision of the Supreme Court in the case of Parmender Kumar & Ors v. State of Haryana & Ors. reported as

(2012) 1 SCC 177 in support of her plea that once the admission prospectus to any course is issued and the admission procedure is initiated, the State

Government does not have the jurisdiction to thereafter change the criteria relating to the condition of admission.

8. She also relies on a decision dated 25.08.2017 of this Court in Assitant Prof. Sutapa Das v. Assistant Registrar Evaluation Centre JNU & Anr. in

W.P.(C)No.6816/2017 in support of her contention that in the aforesaid case also, even though the Court did not decide the question raised by the

petitioner, but after considering the fact that the petitioner had taken admission to the Ph.D course under the UGC Regulations 2009, the Court had

directed that keeping in view the peculiar facts of the case, the petitioner be permitted to be promoted to the next phase of her Ph.D programme,

which is the research phase i.e. 3rd Semester.

9. Having heard learned counsels for the parties, I am of the considered opinion that keeping in view the admitted facts which clearly show that the

prospectus for the admission was issued by respondent no.1 in February, 2016 itself i.e. much before the Regulations of 2016 were issued or notified,

the present petition is liable to succeed. I find merit in the submission of the learned counsel for the parties that once the admission process had

started, the eligibility conditions and other conditions stated in the prospectus cannot be altered to the determent the students, who apply pursuant to

the said prospectus. In this context, reference may be made on the paras 15 & 16 of the decisions of this Court in Varun Kumar Agarwal (supra):-

â??15. In Indu Gupta v. Director Sports, Punjab and Anr., AIR 1999 P&H 319 (FB), the Full Bench in paragraphs 9, 10 and 11 has

expressed thus:

9. A Full Bench of this Court in the case of Raj Singh v. Maharshi Dayanand University, (1994) 4 Recent Services Judgments, 289

disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict adherence to avoid

unnecessary prejudice to the candidate or the authority during the course of admission. The bench approved that the eligibility for

admission to a course has to be seen according to the prospectus issued before the entrance test examination and that the admission has to

be made on the basis of the instructions given in the prospectus having the force of law. While disapproving the law laid down by a Division

Bench of this Court in the case of Madhvika Khurana (minor) v. M. D. University Civil Writ Petition No. 15367 of 1991, where contrary

view had been taken, the Full Bench observed that the students seeking admission to the professional colleges are even otherwise matured

enough and supposed to understand the full implication of filling the admission form and compliance with the instructions contained in the

brochure.

10. Subsequently, another Full Bench of this Court in the case of Rahul Prabhakar v. Punjab Technical University, Jalandhar, 1997 (3) RSJ 475: (AIR

1998 P&H 18) recapitulated the entire law on the subject. The Full Bench was considering the same brochure for the previous year of the Punjab

Technical University. The Court held as under:

“A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab (1993) 4 Serv LR 673 had to consider the scope and binding

force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the

force of law and it was not open to alteration. In Raj Singh v. Maharshi Dayanand University, 1994 (4) R.S.J. 289 another Full Bench of

this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be

allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for

admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be

made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur v. Punjab

University, 1996 (1) RSJ 1: (AIR 1996 P&H 109)took the view that there has to be a cut off date provided for admission and the same

cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of

us Constituting another Full Bench. Thus, it is settled law that the provisions

contained in the information brochure for the Common

Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of

powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which

applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and

spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the same cannot be considered as

having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms

of the brochure have only to be rejected.

11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used preemptory

language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be

essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an

individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness

and unfairness. Such unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and

conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure. The brochure has the force of law.

Submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats

in accordance with the terms prescribed in the brochure.

(Emphasis added)

16. We have referred to the aforesaid decisions only to highlight that the conditions stipulated in the prospectus are guidelines for all

concerned and everyone is required to follow the same in letter and spirit and not act in transgression. The hopes and aspirations of the

students, who came within the zone of merit, cannot be scuttled by changing the prospectus by way of introducing a corrigendum. A change

in the conditions of the prospectus can be conceived of and allowed if such power

is specifically reserved while making the prospectus

public as in that case, no one can think of having a right. In that event, the same could be capable of change. In the case at hand, in the

absence of a power reserved in the prospectus, in our considered opinion, the same could not have been altered by way of corrigendum. It

is interesting to note that by issuing a corrigendum, the scenario of results changed because further results were published and more

candidates were called. This, according to us, is nothing but an accommodation. The AIIMS may have been conferred the privilege of

institutional preference, but that would not enable AIIMS to change the prospectus in the manner it has been done. Thus, the action of the

AIIMS on this score is vitiated and despite the labored attempt by the learned Counsel for the AIIMS, we cannot give the stamp of approval

to the action of the institution.â??

10. I also find merit in the submission made by Ms.Monika Arora that even if the admission procedure had been completed only after the

issuance/notification of the UGC Regulations, 2016 the said regulations could not be made applicable to the students, who had admittedly taken

admission pursuant to prospectus issued in February, 2016 wherein it had been specifically stated that the admission was governed by the UGC,

Regulations 2009. In this context, reference may be made on paras 26 & 29 in the case of Parmender Kumar & Ors.(supra) :-

â??26. From the facts as disclosed, the only question which emerges for decision in these appeals is whether the State Government had any

jurisdiction and/or authority to alter the conditions relating to admission in the postgraduate or diploma courses in the different disciplines

in medicine which had earlier been indicated in the Prospectus, once the examination for such admission had been conducted and the

results had been declared and a select list had also been prepared on the basis thereof. In other words, once the process of selection had

started on the basis of the terms and conditions included in the Prospectus, was it within the competence of the State Government to effect

changes in the criterion relating to eligibility for admission, when not only had the process in terms of the Prospectus been started, but also

when counselling was to be held on the very next day, which had the effect of

eliminating many of the candidates from getting an opportunity of pursuing the postgraduate or diploma courses in the reserved HCMS category.

29. As has also been pointed out hereinbefore, this Court in Rajiv Kapoor case took notice of the fact that the Full Bench, on whose

decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria

specified in the government orders already in force and the prospectus, after ignoring the offending notification introducing a change

at a later stage.

(emphasis supplied).

In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the

postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by

government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus

was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had

been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as

to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses.

11. The writ petitions are accordingly allowed and the circulars dated 21.09.2017, 25.09.2017 & 24.10.2017 issued by respondent no.1 are hereby

quashed. The respondent no.1 is directed to process the cases of the petitioners as per the UGC Regulations of 2009 and in accordance with their

prospectus issued in February, 2016.

12. The writ petitions along with pending applications are disposed of with the above directions, with no order as to costs.