
(1997) 03 DEL CK 0007

In the Delhi High Court

Case No : Civil Writ Petition No. 3930 of 1996

Puja Lal

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 05-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 2 AD 705 : (1997) 66 DLT 217 : (1997) 41 DRJ 333

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

Bench : Single Bench

Advocate : R.K. Saini, Vinod Yadav and B. Babbar, for the Appellant;

Judgement

Vijender Jain, J.

(1) ADMIT.

(2) The case of the petitioner is that she joined the course of M.Sc. Part I in Applied Operational Research (South Campus) in the University of Delhi for the year 1994-95. She passed the first year examination of the said course and she was issued a provisional certificate (previous) dated 2.8.1995. Aforesaid course was introduced for the first time in July/August 1994 as two years Master Degree Course and the petitioner belongs to the first batch of the aforesaid course. The petitioner took admission on the basis of Bulletin of Information and the Courses of Studies published and circulated by the respondent which has treated the M.Sc. Part-1 Course in Operational Research and M.Sc. Part- 1 in Applied Operational Research on the same footing and the said Bulletin did not provide for the minimum qualifying marks a student has to secure in each paper. Petitioner has been a good student having secured 64.8" per cent marks in her Graduate degree. The petitioner took the M.Sc. (Previous) Examination and was declared successful along with other successful candidates. Provisional Certificate and mark sheet were also issued to the petitioner some time in August 1995. Provisional Certificate is at page 18 and mark sheet is at page 19 of the paper

book. She secured 541 marks out of 800 marks and in the statement of marks it was mentioned that she was eligible for promotion with the remarks "E.P.". However, as she secured less marks in Paper-V she applied for re-valuation on 29.8.1995. No reply or action has been taken on her application dated 29.8.1995 by the respondent as alleged by the petitioner.

(3) Thereafter, she was admitted to M.Sc. (final) for the aforesaid course for the Academic Session 1995-96. The petitioner secured an aggregate mark of 621 out of 800 marks but was declared unsuccessful, although she secured 77.6 per cent marks in her Final examination. Thereafter petitioner was told that though she had cleared all the papers in Part- II examinations but as she had secured 42 per cent marks in Paper V of Part-1 examination which is below 50 per cent marks, i.e. required minimum qualifying marks, she had been declared unsuccessful in M.Sc. in Applied Operational Research Course for the Academic Session 1994-96.

(4) Learned counsel appearing for the University has contended that as per the Ordinance the minimum pass marks required to pass out the examination shall be 50 per cent in each theory papers and project separately and as the petitioner did not secure 50 per cent marks in Paper-V, she had failed in the examination.

(5) The short question is as to whether the respondent- University was justified in applying the Ordinance to the effect that the minimum marks required to pass out the examinations was 50 per cent in each subjects without putting the petitioner to notice. Secondly, on account of said course being a new course, respondents having declared the petitioner "E.P." are estopped from declaring her failed in the said examination. The respondents are silent as to when this Ordinance was issued by the respondents as admittedly this was a new course in Applied Operational Research and on the query asked by this Court from Head of the Department of Applied Operational Research as well as Controller of Examinations, who were present pursuant to the orders passed by this Court that they had not issued any notice to the petitioner in the first year signifying as to what would be the minimum pass marks for each paper in the aforesaid course. As a matter of fact, they themselves were not sure as to what would be the minimum qualifying marks for each paper, that is why they had not made remark "E.R." on the statement of marks for Part-1 examination of M.Sc. Course. Though, it was brought to the notice of this Court that in such cases on the mark-sheet after total aggregate of marks, it is mentioned "E.R.", i.e. Essentially Repeat, thereby giving the notice to the student that promotion is on the basis of subject essentially to be repeated by the student to get qualifying marks which make student eligible for promotion to higher class and qualify in final examination.

(6) The respondent has taken the stand in the counter affidavit that the petitioner was promoted pursuant to the result Notification No.S.No./AER/SCD/95/192 dated 24.7.1995. I would deal with the said Notification, which is to the following effect :-

"UNIVERSITYOF Delhi South Campus M.Sc. Part I Examination, 1995 Applied Operational Research The following candidates who appeared at the Part I Examination of M.Sc. in Applied Operational Research, held in April, 1995 have secured the marks as shown against each. These candidates are eligible to proceed to the second year Class subject to confirmation of their admission to the I year of the course :- Roll No. Name of Marks Obtained candidates (Out of 800) 14915 P&H 541 By no stretch of imagination it can be said that there was any stipulation attached to by the Notification of the University while declaring the petitioner having passed the first year examination that she has to secure 50% marks in each subjects and not having secured 50% marks in Paper-V of Part I examination, she was to re-appear for the said paper. The stipulation was with regard to the confirmation of petitioner's admission to the first year course. Therefore, it is manifestly clear from the aforesaid Notification filed by the respondent themselves that till they issued this notification no such stipulation regarding minimum percentage of marks regarding all the papers was the consideration for promoting the petitioner. Strangely enough, Annexure A which has been much relied upon by the respondent in the counter affidavit the respondents are silent as to when this Ordinance pertaining to M.A. Course in Applied Operational Research was promulgated, published, circulated and notice thereof was given to the petitioner. The respondent has taken the stand in the court that admittedly they have not published the Bulletin of Information relating to Applied Operational Research separately for the year 1994-1995. That being the situation, the petitioner was fully justified in view of the provisional certificate issued by the respondent and the noting on the mark sheet "E.P.", that she has been declared successful in Part I examination without any reservation. Even otherwise on account of Bulletin made available to the petitioner being silent about the minimum marks thereof and general impression given by it being that two courses were similar, i.e. "Applied Research " and "Applied Operational Research", the petitioner was justified in holding the view that she has passed the M.Sc. Part I examination.

(7) The petitioner was appearing in person, Court had requested Mr. R.K. Saini, Advocate to appear as amicus curiae in the matter. Mr. Saini has contended that the respondents issued the provisional certificate and statement of marks noted "E.P." thereon, the petitioner having applied for re-valuation of marks in Paper-V of part-I examination, no communication having been received from the respondent before October 1996 that petitioner will be detained on account of her non-clearing or non-appearing in paper-V, the respondents are estopped from contending that the petitioner will be governed by Clause 8 of the Ordinance which came into force subsequently after the petitioner had appeared in the year 1995 for the examination of Part-1 of M.Sc. Course in Applied Operational Research.

(8) The petitioner draws support from the judgment of a Division Bench of this Court where the plea of estoppel was discussed. Jaspal Singh, J. who eloquently spoke for the Division Bench in case reported as Kanishka Aggarwal Vs.

University of Delhi and Others, 1991 (2) Delhi lawyer 147, held :-

"WE feel, with respect, that Mr. P.P. Rao was seeking in effect, to re-enact the later half of the nineteenth century which had seen equitable estoppels being divested first by the House of Lords in *Jordan v. Money* (10 Er 868) limiting estoppels by representation to representation of existing fact and then by Fry J. in *Willmott v. Barber* (1880) 15 Ch.D.90 which laid down a series of probanda [We got the impression, we wish wrongly, as if Mr. Rao was championing the probanda] and by Bown LJ in *Lou v. Bouveril* (1891) 3 Ch.82 mercifully only *Ramsden v. Dyson* (1866) Lr I HI 129 could escape the ravages of the nineteenth century, though it could not escape being bruised badly. It had broadly covered the area of estoppels by acquiescence. It was bruised as it had become subject to the qualifications of the probanda of Fry J. in *Willmott* and to being limited to being a rule of evidence. It was left to the middle years of this century to break the shackles applied to the "*Ramsden v. Dyson* principle" by transforming it into what we now call "proprietary estoppels". It is not limited by the probanda of Fry J. [See : *Shaw v. Applegate* (1977) 1 Wlr 970; *Taylor's Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd.* (1982) 1 Qb 133; *Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank* (1982) 1 Qb 84] ; it can operate as a cause of action, [See : *Amalgamated Investment*, *ibid*] it is of general applicability (see *Moorgate Mercantile v. Twitchings* [(1976) Qb 225; *Western Fish Products Ltd. v. Penwith District Council* [(1981) 2 All Er 204; *Habib Bank Ltd. Vs. Habib bank Ag Zurich* [(1981) 1 Wlr 1265, and above all it is not subject to categorisation [see *Crabb v. Arun District Council*] it has been hailed as "one general principle shorn of limitation" (per Lord Denning in *Amalgamated Investment supra*) and as a most "general", "flexible" and "useful principle" *ibid*. We may, at this stage, also refer to that great Judge coming from Australia - Dixon J, and to his two judgments *Thompson v. Palmer* and *Grundt v. Great Builders Pty Gold Mines Ltd.* (1937) 59 Clr 641. What is significant for our purposes is that in the later judgment Dixon J. took as the starting point for his estoppel in *paes*, the "assumption" made by the party seeking to set up the estoppel, rather than the conduct of the party sought to be estopped. The forms of "conduct giving rise to an estoppel" to which Dixon J. referred to in *Thompson v. Palmer* (*supra*) may be summarised as "estoppel by convention", "estoppel by exercise of rights", "estoppel by acquiescence in another's mistake", "estoppel by negligence" and "estoppel by representation". The notion of the making of a promise has no place in any of these. 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 required. 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"? We hold that the plea of estoppel is available and applicable....."

(9) I am in complete agreement with the view expressed by the Division Bench of this Court. Similarly, the petitioner was given a provisional certificate to the effect that she has passed M.Sc. Part I examination having been given mark-sheet with endorsement "E.P." and not "E.R.", having received not a word from 1995 till October" 1996 or intimation that the petitioner has not qualified Part I of Final Year examination if she does not obtain 50% of marks in Paper-V of Part I examination. All this does constitute a representation by the respondents. This was what precisely answered by Supreme Court in Sanatan Gauda Vs. Berhampur University and others, . The applicant was justified, under the circumstances to raise assumption. The petitioner on the representation of the University on the basis of the Bulletin of Information which had equaled M.Sc. Part-1 Course in Operational Research with M.Sc. Part-1 in Applied Operational Research was justified in passing the examination of the first year as no such stipulation of having at least 50 per cent marks in all the papers/subjects was a condition precedent at the time when she took admission in the first year of the said course. Even in the said Bulletin, no where it advises the students to go through the Ordinance. Nothing relevant has been brought on record to show that Ordinance prescribing 50 per cent marks in each paper was a sine qua non for promotion at the relevant time. There is considerable force in the arguments advanced by learned counsel for the petitioner that the prospectus which in this case is the Bulletin of Information published by the respondent is an instrument through which the Department of Applied Operational Research holds out its contents and represents the general public as well as to a student the terms and conditions. I do not see any force in the arguments of the learned counsel for the respondent that Ordinance only dealt with the terms of the admission and not of examination more particularly in view of the Ordinance issued for Operational Research which was in force at the time when the admission was given to the Petitioner for Applied Operational Research for the year 1994-95. The condition of said ordinance, particularly Condition No. 2(b) is as follows:-

"NO. candidate shall be permitted to proceed to the second year class unless he has secured at least 40% marks in the aggregate of at least half the number of courses, written and practical taken together prescribed for the first year. (For this purpose the Courses in which the candidates has secured the least marks will be ignored)."

(10) Nothing has been brought on the record by the respondent as to whether any other Ordinance except the Ordinance which has been annexed with the counter affidavit, was in vogue when the petitioner took admission to the first year course for the year 1994-95. As a matter of fact, respondent failed to communicate to the petitioner before 1.10.1996 what has been stated by the respondents thereafter regarding qualifying marks in such paper. The delay has not been explained by the respondent. I must comment adversely on the action of the respondent. After petitioner having applied on 29.8.1995 for revaluation of the result in Paper-V, the result of re-valuation was not informed till the filing of this writ petition to the petitioner. Even in Annexure-C filed with the counter affidavit, so-called re-valuation result, photocopy of which has been filed, nowhere it states as to what is the result of re-valuation. Admittedly the date of issue is 9.4.1996, though the same is denied by the petitioner as not received and that is why she has made a prayer in Clause-C of the writ petition directing University to inform about the re-valuation result.

(11) In these circumstances, what is the fault of the petitioner for inaction, non communication and representation of the respondents, should the petitioner be thrown out, should she be deprived of hope and aspirations for which she worked so assiduously. I, Therefore, allow the writ petition, make the rule absolute. The petitioner be declared successful in the M.Sc. Final course in applied Operational Research 1994-96 within one month from today.

(12) With these observations, writ petition is allowed. Parties are left to bear their own costs.