

(2012) 02 DEL CK 0328

In the Delhi High Court

Case No : Writ Petition (C) 5232 of 2008 and CMs 9999 of 2008, 10528 of 2009

Rahul Sharma

APPELLANT

Vs

Indira Gandhi National Open University and Others

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 02 DEL CK 0328

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Ajay Veer Singh Jain with Mr. Atul Agarwal, for the Appellant; Aly Mirza, Advocate for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioner praying inter alia for directions to respondents No. 1 and 2/University to permit him to continue with his B.Sc. (Nautical Science) course conducted by respondents No. 1 and 2/University. The second relief sought by the petitioner is to direct the respondents to send him on sea on-board training and to adjust the fee already paid by him for on-board training. Lastly, he has sought quashing of the order dated 31.03.2008 passed by respondents No. 1 and 2/University, whereunder, the respondents reiterated an earlier decision of cancelling the admission of the petitioner and declined to regularize the same on account of his having submitted fake documents to respondents No. 1 and 2/University.

2. At the outset, counsel for respondents No. 1 and 2/University states that the relief sought in the present petition at prayers (i) and (ii) have been rendered infructuous for the reason that respondent No. 1/University has discontinued the B.Sc. (Nautical Science) course since January, 2009 and only those students are being permitted to continue with the course, who had taken admission prior to January, 2009. No doubt the discontinuation of the subject course by the respondents No. 1 and 2/University, makes the first two reliefs prayed for in the

writ petition, redundant.

3. As regards the third and the last relief sought by the petitioner, which is for quashing of the impugned order dated 31.03.2008 passed by respondent No. 1/University, learned counsel for the petitioner states that in the year 2001, the petitioner had appeared in the high school examination conducted by respondent No. 4/Board of High School & Intermediate Education, UP (in short "Board"). The high school certificate issued by respondent No. 4 contained a typographical error with respect to the date of birth of the petitioner. It is submitted that though the correct date of birth of the petitioner is 02.06.1987, his date of birth was erroneously mentioned in the certificate as 15.02.1984.

4. In the counter affidavit filed by respondent No. 1/University it is averred that admission to the programme of B.Sc. (Nautical Science) takes place under two categories, i.e., sponsored and non-sponsored category. Under the sponsored category, the students approach the shipping companies and are directly admitted at the training institutes jointly recognised by respondent No. 1/University and the Directorate General of Shipping, Government of India. The training institutes thereafter forward a list of admitted candidates alongwith their original testimonials to respondent No. 1/University for confirmation of their admission and verification of their testimonial. Under the non-sponsored category, the candidates are selected directly by respondent No. 1/University on the basis of an entrance test conducted by the University followed by an interview and on selection, they are allotted training institutes.

5. As per respondent No. 1/University, in the year 2005, the petitioner had sought admission as a non-sponsored candidate, but when it was found out that there was a discrepancy in his age certificate and as he could not produce the original high school certificate carrying his date of birth, which made him eligible for the programme, the petitioner was denied admission. As per respondent No. 1/University, the petitioner was over aged for the programme in terms of the certificate produced by him, the maximum age to secure admission in the programme at the relevant time being 20 years in case of 10+2 students.

6. It is pertinent to note that though the petitioner has not made any averment in the present writ petition that prior to institution of the present petition, he had approached the High Court by filing a writ petition registered as W.P.(C) 11786/2005, counsel for respondents No. 1 and 2/University states that he had filed such a petition wherein directions were sought to the respondents to grant him admission in the said course upon his producing the rectified high school certificate. Notice to show cause was issued in the aforesaid writ petition vide order dated 22.07.2005, whereafter, a counter affidavit was filed by respondent No. 1/University. In view of the fact that serious questions of facts with regard to the correct date of birth of the petitioner were raised in the counter affidavit, the Court had declined to exercise its jurisdiction under Article 226 of the Constitution of India and instead, it was observed that the petitioner had his remedy of filing a regular suit, seeking a declaration of his actual date of birth.

With the aforesaid observation, the earlier writ petition was dismissed on 25.08.2005.

7. Without making a mention of the aforesaid earlier writ petition filed by the petitioner, that came to be dismissed on 25.08.2005, he filed the present writ petition on 16.07.2008 stating inter alia that in the year 2007, i.e., at the time of applying to respondent No. 1/University for admission in the aforesaid course through respondent No. 3/Shipping Corporation of India, he had enclosed a photocopy of the High School Examination Certificate dated 25.06.2001 bearing No. 00036224, wherein his date of birth was mentioned as 02.06.1987. Based on the photocopy of the aforesaid certificate filed by the petitioner, he was granted admission in the aforesaid course by the respondent No. 1/University. Thereafter, when respondent No. 1/University scrutinized the documents enclosed by the petitioner with his application, it was observed that the certificate submitted by him lacked all the security features incorporated by the respondent No. 4/Board. The said certificate was found to be a colour photocopy of the original certificate, over which material had been typewritten and it was also observed that there was overwriting on the date of issue of the certificate. As a result, the petitioner was informed vide letter dated 17.4.2007 that his admission in the B.Sc. (Nautical Science) course could not be allowed to continue and that the same stood cancelled.

8. Learned counsel for the petitioner states that the reason for the petitioner to have submitted the aforesaid certificate of date of birth to respondent No. 1/University was that the earlier high school certificate issued by respondent No. 4/Board had erroneously mentioned an incorrect date of birth of the petitioner. As a result, in October, 2005, he had approached respondent No. 4/Board for correction of the same and at that time, the petitioner had surrendered the original high school certificate to the respondent No. 4/Board and he was informed that he would receive the corrected certificate in due course. It is the contention of the learned counsel for the petitioner that while leaving the office of respondent No. 4/Board, the petitioner was contacted by a person, who assured him that he would arrange for a provisional certificate, if he desired one, to which he gave his consent. It is alleged that the aforesaid provisional certificate was later on delivered to the petitioner by post. However, there is no proof of receipt of the aforesaid certificate by post placed on record. Learned counsel for the petitioner submits that some time later, respondent No. 4/Board had dispatched the corrected high school certificate to the petitioner, wherein his date of birth was shown as 02.06.1987 and the said certificate has been enclosed with the petition as Annexure P-4.

9. It is, therefore, stated that after respondent No. 1/University had issued a letter dated 17.04.2007 to the petitioner, informing him about the cancellation of his admission due to the aforesaid reasons, the petitioner procured the corrected high school certificate and submitted the same to respondent No. 1/University on 02.06.2007. It is the case of the petitioner that having submitted the aforesaid

corrected certificate alongwith the other supporting documents, respondent No. 1/University was satisfied that he was entitled to continue studying in respondent No. 1/University but, when he did not hear from respondent No. 1/University, he again approached it by writing a letter dated 25.08.2007. However, the impugned order dated 31.03.2008 was passed by respondent No. 1/University, informing the petitioner that his admission to the course in question had been cancelled and all the original documents except the "fake document" as discovered by respondent No. 1/University would be returned to him. Aggrieved by the aforesaid order passed by respondent No. 1/University, the petitioner has filed the present petition.

10. Learned counsel for respondent No. 1 and 2/University states the present petition is liable to be dismissed in view of the fact that while filing the present petition, the petitioner has not disclosed any of the material information as regards an earlier litigation initiated by him against respondent No. 1/University, subject matter of W.P.(C) 11786/2005. He further states that the aforesaid information has been deliberately withheld by the petitioner knowing very well that in the earlier proceedings, the Court had observed that it would be inappropriate to exercise its jurisdiction under Article 226 of the Constitution of India and the petitioner had been relegated to file a regular civil suit for seeking a declaration of his actual date of birth.

11. It is not denied by the counsel for the petitioner that pursuant to the order dated 25.08.2005 passed in the aforesaid writ petition, the petitioner did not take any steps to file a civil suit for declaration of his actual date of birth. The explanation offered by the counsel for the petitioner is that there was no need for the petitioner to have approached the civil court by filing a regular civil suit in this regard for the reason that respondent No. 4/Board had rectified the certificate issued in that regard, does not take away from the fact that the petitioner has not uttered a syllable with regard to the earlier round of litigation initiated by him against respondent No. 1/University, that culminated in the order dated 25.08.2005.

12. Records reveal that after being denied admission in the year 2005, the petitioner had applied to respondent No. 1/University as a company sponsored candidate, i.e., sponsored by respondent No. 3/Shipping Corporation of India and resultantly, he was directly admitted in the Maritime Training Institute (MTI), owned by respondent No. 3/Shipping Corporation of India. At the time of his admission, the petitioner did not submit his original documents pertaining to his date of birth in the form of high school certificate, mark sheet, intermediate certificate etc. When he was asked by respondent No. 1/University to produce his original high school certificate, the petitioner visited respondent No. 1/University on 13.04.2007 and produced the certificate enclosed with the writ petition as Annexure P-2. Pertinently, the photocopy of the certificate submitted by the petitioner to respondent No. 1/University was self-attested as true copy. As noted above, upon scrutinizing the aforesaid certificate, respondent No. 1/University

observed that it lacked all the security features incorporated by respondent No. 4/Board and also had overwriting on it. As the said certificate was found to be a fake certificate, respondent No. 1/University had informed the petitioner that the certificate submitted by him being fake, his admission to the course was cancelled. Later on, the petitioner's father and uncle had visited respondent No. 1/University and submitted another high school certificate bearing the date of birth of the petitioner as 02.06.1987 and they sought withdrawal of the earlier certificate submitted by him. This fact was brought to the notice of the Registrar (SRED) of the respondent/University, who had observed that once a candidate produces a fake document, his admission could not be allowed to continue or be restored even if such a candidate submits the original document later in time. In view of the above decision, the admission of the petitioner was finally cancelled by respondent No. 1/University and all his original documents were returned to him except for the fake certificate.

13. Pertinently, a counter affidavit has also been filed by respondent No. 4/Board, who was impleaded later on as a co-respondent. Respondent No. 4/Board has confirmed the fact that the provisional certificate bearing No. 00036224 that had been produced by the petitioner before respondent No. 1/University, photocopy of which has been enclosed with the writ petition as Annexure P-2, had not been issued by the Board.

14. It is relevant to note that the petitioner has not filed rejoinders either to the counter affidavit filed by respondents No. 1 and 2/University or to the counter affidavit filed by respondent No. 4/Board. Therefore, this Court has no option but to assume that the averments made by the respondents in their counter affidavits stand admitted by the petitioner as true and correct and an adverse inference ought to be drawn against him.

15. Counsel for the petitioner submits that the entire confusion as regards the submission of the corrected high school certificate by the petitioner was on account of an error on the part of respondent No. 4/Board in originally issuing a certificate bearing an incorrect date of birth of the petitioner, i.e., 15.02.1984 instead of 02.06.1987. The aforesaid explanation cannot be a justification for the petitioner to have later on submitted a fake certificate to the respondent No. 1/University, which had been duly self-attested by the petitioner, who had described it as a "provisional certificate" issued by respondent No. 4/Board, when no such "provisional certificate" had ever been issued by respondent No. 4/Board as per its assertion in the counter affidavit. Merely because the petitioner had approached respondent No. 1/University after issuance of the cancellation letter dated 17.04.2007, so as to submit another certificate, which is stated to be the correct certificate issued by respondent No. 4 (Annexure P-4), cannot justify his conduct in earlier submitting a fake certificate to respondent No. 1/University when he was initially seeking admission in the B.Sc.(Nautical Science) course.

16. In such circumstances, the impugned order dated 31.03.2008 passed by respondents No. 1 & 2/University is upheld as it does not suffer from the vice of

any illegality, arbitrariness or perversity. Even otherwise the petitioner is not entitled to any relief for the reason that counsel for respondents No. 1 and 2/ University has stated at the outset that the University has discontinued the subject course since June 2009 and, therefore, the question of permitting the petitioner to continue with the said course does not arise. The request made by learned counsel for the petitioner that the fee deposited by the petitioner to undertake the course with respondent No. 1/University be directed to be refunded to him, is declined, as the same has been rightly forfeited by the University upon cancelling his admission on account of submitting a fake certificate at the time of applying to the University for admission.

17. In view of the above, the present petition fails and is accordingly dismissed alongwith the pending applications, while leaving the parties to bear their own costs.