

(2011) 01 DEL CK 0104
In the Delhi High Court
Case No : Writ Petition (C) 4968 of 2010

Rohit Rakesh

APPELLANT

Vs

Indira Gandhi National Open University and Others

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 DEL CK 0104

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.N. Bhardwaj, for the Appellant; Sapna Chauhan, Respondent No. 3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner seeks a mandamus directing the Respondent University to issue to the Petitioner degree of B. Sc. (Hospitality & Hotel Administration) course undertaken and cleared by the Petitioner. The Petitioner also seeks damages of Rs. 50,000/- for withholding his degree. It is the case of the Petitioner that he has done three years diploma course in Hotel Management from Durgapur Society of Management Science (Durgapur Society), approved by All India Council for Technical Education (AICTE); that after working for about one and a half years in Hotel Clarities, Delhi, he joined the Respondent University for obtaining the degree aforesaid in B. Sc. (Hospitality & Hotel Administration); that he appeared in the examination held of the said course in November, 2007 and in June, 2009 and in the result declared on the internet on 18th October, 2009, his course status was described as "complete". He however contends that he was not issued the degree inspite of reminders and legal notices.

2. Notice of the petition was issued and the pleadings have been completed. The counsels have been heard.

3. The Respondent University in its counter affidavit has inter alia contended that

the petition suffers from gross concealments. It is pleaded that admission was granted to the Petitioner in the course aforesaid pursuant to the application dated June, 2006 of the Petitioner, for the term commencing from July, 2006 to December, 2007; that the course in question is an abridged course meant exclusively for three years diploma holders from National Council for Hotel Management and Catering Technology (NCHMCT) only; it was so provided in the programmer guide issued in respect of the said programmer; the Petitioner in his application falsely stated that he was a diploma holder from NCHMCT; that on the said representation of the Petitioner, he was admitted provisionally and was also allowed to appear in the examination; however for processing the issuance of degree to the Petitioner, the Respondent University verified from NCHMCT and was informed that the Petitioner was never admitted to NCHMCT. It is therefore contended that the question of issuance of degree to the Petitioner does not arise. It is urged that the Petitioner having gained admission on concealment and suppression of true facts, is even otherwise not entitled to any relief.

4. The Petitioner in his rejoinder has pleaded that the Respondent University had verified and accepted the application of the Petitioner for admission and only thereafter issued enrollment number, accepted fee and allowed the Petitioner to continue with the course and appear in the examination. It is further contended that the Durgapur Society being AICTE approved, the Respondent University was satisfied with the eligibility of the Petitioner for admission to the B. Sc. (Hospitality & Hotel Administration) course. It is contended that it was the duty of Respondent University to verify the eligibility of the Petitioner and Respondent University having allowed the Petitioner to continue with the course and to appear and pass in the examination thereof cannot now deny the degree to the Petitioner.

5. The counsel for the Petitioner has based his argument on Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, wherein a candidate who was allowed to take the examination notwithstanding not having the requisite attendance and notwithstanding having not submitted the NOC from his employer for pursuing the course, was held to be entitled to degree on the ground that power to withdraw candidature before examination cannot be exercised after the candidate has appeared in the examination.

6. Per contra, the counsel for the Respondent University has argued that though as per the University Grants Commission, a degree course (as B. Sc. is) is compulsorily required to be of three years duration, special permission has been taken for one and a half years bridge course only for the students of NCHMCT. He has distinguished the judgment in Shri Krishnan (supra) by contending that in that case the fault was of the University in not exercising due care in scrutinizing the application form etc. in which the correct particulars had been disclosed by the student; per contra, it is shown from the admission form filled by the Petitioner that the Petitioner nowhere disclosed that he had done his diploma from Durgapur Society but had represented himself as a diploma holder from

NCHMCT. Attention is further invited to the prospectus and admission form of B. Sc. (Hospitality & Hotel Administration) course where it is expressly provided that the course is for "ex-Three Years Diploma holders of Hotel Management from Institute of Hotel Management under National Council for Hotel Management and Catering Technology". Attention is yet further invited to the admission form where also it is repeated that it is for three year diploma holders from NCHMCT, New Delhi only. The admission form in the Column "Educational Qualifications" does not ask the students the Institute from which they have obtained diploma in Hotel Management but merely asks them their enrollment number in the NCHMCT diploma course. The Petitioner therein filled in his roll number of Durgapur Society without disclosing that the enrollment number was of Durgapur Society and not of NCHMCT as required. The counsel relies on Ms. Rabia Vs. Jamia Millia Islamia University and Others, where the order of cancellation of admission on the ground of admitted non eligibility was upheld.

7. The reasoning which prevailed with the Supreme Court in Shri Krishnan was in view of the Ordinance of the University in that case. It was held that the Ordinance empowered the University to withdraw the candidature of the student only before the student takes the examination and not after he had taken the examination; that once the student was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature, had worked itself out and the student could not be refused admission subsequently for any infirmity which ought to have been looked into before giving the permission to appear in the examination. The negligence found was of the University authorities in scrutinizing the admission form.

8. The case of the Petitioner herein is not based on such Ordinance. Moreover, the facts in the present case are entirely different from that of Shri Krishnan. In Shri Krishnan there was no inherent lack of eligibility; there the breach was of the rule of attendance and of consent of the employer. Here the degree after only one and a half years of course as against the normal of three years, is allowed to be granted only to diploma holders of NCHMCT and not to diploma holders of any other Institute. The Petitioner was fully conscious of the said fact. It is not as if the Petitioner in his application form disclosed that he was not the diploma holder of NCHMCT but of Durgapur Society; then it could still have been said that there was negligence on the part of the University. On the contrary, the Petitioner allowed the Respondent University to presume that he was a diploma holder of NCHMCT.

9. Undoubtedly there is some negligence on the part of the Respondent University in allowing the Petitioner to continue with the course. I had enquired from the counsel for the Respondent as to whether the examination of the said one and a half years course are held at the end of one and a half years only or earlier also. The counsel has informed that the examinations are held after every six months. There does appear to be a laxity on the part of the Respondent University in allowing the Petitioner to appear in the first examination when he

was admittedly not eligible. The scrutiny ought to have been done then only. However, the said fact is to be seen in the context of the Respondent University and the course. The Respondent University is an Open University set up to allow those desirous of continuing their education without the rigors as of the other Universities. The course was to be conducted by dispatch of study material and assignments. Though the counseling sessions are held at the study centers but those were optional and those who did not attend the said counseling sessions were not debarred from appearing in the examination. In these circumstances, the laxity of the Respondent University in scrutinizing the eligibility of the Petitioner when he had appeared first in the examination is not such which would entitle the Petitioner to a degree to which he is otherwise not entitled.

10. The fact remains that the Petitioner was not entitled to even join the course. Rather the Petitioner in the admission form signed a declaration that he had read and understood the condition of eligibility and that he fulfilled the eligibility criteria and in the event of any information being incorrect or misleading, his candidature shall be liable to cancellation at any time and he shall not be entitled to refund of any fee. The Petitioner is bound by his declaration and cannot now be heard to object when he admittedly was not eligible for admission.

11. The Supreme Court in Shri Krishnan itself held that the case therein was not of a fraud committed by the student. The present is however clearly a case of fraud committed by the Petitioner in gaining admission.

12. The Supreme Court in Maharshi Dayanand University Vs. Surjeet Kaur, held that the Court has no competence to issue a direction contrary to law, nor the Court can direct an authority to act in contravention of statutory provisions. It was held that the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory Rules & Regulations. It was further held that there can be no estoppels/promissory estoppels to debar a public authority from enforcing a statutory provision. The mistake on the part of the University in that case in allowing an applicant to appear in the examination was held to be conferring no right in the applicant if not entitled under the Rules & Regulations to pursue a course. It was held that the Rules & Regulations cannot be allowed to be defeated merely because the University erroneously allowed a candidate to appear in the examination.

13. Similarly in Mahatma Gandhi University v. Gis Jose (2008) 17 SCC 611 it was held that a student even if wrongly admitted without being eligible should not be permitted to continue with the course and misplaced sympathy should not be shown in total breach of Rules.

14. The Petitioner having joined the course with his eyes open is even otherwise not found entitled to any equitable relief.

15. The writ petition is dismissed. I refrain from imposing any costs.