

(2019) 11 DEL CK 0070

In the Delhi High Court

Case No : Civil Writ Petition No. 10655 Of 2019, Civil Miscellaneous No. 44034 Of 2019

Shingying Kristy

APPELLANT

Vs

Delhi University Through Vice Chancellor And Ors

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Citation : (2019) 265 DLT 93 : (2020) 1 AD(Delhi) 19

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : R.A. Worzo Zimmick, Ojusya Joslir, Mohinder J.S. Rupal, Kausik Ghose

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. This is a writ petition whereby the petitioner seeks a direction for admission to the three-year LL.M. course qua the academic session 2019-2020, albeit, in the Scheduled Tribe (ST) category.

2. The sole ground on which the University of Delhi (in short "University") opposes the petitioner's writ petition is that the cut-off date i.e. 31.08.2019 has been crossed.

2.1 This defence of the University has to be appreciated in the peculiar facts and circumstances which have arisen in this case.

3. The petitioner, upon a notification being issued by the University for holding entrance exam for LL.M. course, sat for the said exam. The petitioner passed the entrance exam. In the common merit list, the petitioner ranked 145.

4. The petitioner avers that since her uncle had taken ill, she had to proceed to Nagaland via Kolkata-Dimapur. The petitioner claims that she boarded a flight for this purpose from Delhi on 23.08.2019. In support of this plea, the petitioner has

placed on record her air ticket. The petitioner goes on to state that her uncle passed away on 02.09.2019 and that the last rites were performed on 03.09.2019.

4.1 In support of this plea, the petitioner has appended a document which is marked as Annexure P-7. It is further submitted by the petitioner that while she was in Nagaland, she got to know that the counselling for the ST seat would be held on 06.09.2019.

5. Notably, the petitioner's name along with another ST candidate appeared in the 6th admission list.

6. Given this situation, the petitioner appears to have done the next best thing which is to submit a "grievance-application" via a friend i.e. one Mr. David Naulak. It is averred that this application was filed with respondent no.2 i.e. Professor Raman Mittal, Dean, and Head, Faculty of Law.

7. The petitioner goes on to submit that on 09.09.2019, she approached the concerned authorities at the University when she was assured, albeit, orally by respondent nos.2 to 5 that the seat reserved for the ST candidate would be allotted after 12.09.2019. The reason for this suggestion, according to the petitioner, was that the University elections were on and the administration was involved with it.

8. It appears that the petitioner after 12.09.2019, once again approached the respondents, however, the exercise proved to be futile as she was not allotted the reserved seat. It is in this background that the petitioner has approached this court by way of the instant writ petition.

9. Notice in this writ petition was issued on 30.09.2019 when Mr. Rupal on behalf of the respondents was present. On that date, Mr. Rupal accepted the notice and sought a week for filing a counter-affidavit. Pertinently, on that very date, a direction was issued to the effect that if a seat in the ST category was available, the same would not be filled-up till the next date of hearing. The matter was renotified for 31.10.2019.

10. On 31.10.2019, it transpired that although more than four weeks had elapsed, counter-affidavit had not been filed on behalf of the University. Mr. Rupal on that date, once again, sought a short accommodation to file a counter-affidavit.

10.1 While, Mr. Rupal's request was acceded to he was asked to return with instructions as to whether the seat reserved for the ST candidate could be allotted to the petitioner given the circumstances that she had articulated in her petition. The matter was, accordingly, posted for hearing on the very next date of hearing i.e. 01.11.2019.

11. Since the counter-affidavit had not been filed with the Registry, Mr. Rupal presented the same in court. A copy of the counter-affidavit was handed over to

learned counsel for the petitioner. The Registry was directed to upload the counter-affidavit placed before me in court on that date.

12. The matter was then taken up on 04.11.2019 when at the request of counsel, the matter was posted for today.

13. As indicated right at the beginning, in the counter-affidavit, the only ground which has been taken to resist the relief sought for by the petitioner is that the cut-off date i.e. 31.08.2019 had been crossed.

14. I must also indicate that in the counter affidavit, the University has failed to deal with the letter dated 06.09.2019 filed by the petitioner which is marked as Annexure P-8 and is appended at page 26 of the paper book.

15. Besides this, the University while denying the assertion of the petitioner that the counselling was held on 06.09.2019, does not disclose the date on which counselling was held. This aspect is crucial as the 6th admission list was published, concededly, only on 31.08.2019. Since this information can only be in the possession of the University, it ought to have disclosed in the affidavit the date of the counselling.

16. I have queried Mr. Rupal on this aspect of the matter. He has not been able to draw my attention to any document which states that 31.08.2019 was the date of counselling for the petitioner and the other ST candidate whose name is given in the 6th admission list.

17. The 6th admission list which is marked as Annexure P-5 and is appended on page 22 of the paper book does not state that 31.08.2019 was the date of counselling.

18. In these circumstances, the court is left guessing as to what was the date of counselling. What is even more surprising, as noticed above, is that the University has failed to deal (completely) with the letter dated 06.09.2019 addressed by the petitioner to the Dean, Faculty of Law. In response to the assertion by the petitioner that the letter dated 06.09.2019 was dispatched to the concerned person i.e. the Dean, Faculty of Law via her friend Mr. David Naulak, the University has stated the following:

"6. It is not comprehensible that the petitioner could have given the written representation dated 06.09.2019 while petitioner admittedly was away to Nagaland on the said date. The petitioner has not explained as to how the petitioner could send the letter dated 06-09-2019 through her friend from Nagaland. In any case since the said letter is dated 06-09-2019, therefore it could not in any eventuality could reach from Nagaland on 06-09-2019."

19. A perusal of this assertion would show that while the University raises a doubt as to how the petitioner could have written and/or dispatched the letter dated 06.09.2019 through a friend when she was in Nagaland, it does not answer as to who made the endorsements on the letter dated 06.09.2019.

Notably, there are two endorsements on the letter dated 06.09.2019.

19.1 The first endorsement reads:

"Application should come through Dean, Faculty of Law s/d"

19.2 The second endorsement reads:

"May be considered if permissible within rules.

s/d

Dean, Faculty of Law, Delhi

17.09.2019"

19.3 Besides there, is one more endorsement, albeit, on the next document appended on page 27 of the paper book. This endorsement is signed by apparently the same person who signed the first endorsement which reads this:

"Sir,

Kindly confirm whether the seats are available or not. Also assume that there is no other candidates in between the last admitted candidate and this candidate on the basis of merit.

s/d

OSD, University of Delhi"

19.4 It is important to note that in this letter, the petitioner requests that one seat could be reserved for her as she was not able to attend the counselling on account of the fact that her uncle had passed away on 02.09.2019 in Nagaland. Furthermore, the petitioner goes on to state that she would be able to return from Nagaland only on 09.09.2019.

19.5. Given this position, it can be fairly assumed that the letter dated 06.09.2019 was delivered to the University on or before 09.09.2019. The other aspect which emerges is that when the letter was delivered and the endorsements were made, the persons making the endorsements were of the view, if not fully, partially that the request made by the petitioner for grant of admission had merit. There is no answer by the University as to why as late as on 17.09.2019, respondent no.2 i.e. the Dean would endorse the letter and say that the petitioner's request may be "considered, if permissible within rules".

20. To my mind, the Dean, Faculty of Law would know that the counselling date, whichever it was, had been crossed and therefore, could have simply rejected the representation. Notably, neither the first endorser not the second endorser rejects the petitioner's representation perhaps because of the reason articulated therein i.e. the death of a close relative. Besides this, the Dean would also have knowledge of the cases in which candidates had been allowed to seek admissions even after 31.08.2019.

21. The University has provided no answers in its counter-affidavit about these aspects, which, in my opinion, are crucial to its defence. The petitioner's case is pivoted on the letter dated 06.09.2019 and the endorsements made therein. The University has simply skirted the essentials by not providing a complete response to the aspects which are undoubtedly in the knowledge of its officials, including, Dean, Faculty of Law. All that the University has done is to question the petitioner's assertion concerning the date on which the letter would have reached the concerned person.

22. At this juncture, I must bring to fore, something that the University should have brought to my knowledge, which is the notification dated 03.09.2019. This notification is filed in W.P. (C) 11177/2019, titled Himanshu & Ors. vs. University of Delhi, Faculty of Law Through Registrar in which the University is a party.

22.1 This matter is listed on my board today as Item No. 1. Crucially, in this matter, the existence of this notification is not denied by the University.

22.2 The contents of the aforesaid notification lend a ring of truth to the petitioner's version of events, which is, that the admission process was delayed as the Delhi University Student's - election process was on and it was for this reason she was assured that she would be allotted a seat only after 12.09.2019. The said notification reads as follows:-

"Notice for Postgraduate Admissions 2019-20.

In order to redress the Grievances received by the Admission Office, it is hereby resolved to process the Admissions on 05th and 06th September, 2019 in the respective Faculties, Departments and Colleges for those Postgraduate applicants whose names appeared in the final admission list declared on 31st August, 2019 and were unable to report and/or pay their fees on 31st August, 2019.

However, fee payment link for all the above cases shall only be activated after the completion of DUSU election scheduled on 13th September, 2019"

22.3 It is important to note that the 6th admission list was uploaded on 31.08.2019 at 04:15 P.M.

22.4 Therefore, possibly, it was not the date of counselling and if it was, it definitely was completely unrealistic to expect candidates to present themselves for counselling on that very date. This difficulty was experienced by the candidates across the board including candidates who were seeking admission in the 2019 LL.B. course.

22.5 Given this position, the University appears to have decided to defer the admission process to 05/06.09.2019 for those candidates whose names appeared in the final list published on 31.08.2019 but were either not able to report and/or pay their fee on that date because DUSU elections were on. Furthermore, the notification goes on to state that the payment link would be activated on 13.09.2019.

22.6 As observed hereinabove, everything stated by the petitioner ties in with the contents of the aforementioned notification.

23. Given the foregoing circumstances and the fact that one seat in the ST category is lying vacant qua which there is no other claimant, I am inclined to allow the petition.

24. The petition is, accordingly, allowed. The University is directed to grant admission to the petitioner against the ST category seat.

25. In view of the fact that the classes have commenced and some part of delay is attributable to the court's process and, as noted above, on account of repeated requests made for time to file a counter-affidavit in the matter, the University will make suitable adjustments by arranging, if necessary, extra classes for the petitioner.

26. The petitioner will attend extra classes if the University so advises.

27. The petitioner will also fulfil the requisite formalities which will include deposit of fee and production of original documents.

28. The petition is disposed of in the aforesaid terms. The pending application shall stand closed.

29. Dasti under signatures of the Court Master.