
(2014) 08 DEL CK 0240

In the Delhi High Court

Case No : LPA 714/2013

Shivam Shresthi

APPELLANT

Vs

Delhi Technological University

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Citation : (2014) 08 DEL CK 0240

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : N.K. Khetarpal, Advocate for the Appellant; Zubeda Begum and Sana Ansari, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 11th September, 2013 of the learned Single Judge of this Court of dismissal of W.P. (C) No. 5069/2013 preferred by the appellant. The said writ petition was filed, pleading:-

(i) that the appellant, after securing 293902 overall rank and 84411 category rank in All India Engineering/Architecture Entrance Examination (AIEEE) 2012 applied to the respondent University for admission in the B.Tech. Programme 2012-2013 under the subcategory of Ex-Servicemen under the category "Children/Wards of Defence Personnel (CW)";

(ii) that the appellant appeared for counseling on 26th June, 2012 under the CW category but the respondent University while verifying the documents, arbitrarily converted the appellant's category from CW category to General category;

(iii) that the appellant filed W.P. (C) No. 5921/2012 in this regard which was disposed of vide order dated 15th May, 2013 holding that the appellant was entitled to admission under the Wards of Ex-Servicemen, Defence Personnel category in the respondent University in the Academic Year 2012-2013 and had been wrongly denied the said admission but since there were no seats left/

available in that academic session, directing "that the petitioner would get the benefit of succeeding in the petition but one year later which is an unavoidable situation on account of time having been elapsed during the pendency of the petition";

(iv) that though the respondent University in compliance of the aforesaid order, in the Academic Year 2013-2014 offered admission to the appellant in the stream of Engineering Physics but applying the criteria of seat allocation for the year 2013-2014 and not the criteria for the year 2012-2013 as per which the appellant was entitled to admission in the stream of Mechanical Engineering; and,

(v) that though the appellant had also filed a Cont. Cas. (C) No. 584/2013 for non-compliance of the order dated 15th May, 2013 in W.P. (C) No. 5921/2012 but the same was dismissed on 2nd August, 2013 giving liberty to the appellant to file a fresh petition.

Accordingly, the writ petition from which this appeal arises was filed seeking a direction to the respondent University to admit the appellant to B.Tech. Mechanical Engineering in the Academic Year 2013-2014.

2. The respondent University filed a counter affidavit to the writ petition inter alia pleading, (i) that as per the admission policy of the respondent University all admissions are made as per merit rank of the candidates in their respective categories; 85% of the seats are for Delhi candidates and which are further divided into General, Scheduled caste (SC), Scheduled Tribe (ST) and Other Backward Classes (OBC); likewise the balance 15% seats for outside Delhi category are further divided into General, SC, ST and OBC category; (ii) as far as the Defence quota is concerned, 5% from Delhi quota seats and 5% from outside Delhi quota seats are earmarked for admission under the Defence quota; the candidates eligible for Defence quota are further considered priority-wise; while there were five priorities applicable for the Academic Session 2012-2013, two more priorities were included with effect from the Academic Session 2013-2014; (iii) that the appellant/petitioner belongs to the outside Delhi OBC category and falls under the newly incorporated Priority VI of the seven sub-categories of Defence Personnel category; and, (iv) that according to the rank of the appellant/petitioner, the priority under which he falls and the availability of the seat, the petitioner had been offered admission in the stream of Engineering Physics.

3. The learned Single Judge vide order dated 9th September, 2013 directed the counsel for the respondent University to file an affidavit stating whether any seat in the stream of Mechanical Engineering was available in the Academic Year 2013-2014.

4. In compliance thereof an affidavit was filed stating that there was only one seat for outside Delhi OBC candidates in the Defence category in the stream of Mechanical Engineering and the same had been filled by eligible candidate and no seat was vacant as on that date.

5. On the basis of the said affidavit, the learned Single Judge, holding that "no relief is possible to the petitioner" dismissed the writ petition.

6. The appeal came up first before this Bench on 27th September, 2013 when the counsel for the respondent University appearing on advance notice was directed to produce the record and list of selected candidates. The matter was adjourned from time to time and ultimately on 15th April, 2014 notice of the petition was issued and observing that the respondent University had not had an opportunity to file a detailed counter affidavit before the learned Single Judge, an opportunity therefor was given.

7. No counter affidavit has been filed; however the counsel for the respondent University states that it was erroneously recorded that the counter affidavit had not been filed when as aforesaid it had been filed. We accordingly heard the counsels and reserved judgment.

8. We, at the outset enquired from the counsel for the appellant/petitioner, that more than one year of the B.Tech. course in Engineering Physics to which the appellant, without prejudice to his contention had been admitted having elapsed, whether the appellant is interested in fresh admission in the Academic Session 2014-2015 and as to how the relief sought can now be given to the appellant.

9. The counsel for the appellant/petitioner stated that the course contents of all streams of B.Tech in the first year is the same and if the appellant/petitioner succeeds, a direction for now in second year, transferring him to the stream of Mechanical Engineering can be passed.

10. We thus heard the counsels on merits.

11. The argument of the counsel for the appellant/petitioner is simple. It is contended that, (a) as per judgment/order dated 15th May, 2013 in the earlier writ petition and which has attained finality, the appellant was eligible for admission in the Academic Year 2012-2013 but was wrongly denied admission; (b) if the appellant had been admitted in the Academic Year 2012-2013, he would have got the stream of Mechanical Engineering; (c) the appellant is thus, as per judgment/order dated 15th May, 2013 entitled to admission in the Academic Year 2013-2014 also in the stream of Mechanical Engineering.

12. We may at the outset record that in the order dated 15th May, 2013 in W.P. (C) No. 5921/2012 earlier filed by the appellant, there is no discussion of the stream to which the appellant was eligible for admission in that academic year. This Court in the said order, while directing the petitioner to be admitted in the next Academic Year 2013-2014, also did not specify the stream in which the appellant was to be admitted.

13. Per contra the counsel for the respondent University states that since the appellant during the counseling held for admission in the Academic Year 2012-2013 was not considered in the admission in Wards of Ex-Servicemen, Defence Personnel category, the question of considering whether he was eligible

for admission in the Mechanical Engineering stream or not did not arise and the appellant today cannot contend that the admission wrongfully denied to him in the Academic Year 2012-2013 would have been in the stream of Mechanical Engineering.

14. We are however of the view that the need for investigating the said question does not arise. Though undoubtedly the Division Bench of this Court vide order dated 15th May, 2013 in W.P. (C) No. 5921/2012 earlier filed by the appellant had directed the appellant/petitioner to be admitted in the next Academic Year 2013-2014 without participating in the admission process therefor but otherwise a Division Bench of this Court (of which one of us Rajiv Sahai Endlaw, J.) was a member, in *Rajat Goel Vs. Ministry of Human Resource and Development (Govt of India)* and *Another*, on a conspectus of the case law has held:-

A. that the Court cannot issue an order directing admission in the next academic session on the basis of admission test of the previous year;

B. that granting admission in the next academic session in such a manner will necessarily be at the cost of the aspirants for admission in the next academic session - the seats available to them for admission would thus stand reduced;

C. that this Court cannot issue such an order, prejudicial to persons who are not even before this Court; and,

D. the admissions for the next academic session are to be on the basis of the academic test to be held therefor and a candidate cannot be made successful in that admission test without appearing and competing in the same, as the same would tantamount to winning a race without participating in the same and which is against all canons of justice, equity and good conscience.

The appeal there against being SLP No. 9544/2012 was dismissed on 2nd April, 2012.

15. Undoubtedly the direction of the Division Bench in the order dated 15th May, 2013 in W.P. (C) No. 5921/2012 filed by the appellant/petitioner is contrary to the above. However while the Division Bench in order dated 15th May, 2013 was not directly concerned with the said aspect, the Division Bench in *Rajat Goel* was adjudicating the said aspect only and thus in our view it cannot be said that there is any inconsistency. Also, though the Division Bench in order dated 15th May, 2013 directed admission of the appellant in the next Academic Session 2013-2014 but without specifying the stream. For this reason also there is no conflict between the orders/dictas of the two Division Benches.

16. Mention in this regard may also be made of the judgment dated 2nd May, 2014 in LPA No. 343/2014 of this Bench in *Pankaj Kumar Tiwari Vs. Vice Chancellor, University of Delhi* wherein also it was held that the reward of success in one competition cannot be given in another competition in which the petitioner has not participated/competed. It may however be mentioned that the judgment in *Dr. Mundhe Kailas Maharudra Vs. AIIMS and Others*, of one of us (Rajiv Sahai

Endlaw, J.) referred to in Pankaj Kumar Tiwari (supra) was set aside by the Division Bench vide judgment dated 29th November, 2010 in LPA 726/2010. However in view of the subsequent judgments of the Division Bench in Rajat Goel and Pankaj Kumar Tiwari, we choose to follow the view taken therein.

17. While in compliance of order dated 15th May 2013, the appellant/petitioner has been granted admission but following the law laid down in Rajat Goel, the appellant cannot be held entitled to admission in the stream to which he might have been entitled to in the previous year. It is not in dispute that applying the admission process for the academic year 2013-2014, the appellant was not eligible for admission into the Mechanical Engineering stream.

18. We therefore do not find any merit in this appeal.

19. The counsel for the respondent University has during the course of hearing also handed over the result/mark sheet of the appellant in the first year to show that the performance of the appellant is quite poor.

20. The appeal which is dismissed; however no costs.