
(2014) 05 DEL CK 0120

In the Delhi High Court

Case No : LPA 345/2014

Shri Birender Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Citation : (2014) 05 DEL CK 0120

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

Bench : Division Bench

Advocate : M.K. Gautam, Advocate for the Appellant; Talish Ray, Advocate for R-1, Mr. C. Prakash, Advocate for R-2 and Mr. Vikas Chopra, Advocate for R-3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. This intra-court appeal impugns the judgment dated 28th February, 2014 of the learned Single Judge of this Court of dismissal of W.P.(C) No. 2029/2013 preferred by the appellant. The said writ petition was preferred seeking a direction to the respondent no. 3 Guru Gobind Singh Indraprastha University (GGSIPU), i) to restore the lateral admission of the appellant on the basis of common entrance test conducted by the respondent no. 3 GGSIPU in the respondent no. 4 Northern India Engineering College in the year 2009-10 in the 3rd Semester of the B.Tech. (Mechanical and Automation Engineering) course; ii) to allow the appellant to appear in the practical examination for the 8th semester scheduled to be held in the month of May, 2013; iii) to quash the letter dated 4th March, 2013 declaring the result for the 5th, 6th and 8th semester as null and void; iv) for a direction to the respondent no. 3 to declare the result of the appellant for the 3rd, 4th and 7th semesters which had been withheld; and, v) for directing the respondent no. 3 to award degree of B.Tech. (Mechanical & Automation Engineering) course of the year 2013 to the appellant.

2. The undisputed facts are:

(i) that the appellant, to be eligible for such lateral admission in the year 2009-2010, was required to have passed the Diploma examination by 15th October, 2009, later extended to 31st December, 2009;

(ii) that the appellant had not passed the said diploma course, neither by 15th October, 2009 nor by 31st December, 2009 and passed the same in June, 2011;

(iii) that the appellant at the time of commencement of the academic year 2009-10, was provisionally admitted on his representation that he had given the exam of Diploma (Instrument & Control) for the year 2009 but the result thereof had not been declared and had undertaken to submit the result upto 31st December, 2009;

(iv) that the appellant continued to deposit the tuition fee and was continued to be issued admits cards for the semester examinations and the result of the examination taken by him for the 5th, 6th & 8th semester was declared, though the result for the 3rd, 4th, and 7th semesters was withheld;

(v) that the appellant filed W.P.(C) No. 692/2013, vide order in which the appellant was permitted to take the practical examination being conducted in the month of May, 2013 and the respondents directed the consider the case of the appellant;

(vi) that the respondent University ultimately vide letter dated 4th March, 2013 communicated to the appellant; a) that upon the appellant not submitting proof of his eligibility for admission, the provisional admission of the appellant had been cancelled vide letter dated 24th December, 2009; b) that the appellant had concealed from the Examination Division the fact that his provisional admission had been cancelled and continued to appear in the end-term examinations of 3rd, 4th, 5th, 6th, 7th & 8th semesters during the period December, 2009 to May, 2012; c) the Examination Branch inadvertently declared results of the appellant for the 5th, 6th & 8th semesters examination; d) that the decision on the representation of the appellant for restoration of his provisional admission was pending consideration; e) that since the admission of the appellant had not been restored, the result of the appellant for the 3rd, 4th & 7th semesters had been withheld and the result inadvertently declared of 5th, 7th & 8th semesters had been declared as null and void.

3. It was the contention of the appellant before the learned Single Judge, that since the appellant had "now" concluded the diploma course, he should at least be granted admission from the date of completion of the diploma course in the year 2011.

4. Per contra, it was the contention of the respondent no. 3 University before the learned Single Judge that the appellant having mislead the respondent no. 3 University into believing that he had cleared the diploma course in the year 2009 and having subsequently in his letter dated 25th February, 2010 having represented that he had subsequently cleared the diploma course and would

shortly be submitting his final mark-sheet and which also was false, was not entitled to any relief.

5. The learned Single Judge dismissed the writ petition, observing that since the appellant was admittedly not eligible for admission in the year 2009, his admission was illegal and void ab initio and he would not be entitled/eligible to pursue the course. It was further observed that though the appellant had admittedly cleared some of the semesters, yet since the appellant could not have simultaneously pursued both diploma as well as degree course; results of the said semesters were rightly set aside by the respondent no. 3 University. It was further observed that the appellant was permitted to pursue the course only because of the misrepresentations of the appellant and that the situation which had been created was directly attributable to the appellant. Resultantly, it was held that the appellant was not entitled to any equitable relief and the writ petition was dismissed.

6. We have at the outset enquired from the counsel for the respondent no. 3 University appearing on advance notice as to why, once it is the admitted position that the appellant has completed the diploma course in the year 2011, the appellant cannot be granted admission from the academic year 2011-12, instead of from the academic year 2009-10.

7. The counsel for the respondent no. 3 University states that the admission is on the basis of a competitive examination and the appellant having not taken the competitive examination/admission test for the academic year 2011-12, cannot be admitted merely because he in that academic year had acquired eligibility therefor.

8. The only argument urged by the counsel for the appellant before us is that the learned Single Judge failed to consider that the principle of estoppel applies to the respondent no. 3 University; that the respondent no. 3 university, notwithstanding the appellant being not eligible, having demanded and accepted tuition fee from the appellant semester after semester and having also issued admit cards enabling the appellant to appear in the various semester examinations, is now estopped from raising the plea of the eligibility of the appellant. Reliance in this regard is placed on *Sanatan Gauda Vs. Berhampur University and others*, and *Anirudh Sharma Vs. H.N.B. Garhwal University, Srinagar* AIR 2013 Uttarakhand 16.

9. We have however enquired from the counsel for the appellant as to how the principle of estoppel can apply in the present case when the admission given to the petitioner at the beginning of the academic year 2009-10 was provisional and had been cancelled vide letter dated 24th December, 2009, well before the end of the 3rd semester in which the appellant was admitted.

10. The counsel for the appellant states that the letter dated 24th December, 2009 has been fabricated by the respondent no. 3 University and has been referred to and relied upon for the first time in the letter dated 4th March, 2013

issued after a direction in the earlier writ petition preferred by the appellant to consider the case of the appellant and was never referred to earlier.

11. We find the aforesaid argument of the appellant also to be false and in line with the misrepresentation practiced by the appellant throughout. The appellant itself, as annexure to his writ petition, filed the copy of his letter dated 25th February, 2010 to the respondent No. 3 University; the appellant in the said letter stated:

Due to incomplete documents, the IP University cancelled my provisional admission. I was unable to fulfil my documents because my Board of Polytechnic CBTC did not issue my final mark sheet. But after that BTEC Board gives the final mark sheet on 24.02.2010 to me. Now I am able to fulfil all the criteria required for admission. I am submitting my final mark sheet of Diploma to IP University. So due to consider my application approve my admission.

It is apparent from the above that the appellant was well aware, soon after 24th December, 2009, of the cancellation of his provisional admission.

12. Once it is found that the respondent no. 3 University did indeed had on time cancelled the provisional admission of the appellant, the mere fact that the appellant, with full knowledge of the cancellation of the provisional admission, continued to pay the fee and pursue the course and to apply for admission ticket for taking the examination misrepresenting that he continued to be admitted to the course and taking advantage of his admission being in an affiliate of a State university having a large number of students, will not entitle the appellant to invoke the principle of estoppel.

13. Even otherwise, We are of the view that the principle of estoppel does not apply in such matters as has been held in *Maharshi Dayanand University Vs. Surjeet Kaur*, *Mahatma Gandhi University Vs. Gis Jose* (2008) 17 SCC 611 and followed by this Court in *Zuned Khan Vs. Amity University and Another*, where it was 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 and 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. It cannot also be lost sight of that the admission of the appellant by misrepresentation was at the cost and to the prejudice of some other eligible student who though in the competitive examination/admission test may have secured a rank lesser than the appellant but was eligible. We are a country of shortages, where for each and every seat in an educational institution, hundreds compete and we cannot reward such malpractices.

14. The counsel for the appellant has lastly raised the argument of equity and has contended that the appellant having since acquired eligibility, as well as having passed the exams, should not be deprived of the result thereof.

15. We have enquired from the counsel for the appellant whether not the same would amount to condoning the serious defaults of the appellant including of misrepresenting, hoodwinking and cheating and whether not the same would amount to rewarding instead of punishing the appellant for his misdeeds.

16. Expectedly, no plausible answer is forthcoming.

17. We thus agree with the learned Single Judge that the situation, of which advantage is sought to be taken, is a creation of the appellant himself and the appellant cannot benefit therefrom.

18. There is no merit in the appeal. The same is dismissed.