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**(2014) 09 DEL CK 0309**  
**In the Delhi High Court**  
**Case No : LPA No. 574/2014**

Shri Ram College of Commerce APPELLANT  
Vs  
Sunny Goel RESPONDENT

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**Date of Decision :** 09-09-2014

**Acts Referred:**

**Citation :** (2014) 09 DEL CK 0309

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

**Bench :** Division Bench

**Advocate :** Amit Bansal and Senjul Khanna, Advocate for the Appellant; Sunil Goel, Susheel Bhartiya, Saurabh Banerjee and R.K. Singh, Advocate for the Respondent

**Final Decision :** Dismissed

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## Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the judgment dated 25th August, 2014 of the learned Single Judge of this Court allowing W.P. (C) No. 4415/2014 filed by the respondent No. 1 herein.

2. The counsel for the respondent no.1 / writ petitioner and the counsel for the respondent No.2 University of Delhi and the counsel for the respondent no.3 Central Board of Secondary Education (CBSE) appeared on advance notice and with the consent of the counsels, we heard the appeal finally and reserved judgment.

3. The writ petition from which this appeal arises was filed seeking a direction to the appellant College and the respondent No.2 University to give admission to the respondent no.1 / writ petitioner in the undergraduate course of B. Com (H) in the appellant College in the academic year 2014-15. It is inter alia the case of the respondent no.1 / writ petitioner:

(a) that as per the result declared by the respondent no. 3 CBSE on 29th May, 2014 of the Higher Secondary examination (Class XII), the respondent no.1/ writ petitioner had secured 95.50% aggregate marks in the best of four subjects

including English;

(b) that the respondent no.1 / writ petitioner being not satisfied with the marks given to him in the subject of English, in accordance with the rules of the respondent no.3 CBSE, applied for verification (re-totalling) of marks, then for obtaining photocopy of his answer sheet and thereafter for re-evaluation of answer sheet;

(c) that in the meanwhile, the admission process in the respondent No. 2 University for the academic session 2014-15 began and the respondent no. 1 / writ petitioner applied on the basis of the 95.50% marks secured by him, filling up the first choice, for the appellant College;

(d) that on 1st July, 2014, the first cut-off list for admissions was declared and the appellant College declared a cut-off of 97.50% for B.Com (H) for the General Category ?the respondent no.1 / writ petitioner having 95.50% marks was thus not eligible for admission to the appellant College;

(e) that the appellant College, in the second cut-off list declared on 4th July, 2014, declared a cut-off of 97.25% for admission to B.Com (H) for the General Category students ?the respondent no.1 / writ petitioner having 95.50% marks was still not eligible;

(f) that the respondent no. 1 / writ petitioner on the basis of 95.50% marks was admitted to the B.Com (H) course / programme in Hindu College of the respondent No.2 University;

(g) that the respondent no.3 CBSE vide its letter dated 10th July, 2014 informed the respondent no.1 / writ petitioner of increase in his marks in the subject of English Core in re-evaluation, from 87% to 95%, thereby taking the aggregate marks of the respondent no.1 / writ petitioner to 97.50%;

(h) that the respondent no.1 / writ petitioner on 11th July, 2014 itself approached the appellant College for admission but was denied, for the reason of the appellant College having closed the admissions.

4. The learned Single Judge has allowed the writ petition and has directed the appellant College to forthwith grant admission to the respondent no.1 / writ petitioner in the B.Com (H) course for the academic year 2014-15, if required, by creating a supernumerary seat; a direction in this regard has been given to the respondent No.2 University also, reasoning:

(i) that no fault could be attributed to the respondent no.1 / writ petitioner as he had pursued his rights and legal remedies without any delay;

(ii) that had there been no delay on the part of the respondent no.3 CBSE in releasing the result of re-evaluation whereby the respondent no.1 / writ petitioner's marks in the subject of English were increased, the respondent no.1 / writ petitioner would have been admitted in the B.Com (H) course in the appellant College in the normal course as his marks are more than the cut-off;

(iii) that if the argument of the appellant College and the respondent No.2 University, of no admission upon closure thereof being possible, were to be accepted, the entire exercise of re-evaluation would lose its significance and meaning - re-evaluation could not be made an exercise in futility - it has to have some significance and import - after all a student applies for re-evaluation not just for statistical reasons but to take benefit of the increase in marks, if any;

(iv) reliance was placed on *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, where even the strict cut-off date stipulated for entrance to medical colleges was held capable of being waived in certain circumstances when it would result in complete ruining of the professional career of a meritorious candidate;

(v) that the respondent no.1 / writ petitioner till the last cut-off date for admission had expired could not be denied the logical consequence of increase in marks upon re-evaluation;

(vi) that the respondent no.2 University in *Jainidh Kaur (Thr Her Next 6 Friend and Natural Guardian) Vs. St. Stephens College and Others* had undertaken before the Court to admit all students, even if they produce their marks after re-evaluation, till the last cut-off date, irrespective of the availability of seats;

(vii) that the argument of the appellant College and the respondent No.2 University, that the cut-off date referred to in the undertaking given in *Jainidh Kaur (supra)* referred to the cut-off date of a particular course of a particular college and not to cut-off date stipulated by the respondent No.2 University was not correct and the appellant College and the respondent No.2 University could not be permitted to treat the respondent no.1 / writ petitioner differently.

However keeping in view the fact that the overwhelming majority of the students admitted to the respondent no. 2 University belong to the CBSE Board, the learned Single Judge directed the Chairman, CBSE to have a meeting with the Vice Chancellor of the respondent No.2 University to ensure that from the next academic year, students' re-evaluated marks are taken into account while granting admission to colleges of the respondent No.2 University.

5. The contentions of the counsel for the appellant College are:

(A) that the direction of the learned Single Judge is violative of the Schedule of admission laid down by the respondent No.2 University;

(B) that the appellant College cannot be directed to admit students beyond its maximum capacity; the University Grants Commission (UGC) releases funds to colleges as per their maximum intake capacity of students and the creation of supernumerary seat as directed by the learned Single Judge would upset the finances of the appellant College;

(C) that the reliance placed by the learned Single Judge on the undertaking given by the respondent no. 2 University in *Jainidh Kaur (supra)* is misplaced as the

said undertaking was only to admit students till the last cut-off date; the last cut-off date for admission to the appellant College was 7th July, 2014 and the respondent no.1 / writ petitioner had approached with re-evaluated marks thereafter;

(D) that the learned Single Judge erred in not following the judgment of the Division Bench of the Punjab & Haryana High Court in Miss Mandeep Kang Vs. Punjab University and Others, laying down that the last date for considering eligibility of a student for admission is the cut-off date stipulated for admission;

(E) that it is not as if the respondent no.1 / writ petitioner has not been admitted to any college; he has already taken admission to the B.Com (H) course / programme in Hindu College of the respondent No.2 University;

(F) apprehensions are expressed that the judgment of the learned Single Judge, if allowed to become a precedent, would make admissions an endless exercise, delaying the commencement of the academic session; reliance is placed on U.P. Public Service Commission U.P., Allahabad and Another Vs. Alpana, .

6. We have put to the counsel for the appellant that the Schedule of admission, which the judgment of the learned Single Judge is argued to be violating, has been fixed by the respondent No.2 University only and the respondent No.2 University having not made any grievance with respect to the judgment, the appellant College has nothing to worry. On enquiry, the counsel for the respondent No.2 University states that the University is in the process of deciding whether to challenge the impugned judgment.

7. The counsel for the respondent no.3 CBSE supports the respondent no.1 / writ petitioner.

8. The counsel for the respondent no.1 / writ petitioner besides supporting the judgment of the learned Single Judge has contended that the judgment of the High Court of Punjab & Haryana in Mandeep Kang (supra), in para no.7 thereof also carves out an exception qua re-evaluated marks.

9. We have considered the rival contentions. We agree in entirety with the reasoning given by the learned Single Judge and particularly the reasoning of "re-evaluation cannot be an exercise in futility". We may also add that the judgment of the learned Single Judge is in consonance with the consistent view of other High Courts in i) Ms. Deepa Vs. Maharishi Dayanand University and Others, , ii) Apurav Chandel Vs. State of H.P. and Others, , iii) Rajendrakumar Chandrakant Nadkarni Vs. University of Bombay and another, affirmed by the Division Bench of that Court in Yudhvir Singh Sisodiya Vs. Dr. Babasaheb Ambedkar Marathwada University and others, , iv) Ku. Sadhana Vs. Vikram University, Ujjain and Others, , v) Anjay Bansal Vs. Bangalore University and another, , vi) Fateh Kumari Sisodia Vs. State of Rajasthan and Others, and vii) Shri Shatrudhan Upadhaya Vs. Union of India and North Eastern Hill University, Shillong . Reference in this regard can also be made to University of Kerala and Others Vs.

Sandhya P. Pai and Others, though not concerned with the issue as before us, but generally considering the effect of the delays in re-evaluation and containing a useful discussion on the relationship between the Universities and their students.

10. As far as the argument of the counsel for the appellant College, of the direction of the learned Single Judge if allowed to stand making the admission process an endless exercise delaying the commencement of the academic session is concerned, we find the same to be misplaced. As far as the academic year 2014-15 is concerned, the last date for admission stipulated by the University i.e. of 29th July, 2014 has elapsed. What the learned Single Judge has held is that till the said date, admission on the basis of re-evaluated marks cannot be denied. Thus, the possibility of others approaching for admission on the re-evaluated marks does not arise. As far as the future academic years are concerned, the learned Single Judge has already directed a mechanism to be devised therefor. We are confident that the Vice Chancellor of the respondent No.2 University and the Chairman of the respondent no.3 CBSE in their wisdom would be able to take care of the issue. The counsel for the appellant College has argued that the eligibility for admission in the appellant College is not only on the basis of examination conducted by the respondent no.3 CBSE but also on the basis of the examination conducted by other Boards all over the country. He has thus suggested that a discussion between the Chairman of the respondent no.3 CBSE and the Vice Chancellor of the respondent No.2 University would not solve the problem. The said argument is again without any basis and unreasonably doubts the acumen of the highest decision making office in the respondent No.2 University. We are sure that the Vice Chancellor of the respondent No.2 University, while devising the solution for future would take care of the said aspect as well.

11. The undertaking given by the respondent No.2 University in Jainidh Kaur (supra) was to "admit all students even if they only produce their marks after re-evaluation till the last cut-off date irrespective of availability of seat-. The argument of the counsel for the appellant College that the cut-off date referred to in the said undertaking is the cut-off date of individual college affiliated to the respondent No.2 University and not to the cut-off date fixed in the admission schedule announced by the respondent No.2 University and which admittedly was 29th July, 2014, is fallacious. If the reference was to the cut-off date of individual Colleges, the question of the individual colleges admitting students more than their maximum intake capacity would not have arisen inasmuch as the student / candidate with higher marks on re-evaluation would be admitted and the need for the undertaking also stating". irrespective of availability of seat-would not have arisen. The need for undertaking stipulating that the students will be admitted irrespective of availability of seat arises only to take care of situation where the colleges had already closed their admissions and the student with re-evaluated marks approaching thereafter though within the cut-off date fixed by the respondent No.2 University. We thus agree with the learned Single Judge that the cut-off date referred to was the date stipulated by the respondent No.2

University. The respondent no.1 / writ petitioner had approached the appellant College and the respondent No.2 University much prior to 29th July, 2014.

12. The appellant College is the premium college of Commerce in the city and enjoys an enviable position. The same is obvious from the appellant College being the first choice of the respondent no.1 / writ petitioner also. Thus the argument of the counsel for the appellant College of the respondent no.1 / writ petitioner being not entitled to any relief on account of admission in another College is but to be rejected. The appellant College can always on the basis of this judgment approach the UGC for release of additional funds. We also agree with the counsel for the respondent no.1 / writ petitioner that the judgment of the Punjab & Haryana High Court in Mandeep Kang (supra) cannot be said to be holding otherwise as the same itself carves out an exception for students with re-evaluated marks. Similarly, the judgment of the Supreme Court cited by the counsel for the appellant College is in the matter of recruitment, the principles wherein are entirely different. The petitioner in that case was found to be not even eligible to apply and that is not the position here.

We therefore do not find any merit in this appeal which is dismissed.