

(2019) 09 DEL CK 0337

In the Delhi High Court

Case No : Civil Writ Petition No. 9044 Of 2019, Civil Miscellaneous No. 37318, 41050 Of 2019

Shubhangi Sinha

APPELLANT

Vs

University Of Delhi & Anr

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

Citation : (2019) 09 DEL CK 0337

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Abhijat, Abhishek R. Shukla, Shashwat Jindal, Mohinder J.S. Rupal, Hardik Rupal, Prang Newmai, Aditi Shastri, Kaushik Ghosh

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. Via this writ petition, a direction is sought against the respondents to admit the petitioner in the Post-Graduate M.A. (History) course for the academic session 2019-20.
2. The facts which are required to be noticed to adjudicate upon this writ petition are briefly set forth hereafter.
3. The petitioner acquired a degree in B.A. Hons. (History) from the University of Delhi in 2018. In this course, the petitioner obtained a cumulative CGPA of 6.892 which, if converted into percentage, would round-off to 65.474. The petitioner, thereafter, made an application to the University of Delhi to seek admission in a post-graduate course i.e. M.A. (History), albeit, in the academic session 2019-2020.
4. The application, in terms of the Bulletin of Information for Post-Graduate Admissions (in short "Bulletin") was uploaded online on 10.06.2019. In the application, apart from aspects, the writ petitioner stated the following vis-à-vis

her educational qualifications :

Educational Qualification

Examination Passed

Stream/ Subject

Board/University

Year of Passing

Maximum Marks

Marks Obtained

Percentage

10+2 or Equivalent

Commerce

CENTRAL BOARD OF SECONDARY EDUCATION

2015

500

469

93.80

B.A.(Hons.)

History

University of Delhi

2018

10

6.892

6.89

5. Thus, as is evident from the aforementioned extract, the petitioner had clearly disclosed to the University of Delhi the marks she had obtained in her graduation i.e. B.A. Hons. (History) course.

5.1 The petitioner, however, was not considered for admission to the M.A. (History) course even though, as per the marks cut-off stipulated in the third admission list, she ought to have gained admission.

5.2 The petitioner, being aggrieved, filed an application on 07.08.2019 with the Grievance Committee set-up by the University of Delhi to seek redressal.

5.3 In brief, in the application, the petitioner brought to fore the fact that even though her CGPA was higher than the cut-off disclosed qua the third admission list, she had not gained admission to the M.A. (History) course.

5.4 To be noted, this application is appended at page 112 of the paper book and is marked as Annexure P-10.

5.5 Concededly, the application was dealt with by a member of the Grievance Committee. After recording the grievance of the petitioner, the member of the Grievance Committee endorsed the application with the remark "special case".

5.6 Having secured an imprimatur of the member of the Grievance Committee that her's was a special case, the petitioner verily believed that she would gain admission to the M.A. (History) Course.

5.7 The petitioner, however, did not gain admission, and hence, decided to approach this court to ventilate her grievance via the instant writ petition.

6. The petition came up for hearing before this court on 21.08.2019 when notice was issued in the writ petition. On return of notice, i.e. on 23.08.2019, Mr. Mohinder J.S. Rupal, Advocate, appeared on behalf of the University of Delhi. Mr. Rupal sought for and was given time to file a counter affidavit. Furthermore, the University of Delhi was also directed to keep one seat vacant for the petitioner, albeit, provisionally.

7. It is in these circumstances that the matter has been heard today.

8. I am informed by Mr. Rupal that one seat is kept aside for the petitioner, as directed by this court.

9. Mr. Rupal has handed over to me in court today the original counter affidavit that the University of Delhi has prepared and proposes to file with the Registry of this court. A perusal of the counter affidavit would show that the University of Delhi opposes the relief sought for by the petitioner on a singular ground, which is, that she failed to update her qualifying degree marks on the web-portal, as required in terms of the guidelines contained in the Bulletin, despite the same being accessed by her three times.

10. I have put to Mr. Rupal as to whether the entire set of the guidelines are available with him. Mr. Rupal says that while the guidelines in their entirety are not available with him, the relevant portion of the same is extracted in paragraph 5 of the counter affidavit. This stance of Mr. Rupal is correct.

10.1 This query was put to Mr. Rupal as Mr. Abhijat who appears for the petitioner had drawn my attention to another part of the Bulletin on the aspect of updation of qualifying degree marks.

10.2 Therefore, taking into account the submissions of Mr. Rupal and assuming that what is extracted in paragraph 5 of the counter affidavit is the entirety of the guidelines on which the University of Delhi seeks to rely, the relevant part of

this paragraph which sets out its defence is extracted hereafter for the sake of convenience:

"5. ""every candidate has to mandatory (sic: mandatorily) update his/her qualifying degree marks on the portal including the candidates in the category of gap years." It is pertinent to mention that for this purpose that the portal was opened thrice for updating the marks as accepted by the Petitioner herself in para 11 of the present Writ Petition ..."

11. A perusal of the extract would show that the stand of the University of Delhi is that even though the petitioner opened the web-portal of University of Delhi three times, she failed to update her qualifying degree marks. Notably, with the counter affidavit nothing has been filed which would show that though the petitioner opened the web-portal three times, as has been admitted by her, she was prompted to update her graduation marks. This aspect is noticed by me as the University of Delhi relies upon assertions made by the petitioner in paragraphs 7 and 11 of the writ petition to establish that she had failed to update her qualifying degree marks despite being prompted to do so. The relevant portion of paragraphs 7 and 11 of the writ petition on which reliance is placed by the University of Delhi, for the sake of easy reference, is extracted hereafter :

"That the Petitioner received the above information to update the qualifying marks through SMS only on 22.07.2019.

xxx xxx xxx

That it has been reliably learnt by the Petitioner that the University's link for updating portal was opened for the third time between 01.08.2019 to 04.08.2019 but no intimation was given to the Petitioner to update her qualifying marks."

12. A perusal of the aforementioned extracts of the writ petition would show that the stand taken by the petitioner, is that, firstly, the web-portal of the University of Delhi despite being opened for the third time gave no information to her that she was required to update her qualifying marks. Secondly, the message sent to her via SMS requiring her to update her qualifying degree marks was received by her only on 22.07.2019.

12.1 This aspect has to be examined in the light of the assertions made by the University of Delhi in paragraph 6 of its counter affidavit. The University of Delhi avers that it had issued notice on its website on 20.07.2019 inviting all post-graduate candidates to update their qualifying marks by logging on to its web-portal latest by 05:00 pm on 21.07.2019.

12.2 The University of Delhi has not appended any document to back this assertion.

13. The only information the petitioner claims she received and that too via an

SMS was received by her only on 22.07.2019. As a matter of fact, to back her assertion, the petitioner has appended a copy of the screenshot, which is appended at page 85 of the paper book.

13.1 There is nothing stated in the counter affidavit to contest this position.

14. As indicated above, the University of Delhi relies upon the assertions made by the petitioner in paragraph 7 of the writ petition in support of its stand which on the face of it is destructive of its defence that the students, including the petitioner, were informed that they were required to update their qualifying marks by 21.07.2019.

15. Given these circumstances, what this court is required to rule on is: as to whether the petitioner was remiss in not updating her qualifying marks. This poser brings me back to that portion of the guidelines on which the University of Delhi relies to resist the writ petition.

16. A careful perusal of the guidelines would show that it required the candidate to mandatorily update his or her qualifying degree marks on its web-portal. The word "update", to my mind, would include a circumstance, which alludes to the latest information. In this case since there was no change in marks, the latest information qua the petitioner's marks was that which found mention in the application uploaded on the web portal of the university of Delhi in the first instance.

Update

xxx xxx xxx

A verb trans. Bring up to date.

xxx xxx xxx

B noun The action or act of updating someone or something; the result of this; an updated version of something; a report or account containing the latest or current information on something.

xxx xxx xxx

Shorter Oxford English Dictionary, Fifth Edition, Volume 2, N-Z, Oxford University Press (2003).

16.1 In the instant case, there has, concededly, been no change in the marks. The petitioner relies upon the original marks which were adverted to in the application form. Be that as it may, even if, I were to accept the stand of the University of Delhi that the petitioner was required to once again access the web-portal only to reaffirm the fact that there was no change in her marks, that information, it appears on a pre-ponderance of probability, was not passed on to the petitioner.

17. Given this state of affairs, I am in agreement with Mr. Abhijat that there is a

case made out by the petitioner for admission. What adds heft to the case of the petitioner is the endorsement made by a member of the Grievance Committee which, I would safely assume, was made after due consideration of the merits of her complaint. As alluded to hereinabove, a member of the Grievance Committee has endorsed the petitioner's application with the remarks "special case".

17.1 To counter this, Mr. Rupal says that the petitioner's application was not considered by the Grievance Committee but by one of its members. To my mind, that only makes matters worse for the University of Delhi. If there is a mechanism put in place for redressing the grievance of the candidates, then, the burden was on the University of Delhi to ensure that the requirements stipulated were complied with while dealing with the complaint of the petitioner. The petitioner did what she was required to do to seek redressal. The failure on the part of the member to refer the matter to the entire body which constituted the Grievance Committee cannot be laid at the door-step of the petitioner. Therefore, in my opinion, the petitioner is entitled to rely upon the endorsement made by a member of the Grievance Committee.

18. Mr. Rupal, in support of his submission, that no relief can be given to the petitioner and that this court should eschew sympathy while examining the case, has adverted to the following judgments :

(i) Khalid Imam v. Union of India & Ors. passed in W.P.(C)No.8347/2015 on 01.09.2015.

(ii) Sunil Oraon (Minor) Through Guardian & Ors. v. CBSE & Ors., (2006) 13 SCC 673.

19. On the other hand, Mr. Abhijat has relied upon a judgment of the Division Bench of this court dated 04.08.2016, passed in W.P.(C)No.3137/2016, titled Ajay Kumar v. Union of India & Ors.

19. I have examined the judgments cited by Mr. Rupal.

19.1 In my view, the judgments cited before me are distinguishable on facts. The judgment rendered in Khalid Imam concerns a matter where the petitioner had failed to indicate her choices with regard to the medical colleges in which she desired admission. The period for indicating those choices of colleges was defined. The computer was unable to enter the choices after the defined period had expired as there was a locking device incorporated in the software.

19.2 In this case, no such situation has arisen. This is a matter where the guidelines, if applied, as indicated above, required updation. As observed hereinabove, the petitioner's qualifying degree marks did not undergo a change and, therefore, there was no requirement of updation.

19.3 Likewise, the judgment of the Supreme Court in Sunil Oraon is not applicable as this was a case where the practice of passing interim orders by courts below whereby admissions were granted was deprecated. In this

particular case, the writ petition has been finally decided and no interim order was passed to admit the petitioner.

20. Therefore, for the foregoing reasons, I am inclined to allow the writ petition. The seat which was retained for the petitioner would be allocated to her subject to her fulfilling the requisite conditions and formalities.

21. The petitioner, for this purpose, will appear before the Head of the Department/Central Admission Committee at 11:00 am on 27.09.2019.

22. The captioned writ petition is disposed of in the aforesaid terms. The pending applications shall also stand closed.

23. There shall be no order as to costs.