
(2011) 05 RAJ CK 0175

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2272 and 2273 of 2009

Sonam Garg and Radha Goyal

APPELLANT

Vs

All India Council for Technical Education and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 4 RLW 3637

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Anil Kumar Sharma, for the Appellant; A.K. Bhargava for Respondent No. 2 for Rajasthan Technical University, Kota and B.C. Jain for Respondent No. 3 for Biyani Institute of Science and Management, for the Respondent

Judgement

Mohammad Rafiq, J.—Petitioners Sonam Garg and Radha Goyal in writ petition no. 2272/2009 and, Shweta Jwali and Geetanjali Maheshwari in writ petition no. 2273/2009, have approached this court with prayer that respondent no. 2 Rajasthan Technical University, Kota, (for short, "respondent university") be directed to issue them permission letters/admission cards and allow them to appear in M.B.A. 1st semester examination in February, 2009. Shri Anil Kumar Sharma, learned counsel for petitioners, has argued that all petitioners were regular students of respondent No. 3 Biyani Institute of Science & Management, Jaipur (for short, "respondent institution"); they were admitted against direct admission quota on the basis of their qualifying Rajasthan Management Aptitude Test (for short, "RMAT"). It is argued that in the case of petitioners Sonam Garg and Radha Goyal, though their photographs and signatures were correctly shown on their admit-cards, but in place of their names and fathers' names, names of Priyanka Mundra D/o Shri Dilip Kumar Mundra and Deepika Sharma D/o Shri Om Prakash Sharma, respectively, were shown. In the case of petitioners Shweta Jwali and Geetanjali Maheshwari, their admit-cards were not at all issued. Petitioners have regularly attended the classes of the study course. Respondent institution also forwarded a list of total 53 candidates including names of present four petitioners along-with their examination-forms and other details for allowing

them to appear in the examination. Respondent university has acted illegally in not issuing them admit-cards to them and not allowing them to appear in the examination. It is argued that due to some clerical mistake on the part of respondent university, admit-cards have been issued in wrong names or have been withheld. Petitioners, who are innocent students, cannot be made to suffer on account of mistake of the institution. Learned counsel submitted that petitioners appeared in MBA 1st semester examination under interim order of this court dated 27.02.2009 and thereafter they appeared in all semesters of MBA examination. Petitioners cannot be penalized because of differences between respondent university and respondent institution.

2. Shri A.K. Bhargava, learned counsel appearing on behalf of respondent university, opposed writ petitions and submitted that respondent institution adopted malpractice in sending names of petitioners; even though they were originally not admitted and if admitted, they were admitted at very belated stage without timely notifying this fact to respondent university. Learned counsel submitted that examination forms of MBA 1st Semester as well as enrollment and eligibility forms for the session 2008-09 were sent to the respondent institution by respondent university. Examination form No. 803371, as per electronic record of respondent university, was issued in the name of one Deepika Sharma D/o Shri Om Prakash Sharma and sent to respondent institution. Such form was misused by respondent institution and name of Radha Goyal was overwritten by applying white fluid over name of Miss Deepika Sharma. Similarly, examination form No. 803390 submitted in the name of Sonam Garg was originally issued in the name of Priyanka Mundra D/o Shri Dilip Kumar Mundra. This form was also misused by respondent no. 3 institution by use of white fluid over name of Priyanka Mundra and was used for Ms. Sonam Garg. Since in electronic record maintained by respondent university, those forms were entered in names of Deepika Sharma and Priyanka Mundra, admission cards were obviously issued in their names rightly, whereas photographs containing signatures that were forwarded by respondent institution were affixed thereon. Learned counsel submitted that respondent institution in similar manner indulged in further malpractice by getting the application forms of enrollment and eligibility photocopied and filling them without any serial number in so far as petitioners Shweta Jwali and Geetanjali Maheshwari in writ petition No. 2273/2009 are concerned.

3. Learned counsel for respondents, in order to bring his point, referred to examination and eligibility forms of all these candidates filed with their reply as Annexure R-2/1, R-2/2, R-2/3 and R-2/4. Learned counsel also submitted that names of these four candidates were added much later at bottom of the list forwarded by respondent institution to Coordinator of RMAT, Rajasthan Technical University, Kota, dated 29.11.2008. In the list of direct admission, that was sent by respondent institution to respondent university, names of Priyanka Mundra D/o Shri Dilip Kumar Mundra and Deepika Sharma D/o Shri Om Prakash Sharma, entered respectively at serial no. 5 and 23, were scored out by use of the cross

mark (x), whereas there is tick mark (insert sign) against names of remaining candidates. It was for all these reasons that respondent university withheld/did not issue admit-cards in the name of petitioners and this also explains why the admit cards in the case of Sonam Garg and Radha Goyal were issued in the name of Priyanka Mundra D/o Shri Dilip Kumar Mundra and Deepika Sharma D/o Shri Om Prakash Sharma.

4. Shri A.K. Bhargava, learned counsel for respondent university, cited judgment of Supreme Court in *Minor Sunil Oraon Tr. Guardian and Others Vs. C.B.S.E. and Others*, wherein it was held that mere fact that ultimate victim in such cases would be innocent students, is not a good ground to direct CBSE to allow them to appear in examination. Passing of an interim order by High Court permitting such students to appear at CBSE examination was deprecated as aberration and subversive of academic discipline. However, students suffering by objectionable conduct of a school, were given liberty to seek such remedy against the school as might be available in law. Reliance was also placed on another judgment of Supreme Court in *Guru Nanak Dev University Vs. Parminder Kr. Bansal and another*, for the same proposition of law.

5. Shri B.C. Jain, learned counsel appearing on behalf of respondent institution has rebutted the allegation of malpractice by respondent institution and has submitted that process of admission started in August 2008. A list of admitted candidates was sent to respondent university. It is argued that due to assembly elections, a ban was imposed by election commission and permission for starting MBA classes was granted to respondent institution by Rajasthan Technical University after approval of election commission in November, 2008. Forms of direct admission of students containing list of such 53 students were sent to Coordinator, RMAT, Rajasthan Technical University, Kota, vide letter dated 29.11.2008. Learned counsel argued that mere fact that names of these petitioners figured at the bottom of the list, cannot be of much significance because otherwise also their names appeared in the list of students appended thereto, who were given admission against direct admission quota to MBA 1st semester examination, 2008-09, in alphabetic order. Learned counsel submitted that enrollment forms have been correctly used and therefore petitioners were entitled to appear in the examination. When their admit cards were not received, respondent institution wrote a letter to the Vice Chancellor of respondent university on 23.02.2009 to issue their permission letters immediately.

6. I have given my thoughtful and anxious consideration to rival submissions and perused material on record.

7. Petitioners approached this court at a time when their examinations were round the corner. This court, by different orders passed from time to time, permitted them to provisionally appear in the examination of different semesters, however with a rider that their result would not be declared save with permission of the court. But such orders cannot be made basis of claiming equity to overriding the considerations of the matter on merits, because in any case, when

a matter was brought before this court and even if it is decided with some delay, the same has to be decided on its own merits and therefore I shall have to examine these matters from the perspective whether there was at all any justification for directing respondent university to allow petitioners to appear in the examination in the facts of this case.

8. Application forms for enrollment and eligibility were issued by respondent university, is a fact which is not and cannot be denied. There is also an additional factor to notice here that such application-forms for enrollment and eligibility is got printed by respondent university for each academic year which in present case was 2008-09 and on each of these forms there is printed form number. As per the records of the respondent University, application forms at serial numbers 803371, and 803390 were in the names of Priyanka Mundra D/o Shri Dilip Kumar Mundra and Deepika Sharma D/o Shri Om Prakash Sharma. This is corroborated from the fact that when those forms were used by the respondent institution by applying white fluid for striking off names and filling in them names of Sonam Garg and Radha Goyal, this mismatch with electronic record maintained by respondent university, which is why when print out of admit-cards was taken, they indicated the names of Priyanka Mundra D/o Shri Dilip Kumar Mundra and Deepika Sharma D/o Shri Om Prakash Sharma, respectively. Curiously, respondent institution in the case of other petitioners, namely, Shweta Jwali and Geetanjali Maheshwari, has adopted an indigenous method by getting those forms photocopied without there being any printed form number and used them by filling in names of petitioners of which no record was available with the respondent university, which is why the respondent university did not issue their admission cards.

9. In my considered view, the fact that names of these four students have figured at bottom of the list of direct admission quota sent by respondent institution to respondent university cannot be a sheer coincidence. Another list of students of direct admission quota of MBA 1st semester separately enclosed therewith, contains names of Priyanka Mundra D/o Shri Dilip Kumar Mundra and Deepika Sharma D/o Shri Om Prakash Sharma have figured at serial number 5 and 23 respectively, but they have been struck off by indicating a cross mark and names of present petitioners have been inserted which although appeared in alphabetical order. This speaks volumes of the manner in which private institutions are indulged in malpractice of alluring students even at the last minute, Rajasthan Technical University also cannot be absolved of its responsibility because despite several instances of such bad practice by the concerned private institutions, it appears not to have intimated any action to de-affiliate such institution, and ultimate sufferer of course are students because affiliation granted by respondent university, enabled this institution to indulge in such practice by charging heavy amount as fees.

10. Supreme Court in Sunil Oraon's case, *supra*, was dealing with a case where students were admitted in a school which was earlier affiliated to CBSE for some

time and later on such affiliation was not extended. The school approached the High Court to allow the students to appear in the examination conducted by CBSE to publish their results. Single Bench of High Court by interim order permitted the students to appear in the examination. Subsequently, the writ petition was dismissed on the ground that school was not affiliated to CBSE. Letters patent appeal was also dismissed, which is why certain students approached the Supreme Court. It was held that ultimate victims in such cases would be the innocent students, is not a good ground to direct CBSE to allow them to appear in the examinations. Supreme court deprecated the interim order passed by the High Court in the facts of the case as aberration and subversive of academic discipline. However students suffering by the objectionable conduct of the school, were given liberty to seek such remedy against the school as might be available in law. In facts of the case therefore notwithstanding appearance of the petitioners in the examinations of different semesters under interim orders passed by this Court from time to time, they cannot be held entitled to any benefit of such examination. However, at the same time they are held entitled to refund of the fees with reasonable rate of interest, which has been charged by the respondent institution.

11. While, therefore, dismissing the writ petitions, this Court direct the respondent no. 3 institution to refund the fees charged from each of the petitioners with interest at the rate of 6% per annum from the date of its deposit, within a period of thirty days from the date a copy of this order is produced before it. Writ petitions accordingly stand disposed of with the aforesaid directions.