

(2011) 02 DEL CK 0101
In the Delhi High Court
Case No : Writ Petition (C) 308 of 2011

Zuned Khan

APPELLANT

Vs

Amity University and Another

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0101

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Dalip Singh and Satya Siddiqui, for the Appellant; Rajesh Yadav, A.P. Singh and Rajan Chawla, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner in the academic year 2010-2011 applied for and was admitted to the MBA (Gen.) programme of the Respondent University. Fee of Rs. 2,23,000/- claims to have been deposited on 26th July, 2010. The Petitioner however claims that though he was given identity card and provided enrollment number but was not given the roll number for the first semester end term examination due in November-December, 2010. When the representations of the Petitioner failed to meet with any success, the present petition has been filed seeking direction to the Respondent University to allow the Petitioner to take the examination and to continue in the second semester of the course.

2. The writ petition came up before this Court first on 17th January, 2001 when it was found that the eligibility prescribed for admission to the MBA programme was minimum 60% marks in class XII and 50% marks in graduation from recognized University. Not finding the Petitioner to have filed his mark sheet of Class XII, the matter was adjourned to today. It was also found that though the Petitioner claims to have done graduation from the School of Open Learning of Delhi University but had passed the same in 3rd division i.e. with less than 50% marks. The Petitioner however claimed to have also done BBA from National Institute of Management Solutions (NIMS), Delhi and claims to have more than

50% marks therein. The Petitioner was also asked to show to this Court that NIMS is a recognized University.

3. The Petitioner has since then filed his mark sheet of class XII and on the basis whereof it is stated that the Petitioner had 67.6% marks in aggregate. However, as far as NIMS is concerned, all that the Petitioner is able to show is that NIMS describes itself as registered by Govt. of NCT of Delhi.

4. The counsel for the Respondent AMITY University appearing on advance notice has rightly contended that recognized University would denote a University recognized by the University Grants Commission (UGC). He states that NIMS is not in the list of universities recognized by UGC. He has also handed over in the Court the download from the website of NIMS where it is expressly stated "all courses offered by NIMS are independent programmes and do not have any approval from statutory bodies like AICTE, UGC."

5. The counsel for the Petitioner has however drawn attention to the download of the application form processing status on the website of the Respondent University showing the Petitioner as eligible for selection process. Attention is also invited to the download of the registration status of the Petitioner as on 1st November, 2010 on the website of the Respondent University where the Petitioner is shown to have been registered and the documents submitted by the Petitioner are stated to have been verified and the enrolment and the status of the Petitioner is shown as "Final". He thus argues that the Respondent University after verifying the documents of the Petitioner and having finally enrolled the Petitioner is now estopped from contending otherwise.

6. Though the sympathies of this Court are with the Petitioner but the Supreme Court in *Maharshi Dayanand University Vs. Surjeet Kaur*, 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. It was held that the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory Rules & Regulations. It was further held that there can be no estoppel/promissory estoppel to debar a public authority from enforcing a statutory provision. The mistake on the part of the University in that case in allowing an applicant to appear in the examination was held to be conferring no right in the applicant if not entitled under the Rules & Regulations to pursue a course. It was held that the Rules & Regulations cannot be allowed to be defeated merely because the University erroneously allowed a candidate to appear in the examination.

7. Similarly in *Mahatma Gandhi University v. Gis Jose* (2008) 17 SCC 611 it was held that 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.

8. The Petitioner having admittedly not met the eligibility criteria for admission to the MBA programme, notwithstanding the default even if any of the Respondent

University, cannot claim a right to continue in an educational programme as per rules whereof he is not eligible for admission thereto. The Petitioner thus cannot be granted the relief sought in the petition. The counsel for the Petitioner states that the Petitioner has also passed the MAT examination of the Indian Management Association held in May, 2010. However, the said examination does not make the Petitioner eligible for admission to MBA programme of the Respondent University.

9. However, this Court is disturbed about the trend seen in the recent past of the unaided private educational institutions admitting students, receiving hefty fees from them and thereafter nearing examination informing them that they are not eligible for admission. The same leads to great heartburning and loss of time to the upcoming generation. Though the Petitioner has not claimed the relief of refund of the amounts paid but the fact remains that the said amounts were paid by the Petitioner to the University for education and which though rendered to the Petitioner from July to November, 2010, but is meaningless for the Petitioner. The Respondent University is thus directed to within 30 days of today, refund to the Petitioner the entire amount, without any deduction, received from the Petitioner against the return of the laptop provided by the Respondent to the Petitioner failing which the Respondent University shall also be liable for payment of interest thereon at the rate of 10% per annum.

10. Insofar as the other grievance of the Petitioner of the Respondent University having caused loss to him are concerned, no relief with respect thereto can be given in the present proceedings and the Petitioner will be at liberty to seek appropriate remedies.

The petition is disposed of. No order as to costs.

Dasti under signature of the Court Master.