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**(1997) 11 P&H CK 0022**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 15803 of 1997

Gagan Jyot Mann

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision:** Nov. 21, 1997

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 226

**Citation:** (1998) 118 PLR 836

**Hon'ble Judges:** Sarojnei Saksena, J; G.S. Singhvi, J

**Bench:** Division Bench

**Advocate:** Ravinder Chopra, for the Appellant; Rajan Gupta and A.C. Jain, for the Respondent

**Final Decision:** Allowed

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**Judgement**

Sarojnei Saksena, J.

The short question that arises for adjudication of this petition is whether the refusal by respondent No. 2 to admit the petitioner in Fashion Design Course despite her securing merit in the Entrance Test is legal and justified.

2. Respondent No. 2/Institute established by the Punjab Government in collaboration with National Institute of Fashion Technology (in short the "NIIFT") New Delhi for educating young men and women who have a flak and aptitude for fashion design and an entrepreneurial acumen for career and business in textiles, garments etc. In response to the notice issued by the NIIFT for admission against 30 seats of diploma in fashion design, about 400 candidates including the petitioner submitted their applications. The petitioner passed the Entrance Test held on 90/20.7.1997. After screening 100 candidates were called for Situation Test. The petitioner was one among them. She qualified the Situation Test held on 29.8.1997 and was placed the merit list. Although there is some dispute between the parties about her merit position inasmuch as the petitioner claimes that she was placed at

No. 12 and the respondent-Institute pleaded that she was placed at No. 14, the same is irrelevant for the purpose of adjudication of the question referred to herein above. Vide letter dated 11.9.1997. (received by her on 15.9.1997) the petitioner submitted a Bank Draft for Rs. 11525/- issued by the Punjab and Sindh Bank Dehradun in the favour of NIIFT along with a letter through speed post on 17.9.1997, which was received in the post office at Mohali on 19.9.1997. Vide letter Annexure P/4 26.9.1997 the petitioner was informed that the received against which she was given admission has been offered to the next candidates because she, i.e., the petitioner did not comply with the instruction contained in the letter dated 11.9.1997. The Bank draft was also returned to her.

3. The petitioner has pleaded that, the action of the Institute to nullify her admission is illegal, void, arbitrary, discriminatory and violative of Articles 14 of the Constitution. She has also challenged the legality of admission of respondent No. 4.

4. In its reply, respondent No. 2 has raised a preliminary objection of delay. Its plea is that the petitioner is guilty of laches because she has filed the writ petition on 5.11.1997, i.e., after almost one month and 10 days of the cancellation of her admission and in the absence of any cogent explanation of this delay, the Court should not give any relief to her. Another objection raised by the respondent No. 2 relates to non-impleadment of the student to whom the admission was offered against the seat of the petitioner, However, we need not deal with this objection in detail because Miss N.S. Rupali was subsequently impleaded as respondent to the writ petition. On merit, the respondent No. 2 has pleaded that due to the petitioner's failure to deposit the requisite fee and to bring the original certificate for verification, her admission had to be annulled and the next candidate in the order of merit had to be admitted. Respondent No. 2 has also pleaded that the petitioner was required to appear personally on 22.9.1997 or 23.9.1997, but she did not turn up and therefore, the impugned decision does not suffer from any illegality.

5. On being impleaded as party-respondent No. 3. Ms. Rupali submitted her writ ten statement. She has pleaded that her name was not in the first 30 candidates but she was called upon by respondent No. 2 to deposit her fee which she deposited along with hostel fee and she is pursuing her studies in the Institute.. She has also pleaded that the Post Office is not an agent of the Institute and tiff then the amount is actually paid to the Institute, it remains with the Post Office and as such, sending of the fee through Post Office before 22.9.1997 cannot be treated as sufficient compliance of the conditions contained in the letter dated 11.11.1997. On merits, she has supported the case setup by respondent No. 2. Respondent No. 3 has also pleaded if her admission to Fashion and Design Diploma Course is cancelled she would suffer irreparable loss and injury. She has undertaken this Course since 1.10.1997 and will not be able to attend any other equivalent course. She has also joined correspondence B.A. Pass degree course with Panjab University. Admission to

all other similar courses have finally been closed.

6. In the replication filed by her, the petitioner has pleaded that enquiries made by her vide letter dated 13.11.1997 addressed to the Chief Postmaster General, Punjab Circle, Chandigarh, shows that the registered letter No. 7454 sent by her to the NIIFT was endorsed to the Area Postman for delivery on 19.9.1997, but the latter could not deliver it because the official/receptionist of the office of addressee was on leave and no other arrangement was made by the Institute for the receipt of registered article. It is also said that the letter was actually delivered on 24.9.1997., No further affidavit has been filed by either of the receipt of registered article. It is also said that the letter was actually delivered on 24.9.1997. No further affidavit has been filed by either of the respondents. Therefore, the averments made in the replication and the contents of letter (Annexure P-5) have remained uncontroverted.

7. We have heard the learned counsel and have carefully perused the record. Letter Annexure P/1(R/1) by which the petitioner was informed of her admission contained a clause requiring the petitioner to deposit the fee by a particular date, i.e., 22.9.1997. This letter also mentions thus:-

"That late fee of Rs. 500/- shall be charged extra on 23.9.1997 failing which your seat will be offered to the next candidate on the waiting list.

Further it is mentioned that "please submit attested copies of the following certificates and also bring the original certificates for verification." Six certificates were mentioned below this. In the concluding para of this letter an advice was given to the petitioner to keep in mind that trains/buses or other means of transport can run late, her journey should be planned keeping in view such contingencies as the Institute shall not entertain any excuse on this account.

8. Making reference to. the language of letter (Annexure P-1) Shri Chopra argued that the said letter did not require the petitioner to come personally on 22.9.1997 along with her original certificates for verification or to deposit the fee, but she was required to deposit the fee by 22.9.1997 and the petitioner had complied with the instructions given in the letter by sending the bank draft along with the registered letter dated 17.9.1997. He submitted that the Institute should not be allowed to take advantage of its own wrong, namely, in the absence of any arrangement for receipt of the registered letter. Shri Gupta, counsel for respondent No. 2, laid stress on the fact that the petitioner did not appear personally before the competent authority on 22.9.1997 or on 23.9.1997 even though there was a clear indication in the letter that her failure to, do so will lead to the allocation of seats to the next candidate. Shri Gupta invited our attention to the following portion of the letter (Annexure P-1):-

"Please submit attested copies of the following certificate and also bring the original certificates for verification."

9. He emphasised on the word "bring" and argued that this word "bring" clearly indicates that the petitioner was required to come personally for this purpose. Keeping this time limit in mind, the respondent-Institute has clearly mentioned in the last para of the letter that she should keep in mind that trains/buses or other means of transport can run late, therefore, she should plan her journey keeping in view such contingencies as the. Institute shall not entertain any excuse on that account. Shri Gupta submitted that due to the petitioner's failure to appear in person and produce the certificates for verification on 22.9.1997 or on 23.9.1997 along with late fee left no option with the Institute but to admit the respondent No. 3.

10. The learned counsel for respondent No. 3 argued that respondent No. 3 is not at fault. Due to the fault of the petitioner, she (petitioner) could not be given admission in the said Diploma Course and on her failure to come on 22 or 23.9.1997, her seat was offered to respondent Nq3. She is studying since 1,10.1997 and for her fault, she should not be penalised and should be allowed to continue her studies in the respondent-Institute.

11. Having given our thought to the rival arguments, we are unable to agree, with Shri Gupta and Shri Jaw that the petitioner should be non-suited on the ground of delay and laches. The total time gap between in cancelling of the petitioner's admission and the filing of the writ petition is just about one month and this delay, in our opinion, cannot be treated as sufficient to deny relief to the petitioner. In [Tilokchand and Motichand and Others Vs. H.B. Munshi and Another](#), the Apex Court has held as under:-

"This Court will not inquire into belated and stale claims or take note of evidence of neglect of one's own rights for a long time. The party -claiming Fundamental Rights must move the Court before other rights of innocent parties emerge, by reason of delay on the part of the person moving the Court."

The Apex Court further held :-

"A petition under Article 32 is not a suit and it is also not a petition or an application to which the Limitation Act applies. Legislative curbs might be questioned under Article 13(2). A short period of limitation might well frustrate the Fundamental Right. Too long a period might enable stale claims to be made to the detriment of other rights which might emerge."

"Utmost expedition is the sine qua non for such claims. The party aggrieved must explain satisfactorily all semblance of delay. No period can be indicated which may be regarded as the ultimate limit of action for that would be taking upon itself legislative functions. In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India each case will have to be considered on its own facts. Avoidable delay affecting the merits of the claim, will disentitle a party to invoke the

extraordinary jurisdiction."

"The question's one of discretion for this Court to follow from case to case. This Court need not necessarily give the total time to the litigant to move this Court under Article 32, even though he may be within statutory limitation. Similarly, in a suitable case this Court may entertain a petition even after limitation. It will all depend on what the breach of the Fundamental Right and the remedy claimed are and how the delay arose."

12. The learned counsel for respondent No. 2 has placed undue emphasis on the word "bring in letter Annexure P/1(R/1) appearing at page 2 of the letter. A plain perusal of this letter reveals that the petitioner was informed that she has qualified for admission to Diploma in Fashion Design is required to deposit the fee on 22.9.1997 between 10.00 A.M. to 4.00 P.M. It is also indicated therein that late fee of Rs. 500/- shall be charged extra on 23.9.1997 failing which the seat offered to her will be given to the next candidate in the waiting list. The word "deposit" is used in 1st. para which can never mean that she was required to deposit the fee personally. On 2nd page of this letter Annexure P/1, it is mentioned, "Please submit attested copies of the following certificates and also bring the original certificates for verification." The word "submit" can sever means that the candidate is required to come personally for submitting the certificates. In the 2nd line, the word "bring" is certainly used but it has no reference to any date. By reading these two lines conjointly, no candidates, having even a little knowledge of English language, would have thought that he/she is required to come personally on 22.9.1997 to submit attested copies of the certificates mentioned therein and to bring original certificates for verification. No doubt in the concluding para of this letter, it is mentioned that she should keep in mind that the trams/buses or other means of transport can run late, therefore, she should plan her journey keeping in which such contingencies as the Institute will not entertain any excuse on this account. If really, the respondent-Institute wanted that the petitioner should come personally on 22.9.1997 along with her fee, original certificates and attested copies thereof, the petitioner would have personally attended the office of respondent No. 2 on 22.9.1997 but a conjoint reading of all the contents of this letter only indicates that the petitioner was required to deposit her fee on 22.9.1997 or by 23.9.1997 along with a fee of Rs. 500/- and was required to bring her original certificates along with attested copies thereof for verification for which no date was mentioned therein. In the last but one para it is clearly indicated that classes will begin on 1.10.1997 and she is required to report at 9.00 A.M. at the Institute. By no stretch of imagination this last para can be connected with the word "bring" in the first para at page 2 or with the word "deposit" appearing in 1st para of page 1 of this letter. Thus, in our considered view, the respondent-University has wrongly declined to admit the petitioner to Diploma Course in Fashion Design on this pretext that as she has not deposited the fee and has not come personally along with her original certificates for verification on 22.9.1997, as per the direction given in letter Annexure P/1, her

seat was offered to respondent No. 3.

13. In this connection, it is also pertinent to mention that respondent No. 2 has not controverted the contents of letter Annexure P/5 wherein Chief Postmaster General, Punjab, Chandigarh has reported that registered letter No. A-7454 dated 17.9.1997 (sent by the petitioner) and addressed to respondent No. 2 was entrusted to Area Postman for delivery on 19.9.1997 but as no official/receptionist was available in the office of the respondent-Institute, the same could be delivered on 24.9.1997. No doubt, it is well settled legal position that when registered letter is posted till it reaches the addressee, the Post Office is an agent of sender and not of the addressee. Such registered articles can be said to be delivered to the addressee when it is really delivered to the addressee. But from this letter Annexure P/5 it is evident that this registered letter along with bank draft sent by the petitioner was offered for delivery in the office of the respondent-Institute on 19.9.1997 but as no official was there to receive it, it could only be delivered on 24.9.1997. The petitioner did whatever she could have done to remit her fee for admission to the said Course in the respondent-Institute. The aforementioned circumstances were beyond her comprehension/control.

14. It also appears that the reason put forward by the Council to justify the admission of respondent No. 3 appears to be an innovation of the Council itself because Annexure P-4 does not contain non-appearance of the petitioner on 22.9.1997 or on 23.9.1997 as the reason for declining admission to her or for admitting the respondent No. 3. Thus, we held that the petitioner's admission has been wrongly invalidated and she is entitled to Readmitted to the Diploma Course in Fashion Design.

15. We are alive of this fact that respondent No. 3 has already been admitted and she is studying in the Institute since 1.10.1997. Therefore, even while quashing Annexure P-4, we deem it appropriate to direct the governing Council of respondent-Institute to take appropriate decision qua respondent No. 3 so as to allow her to continue her studies. For this purpose, the governing Council may create an additional seat in the concerned course.

16. In the result, we allow the writ petition and quash Annexure P-4. Respondent No. 2 is directed to admit the petitioner to the Diploma course in Fashion Design within 7 days after verification of her documents. Respondent No. 3 shall be allowed to continue to her studies and the governing Council of the Institute shall take appropriate decision on the issue of creation of additional seats within 10 days of the submission of certified copy of this order. Till then she shall be allowed to continue to her studies.