

(2013) 09 DEL CK 0046

Delhi High Court

Case No: LPA 670 of 2013

Shivam Jasra

APPELLANT

Vs

Guru Gobind Singh Indraprastha
University and Another

RESPONDENT

Date of Decision: Sept. 25, 2013

Hon'ble Judges: N.V. Ramana, C.J; Pradeep Nandrajog, J

Bench: Division Bench

Advocate: Neeraj Kishan Kaul and Mr. G.D. Goel and Mr. Deepak, Mr. Sanjiv Goel and Mr. Vishal Tyagi, for the Appellant; Mukul Talwar, Advocate and Mr. Sradhananda Mohapatra and Mr. Vipin Singh, Advocates for R-1 and Mr. Saket Sikri, Advocate for R-2, for the Respondent

Final Decision: Disposed Off

Judgement

Pradeep Nandrajog, J.

CM No. 14209/2013

Allowed subject to just exceptions.

LPA No. 670/2013

1. Recording that for the reasons contained in the decision dated September 02, 2013, dismissing W.P. (C) No. 5458/2013 Pavani Bhardwaj Vs. UOI & Ors., vide impugned order dated September 06, 2013 (wrongly typed as July 03, 2012) W.P. (C) No. 5620/2013 filed by the appellant has been dismissed by the learned Single Judge. Since the reasons are contained in the decision dated September 02, 2013 in Pavani Bhardwaj's case, we note that writ petition filed by Pavani Bhardwaj was dismissed on account of clause 10 of the Information Admission Brochure issued by the first respondent declaring the schedule for the second counselling for effecting admission to B.A.LLB course for the academic year 2013-14 and Note (ii) below sub-clause (viii) of clause 6 of the said brochure. Having been allotted a seat in IIMT College affiliated to respondent No. 1 university at the first round of counselling,

Pavani Bhardwaj was seeking a seat to be allotted to her in Vivekananda Institute of Professional Studies (hereinafter referred to as "VIPS") under the management quota. Clause No. 10 and the Note below sub-clause (viii) of clause No. 6 of the brochure which were noted by the learned Single Judge read as under:-

10. Candidates once enrolled through the counselling conducted by the University at the end of 2nd counselling will not be considered for admission through Management Quota.

X X X

6....

(i)-(vii).....

(viii).....

Note (i).....

(i) Candidates once enrolled in the University at the end of second counselling will not be considered for admission through Management Quota.

2. The reasoning of the learned Single Judge is that having abided by the terms of the counselling schedule while seeking admission for the B.A.LLB course of the first respondent, Pavani Bhardwaj could not maintain an action contrary to the terms of the counselling and secondly that the scheme of education imparted by respondent No. 1 was to affiliate privately managed institutes with it to conduct class room teachings and if candidates were allowed to withdraw after taking admission in a private institute the seat would go a begging thereby adversely affecting the finances of the institution which had to charge such fee which was determined by respondent No. 1.

3. Shivam Jasra, the appellant before us who was the writ petitioner before the learned Single Judge was desirous of seeking admission for the B.A.LLB course of the first respondent and had successfully cleared the Common Entrance Test (CET). He was ranked at No. 2338. On July 09, 2013 the schedule of the first and the second phase of the first counselling was notified, vide clause (viii) whereof notifying to the candidates as under:-

(viii) Withdrawal of Admission after first counselling.

The candidates after getting admission in the first counselling will be allowed to withdraw the admission up to 5:00 PM of 02nd August, 2013.....

The same appears to have been notified to the candidates in conformity with a Note under clause 5 of the Information Admission Brochure and sub-clause (v) under clause 6, contents whereof are being noted by us hereinafter in paragraphs 7 and 8.

4. Appellant was admitted on July 17, 2013 in the Fairfield Institute of Management and Technology for the B.A.LLB programme at the first round of counselling.

5. He claims that on August 12, 2013 he withdrew his consent to be admitted as a student in Fairfield Institute of Management and Technology. In the meanwhile, second round of counselling was also over and it needs to be noted that the candidate at the last serial number, as per merit position, who was enrolled at VIPS had more marks than the appellant; meaning thereby that had appellant withdraw his candidature after the first round of counselling at which he was admitted in Fairfield Institute of Management and Technology and had participated at the second round of counselling he would not have been admitted in VIPS as per his merit position. Appellant had applied for admission in VIPS under the management quota and as per marks obtained by him in the Senior Secondary School Examination, the criteria for admission under the management quota, appellant found he being entitled for admission in VIPS and since the University did not permit him to abandon the seat allotted to him for the course in question at Fairfield Institute of Management and Technology the writ petition was filed.

6. Undisputedly the Information Admission Brochure intimating the schedule of counselling for the academic session 2013-14, vide clause No. 5, permits candidates to withdraw from admission after first counselling and obtain refund of fee. But, the Note under the clause contains a prohibition, in that, the said candidate would not be entitled to be considered for admission in second counselling. The Note reads as under:-

NOTE: A candidate, who has taken admission during first counselling and then he/she withdraws his/her admission shall not be considered for admission in second counselling.

7. However, vide sub-clause (v) under clause 6, pertaining to admission through second counselling, the same brochure informs the candidates as under:-

(v) Candidates who got admission during First Counselling are also advised to attend to Second Counselling if they wish to change the programme/institute on the basis of their merit against the available vacant seat(s).

8. Further, Note (ii) beneath sub-clause (viii) of clause 6, contents whereof have been noted by us in paragraph 2 above also finds a mention in the brochure.

9. The position therefore would be that there exists a strange mix of clauses and conditions which are mutually irreconcilable. Under clause No. 5 after first counselling, candidates are permitted to withdraw from the admission and the Note under the clause prohibits a candidate who has taken admission during first counselling to be considered for admission in the second counselling. Under sub-clause (v) of clause 6 the candidates who obtain admission during first counselling have been advised to attend second counselling if they wish to change

the programme/institute on the basis of their merit against available vacancies. Obviously, the two cannot co-exist.

10. It is apparent from the decision of the learned Single Judge in Pavani Bhardwaj's case that aforesaid aspect of the matter was not brought to the notice of the learned Single Judge.

11. Whether there exists a rationale to permit candidates to withdraw their candidature if they find admission in a course or an institute at the first round of counselling to avail the opportunity at the second counselling to change the course or the institute but the same does not exist to permit candidates to withdraw their candidature after the second counselling to change the course or the institute under the management quota requires it to be held that the denial of option at the second stage is arbitrary and hence liable to be struck down is a question which needs a serious debate for the reason if the admission process is on and seats under the management quota are yet to be filled up, it can be possibly be argued by a candidate who has been admitted for a course at an institute that his withdrawal would not adversely affect the finances of the institute for the reason his seat can be filled up by a wait listed candidate who need not be admitted under the management quota thereby making available a seat in the management quota to be filled up by yet another candidate.

12. But we need not delve any further into the matter to resolve the apparent conflict between the various clauses of the brochure for the reason the conceded position taken by the first respondent was that private institutes affiliated to it have to manage the affairs of the institute from the funds generated in the form of fees paid by students, which fee structure is determined by the university to ensure that there is no profiteering by these institutes. Thus the rationale would be that if a person is admitted in an institute he being permitted to withdraw after admissions are closed would mean that the said institute would be left with a vacant seat thereby adversely affecting its revenue inflow which may lead to a financial crisis in the institute. To overcome the same, Sh. Neeraj Kishan Kaul learned senior counsel for the appellant made a statement at the Bar that the appellant would deposit full course fee for all the years with Fairfield Institute of Management and Technology as a condition for being admitted as a student in VIPS. The reason for the offer was that in this way the alleged prejudice to the finances of Fairfield Institute of Management and Technology would not be occasioned and simultaneously the appellant would be able to study in an institute close to his house and not at an institute which is approximately 25 km away from the house of the appellant and further the distance has to be covered by a route where direct connectivity is unavailable, meaning thereby, the appellant would have to either travel by a private conveyance to reach Fairfield Institute of Management and Technology or change at least 3 buses to reach the institute and in the process spend two hours each day for travelling one set of distance i.e. two hours to reach the institute from the house

and two hours to reach back.

13. Learned counsel for VIPS states that said institute has no objection to admit the appellant under its management quota. Concededly, appellant has a merit position entitling him to be admitted to the course in question in VIPS under the management quota.

14. Accordingly, we dispose of the appeal directing that conditional upon the appellant depositing full course fee for the entire duration of the B.A.LLB course with Fairfield Institute of Management and Technology he would be granted permission by the first respondent to join the B.A.LLB course for the academic year 2013-14 onwards at VIPS. Parties shall bear their own costs all throughout.

CM No. 14207/2013

Dismissed as infructuous.