

(2009) 09 DEL CK 0046

Delhi High Court

Case No: Writ Petition (C.) No. 11041 of 2009

Kanika Singh

APPELLANT

Vs

Vice Chancellor, Jamia
Millia Islamia University

RESPONDENT

Date of Decision: Sept. 14, 2009

Hon'ble Judges: Anil Kumar, J

Bench: Single Bench

Advocate: Ramesh Kumar, for the Appellant; B.B. Sawhney and Lakshay Sawhney, for the Respondent

Judgement

Anil Kumar, J.

The petitioner seeks direction to the respondent to consider the claim of the petitioner for admission to the course of Masters of International Business for the session 2009-2010.

2. Brief facts leading to institution of the present writ petition are that after qualifying her graduation, the petitioner applied in July 2009 for admission to the course of Masters of Business Administration in the Department of Commerce and Business Studies of the Jamia Millia Islamia University. The petitioner appeared for the entrance test on 1st July, 2009 and she qualified the entrance examination and also appeared for an interview on 14th July, 2009. The petitioner according to her merit ranking was 4th in the waiting list of Schedule Caste candidates. According to the petitioner, the respondent invited candidates from the waiting list for completion of admission formalities of 5th August, 2009.

3. The plea of the petitioner is that she could not appear on 5th August, 2009 as it was the festival of Raksha Bandhan and her sister who is also a final year student of B.Com (Hon.) in the same Department had informed her on 4th August, 2009 that the registration will be done on 6th August, 2009. The petitioner also alleged that her sister had intimated her, as her sister and another student Umer Alam had asked Shri Kamal Khan, a senior Officer in the office of the Head of the Department about the registration on Raksha

Bandhan, i.e., 5th August, 2009 and they were intimated that the registration could be done on 6th August, 2009.

4. According to the petitioner, in the circumstances, when she went on 6th August, 2006, it transpired that the registration had already been completed on 5th August, 2009. The petitioner along with her father allegedly met the Head of the Department, Professor A. Aziz Ansari. The Petitioner was asked to write an application for registration and admission, if any seat would be vacant on 12th August, 2009. The petitioner's assertion is that admission has been given to three wait-listed candidates who were positioned at serial No. 2, 3 and 7, whereas the position of the petitioner is 4th. The further grievance of the petitioner is that seat is being offered to Shri Amit Kumar Nanglu, who is at serial No. 9 in place of petitioner who is at 4th position and in the circumstances, the merit has been ignored. After failing to get admission as the petitioner did not appear on 5th August, 2009 and the admission was completed, the petitioner filed the present petition on 19th August, 2009. This Court by order dated 21st August, 2009 issued show cause notice and directed the respondent to keep one seat in the course of Masters in International Business, if available.

5. The petition is contested by the respondent contending inter alia that Jamia Millia Islamia is a Central University created by an enactment of the Parliament of India and is a premier institution and its functioning is regulated in accordance with rules and regulations.

6. Relying on the admission schedule duly incorporated in the prospectus, the respondent asserted that last date for completion of admission was 4th August, 2009 and the registration of the candidates selected from wait list was to be done on 5th August, 2009 and the list of the admitted candidates from the wait list was to be displayed on 6th August, 2009. The respondents have produced the details of admission schedule and wait listed candidates for admission to MIB.

7. The categorical assertion of the respondent is that on 22nd July, 2009, University had notified the list of wait listed candidates who had to get themselves registered by their physical presence on 5th August, 2009 between 10.00 am to 2.00 PM in the Department of Commerce and Business Studies. Wait listed candidates were asked to bring their admit cards in original.

8. According to the respondent, the name of the petitioner was shown at serial number 4 and therefore she had to get herself registered on 5th August, 2009. On 5th August, 2009 was not a holiday and the work was done normally. It is categorically asserted that all the wait listed candidates except the petitioner got registered in the said course in accordance with instructions in the admission notification.

9. On 6th August, 2009, three candidates out of total registered candidate were notified for provisional admission and for one vacancy, Shri Amit Kumar Nanglu was notified for

provisional admission. In the circumstances, it is contended that the candidature of the petitioner can only be considered after the entirety of the registered applicants are admitted and in case a seat is vacant.

10. According to the respondent, nine candidates got registered on the notified date, i.e., 5th August, 2009 and the respondent University is bound to honor the said admission schedule and give admission to those candidates who got themselves registered and the respondent cannot be faulted for the erroneous information supplied to the petitioner by her sister. Regarding allegation that the University official also supplied the wrong information, it was categorically denied that it was communicated by any official of the University that the registration could be done on 6th August, 2009. Learned Counsel for the respondent has also relied on 1998 AD VI (Delhi) 276 Motika Sinha and Ors. v. Delhi University and Ors. in support of his contention that the petitioner has lost her right to admission by not appearing on the date fixed for registration.

11. The petitioner filed a rejoinder contending that a notification of waiting list II stipulated Shri Amit Kumar Nanglu at serial number 9 who has been offered admission with the direction to submit his documents by 18th August, 2009.

12. This Court has heard the arguments in detail from the counsels of the both parties. This is not disputed that the petitioner did not get herself registered on 5th August, 2009. This also cannot be disputed that nine other candidates got registered on 5th August, 2009. The point for consideration is whether the petitioner who failed to get herself registered has forfeited her right for admission vis-a-vis those candidates who got themselves registered on 5th August, 2009. This is not disputed by the petitioner that the registration was to be done on 5th August, 2009. The petitioner's plea is that her sister who is also a student of B.Com (Hon.) final year had told her that she and another student had asked from the office of the concerned Department and an official who has been named as Mr. Kamal Khan had intimated them that the registration could be done on 6th August, 2009. This fact that Mr. Kamal Khan, a senior office of the Head of the Department, had made such representation is categorically denied by the respondent.

13. The petitioner has not filed any affidavit of her younger sister deposing that she and another student, Mr. Umer Alal, had asked Mr. Kamal Khan who had allegedly intimated them that the registration could be done on 6th August, 2009, as 5th August, 2009 was Raksha Bandhan. Taking the pleas and counter pleas into consideration and the fact that the petitioner has not filed the affidavit of her sister, the version given by the petitioner cannot be accepted. In any case, even if the version of the petitioner is to be believed whether non-registration by the petitioner on 5th August, 2009 will forfeit her right for admission or the petitioner on account of being higher in rank is still entitled for admission.

14. This is true that merit is the consideration for admission to the course, however, at the same time in order to avoid wastage of seat and that the course can commence on

schedule, the procedure laid down by the Universities cannot be ignored completely. The respondent had categorically laid down the procedure for admission and had detailed various dates which are not denied by the petitioner. In such a situation merit cannot be emphasized and cannot be a ground beyond a limit. A candidate who does not follow the procedure and does not appear on the date which was fixed for registration cannot claim a better right merely on account of having a higher merit vis-a-vis a candidate who is slightly lower in the merit but who complied with the procedure and got himself registered.

15. This also cannot be doubted that the University authorities are not to wait indefinitely for a candidate whatever be his ranking and merit especially if the dates for admissions are categorically notified and are within the knowledge of a candidate who opts not to appear on account of his own perception. In *Motika Sinha and Ors. (supra)*, it was held that the authorities of the Universities or the members of the Admission Committee cannot go in search of the candidates to ascertain whether he intends to take admission and escort him to come to the admission counter if he is "kind enough" to take admission. It was further held that it is the duty of the candidate to diligently wait for the release of the admission list and to take admission within the stipulated time and if the candidate fails to discharge this duty, he loses his right for admission. The reasoning given by a single Judge in respect to admission to L.L.B. course as detailed in para 14 are as under:

14. When the number of seats in a course is limited and the applicants for admission are more, admission can be given only on the basis of some form of selection. In the case of LL.B course of the University of Delhi the prescribed form of selection is the Entrance Test. Admission is given on the basis of the marks/rank obtained by the candidates in the Entrance Test. Since there is possibility of some candidates deciding not to take admission and join the course even after securing high marks/rank in the Entrance Test and since admissions have to be completed as far as possible before the date fixed for commencement of the course and since the situation of the seats remaining unfilled has to be avoided, provision has been made in the Prospectus for issuing a first admission list, then a second admission list, then a third admission list and thereafter a waiting list also. To make this provision workable it is essential to fix and follow a time schedule for issuing each list and for admitting the candidates included in each list. The candidates included in the first admission list are given a limited time to submit the admission form and deposit the requisite fees which indicate their decision to take admission and join the course. If they don't submit the admission form or deposit the requisite fees within the stipulated time it is presumed that they have given up their claim for admission and, depending on the number of seats remaining unfilled a second admission list is issued. If the candidates included in the second admission list don't submit the admission form and deposit the requisite fees within the stipulated time, a third admission list is issued depending on the number of seats remaining unfilled. Again if the candidates included in the third admission list don't submit the admission form and deposit the fees within the stipulated time admission will be given to candidates included in the Waiting List. The candidates who fail to submit the admission form and deposit the requisite fees within the

stipulated time, forfeit their right for a admission and they are not entitled to be considered for admission at a later stage. This procedure gives due importance to merit of the candidates and at the same time ensures that the seats are not wasted and the course can commence as scheduled. It also takes care of the aspirations and expectations of candidates who having been ranked relatively lower in merit are waiting for their chance for admission. This procedure is quite fair and just. There is nothing arbitrary or unreasonable about it. Merit cannot be emphasised beyond a limit. To begin with, a candidate should prove his merit by appearing in the Entrance Test. Then, if his name is included in any of the admission lists he should submit the admission form and deposit the requisite fees within the stipulated time. The University or the Admission Committee cannot indefinitely wait for a candidate whatever be his rank and merit. The authorities of the University or the members of the Admission Committee cannot go in search of the candidate to ascertain whether he intends to take admission and escort him to the admission counter if he is "kind enough" to take admission. It is the duty of the candidates to diligently wait for the release of the admission list and to take admission within the stipulated time. If the candidate fails to discharge this duty he loses his right for admission. The University and the Admission Committee cannot entertain him when he chooses to turn up for taking admission at his convenience. Hence, notwithstanding the merit and rank of a candidate, he has no unfettered right for admission. His right for admission on the basis of his merit and rank is subject to his complying with the requirements or conditions for admission of candidates. One such condition or requirement is that if he intends to take admission he should submit the admission form and deposit the requisite fees within a stipulated time. If he fails to comply with the said requirement or condition he loses his right for admission. Thereafter all talks about merit and rank are in vain. Hence having failed to submit the admission form and to deposit the requisite fees within the stipulated time the petitioners have no enforceable legal or fundamental right to be admitted to the LLB. Course on the basis of the inclusion of their names in the first admission list. Nor do they have any right to be considered for admission in the seats remaining unfilled in preference to the candidates who are entitled to be included in the proposed third admission list or the waiting list, because, by failing to submit the admission form and deposit the requisite fees within the stipulated time the petitioners have forfeited their claim for admission. The candidates who are entitled to be included in the proposed third admission list or the waiting list are entitled to be considered for admission to the available seats in preference to the petitioners. In the Admission Procedure envisaged by the Prospectus 1998-99 issued by the Faculty of Law, University of Delhi they are entitled to expect that they will be considered for admission to seats remaining unfilled due to the failure of the candidates included in the earlier admission list to take admission within the stipulated time. They will be adversely affected if indulgence is shown to the petitioners by directing to admit the petitioners in the available seats in violation of the admission procedure laid down in the prospectus. The Court cannot ignore or forget the interests of such candidates who are not parties to this writ petition.

16. In the circumstances, the candidates who got themselves registered on 5th August, 2009 who were below the petitioner, have acquired some rights on registration, cannot be ignored and cannot be denied preference especially in the present facts and circumstances of the case. In the present facts and circumstances, it is inevitable to infer that failure to get registered on the due date is solely on account of the laps on the part of the petitioner and it is not on account of circumstances beyond her control or due to some fault of the respondent and imputable to the respondent. No fault can be attributed to the respondents for non-registration of the petitioner on 5th August, 2009. Though the petitioner has contended that she will lose her one year if she is not granted admission but this is solely on account of her own act and default for which the respondents cannot be held liable in any manner.

17. Therefore the petitioner is not entitled for the relief claimed and respondent cannot be directed to admit her on the basis of her 4th rank in the waiting list. The respondent has however, stated in the counter affidavit that the petitioner can only be considered after the entirety of the registered applicants are admitted and in case a seat is still vacant. Therefore the writ petition is disposed of with direction to the respondent to admit the petitioner in the said course after admitting all the candidates who had got themselves registered prior to the petitioner in case any seat is still vacant. The interim order dated 21st August, 2009 is vacated. Considering the facts and circumstances, parties are left to bear their own costs.