

2023 PLRonline 0008 (Del.)

Delhi High Court

Vikas Mahajan J.

Rahul Kumar v. University Of Delhi

Civil Writ Petition No. 15355 Of 2022

29-03-2023

Education - Brochure or Advertisement - Terms of the brochure are binding upon a candidate - It is the rule mentioned in the prospectus which will prevail over misleading notice / information available on the website of the Faculty - Constitution Of India, 1950 Article 226

Advocate : Mohinder J. S Rupal

Judgement

Vikas Mahajan, J

1. The petitioner, who is a third-year student pursuing LL.B. from Law Centre-1, Faculty of Law, University of Delhi, has filed the present petition seeking a direction to the respondent-University to allow him to take his IV semester supplementary exam in the subject of 'Competition Law' along with supplementary exam of VI semester.

2. The contention of the petitioner is that he had a backlog examination of 'Competition Law' from the IV semester of LL.B. and the said backlog examination was scheduled to be conducted on 25.08.2022 as part of regular examination for the said semester. At the same time, the VI semester regular examinations were scheduled to be conducted from 10.08.2022 to 29.08.2022. However, a day prior to the backlog examination i.e. on 24.08.2022, the VI semester exam in the subject of 'Principles of Taxation' was scheduled to be held.

3. It is the case of the petitioner that he came across notice/information titled as "Important Rules" displayed on the official website of the Faculty of Law (lawfaculty.du.ac.in) under the tab name 'Students', which reads as under:-

"Supplementary Examination

After the completion of six Terms, a student of LLB may take supplementary examination in any paper of I or III Term along with the V Term supplementary examination and in any paper of II or IV Term along with the VI Term supplementary examination held for the purpose: Provided that all the thirty papers required for getting the LL.B. Degree have to be

cleared within the span period of six years."

(emphasis supplied)

4. It is further case of the petitioner that in view of the above information available on the website, the petitioner was misled to believe that the IV semester supplementary examination will be conducted along with the VI semester supplementary examination. Since there was no time gap between the IV semester backlog examination and VI semester examination in the subject of 'Principles of Taxation', the petitioner was not in a position to thoroughly prepare and clear both examination, therefore, the petitioner prepared extensively for the VI semester examination in the subject of 'Principles of Taxation' instead of IV semester backlog examination in the subject of 'Competition Law' under the belief that in case he failed in IV semester backlog examination, he could again appear in the same along with the VI Term supplementary examination. Accordingly, the petitioner appeared for both the examinations, i.e., in the VI semester exam 'Principles of Taxation' held on 24.08.2022 and the IV semester backlog examination of 'Competition Law' held on the very next day i.e. on 25.08.2022.

5. The results of the VI semester examination along with backlog exam of IV semester taken by the petitioner was declared on 18.10.2022. The petitioner secured 62 marks out of 100 marks in the 'Principles of Taxation' whereas in the backlog exam of 'Competition Law' pertaining to the IV semester the petitioner could score only 24 marks out of 100 marks.

6. It has further been asserted in the writ petition that on an subsequent enquiry the petitioner learnt that the supplementary examination of IV semester will not be conducted along with the VI semester supplementary examination and such practice has been discontinued by the University by way of a notification in the year 2017. The petitioner claims that in view of the notice/information displayed on the website of the Faculty of Law he is entitled to take supplementary examination of IV Semester with specially conducted VI Semester Supplementary examination.

7. The case of the University of Delhi (respondent no.1), as borne out from a short counter affidavit is that the petitioner, who admittedly took admission in the LL.B course in the Faculty of Law, University of Delhi in the academic year 2019-20, will be governed by the terms and conditions stipulated in the prospectus of the Faculty of Law for the same academic year 2019-20.

8. According to the University, the prospectus for the year 2019-20 as well as for the current academic year 2022-23 clearly provides that supplementary examination for students for V and VI terms of LL.B would be held at the end of VI term examination to give one more opportunity to such students who could not clear any one or more papers of V and VI terms, whereas the supplementary exam of backlog of IV semester could be cleared by taking such exam at the regular examination held at the end of the said semester. It is further the case of the University that the supplementary examination rule incorporated in the prospectus for the year 2019-20 as well as in the subsequent years, was done in compliance of a decision of this Court in *Aditya N. Prasad vs. University of Delhi*, W.P.(C)

7365/2011, which was also approved by the EC Resolution 8-6 dated 03.07.2017/14-15.07.2017. The material part of the short counter affidavit reads as under:-

"5. The Petitioner has not come to this Hon'ble Court with clean hands. The Petitioner admittedly took admission in the LL.B. course in the Faculty of Law, University of Delhi in the academic year 2019-20. The Prospectus of Faculty of Law for the year 2019-20, as well as the Prospectus for the present academic year, i.e., 2022-23 have respectively at page nos.25 and 48 specifically provided as under:

2019-20

"11. Supplementary Examination rules in compliance with Aditya N. Prasad, W.P.(C) No.7365 of 2011 as approved by AC/EC in 2017:

A supplementary examination for students of LL.B. V and VI Terms would be held at the end of the VI Term examinations to give one more opportunity to such students who could not clear any one or more papers of V and VI Terms. In case a student of V and VI Term had not cleared any paper of I, II, III and IV Terms he/she would clear the same by taking the respective examinations at the regular examination held at the end of each Term:

Provided that such students of V and VI Terms who could not clear any paper or papers of the V and VI Terms even after taking the supplementary examination, he/she would clear the same at the regular examinations of V and VI Terms held at the end of each Term.

Provided further that all the thirty papers, required for getting the LL.B. degree has to be cleared within the over-all span of 6 years."

2022-23

Supplementary Examination rules in compliance with Aditya N. Prasad, W.P.(C) No.7365 of 2011 as approved by AC/EC in 2017:

"A supplementary examination for students of LL.B. V and VI Terms would be held at the end of the VI Term examinations to give one more opportunity to such students who could not clear any one or more papers of V and VI terms. In case a student of V and VI Term had not cleared any paper of I, II, III and IV Terms he/she would clear the same by taking the respective examinations at the regular examination held at the end of each Term: Provided that such students of V and VI Terms who could not clear any paper or papers of the V and VI Terms even after taking the supplementary examination, he/she would clear the same at the regular examinations of V and VI Terms held at the end of each Term. Provided further that all the thirty papers, required for getting the LL.B. degree has to be cleared within the over-all span of 6 years."

The Supplementary Exams will be held in strict compliance with the Appendix XVIII E.C. dated 3.7.17/14.7.17 (pp-255-59) and will be open to the regular final year students only.

The true and correct copies of page 25 of the Prospectus of Faculty of Law for the academic

year 2019-20, as well as page 48 of the Prospectus of Faculty of Law for the present academic year, i.e., 2022-23 are annexed herewith and marked as ANNEXURE-R1 (COLLY.).

6. That as per EC Resolution 8-6 dated 03.07.2017/14-15.07.2017, Appendix-XVIII, Rules for Supplementary Examination, are as follows:

“A Supplementary Examination for students of LL.B. V and VI Terms would be held at the end of the VI Term examination to give one more opportunity to such students who could not clear any one or more papers of V and VI Terms. In case a student of V and VI Term had not cleared any paper of I, II, III or IV Terms, he/she would clear the same by taking the respective examinations at the end of each Term:

Provided that such students of V and VI Terms who could not clear any of the paper or papers of the V and VI Terms even after taking supplementary examinations, he/she would clear the same at the regular examination of V and VI Terms held at the end of each Term.”

A copy of the said EC Resolution 8-6 along with extract of Appendix-XVIII is annexed herewith as ANNEXURE-R2.

7. Thus, the Petitioner, in case he has arrears of 4th semester papers, has to appear in the supplementary examination along with the regular examination, as per the aforementioned rule position of the Faculty of Law.”

9. The petitioner appearing in person invited the attention of the Court to the rule pertaining to the supplementary examination under the heading of “Important Rules” downloaded from the official website of the Faculty of Law, to contend that he has been misled by the information provided on the website which states that II and IV semester supplementary examination will be conducted along with the VI semester supplementary exam. He, therefore, urges that he should be allowed to take his backlog exam of IV semester along with the V and VI semester supplementary examination which would be held at the end of the VI Term examinations.

10. Per contra, Mr. Mohinder J.S. Rupal submits that the supplementary examination will be held only for the students of V and VI terms of LL.B. to give one opportunity to such students who could not clear one or more papers of V and VI terms. He submits that the backlog paper in case of the petitioner pertains to the IV semester and he could appear in the supplementary examination for the said paper whenever the regular examination of the IV semester is held.

11. I have heard the petitioner-in-person, as well as, Mr. Mohinder J.S. Rupal, the learned counsel appearing for the respondent no.1/University of Delhi and have perused the documents on record.

12. It is noticed that none of the parties have brought on record the schedule of supplementary examination to be held at the end of VI term examination.

13. It is, however, not in dispute that that notice/information pointed out by the petitioner is

available on the website of Faculty of Law and the same is contrary to the rule for supplementary examination spelt out in the prospectus for the year 2019-20 and the subsequent years. Therefore, the limited question which falls for consideration of this Court is whether the petitioner has any right to take supplementary examination of the backlog paper of 'Competition Law' pertaining to IV semester along with the specially conducted supplementary examination for V and VI semesters, based on the notice/information available on the website of Faculty of Law, or it is the rule for supplementary examination mentioned in the prospectus which would prevail.

14. Admittedly, the petitioner joined the LL.B. course in the year 2019-20, therefore, for the purpose of present case it is the prospectus the said academic year which will be relevant.

15. For resolving the above controversy, the legal sanctity of the two documents viz., notice/information available on the website of the Faculty of law and the prospectus, has to be examined. The issue in regard to binding character of the prospectus is no more *res integra*. In *Varun Kumar Aggarwal vs. Union of India & Ors.*, 179 (2011) DLT 24, after noticing various precedents, the Division Bench of this court held that the prospectus is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission. The relevant paras' of the decision reads as under:-

"14. Presently we shall refer to certain authorities in the field that have dealt with sanctity of a prospectus or brochure and the legal impact when it is changed in the midstream. In Dr. M. Vannila v. Tamil Nadu Public Services Commission, 2007 (3) CTC 69, a Division Bench of the High Court of Madras has opined thus:

"19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in Punjab Engineering College, Chandigarh v. Sanjay Gulati, (AIR 1983 SC 580 = 1983 (96) LW 172 S.N.). Following the same, a Division Bench of this Court has also observed in Rathnaswamy, Dr. A. v. Director of Medical Education (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu (1994 WLR 624). The same principle is reiterated in the case of Dr. M. Ashiq Nihmathullah v. The Government of Tamil Nadu, 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission."

15. In *Indu Gupta v. Director Sports, Punjab*, AIR 1999 P&H 319 (FB), the Full Bench in paragraphs 9, 10 and 11 has expressed thus:

"9. A Full Bench of this Court in the case of Raj Singh v. Maharshi Dayanand University, (1994) 4 Recent Services Judgments, 289 disapproved the liberal construction of the terms and conditions of the brochure and specified the need for their strict adherence to avoid unnecessary prejudice to the candidate or the authority during the course of admission. The bench approved that the eligibility for admission to a course has to be seen according to

the prospectus issued before the entrance test examination and that the admission has to be made on the basis of the instructions given in the prospectus having the force of law. While disapproving the law laid down by a Division Bench of this Court in the case of Madhvika Khurana (minor) v. M.D. University Civil Writ Petition No. 15367 of 1991, where contrary view had been taken, the Full Bench observed that the students seeking admission to the professional colleges are even otherwise matured enough and supposed to understand the full implication of filling the admission form and compliance with the instructions contained in the brochure.

10. Subsequently, another Full Bench of this Court in the case of Rahul Prabhakar v. Punjab Technical University, Jalandhar, 1997 (3) RSJ 475: (AIR 1998 Punj. & Har. 18) recapitulated the entire law on the subject. The Full Bench was considering the same brochure for the previous year of the Punjab Technical University. The Court held as under:-

“A Full Bench of this Court in Amardeep Singh Sahota v. State of Punjab, (1993) 4 Serv LR 673 had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh v. Maharshi Dayanand University, 1994 (4) R.S.J. 289 another Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur v. Punjab University, 1996 (1) RSJ 1: (AIR 1996 Punj. & Har. 109) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the coordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.”

11. The cumulative effect of the above well enunciated principles of law, is that the terms and conditions of the brochure where they used preemptory language cannot be held to be merely declaratory. They have to be and must necessarily to be treated as mandatory. Their compliance would be essential otherwise the basic principle of fairness in such highly competitive entrance examinations would stand frustrated. Vesting of discretion in an individual in such matters, to waive or dilute the stipulated conditions of the brochure would per se introduce the element of discrimination, arbitrariness and unfairness. Such

unrestricted discretion in contravention to the terms of the brochure would decimate the very intent behind the terms and conditions of the brochure, more particularly, where the cut off date itself has been provided in the brochure. The brochure has the force of law. Submission of applications complete in all respects is a sine qua non to the valid acceptance and consideration of an application for allotment of seats in accordance with the terms prescribed in the brochure.

16. We have referred to the aforesaid decisions only to highlight that the conditions stipulated in the prospectus are guidelines for all concerned and everyone is required to follow the same in letter and spirit and not act in transgression...."

(emphasis supplied)

16. Again, a Coordinate Bench in *Hritik Rana vs. Delhi Sports Council and Ors.*, (2020) SCC OnLine DEL 1822, emphasized on the binding character of the terms of brochure in the following words:

"14. ... it is settled legal position that the terms of the brochure are binding upon a candidate...."

(emphasis supplied)

17. It is not the case of the petitioner that the supplementary examination rules are not stipulated in the prospectus for the year 2019-20. The contention raised by the petitioner, however, is that he has been misled by the information in the form of "Important Rules" available on the official website of the Faculty of Law. In view of the legal position as noted above, it is beyond any doubt that the supplementary examination rules as spelt out in the prospectus for the year 2019-20 shall govern the procedure with regard to the conducting of supplementary examination. The petitioner cannot claim any right based on some information available on the website which is contrary to the supplementary examination rule spelt out in the prospectus.

18. In Sonam Rawal v. University of Delhi and Ors. [W.P.(C) 16897/2022], in a similar situation, I have already taken a view that any misleading information available elsewhere other than in the Bulletin of Information/prospectus would not clothe the candidate with any legal right and in such a situation doctrine of estoppel also cannot be pressed into service against the respondent-University, when such information is ex facie contrary to the rules mentioned in the Bulletin of Information/prospectus. The relevant paras of the said judgment are extracted hereunder:-

"17. It is also not in dispute that the eligibility criteria for admission to M.Sc. Botany under Merit Category as mentioned in the Bulletin of Information 2022 is at variance with the one mentioned in the PG Admission Form available on the website. As noted above, the eligibility criteria under the Merit Category as mentioned in the Bulletin of Information is B.Sc. (Hons.) Botany from University of Delhi whereas the one stated in the Admission Form also includes B.Sc. (Hons.) Biological Science from University of Delhi apart from B.Sc. (Hons.) Botany.

18. *In the backdrop of aforesaid factual matrix, the fundamental question which falls for consideration in the present petition is that which eligibility criteria will prevail, whether the one mentioned in the Bulletin of Information or the one given in the Admission Form.*

XXXX XXXX XXXX XXXX

27. *In view of the legal and factual position as stated above, it is beyond any cavil that the eligibility criteria as mentioned in Bulletin of Information 2022 shall govern the admission to M.Sc. Botany course under the Merit Category. The petitioner cannot take advantage of, or refuge under, the inadvertent error that has crept in the Admission Form available on the website. Such a mistake on part of the respondent-university would not clothe the petitioner with any legal right. Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute. Obviously, this court cannot direct the respondent-university to commit breach of its Bulletin of Information.*

28. *It is settled legal position that the Bulletin of Information has the force of law and it is also trite that there is no estoppel against law. Therefore, the doctrine of 'legitimate expectation' and 'estoppel' cannot be pressed against the respondent-university when the mistake in the PG Admission Form is ex facie contrary to the eligibility criteria mentioned in the Bulletin of Information."*

19. Keeping in view the above legal and factual position, it is the rule mentioned in the prospectus which will prevail over misleading notice / information available on the website of the Faculty of Law. As per the Rule spelt out in the prospectus, the supplementary examination for the backlog paper of the Petitioner in 'Competition Law' pertaining to IV semester will only be held along with the regular examination of IV semester. Accordingly, the petitioner is not entitled to take supplementary examination for the backlog paper of 'Competition Law' pertaining to IV semester along with the supplementary examination for V and VI terms to be held at the end of VI term examination. The object of such supplementary examination is to give one more opportunity to those students who could not clear any one or more papers of V and VI Terms. The case of the petitioner does not fall in this category. The petitioner has backlog paper of IV semester and no supplementary examination for IV semester are to be held at the end of VI term.

20. In view of the above, there is no merit in the writ petition, accordingly, the same is dismissed.