

A PRIYADARSHINI COLLEGE OF COMPUTER SCIENCE
AND ANOTHER

v.

MANISH KUMAR AND OTHERS
(Civil Appeal No. 674 of 2013)

B JANUARY 24, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

C *Education – Admission – Requiring 60% marks in the
qualifying examination – The candidate mentioned in the
enrolment form that he had secured 56% marks in the
qualifying examination – While in the declaration appended
to enrolment form asserted that he had secured 60% marks
– University did not permit him to appear in the exam – Writ
D petition by the candidate seeking direction to appear in the
exam or for compensation of Rs. 10 lakhs – Single Judge of
High Court did not permit him to appear in exam as he had
not got 60% marks in the qualifying exam, but granted him
compensation of Rs. 5 lakhs stating that the candidate had
E declared in admission form that he had got 56% marks, but
the college failed to inform him that he was required to
possess 60% marks – Division Bench affirmed the order of
Single Judge – On appeal, held: Conclusion of High Court
F is contrary to the materials placed on record – The candidate
applied for admission knowing fully well that he had not
secured the minimum eligible marks – Candidate cannot
claim benefit for his own wrong – College cannot be held liable
for the act of the candidate – Direction for compensation, not
sustainable.*

G **Appellant-College invited applications against
lapsed/vacant seats for various branches including
admission for second year (3rd Semester) of Engineering
for Diploma Holders/B.Sc. with maths eligibility with 60%
marks. In pursuance to the invitation, respondent No. 1**

applied for admission in 3rd Semester for the course of B. Tech. When his application was forwarded to the University for examinations, it refused him to appear in the examinations on the ground that he was not having 60% marks in B.Sc. The appellant-College cancelled his admission and refunded the entire fee deposited by him.

A

B

Respondent No. 1 filed a Writ Petition praying for a direction to the University to permit him to appear in the exam or to pay him compensation of Rs. 10 Lakhs. Single Judge of High Court rejected the prayer of respondent No. 1 to appear in the examination, but directed the appellant-College to compensate him by paying Rs. 5 lakhs. Division Bench of the High Court affirmed the order of the Single Judge. Hence the present appeal.

C

Allowing the appeal, the Court

D

HELD: 1. The conclusion of the Single Judge of High Court that respondent No.1 had declared in the admission form that he got 56% marks in B.Sc examination and the appellant-College was not able to show that prior to granting admission they had informed him that he should possess 60% marks in the qualifying examination is contrary to the materials placed before him. The advertisement calling for applications specifically mentioned that minimum 60% marks in B.Sc. Maths is the eligibility criteria and based on the same, respondent No.1-candidate applied for the same. In the enrolment form in clause 17(ii) respondent No. 1 has specifically stated that he secured 56% marks. The appellant-College could have rejected his application. However, in view of the assertion made by respondent No.1 in Clause 7 of the declaration that he had secured 60% marks, the appellant-College accepted his form and admitted him in the course he applied for. When the deficiency was pointed out by the University, the appellant-College refunded the entire fees received by

E

F

G

H

- A them from respondent No.1. In such circumstances, in view of perverse finding by the Single Judge of High Court which was simply affirmed by the Division Bench, the direction to pay compensation of Rs. 5 lakhs to the candidate – respondent No.1 cannot be sustained. [Paras 8 and 9] [629-E-F; 630-A-E]

2. Every candidate applying for a particular course in any College is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong. The view that the conclusion arrived at by the Single Judge and the Division Bench finding fault with the appellant-College is clearly erroneous and that the appellant-College cannot be held liable for the act of respondent No.1 herein who knowing fully aware that he had not secured the minimum eligible marks, yet applied for admission. Respondent No.1 applied for the said course with an intention to secure admission by playing fraud with the appellant-College. [Paras 7, 10 and 11] [629-B; 630-F-H; 631-A]

- CIVIL APPELLATE JURISDICTION : Civil Appeal No. 674 of 2013.

From the Judgment & Order dated 03.08.2009 of the High Court of Allahabad at Allahabad in Special Appeal No. 1110 of 2009.

- G Aman Vachher, Ashutosh Dubey, Harsh Sharma, Vriti Anand, P.N. Puri for the Appellants.

Satyendra Kumar, S.C. Paul Sunita Bhardwaj, Roopa Paul, Resham Singh for the Respondents.

- H The Judgment of the Court was delivered by

PRIYADARSHINI COLLEGE OF COMPUTER SCIENCE v. MANISH KUMAR

625

P. SATHASIVAM, J. 1. Leave granted.

A

2. This appeal is directed against the final judgment and order dated 03.08.2009 passed by the High Court of Judicature at Allahabad in Special Appeal No. 1110 of 2009, whereby the Division Bench of the High Court dismissed the appeal filed by the appellants herein and confirmed the order dated 01.07.2009 of the learned Single Judge in Civil Writ Petition No. 3465 of 2008.

B

3. Brief facts:

C

(a) Priyadarshini College of Computer Science – Appellant No.1-herein (hereinafter referred to as the “appellant-College”) is a recognized institution and is affiliated with the Uttar Pradesh Technical University, Lucknow and is imparting technical education for various branches including B.Tech (Computer Science), B.Tech (Electronics & Communication), B.Tech (Information & Technology) and B.Tech (Electronics & Instrumentation).

D

(b) On 21.08.2007, the appellant-College published a notice in the daily Hindi Newspaper “Dainik Jagran” inviting applications against lapsed/vacant seats for the Session 2007-08 for various branches including admission for Second Year (3rd Semester) of Engineering for Diploma Holders/B.Sc. with Maths eligibility with minimum 60% marks.

E

(c) In pursuance of the aforesaid notice, Manish Kumar - respondent No.1 applied for admission in 3rd Semester for the course of B.Tech (Computer Science) in the appellant-College. At the same time, admission in the First Year (1st Semester) of the aforesaid branches was also going on in which the minimum qualification was 10+2 with 50% marks.

F

G

(d) The appellant-College relying on the declaration made by respondent No.1 in the admission form that he is having 60% marks in the qualifying subjects (though actually he secured 56%) admitted him in B.Tech (Computer Science) for the

H

A Second Year (3rd Semester) by taking the requisite fee.

(e) On 03.12.2007, when his application was forwarded to the University for 3rd Semester Examinations, it refused to issue admit card to appear in the examination, since he was not having the required percentage of marks i.e. 60%.
B Subsequently, the appellant-College cancelled the admission of respondent No.1 and refunded the entire fee of Rs.59,715/- deposited by him on the same day.

(f) Aggrieved by the same, in January, 2008, respondent
C No.1 filed a petition being Writ Petition No. 3465 of 2008 before the High Court praying for a direction to the University to permit him to appear in the examination or to pay a compensation of Rs. 10 lakhs to him.

(g) Learned Single Judge of the High Court, vide order dated 01.07.2009, treating the writ petition as that of a Public Interest Litigation allowed the writ petition in part and held that since respondent No.1-herein does not possess the minimum qualification for appearing in the 3rd Semester of B.Tech (Computer Science) rejected his prayer to appear in the examination but in order to compensate him for the loss suffered directed the appellant-College to pay a compensation of Rs. 5 lakhs to him within six weeks from the date of the order. The High Court also held that if appellant-herein fails to pay the said amount, respondent No.1 is at liberty to approach the District
E Magistrate, G.B. Nagar, Noida for realizing the said amount from the respondent-College as arrears of land revenue. It further held that respondent No.3-University shall be at liberty to initiate appropriate proceedings against the appellant-College for granting admission to respondent No.1.
F

(h) Being aggrieved by the order of the learned Single Judge, the appellant-College filed an appeal being Special Appeal No. 1110 of 2009 before the Division Bench of the High Court. The Division Bench, by order dated 03.08.2009,
G
H dismissed the appeal of the appellants.

PRIYADARSHINI COLLEGE OF COMPUTER SCIENCE v. MANISH KUMAR [P. SATHASIVAM, J.] 627

(i) Being dissatisfied, the appellants have preferred the above appeal by way of special leave. A

4. We heard Mr. Aman Vachher, learned counsel for the appellants and Mr. Satyendra Kumar, learned counsel for respondent No.1. B

5. In order to understand the rival claim and the decision of the learned single Judge as well as the Division Bench of the High Court, it is useful to reproduce the advertisement dated 21.08.2007 published by the appellant-College in Dainik Jagran which reads as under: C

"Established in 1991

Priyadarshini College of Computer Sciences D

(Affiliated to U.P. Technical University Lucknow and approved by AICTE Govt. of India)

SPOT ADMISSION 2007-2008

Applications are invited against lapsed/vacant seats. Admission open in IInd year of Engg for Diploma holders/ BSc. with Maths Eligibility minimum 60% marks in the following branches. E

- i. B Tech (Computer Science & Engg.) F
- ii B Tech (Electronics & Comm.)
- iii. B Tech (Information Technology)
- iv. B Tech (Electronics & Instrumentation)

ALSO URGENTLY REQUIRED G

- 1. Accountants, PA/PS
- 2. Catering Contractor for Running Mess & Canteen

H

A

CONTACT

Plot No.6-A, Institutional Area, Knowledge Park – I
Greater Noida 201306 Ph:-0120-2322751, 09911027176"

B

C

D

E

F

G

H

6. Pursuant to the aforesaid publication, like others, respondent No.1-herein also submitted duly filled in application form and the same was received by the office of the appellant-College. The advertisement referred above clearly mentions the eligibility of minimum 60% marks in B.Sc with Maths for admission in the IInd year (3rd Semester) in B.Tech (Computer Science). It is the claim of the appellant-College that respondent No.1 has not disclosed the percentage of marks of qualifying examination and according to clause (b) of the undertaking given by him in the admission form that if any of the statement is subsequently found to be untrue, his admission to the College would be cancelled. It is also brought to our notice that there was a specific clause in the admission form about the disclosure of the percentage of marks of qualifying subject but in that respondent No.1 has not disclosed the percentage of marks, namely, 56%. In this way, according to the appellant-College, respondent No.1 has concealed the relevant facts. It is also brought to our notice that in the duly filled in enrolment form by respondent No.1, in Column 17 (ii), with reference to percentage of marks obtained in qualifying level examination, he correctly mentioned the marks secured by him as 56%, on the other hand, in the declaration made by him which was appended along with the enrolment form, in Clause 7 he unequivocally declared that he secured 60% marks in qualifying subjects.

7. From the details mentioned in the advertisement, it is clear that in respect of lapsed/vacant seats, applications are invited for admission in IInd Year of Engineering for Diploma holders/B.Sc with Maths with minimum 60% marks. It is further clear that respondent No.1 has secured only 56% marks in the qualifying level examination which is evident from Clause 17(ii)

of the enrolment form. It is true that in the scrutiny itself, it would be open to the appellant-College to reject his application. However, since respondent No. 1 has made a categorical declaration (which is mandatory by a candidate) declaring that he had secured 60% marks in the qualifying subject, the appellant-College admitted him and received fees. The fact is that the eligibility condition is 60%, however, respondent No.1 has secured only 56% marks applied for the said course with an intention to secure admission by playing fraud with the appellant-College. Unfortunately, learned single Judge failed to take note of this relevant aspect which was merely affirmed by the Division Bench of the High Court.

8. It is relevant to point out that when the University found that respondent No.1 was not eligible for the said course, it rejected his candidature and he was not allowed to appear in the examination. In such circumstance, respondent No.1 approached the High Court for appropriate direction for allowing him to appear in the examination. In the said writ petition, though the prayer of respondent No.1 was not considered by the learned single Judge, however, a direction was issued to the appellant-College herein to pay a compensation of Rs. 5 lakhs to him within six weeks from the date of its order, namely, 01.07.2009. The perusal of the order of learned single Judge proceeds that respondent No.1 herein had declared in the admission form that he got 56% marks in B.Sc examination and the appellant-College was not able to show that prior to granting admission they had informed him that he should possess 60% marks in the qualifying examination. Learned single Judge has also concluded that it would have been a different case if the candidate had provided wrong information to the College that he had 60% marks in B.Sc and it was later found that he had marks less than 60% marks. Learned single Judge has also concluded that the appellant-College has cheated the candidate by granting him admission taking fees from him knowing fully aware that he does not have the requisite qualification for grant of admission.

- A The above-mentioned conclusion of the learned single Judge is contrary to the materials placed before him.

9. We have already extracted the entire advertisement calling for applications in which they specifically mentioned that minimum 60% marks in B.Sc. Maths is the eligibility criteria and based on the same, respondent No.1-candidate also applied for the same. We have also pointed out that in the enrolment form in clause 17(ii) he has specifically stated that he secured 56% marks. As observed earlier, the appellant-College could have rejected his application. However, in view of the assertion made by respondent No.1 in Clause 7 of the declaration that he had secured 60% marks, the appellant-College accepted his form and admitted him in the course he applied for. It is also relevant to point out that when the deficiency was pointed out by the University, the appellant-College refunded the entire fees received by them from respondent No.1. It is not disputed by the candidate – respondent No.1 herein. In such circumstances, in view of perverse finding by the learned single Judge as mentioned above, which was simply affirmed by the Division Bench, we hold that the direction to pay compensation of Rs. 5 lakhs to the candidate – respondent No.1 herein cannot be sustained. As a matter of fact, it is pointed out by learned counsel for the appellant-College that respondent No.1-candidate has not complained about any claim of donation or additional money paid by him to the appellant-College.

10. It has to be kept in mind that every candidate applying for a particular course in any College is expected to go through the advertisement thoroughly including the eligibility criteria prescribed for each course and after fulfillment of the required conditions, state the correct particulars in the application form failing which he/she cannot claim any benefit for his/her own wrong.

11. We are of the view that the conclusion arrived at by the learned single Judge and the Division Bench finding fault

PRIYADARSHINI COLLEGE OF COMPUTER SCIENCE v. MANISH KUMAR [P. SATHASIVAM, J.] 631

with the appellant-College is clearly erroneous and that the appellant-College cannot be held liable for the act of respondent No.1 herein who knowing fully aware that he had not secured the minimum eligible marks, yet applied for admission. A

12. In the light of the above discussion, the orders passed by the learned single Judge dated 01.07.2009 in Civil Writ Petition No. 3465 of 2008 and the Division Bench of the High Court dated 03.08.2009 in Special Appeal No. 1110 of 2009 are quashed insofar as direction for payment of compensation of Rs 5 lakhs is concerned, consequently, the appeal is allowed. No order as to costs. B C

K.K.T.

Appeal allowed.