

Vidya Amin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION(L) NO.6545 OF 2020

Rutuja Rajesh Parmar ... Petitioner
vs.
Jamunalal Bajaj Institute of Management
through its Director and Ors. ... Respondents

Ms. Dhruiti M. Kapadia a/w. Ms. Rekha Musale for the petitioner.

Mr. Ashutosh M. Kulkarni a/w. Mr. Gaurav Sharma for respondent nos. 1 and 2.

Mr. Hemant Haryan, AGP for the State.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- NOVEMBER 24, 2020

PC :-

1. This Writ Petition is at the instance of a student, belonging to reserved category (VJNT). After securing admission in the respondent-institute for pursuing Masters course in Human Resource Development and paying fees in excess of Rs.3 lakh sometime in October, 2020, the petitioner was informed by such institute vide email dated November 5, 2020 of her ineligibility to take admission. The reason assigned was that she had not secured 55% marks at the Higher Secondary level examination. She was, accordingly,

requested to mail her account details for refund of the fees collected. Such communication is the subject matter of challenge in the writ petition.

2. According to the petitioner, she had placed all her cards before the institute. Neither was there any misrepresentation of any sort, nor could she be accused of practicing fraud. Having successfully crossed the various hurdles on the way for securing admission, the institute granted the petitioner admission only at a later stage to deprive her the fruits of her labour on the ground that she had not secured 55% at the Higher Secondary level examination.

3. Ms. Kapadia, learned counsel appearing for the petitioner contends that she is the only one who qualified for and was granted admission in the reserved seat. While referring to the decision of the Delhi High Court in the case of **Javed Akhtar vs. Jamia Hamdard**, reported in **2007 94 DRJ 299**, she submits that the decision of the institute to revoke the petitioner's admission at this stage would work out serious prejudice in her academic pursuit and there being absolutely no fault on her part, the impugned communication

ought to be quashed with further direction on the institute to permit her pursue the course without interruption.

4. We find no reason to call upon the respondents to answer.

5. Law is well settled by the Supreme Court in the case of **District Collector and Chairman vs. M. Tripura Sundari Devi**, reported in **(1990) 3 SCC 655**, that when an advertisement mentions a particular qualification and an appointment is made in disregard of the same, it is not a matter only between the appointing authority and the appointee concerned; the aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on the public to appoint persons with inferior qualifications in such circumstances, unless it is clearly stated in the advertisement that the qualifications are relaxable. No Court should be a party to the perpetuation of the fraudulent practice.

6. In the present case, we are not concerned with appointment but with admission to a course. However, the principles laid down by the Supreme Court in **Tripura Sundari Devi** (*supra*) are clearly applicable in the present case. The admission criteria included, *inter alia*, a stipulation that a candidate seeking admission in the Masters of Human Resource Development course as a reserved candidate must have secured 55% or above at the Higher Secondary level examination. The petitioner, being a reserved candidate, was thus required to obtain 55% marks in order to be eligible to apply and enter the zone of consideration. Despite being well aware of the marks obtained by her at the Higher Secondary level examination, i.e., 51%, the petitioner took a chance of admission. Fortune smiled on her, because the institute at the initial stage did not exercise diligence by scrutinizing the papers and allowed the petitioner not only to participate in the various stages prior to admission but also allowed her admission in the course and received the fees therefor. Thereafter, on deeper scrutiny, the institute ultimately came to the finding that the petitioner did not possess the required percentage of marks at the Higher Secondary level

examination leading to issuance of the communication impugned in this Writ Petition, whereby she was informed of her ineligibility as well as to mail her account details for refund of the fees.

7. Having regard to the guidance provided by the Supreme Court in **Tripura Sundari Devi** (*supra*), we cannot be a party to the fraudulent practice and allow the petitioner to continue with her studies in the course. One does not know for sure, there could have been other reserved category candidates who might have secured more marks than the petitioner but less than the required marks and thus refrained from applying for admission, adhering to the terms of the notice issued by the institute. Any order directing the institute to allow the petitioner to pursue the course would amount to injustice being meted out to all such candidates.

8. That apart, the petitioner has prayed that the relevant qualification be relaxed (prayer d). It is not open to the writ court to direct any institute to relax any qualification to suit the interest of any particular candidate. Any direction in this behalf would amount to compelling the institute to re-write

the qualification, which is impermissible.

9. The decision of the Delhi High Court in **Javed Akhtar** (*supra*) has been considered. In our view, the same cannot be of any assistance in view of the authoritative pronouncement of the Supreme Court in **Tripura Sundari Devi** (*supra*).

10. For all the reasons aforesaid, we find no merit in this Writ Petition and the same stands dismissed. There shall be no order as to costs.

11. We make it clear that this order shall not preclude the petitioner to sue the institute for damages owing to loss of a year, if she is so advised.

12. This order will be digitally signed by the Private Secretary of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)