

2012 M L D 719

[Islamabad]

Before Shaukat Aziz Siddiqui, J

MARYAM IZHAR and another---Petitioners

Versus

INTERNATIONAL ISLAMIC UNIVERSITY and others---Respondents

Writ Petition No.3174 of 2011, decided on 8th February, 2012.

(a) Constitution of Pakistan---

---Art. 199---Constitutional petition---Educational Institution---Petitioners who applied for admission in B.S. Electronic Engineering and were allowed to undertake the entry test, qualified in the same and provisional offers of admission were issued to them; they deposited the requisite university fee, and were issued enrolment slips; petitioners started attending the classes in the university but vide impugned notification, admission of the petitioners were cancelled with immediate effect on the ground that required percentage of marks was not secured by the petitioners---Validity---One of the petitioners secured 59.8% marks which on the principle of accounting and mathematical interpretation, were counted as 60% all over the world---University was required to look into the matter from that perspective and by exercising the parental jurisdiction---Since the said petitioner fulfilled the eligibility criteria, depriving her to continue education on hyper-technical grounds and frictions, was uncalled for---Constitutional petition to the extent of said petitioner was allowed and impugned notification was set aside---University was directed to take the petitioner on roll and allow her to continue/complete her B.S. Electronic Engineering Programme---Said other petitioner had obtained 57% marks, whereas requirement was of 60% marks, she had rightly been debarred from continuing her studies---Requirement of B.S (General) Programme being 50%, said petitioner could if so advised approach the University Authority for conversion of her admission in B.S. Electronic Engineering to B.S. (General) Programme.

PLD 88 SC 356; 1997 CLC 43; 2004 SCMR 1864; 2003 SCMR 410 and 1997 SCMR 15 ref.

(b) Words and phrases---

----"Provisional"---Connotation.

Ms.Shazia Saleem for Petitioner.

Rehan-ud-Din Khan, Standing Counsel for the State.

Date of hearing: 31st January, 2012.

JUDGMENT

SHAUKAT

AZIZ

SIDDIQUI,

J.---

Petitioner Maryam Izhar and Aiman Fatima, invoked the constitutional jurisdiction of this court seeking cancellation/setting aside of impugned Notifications Nos.IIU/SAS/FC/2011-3911 and No.IIU/SAS/FC/2011-3910, both dated 6-10-2011 whereby admission of petitioners have been cancelled from BS Electronic Engineering Program.

2. Brief facts gleaned out from the writ petition are that, in response to the International Islamic University advertisement appearing in the Daily "Jang" dated 26-6-2011, applications were invited for admission in various programs and the petitioners applied for admission in BS Electronic Engineering Fall-2011-Female. The petitioners were allowed to undertake the entry test and qualified the same and their names were exhibited at Serials Nos.23 and 35 of third merit list dated 25-8-2011 respectively and as a consequence whereof, provisional offers of admission for the academic session 2011 were issued to the petitioners on the same date and they also deposited the requisite University fee of Rs.74100 and 44,400 respectively including security deposit and were issued enrolment slips. The petitioners started attending the classes of BS Electronic Engineering in the University. That, all of a sudden, impugned Notifications dated 6-10-2011 were issued whereby the admissions of petitioners were cancelled with immediate effect on the ground that required percentage of marks could not be secured in F.Sc./HSSC Examination.

3. The learned counsel for the petitioners argued that it is incorrect that the petitioner do not possess/obtain the requisite marks as the petitioner Maryam Izhar secured 55.9% marks and petitioner Aiman Fatima secured 59.8% marks against the required 50% marks in the HSSC. That this act of the respondent University will result in wastage of one academic year and will ruin their educational career. That this act of the respondents is illegal and unlawful as a legal right accrued in favour of petitioners under the principle of locus poenitentia. Learned counsel placed reliance on PLD 88 SC 356, 1997 CLC 43, 2004 SCMR 1864, 2003 SCMR 410 and 1997 SCMR 15.

4. The learned Standing Counsel vehemently opposed the contentions of the learned counsel for the petitioners on the grounds that petitioners application forms for BS Electronic Engineering program were submitted on provisional basis being result awaiting candidates and they were allowed to appear in the entry test. That, the petitioners were selected provisionally on the basis that both the students will submit their result of HSSC Examinations obtaining 60% marks as per respondent's university requirement/criteria which the petitioners do not meet and the principle quoted by the petitioners is not applicable on this case, hence the writ petition is liable to be dismissed.

Arguments heard. Record perused.

5. Admittedly, both the petitioners were granted admission provisionally and no finality was attached to their admission. The meanings of word "Provisional". According to Concise Oxford English Dictionary (11th Edition, Revised) ordinary meaning of this word is given as under:--

(i) Arranged or existing for the present, possibly to be changed later.

Black's Law Dictionary (8th Edition) contains the following meanings.

(i) Temporary

(ii) Conditional

Legal Thesaurus by William c. Burton (Second Edition) suggest following words, synonymous to the word "provisional", "alterable, conditional, contingent, dependent on circumstances, in a state of uncertainty, interim, limited, subject to change, transitory, unassured, unconfirmed, unsettled.

6. The case of the petitioner No.2 is distinguishable for the reason that she secured 59.8% marks, which on the principle of accounting and mathematical interpretation are counted as 60% all over the world. The respondent University was required to look, into the matter from this perspective and by exercising the parental jurisdiction. Since the petitioner, fulfilled the eligibility criteria, therefore, depriving her to continue education on hypertechnical grounds and frictions is uncalled for.

In this view of the matter the writ petition to the extent of petitioner No.2 is allowed and the impugned notification No.IIU/SAS/ FC/2011-3910, dated 6-10-2011 is set aside. Respondent University is directed to take the petitioner No.2 on roll and allow her to continue/ complete B.S Electronic Engineering, Programme.

7. As far as, the case of the petitioner No.1 is concerned, she obtained 57% marks, whereas requirement was of 60% marks, therefore, she has rightly been debarred from continuing her studies of B.S Electronic Engineering. However, since the requirement of B.S (General) Programme is 50%, therefore petitioner may if so advised, approach the University authorities for conversion of her admission in B.S Electronic Engineering to B.S. General Programme. If any such application is moved, it is expected from the University authorities that, same shall be given due consideration and by exercising parental jurisdiction, she would be accommodated, provided applicable rules are flexible to administer benign dealing and kindness.

The writ petition is disposed of in the above terms.

H.B.T./44/IsI

Order accordingly.