

2012 M L D 710

[Islamabad]

Before Shaukat Aziz Siddiqui, J

AHMAD SAEED---Petitioner

Versus

**COMSATS INSTITUTE OF INFORMATION TECHNOLOGY, ISLAMABAD through
Vice-Chancellor---Respondent**

Writ Petition No.3222 of 2011, decided on 29th November 2011.

(a) COMSATS Institute of Information. Technology Ordinance (XXXVIII of 2000)--

---S. 4---Constitution of Pakistan, Art. 199---Constitutional jurisdiction---Scope---Educational institution---Provisional Admission---Petitioner was granted provisional admission in a degreeprogramme, and such provisional admission was conditional upon the petitioner fulfilling the minimum eligibility criteria of obtaining a minimum percentage of marks in the Intermediate Examination---Petitioner could not obtain the said minimum percentage of marks in the Intermediate Examination and vide notification issued by the educational institution, provisional admission granted to the petitioner, was cancelled---Petitioner assailed said notification of cancellation of admission---Validity---Meaning of word "provisional" made it abundantly clear that no finality was attached to the admission granted to the petitioner as the same was subject to the obtaining of a minimum percentage of marks in the Intermediate Examination, which admittedly, the petitioner had failed to obtain---Educational institutions were required to maintain the eligibility criteria, and promote merit, transparency, and passions of adherence to rule of law--Contention of petitioner, if accepted, would lead to hideous consequences of evaporating the eligibility criteria, which would lead to reducing the principle of merit into a dead letter---High Court under its constitutional obligation, was duty bound to safeguard the merit in the society and to discourage and defeat cryptic approach committed by any segment of the society---Constitutional jurisdiction of High Court was meant to be exercised in those cases where any individual brought his grievance with regard to the infringement of any accrued right by a public

functionary---Case of petitioner did not warrant exercise of such jurisdiction in his favour---Petitioner was also estopped by his own words and conduct to agitate the matter before any forum--Authorities of the educational institute exercised jurisdiction in accordance with the rules, procedure, and admission policy, therefore, no interference in the same was called for---Constitutional petition was dismissed.

Chairman, Selection Committee/Principal, King Edward Medical College, Lahore v. Wasif Zamir Ahmad and another 1997 SCMR 15; Muhammad Rafique and another v. Director Inservice Agriculture Training Institute and another 2007 CLC 1492 and Umar Najeeb Khan Lodhi v. Bahauddin Zakariya University, Multan and 4 others 2010 MLD 380 distinguished.

Concise Oxford English Dictionary; Black's Law Dictionary (8th Edition) and William c. Burton (Second Edition) ref.

Misbah Riaz v. Government of Pakistan 2007 MLD 701; Sehresh Zainab v. Chairman Selection Committee 2008 CLC 1381; Baha-ud-Din v.. Chairman Joint Admission Committee 2004 CLC 1401; University of Health Sciences v. Sheikh Nasir Subhani PLD 2006 SCMR 243; Mrs. Shehla Shah Nawaz v. Board of Intermediate and Secondary Education PLD 2000 Lah. 121; Memoona Noreen v. Vice Chancellor, Fatima Jinnah University for Women 2011 CLC 230 and Muhammad Illiyas v. Baha-ud-Din Zakria University 2005 SCMR 961 rel.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction---Scope---Constitutional jurisdiction of High Court was meant to be exercised in cases where any individual brought his grievance with regard to the infringement of any accrued right by a public functionary.

(c) Words and Phrases

---"Provisional", meaning of.

Concise Oxford English Dictionary (11th Edition); Black's Law Dictionary (8th Edition) and Legal Thesaurus by William c. Burton (Second Edition) ref.

Hafiz Arfat Ahmed Ch. for Petitioner.

ORDER

SHAUKAT AZIZ SIDDIQUI, J.---COMSATS Institute of Information Technology (hereinafter: called as an "Institute") was granted status of degree awarding Institute by the Federal Government of Pakistan vide Presidential Ordinance No. XXXVIII, dated August, 12, 2000. Under Section 4 of the Ordinance ibid power and functions of the Institute are given which are reproduced below for convenience.

"Powers and functions of the Institution.---(1) The Institute shall have the powers--

(a) to provide for instruction and training in computer and information technology and to make provisions for the advancement and dissemination of knowledge in such manner as it may deem fit;

(b) to admit and examine students;

(c) to hold examinations and confer or award degrees, diplomas, certificates and other academic distinctions on and to persons who have passed its examinations under prescribed conditions;

(d) to confer honorary degrees or other distinctions on approved persons in the manner as may be prescribed;

(e) to prescribe courses of studies and undertake research as it may determine;

(f) to demand and receive such fees and other charges as it may determine;

(g) to appoint such officers including teachers and members of the staff and prescribe terms and conditions, powers and duties of such officers and staff;

(h) to appoint members of the various bodies and committees as the Board may determine for instructional and curricular activities and admit students of the Institute and its constituent units;

(i) to affiliate and disaffiliate educational institutions and inspect such institutions or associate itself with other educational, training and research institutions;

(j) to receive and manage property, grants, bequests, trusts, gifts, donations, endowments and other contributions made to the Institute and to Invest them in such manner as it may deem fit;

(k) to enter into agreements, contracts and arrangement with governments, organizations, institutions, bodies and individuals for carrying out its functions and activities; and

(l) to do all such other acts and things as may be required to further its objectives."

2. In order to advance its object Institute invited applications for grant of admission in different disciplines. To facilitate and save the time of students, even those students were allowed to apply, who appeared in the examinations but their result was awaited. Present petitioner initially applied for BS (Software Engineering) Session-Fall 2011. In an interview conducted by Admission Committee of the Institute, present petitioner was not found eligible for admission in the above mentioned discipline, however, petitioner was suggested to take admission in BS (Business Administration).

3. Entire admission process is provided under Chapter-IV with the head of admissions in the prospectus for session 2011-2012 issued by the Institute. Under the sub-heading Application Procedure following instruction is mentioned for those students whose result was awaited:-

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"In case the final result of previous examination is awaited, then provision of a "Hope Certificate" from the college last attended can provide the basis for a conditional offer of admission at CIIT. The offer is confirmed once the final result is declared and eligibility criteria are fully met. A specimen of a "Hope Certificate" is provided in the prospectus.

Submit the admission form and 'Hope Certificate' affidavits (if applicable) in the admission office of the campus, where admission is being sought."

Provisional admission sub-heading contains the following instructions:--

"Provisional Admissions:--

Candidates may apply for provisional admission if they have already taken the examination of the qualifying degree but have to receive their result. These applicants must submit a Hope Certificate/Affidavit along with duly filled Admission Form. However, applicants who are provisionally admitted must ensure that their results are received in the campus office within 20 teaching days after the commencement of the semester, otherwise their admission will be cancelled."

4. The eligibility criteria for BS (Business Administration) was Intermediate or equivalent with minimum 50% marks from an accredited Institution. It is an admitted fact that through letter dated 19th July, 2011, it was informed to the petitioner that he has been provisionally admitted in BS (Software Engineering) degree programme. As mentioned earlier the Admission Committee of the institute did not find the petitioner eligible for admission in BS (Software Engineering) therefore, vide letter dated, August, 11, 2011 provisional offer of admission to BS (Business Administration) Fall-2011 was made to the petitioner, which was accepted by him, by depositing demand draft bearing No.1870016, dated 25-8-2011 drawn at Askari Bank, Blue Area, Islamabad amounting to Rs.77,000.

5. Since the petitioner was amongst those students who were granted admission provisionally as their result was awaited. The Federal Board of Intermediate declared result, the petitioner obtained 531/1100 marks (48.27%). Unfortunately, petitioner was short of 19 marks from the minimum eligibility criteria. The result card reveals that petitioner passed the examination and was awarded Grade-D. Through Notification No. CA 115 of Fall 2011, dated November 4, 2011 it was declared that admission of the petitioner has been cancelled. The contents of the notification are reproduced herein below:--

CIIT/ISB/ADR-Acad/Admin/11/11 34567, November 4, 2011

Notification

(Cancellation of Admission)

(CA 115 of Fall 2011)

(1) It is hereby notified that the admission of Mr. Ahmad Saeed, Registration No.CIIT/FAL/BBA-142/ISB has been cancelled at his own request.

(2). He has failed to obtain the required percentage of marks in Intermediate examination, hence failed to fulfill the eligibility criteria of CIIT required for admission in BBA program. (underlining provided).

(3) Therefore, the fee deposited at the time of admission amounting to Rs.77,000 will be refunded to him subject to the submission of clearance form duly signed by all the concerned."

6. Feeling aggrieved, the petitioner invoked the constitutional jurisdiction of this court by making following prayer in the Writ Petition:--

"Therefore, it is most respectfully prayed that by accepting the titled petition the act of the respondent cancelling the admission of the petitioner may kindly be declared as null and void and the letter dated 4th of November, 2011 bearing No.CIIT/ISB/ADR-Acad/Admin/11/1134567 may kindly be cancelled".

7. The learned counsel for the petitioner has submitted that impugned action of the respondent Institute is tainted with mala fide, unjust and against the dictums laid down by the superior courts of the country. The learned counsel has placed reliance on cases titled, as Chairman, Selection Committee/Principal, King Edward Medical College, Lahore v. Wasif Zamir Ahmad and another (1997 SCMR 15), Muhammad Rafique and another v. Director Inservice Agriculture Training Institute and another (2007 CLC 1492), Umar Najeeb Khan Lodhi v. Bahauddin Zakariya University, Multan and 4 others (2010 MLD 380).

The learned counsel has further argued that on the principle of locus poenitentiae a valuable right was created in favour of the petitioner and respondent Institute was not vested with any power to withdraw the same.

I have heard the learned counsel for the petitioner and perused the material available on the file.

8. For the just disposal of the instant writ petition, I find it appropriate to mention 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.

(ii) 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.

The meanings of the word "provisional" make it abundantly clear that no finality was attached to the admission granted to the petitioner as same was subject to obtaining minimum 50% marks in the Intermediate Examination, which admittedly, petitioner failed to obtain. Resultantly, the Institute cancelled his admission. The learned counsel very candidly conceded to this aspect, that petitioner was unable to obtain the marks required to meet the eligibility criteria and to deaden the uncertainty about his future.

10. I have gone through all the judgments relied upon by the learned counsel for the petitioner and found them distinguishable to the facts and circumstances of the case of the petitioner.

On the contrary, I guided myself from the wisdom, blossomed in the following case-law, which to my mind is applicable on the issue, Misbah Riaz v. Govt. of Pakistan (2007 MLD 701), SehreshZainab v. Chairman Selection Committee (2008 CLC 1381 (Lahore). Baha-ud-Din v. Chairman Joint Admission Committee (2004 CLC 1401 (Peshawar), University of Health Sciences v. SheikhNasir Subhani (PLD 2006 SCMR 243), Mrs. Shehla Shahnawaz v. Board of Intermediate and Secondary Education (PLD 2000 Lahore, 121), Memoona Noreen v. Vice Chancellor, Fatima Jinnah University for Women (2011 CLC 230 Lahore) and Muhammad Illyas v. Baha-ud-Din Zakria University (2005 SCMR page 961).

11. The Educational Institutions are required to maintain the eligibility criteria and to promote the merit, transparency and passions of adherence to rule of law. If contention of the learned counsel for the petitioner is accepted and writ is issued, it will lead to hideous consequences of evaporating the eligibility criteria, which, obviously will lead to reducing the principle of merit into a dead letter. The High Court under constitutional obligation is duty bound to safeguard the merit in the society and discourage and defeat cryptic approach committed by any segment of the society. The constitutional jurisdiction of the High Court is meant to be exercised in those cases where any individual brings his grievance with regard to infringement of any accrued right by the public functionary. The case of the petitioner does not warrant exercise of constitutional jurisdiction in his favour. The petitioner is even, estopped by his words and conduct to agitate the matter before any forum.

12. The petitioner miserably failed to prove the element of mala fide, discrimination and ill-will against the Institute. On the contrary grant of provisional admission to the petitioner speaks about the parental approach of the Institute. Therefore, the conclusion drawn by this court is that, the authorities of the institute have exercised the jurisdiction in accordance with the rules, procedure and admission policy, therefore, no inference is called for, and instant writ petition is dismissed in limine with no orders to costs.

K.M.Z./19/IsI

Petition dismissed.