
(2004) 04 DEL CK 0079

In the Delhi High Court

Case No : Writ Petition (C) No. 898 of 2004

Abhinitam

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Citation : AIR 2004 Delhi 384 : (2004) 74 DRJ 137

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; S.K. Luthra, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—The Jubilee Hall Hostel of the Delhi University refused the petitioner the residence compelling him to knock at the doors of the Court for redressal of his grievance.

2. The petitioner joined the LL.B course of the Faculty of Law of the University of Delhi but was able to get the hostel accommodation only on 1.10.2002 when he was in his final year. This admission was based on the basis of his merit and he continued to reside in the hostel. The petitioner successfully completed the course study for the LL.B degree in July, 2003 and after qualifying in the entrance examination, was admitted to the LL.M first year course of the Faculty of Law. The petitioner was desirous of continuing to avail of the hostel accommodation and was permitted to occupy the accommodation in terms of the Hand Book of Information and Rules 2003-2004 of the Jubilee Hall, University of Delhi (hereinafter the provisions of the same being referred to as the Rules). In terms of Rule 7.4.7 the bonafide Hall residents become non-bona fide just after completion of the final examinations and can be permitted to stay as guests in case of vacancy. The relevant rules 7.4.7 and 7.4.8 are as under:-

"7.4.7___ The bonafide Hall residents become non-bona fide just after the completion of their final examinations. If they intend to join some other courses in Delhi University they will become resident guests and shall be liable to pay @

Rs.12/- per day till the next academic session begins and vacate the room immediately the same day failing which Rule 7.4.4 be implemented. The resident guests will not be allowed to withdraw their caution money during their resident guest's period nor it will be adjusted against their dues. The resident guests will avail the mess facility and make payment against that as applicable in case of regular member."

"7.4.8.____ In case there is a vacancy of rooms, the Hall administration can provide accommodation to the delegates/scholars o other academic institutions or bonafide students of Delhi University or ex-resident of Jubilee Hall at the rate given below:

(a) Single seated room Rs.45/- per day

(b) Double seated room Rs.25/- per day per person."

3. There appears to be delays in making admissions to the hostel since it was only in November, 2003 that the process began for fresh admissions to the hostel and the last date for making an application was stipulated as 10.11.2003. The petitioner applied on 7.11.2003 for re-admission to the hostel. The petitioner, however, received a notice dated 14.11.2003 to vacate the hostel by 19.11.2003. The petitioner claims to have made an oral representation against the same requesting for permission to continue to occupy at least till the process of admission was completed or till December, 2003 when his examinations were scheduled but was apparently informed that he would have to vacate the hostel if he wanted his application to be considered. The petitioner vacated the hostel on 25.11.2003. The petitioner has alleged that while the petitioner so vacated the hostel, other occupants continued to occupy their rooms. The names of five such candidates have been given in para-11 of the writ petition and this is not denied in the counter affidavit though it is stated that these students were placed under different category and have been subsequently admitted afresh on the basis of their merit as per rules.

4. The first admission list was only displayed on 13.12.2003 but petitioner's name was not included in the list. The petitioner made a representation against the same on 13.12.2003 mentioning that inadvertently the petitioner had mentioned is marks as 353 in the LL.M entrance test whereas the correct marks obtained by him were 453 which should be corrected. The petitioner further requested that his candidature be considered according to Rule 2.2.1 and 2.2.2 of the Rule Book in terms whereof weightage is given to internals / ex-residents in addition to performance in the entrance test. The petitioner also enclosed a copy of the merit list obtained from the Faculty of Law. The second representation was made on 8.1.2004 stating that all students appearing above the petitioner in the merit list have already given their written withdrawal from the hostel admission process and three of them had already taken admission in another hostel. It was, thus, stated that there was no candidate above the petitioner in the merit list. This was followed up with the further representation

by the petitioner on 13.1.2004 referring to the fact that the petitioner was in dire need of the accommodation as he had to face various judicial services examinations and the LL.M second-term examination in April, 2004. The petitioner has finally filed the present writ petition seeking a writ of mandamus for admission to the hostel.

5. In the counter affidavit a reference has been made to earlier notices prior to November, 2003 issued to the petitioner to vacate the room. It has also been stated that the admission list was displayed on the notice board on 12.12.2003 strictly according to the merit and rules. In so far as the issue of the petitioner mentioning lower marks inadvertently is concerned, it is submitted that the same did not affect the petitioner since the merit list submitted by the Faculty of Law was used for purposes of admission and the admission was done as per Rule 3.4. Admission to the petitioner was stated to have been denied on merit. It was also stated that the seats in the various courses of Faculty of Law are divided on the basis of strength of each course and that all the quota under the general category is filled and the reserved category seats cannot be transferred to general category as per rules.

6. The first question which arises for consideration is whether the petitioner is entitled to any weightage on account of the fact that he was a bonafide resident of the hostel. This question is dependant on the construction of Hand Book of Rules since the contention of learned counsel for the respondents was that the petitioner would not be entitled to such weightage in view of the fact that the admission to the LL.M course was based purely on the merit list of the said course and the weightage was being given only in cases where the admission was based on the marks obtained by the students in the examination of the University other than a competitive examination. This position was naturally disputed by the petitioner.

7. In order to appreciate this controversy, it is necessary to refer to the relevant rules which are as under:-

"Rules of Eligibility 2.2.1___ A weightage of 5% marks be given to those internal / ex-residents of the Jubilee Hall at the time of admission who have stayed at least for one full academic year as bonafide student and have been passed examination(s) for which they were enrolled in Jubilee Hall."

"Admission Procedure

3.2___ Admission (except re-admissions) are made strictly on the basis of merit as decided by each Department provided the applicant satisfies the eligibility criteria.

3.4___ If admission to a Course is by a Written test/interview such that the Department provides merit list for admission, the same merit list will be followed for admission to the Hall.

3.6___ For the students of a Faculty/Department, which neither follows any

category system for admission to a course nor holds a Written test/interview for admissions, the admission to Hall will be made on the percentage of marks obtained in the examination on the basis of which admission is sought."

8. The aforesaid rules show that Chapter-3 deals with the admission procedure which requires all admissions to be done on merit. Rule 3.2 provides for the merit as decided by each Department and Rule 3.4 refers to the courses where written test / interview is held where also the Department merit list would be followed. Rule 3.6 refers to the percentage of the marks obtained in the examination in other category of courses. Thus, it is the merit which is to prevail whether it be of a competitive test or a departmental examination. Rule 2.2.1 appears in Chapter-2 which deals with rules of eligibility and provide that weightage of 5% marks to be given to those internal / ex-residents of the Jubilee Hall who at the time of admission have stayed at least for one full academic year as bonafide students and have passed the examination for which they were enrolled in Jubilee Hall. There is no dispute raised in respect of the fact that the petitioner has been such a resident but the only reason for denial of the weightage of 5% to the petitioner is the contention of the learned counsel for the respondents that this Rule 2.2.1 cannot apply to the admissions made in courses where there is a written test/interview.

9. I am unable to accept this contention of the learned counsel for the respondents. There is no exception carved out in Rule 2.2.1 that this weightage is to be given only to a particular category of candidates and not to others. The relevant rule falls in the Chapter dealing with the eligibility condition. The respondents in their wisdom have provided for such weightage to be given to the residents of the hostel. This weightage, as stated above, is not qualified by any rule. Chapter-3 deals with the admission procedure and emphasises only the factum of merit prevailing whether it is competitive examination or based on marks obtained in examination on the basis of which admission is sought. In fact, Rule 3.6 refers to the fact that in Departments not following any category system admission nor holding written test / interview it is the percentage of the marks obtained in the examination on the basis of which admission is sought which can be the criteria. Naturally where admission test is held, it is the merit list in the admission which is relevant.

10. In my considered view it is no answer by the respondents that this is the practice they have followed consistently though it is contrary to the plain reading of the Hand Book of Rules. I am, thus, of the considered view that the petitioner would be entitled to a 5% weightage on account of being a resident of the hostel.

11. In order to further appreciate as to how the allocation of seats takes place, learned counsel for the respondents was asked to produce the relevant data. It may be noticed that the Hand Book of Rules provides for faculty-wise distribution of seats and 40 seats have been allocated to the Law Faculty as under:-

"FACULTY WISE

Faculty Gen.Category SC ST Foreigner Total

Law Faculty 27 6 3 4 40

12. Learned counsel submitted that this aspect would depend on year to year and the present position on instructions was as under:-

Course Category General SC ST PH CW

LL.B.1st Year 09 - 02 01 01 LL.B.2nd Year 10 01 01 01 - LL.B.3rd Year 07 - - -
- LL.M.1st Year 01 02 - - - LL.M.2nd Year 01 01 - - -

Total 28 04 03 02 01

13 In so far as the allocation to different categories was concerned, the present position was stated as under:-

Seats allocated Occupied as per Hand Book seats at of Information present and Rules

No.of seats in General Category 27 28 No.of seats in S.C. Category 06 04 No.of seats in S.T. Category 03 03 No.of seats in C.W. Category -- 01 No.of seats in P.H. Category -- 02 No.of seats in Foreign Category 04 --

14. In respect of the aforesaid, it was stated that one general category student was in unauthorised occupation of the room which had not been vacated.

15. In so far as the merit list for the LL.M first year course is concerned, a perusal of the merit list filed shows that the petitioner's name appeared at Serial No.11. Four candidates above the petitioner were women and would naturally not be eligible for the men's hostel like the respondent. The person at Serial No.3 is stated not to have applied while the person at Serial No.2 got the admission at Jubilee Hall and the others are stated by the petitioner to have already been admitted to different hostels. The marks obtained by the person who had been given admission is 509 out of 700 while the petitioner got 453. Thus, the person who has already been granted admission would have so got admission even if the petitioner would have been given a weightage of 5% but the petitioner would have been at number 2 position after the said candidate.

16. The aforesaid data becomes relevant in view of the contention of the petitioner that four seats in the category of foreign students allocated to the Law Faculty were still lying un-filled. Learned counsel for the respondents, however, stated that there could not be any transfer of such seats and in this behalf referred to the provision contained in the end of Rule 3.10, which is as under:-

"If the candidates for SC/ST are not available among the applicants in a faculty, seats reserved for a faculty will be filled up by the candidates of the same categories from other faculties.

Out of these 15% & 7.5% seats are reserved for SC and ST students, respectively. 10% seats are for foreign students, 1% for wards of war widows

and 3% for visually handicapped and other disabled students and 1% for sports quota."

17. A reading of the aforesaid provision, in my considered view, makes it clear that the seats allocated to SC/ST category which are not filled up from the relevant department, have to be filled up from other faculties and cannot be transferred to the general category. There is, however, no such restriction provided in respect of the foreign students.

18. This aspect is extremely important since the issue of allocation of such seats meant under the foreigner quota is subject matter of adjudication in *Manish Chandra Pathak Vs. University of Delhi and Others*, . The said case also dealt with admission to the LL.B course but in a different hostel and it was held that these seats could not have been released to another department and the seats pertaining to the foreigners quota of Law Faculty have to be allocated to the general category of students of the Law Faculty.

19. I am unable to accept the contention of learned counsel for the respondents that this judgment would not apply to the present hostel on account of the fact that the process was different and in the present process there was a restriction on such transfer of seats which ought to be transferred to a different department. As stated aforesaid, this restriction is specially confined only to the SC/ST category as is apparent from the plain reading of the rules referred to above where reservations of different categories have been dealt with. The result is that there are four seats available for admission.

20. Respondents while giving the details of the distribution have stated that the seniority is not the criteria for admission and the admission is done by merit alone. I fail to appreciate the significance of the statement since merit itself implies that the same is based on the merit list prepared as per seniority. It may be further be taken note of that another note in that statement shows that the admission is given to candidate no.2 in the merit list of LL.M first year and it is stated that the petitioner is in the 11th position in the merit list and there are four applicants above him in the merit list who have applied for admission to the Jubilee Hall. In this behalf the petitioner has already stated that these four persons have already taken admission in another hostel and, thus, this would not come in the way of the petitioner being admitted to the hostel. Not only this, once the 5% weightage is given to the petitioner, the petitioner would be above the merit of the other four candidates as referred to above.

21. I am, thus, of the considered view that for all the aforesaid reasons the petitioner would be entitled to admission to the respondent hostel Jubilee Hall.

22. Before parting with the matter, I am constrained to comment on certain aspects which have come to the notice of this Court during the proceedings of the present matter. The admission process apparently was started in November, 2003 and took shape only in December, 2003 when more than half the term was over. This is an extremely undesirable situation. Once the departments finalise

their merit list, expeditious steps should be taken to fill-up the seats in the hostel on merit as otherwise students are left to fend for themselves. The second aspect arises on account of the fact that each candidate has to apply to different hostels and there is bound to be over-lapping in this procedure. The University must consider the feasibility of a centralised admission procedure to the hostels where the options/merit of the candidate are taken into consideration instead of making the student apply to different hostels. Lastly, for the Law Faculty admissions there should be specified bifurcation of seats under different categories for the three years of LL.B course and two years of the LL.M course to obviate the possibility of any arbitrariness or favoritism. It may also be noticed that the petitioner was asked to leave the accommodation while admittedly even on date there is a person who is in unauthorised occupation of a room and no action has been taken to clear the room. The petitioner has also given names of other persons who were permitted to continue to stay as guests and the only unsatisfactory answer in the counter affidavit is that these students were ultimately found eligible. I consider it appropriate that these matters be considered by the Vice-Chancellor of the University and for the said purpose, the judgment be placed before him for necessary action.

23. A writ of mandamus is issued directing the respondent Jubilee Hall to admit the petitioner to the hostel which has been wrongly denied to the petitioner, subject to the petitioner fulfilling all other requirements and needful be done within a period of 10 days from the date of this judgment.

24. I must also express my appreciation for the manner in which the petitioner conducted the case in person and the clarity with which he expounded the propositions.

25. The rule is made absolute, leaving the parties to bear their own costs.