

(1993) 01 DEL CK 0017

In the Delhi High Court

Case No : C.M.P No. 8040 of 1992 in C.W.P No. 3886 of 1992

Ajay Bhushan Kalia

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Citation : AIR 1993 Delhi 152

Hon'ble Judges : C.L. Choudhary, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; V.P. Chaudhary, with A. Mariarputham and Ms. Sushma Sachdeva, for the Respondent

Judgement

1. This order will dispose of Civil Miscellaneous Application No. 8040/92 in C. W. 3886/ 92. CM. 376/ 92 in C.W. 2671/92, CM. 8037/92 in C.W. 3744/92, C.M. 8042/ 92 in C.W. 3959/92, C.M. 8043/92 in C.W. 3899/92, C.M. 8045/92 in C.W. 2960/ 92, C.M. 8042/92 in C.W. 3919/92, C.M. 8044/92 in C.W. 3995/92, C.M. 8059/ 92 in C.W. 193/92 & C.M. 376/93 to C.W. 2671/92.

2. The petitioner is a graduate from University of Delhi having scored 44% marks. He is seeking admission to the LL.B. 1st course of the University of Delhi for the academic year 1992-93. On 22-6-1992 the respondent University issued an advertisement in the local newspaper signifying that there would be a test for the admission to the LL.B. three years degree course. It was further provided that the test was open to candidates who have passed Master's/ Bachelor's degree examination under 10 + 2 + 3 scheme of Delhi University or an examination recognised by Delhi University as equivalent thereto securing at least 50% marks in the aggregate and have completed 20 years of age as on 1-10-1992. The petitioner being desirous of taking admission in LL.B. course appeared for the entrance test. He secured 185 marks out of 600. He was refused admission by the University of Delhi on the ground that he had secured less than 50% in graduation. The petitioner, feeling aggrieved of the stand taken by the University, approached this Court by way of a writ petition under Art.

226of the Constitution of India challenging the eligibility condition of minimum 50% marks in graduation being illegal, arbitrary, discriminatory and unconstitutional.

3. In similar circumstances 2 other students -- Jayshree Ravi and Anil Kaushal. filed a petition being C.W.P. 2603/1992 challenging the eligibility condition of 50% marks in the aggregate as illegal, arbitrary and irrational. A Division Bench of this Court comprising Mahinder Narain and Jaspal Singh, JJ. heard and decided that writ petition by judgment dated 14-12-1992. Mahinder Narain, J. held that the prescription of minimum 50% marks in B.A. as a condition precedent to sit in the entrance examination prescribed by the University of Delhi was arbitrary, unreasonable and violative of the provisions of Arts. 14 and 21of the Constitution of India and as such that condition was liable to be struck down and , was quashed. It was further directed that the petitioners were also entitled to mandamus that they be permitted to appear in the entrance examination for the admission to LL.B. course for the academic year 1992-93. However, Jaspal Singh, J. did not agree with Mahinder Narain, J. and by a separate judgment upheld the validity of the prescribed qualifying marks of 50% for sitting in the . entrance examination. In view of the difference of opinion amongst the two learned Judges the following order was passed:--

"In view of the difference of opinion between us, in accordance with Cl. (26) of the Letters Patent for the High Court of Delhi there has to be a reference to one or more other Judge"s. The question which would need to be considered is formulated as follows :--

Is the eligibility condition of obtaining at least 50% marks in the Graduate/Post Graduate examination for appearing in the entrance test for admission to the first year of LL.B. course a valid condition keeping in view the provisions of Arts. 14 and 21of the Constitution of India?

In as much as one of us (Jaspal Singh, J.) has held that the condition imposed is not vocative of Arts. 14and 21of the Constitution and that two of the Division Benches of this Court have answered the above said question vis-a-vis Art. 14of the Constitution, and one of us (Mahinder Narain, J.) has held that the aforesaid observations of the Division Benches have been watered down by the Supreme Court in Miss. Mohini Jain Vs. State of Karnataka and others, , and further that the condition imposed is vocative of Arts. 14and 21of the Constitution, it would be appropriate that a larger bench is constituted by Hon"ble the Chief Justice for hearing the aforesaid question.

The papers may accordingly be laid down before Hon"ble the Chief Justice for Constituting a larger bench.

Sd/-

Mahinder Narain, J.

15th December, 1992.

Sd/-

Jaspal Singh, J."

In these circumstances the matter has been placed before me for decision.

4. The petitioner has filed the present application which is under disposal, seeking directions to the respondent for grant of provisional admission pending disposal of the writ petition. It is stated in the application that the students who have got much less marks than the petitioner in the entrance examination have already been admitted and are attending the classes. The hearing and disposal of the writ petition is likely to take some time and in case the petitioner is not allowed to take the 1st Semester examination, to be held in the middle of January, 1993 he shall suffer irreparable loss and injury and shall lose an academic year, and in case he succeeds in the writ petition he cannot be compensated by any means. Under these circumstances it has been prayed that the respondent may be directed to grant the provisional admission and the petitioner may be allowed to take the 1st Semester Examination.

5. The application is being contested on behalf of Delhi University on various grounds inter alias that two division benches of this Court have upheld the eligibility condition of at least 50% marks in Graduation. The petitioner does not satisfy the eligibility condition having secured less than 50% marks in Graduation and he is not entitled to admission. Only those candidates have been admitted to the 1st year of the LL.B, course who satisfy the condition of having obtained 50% marks. The Supreme Court, in quite a number of decisions has disapproved the practice of granting provisional admissions unless there are very strong reasons to do so.

6. I have heard the learned counsel for the parties and have best owned my thoughtful consideration to the controversy involved.

7. In support of his arguments Mr. Chaudhary appearing for the University relied upon a judgment of the Supreme Court in the case of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, wherein it was observed as follows (Para 3, at p. 187 of AIR):

"With this short prelude, now to the facts of the case which disclose a sad story indeed -- not because those in charge of the institutions commit errors but because the Courts start directing the authorities to grant provisional admissions to students even if they did not deserve the same in some cases. Experience has shown that in view of the huge accumulation of arrears in Courts, it takes a long time for the petitions to be disposed of, hence we have evolved the practice of forcing the authorities to grant provisional admissions which has resulted in a piquant and pungent situation because by the time the case comes up for hearing, the rejected candidates having completed their course and having appeared at the examination with every hope of success become eligible for admission to the higher course in case of success though the Court may

ultimately find that their initial rejection was justified. Such a situation becomes a sort of a *fait accompli* for those in charge of the institutions as a result of which the candidates are admitted in due deference to the desire of the Court by increasing or creating vacancies even in the absence of suitable and proper facilities to train the extra candidates. This results in an anathema and a dilemma for which there is hardly any remedy. The present cases are a clear illustration of this problem. Our suggestion, Therefore, is that whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the Court is fully satisfied that the petitioner has a cast iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible. In order, however, to test this fact even a short notice may be given to explore as to what the other side has to say and thereafter if the Court is satisfied that there is strong *prima facie* case and the matter needs through examination, provisional admission may be given. We hope and trust that the High Courts would in future discontinue the practice of lightly granting provisional admission to the candidates at the time of regular admissions, as observed above. It is needless to state that this Court on its part would also be extremely reluctant to grant provisional admission and would do so only in a very special case. The fundamental reason for this is that otherwise the institutions are likely to become overcrowded by candidates, eligible or ineligible, efficient or inefficient. Unless the Institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out Doctors not fully qualified which would adversely affect the health of the people in general."

8. He also relied upon a recent judgment of the Supreme Court delivered in the case of *U.P. Junior Doctors' Action Committee and Others Vs. Dr. B. Sheetal Nandwani and Others*, wherein the following observation was made (at p. 673 of AIR) :--

"It is a well known rule of practice and procedure that at interlocutory stage a relief which is asked for and is available at the disposal of the matter is not granted. The writ petitioners wanted admission into postgraduate course as the main relief in the writ petition. To have it granted at the threshold creates a lot of difficulties. In a case where the petitioner ultimately loses in a case of this type a very embarrassing situation crops up. If he has by then read for two or three years, there is a claim of equity raised on the plea that one cannot reverse the course of time. In a case of this type equities should not be claimed or granted. Taking an overall picture of the matter we are of the view that unless there is any special reason to be indicated in clear terms in an interlocutory order as a rule no provisional admission should be granted and more so into technical courses."

9. Mr. Chaudhary also relied upon a decision of the Division Bench of this Court in the case of *Jayant Sud v. Faculty of Law*; reported as (1992) 47 DLT 182, wherein the eligibility condition of securing 50% marks in the degree

examination was upheld.

10. On the other hand Mr. Saini appearing for the petitioner contended that there is a difference of opinion amongst the two learned Judges and one of the Judges i.e. Mahinder Narain, J. has held that the eligibility condition of 50% marks is invalid, unconstitutional and violative of Arts. 14 and 21 of the Constitution of India. The matter is yet to be finally heard and decided. In case the petitioner succeeds in the writ petition he cannot be compensated by any means. On the other hand if he is granted provisional admission and is allowed to sit in the examination no harm will be done to the University. But in case he is not allowed to take the examination he shall suffer irreparable injury.

11. I have given my thoughtful consideration to the entire matter. In case of Krishna Priya Ganguly and Others Vs. University of Lucknow and Others, the Supreme Court has laid down that the provisional admission could be granted only in a very special case. But since there is a difference of opinion between the two learned Judges and one of them, Mahinder Narain, J. has struck down the condition of eligibility of 50% marks on the ground that it is arbitrary and discriminatory and is violative of Arts. 14 and 21 of the Constitution of India. No doubt, Jaspal Singh, J. has upheld the validity of the aforesaid eligibility condition. In my opinion the petitioner has a strong prima facie case because it is yet to be decided as to which of the views taken by Mahinder Narain, J. or Jaspal Singh, J. is correct. In case the petitioner is granted provisional admission and he is allowed to appear in the 1st Semester examination the University will not suffer any injury. On the other hand if the petitioner is not allowed to take the 1st Semester examination and ultimately he succeeds in the writ petition he shall suffer irreparable loss and he will lose one academic year.

12. I understand that the students who have secured 100 or more marks have been admitted in the LL.B. 1st year. The petitioner has secured 185 marks. Taking into consideration the totality of circumstances, I am of the view that the petitioner is entitled to the grant of provisional admission and taking 1st Semester examination. Accordingly, I direct the respondent to grant provisional admission to the petitioner and allow him to take the 1st Semester examination. However, I make it clear that the provisional admission so granted or taking of 1st Semester examination by the petitioner shall not create any light in favor of the petitioner in case he ultimately fails in the writ petition.

13. Petition allowed.