

(2021) 01 DEL CK 0189

In the Delhi High Court

Case No : Letter Patent Appeal No. 10 Of 2021

Arjun & Anr

APPELLANT

Vs

University Of Delhi & Ors

RESPONDENT

Date of Decision : 08-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2021) 01 DEL CK 0189

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; Jyoti Singh, J

Bench : Division Bench

Advocate : Himanshu Sharma, Amit Bansal, Seema Dolo

Final Decision : Dismissed

Judgement

D. N. Patel, CJ

Proceedings in the matter have been conducted through video conferencing.

CM APPL. 684/2021 (exemption)

Allowed, subject to all just exceptions.

The application is disposed of.

LPA 10/2021, C.Ms.No. 683/2021 (stay)

1. The present appeal has been preferred by the appellants (original petitioners) feeling aggrieved and dissatisfied with the judgment and order of the

learned Single Judge dated 21st December, 2020 in W.P.(C) No.10777/2020.

2. Having heard the learned counsel for the appellants (original petitioners) and looking to the facts and circumstances of the case, what emerges is

that the appellants are in effect seeking amendment/addition to the guidelines for admission process in the Delhi University based on sports quota.

Learned counsel appearing for the appellants (original petitioners) has drawn the attention of this Court to the â??Bulletin of Information for

Admission to Under Graduate Courses (2020-2021)â?? which is appended as Annexure P/1 (page No. 71).

3. Relevant part of the aforesaid Bulletin with regard to Games or Sports considered for admission on the basis of the sports quota, reads as under :-

â??B. Games / Sports considered for Admission on the basis of Â Sports

Team Games

Baseball (M), Basketball (M&W), Cricket (M&W), Football (M&W), Handball (M&W), Hockey (M&W), Kabaddi (M&W), Kho-kho (M&W),
Netball (W), Softball (W) and Volleyball (M&W)

Dual & Combat Sports

Badminton (M & W), Boxing (M&W), Judo (M&W), Squash (M&W), Table Tennis (M&W), Taekwando* (M&W), Tennis (M&W) and
Wrestling (M&W).

*Kyorugi

Individual Sports

Archery** (M&W), Athletics (M&W), Chess (M&W), Diving (M&W), Gymnastics (M&W), Shooting***(M&W), Swimming (M&W) and
Weight-lifting (M&W)

**Compound & Recurve

****10 Meter Air Pistol & 10 Meter Air Rifleâ??

4. As per the aforesaid Guidelines, for admission on the basis of sports quota, various games have been included for reservation of the seats. As an

illustration, Baseball is considered for admission on the basis of sports quota for male candidates, Basketball is for both male as well as female

candidates. Similarly, Cricket is for both male as well as female candidates and Netball is only for female candidates.

5. Learned counsel appearing for the appellants submits that the appellants herein are sportsmen who have secured Gold Medals in Netball game at

Sub-Junior Nationals under 16, Junior Nationals under 19 and Senior Nationals in Male Category. The grievance canvassed by counsel for the

appellants is that while the guidelines have included Netball as a game for the female candidates, the same is not included for the male category and

no plausible explanation is forthcoming for not including Netball under the male category. The classification sought to be made is without a reasonable

nexus with the object sought to be achieved and is violative of Article 14 of the Constitution of India. It is argued that the learned Single Judge has

erred in not allowing the prayer in the Writ Petition of issuing a writ of mandamus to respondent No. 1 to include Netball in the Men Section for

admission to the Under Graduate Courses 2020-21 in the Delhi University on the basis of sports quota.

6. We are not in agreement with the aforesaid contention of learned counsel for the appellants (original petitioners) for the following reasons :

(i) Annexure P/1 which are the Guidelines for admission on the basis of sports quota (relevant page being 128), is a policy decision of the Delhi University.

(ii) In our view, the learned Single Judge has rightly not exercised his extraordinary jurisdiction under Article 226 of the Constitution of India to

interfere with the policy decision of the respondent University. Which game should be included for determining the admission quota on the basis of

sports and amongst them which game should fall to the male/female category, is essentially a conscious policy decision, based on the wisdom and

expertise of the policy maker. It is well settled that Courts should be extremely slow in interfering with policy decisions, unless they are completely

arbitrary, as formulation of policies is neither the domain nor the prerogative of the Courts.

(iii) The appellants have participated in the selection process in the category of Basket Ball in terms of the Information Bulletin issued by the Delhi

University, completely aware of the guidelines including the non-inclusion of Netball in the Men Category. They cannot now turn around to

challenge the guidelines to improve their ranking for admission. It is well settled that once a candidate participates in the selection process, he cannot

turn around and challenge the same, having been unsuccessful and in this context, the learned Single Judge has rightly relied on the judgement in W.P.

(C) 7832/2020 titled Ms. Meenakshi & Ors. vs. AIIMS.

7. Having gone through the impugned judgement, we are of the view that the aforesaid aspects of the matter have been properly appreciated by the

learned Single Judge while deciding W.P.(C) 10777/2020 vide judgment and

order dated 21st December, 2020.

8. It has been held by the Supreme Court in *Mabel v. State of Haryana and Others* reported in (2002) 6 SCC 318 in paragraphs 3, 4 and 5 as under:

“3. It is submitted by Mr K.V. Viswanathan, the learned counsel for the petitioner that clause 18 of the Information Brochure cannot be

so interpreted as to debar her from seeking admission to the course for all times to come and if the order is not reviewed she would be

precluded from seeking admission in MBBS course forever, which is an unintended punishment. Mr Sanghi would contend that clause 18

bars a student who has taken admission in one course, to seek admission in another course.

4. It will be useful to refer to clause 18 which reads as under:

“18. The candidates already admitted in any medical/dental colleges will not be considered eligible for admission to the course.”

5. A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be

ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to

ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek

admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has

taken admission, and further, such a change would deprive another eligible candidate from seeking admission to the other course.

Obviously, the intention of the authority concerned in framing clause 18 appears to be to ensure that a candidate who has already secured

admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It,

therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After

completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4/5 years, as the case

may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice

provided other conditions of admission are satisfied. In other words, the bar

under clause 18 in this case will cease after the BDS course

for the academic year 2000-01, in which the petitioner has taken admission comes to an end after 5 years. In the light of the above

observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in

2000-01.â??

(emphasis supplied)

9. It has been held by the Division Bench of this Court in *Nidhi Goyal v. Medical Sciences University of Delhi* reported in (2015) SCC OnLine Del

8347 in paragraph Nos.2, 9, 11 and 12 as under:-

â??2. Clause 9.11 impugned in this petition is as under:

â??9.11 A candidate who selects/is allotted a seat in the last counseling shall have no right to surrender the seat. If he/she does so, he/she

shall be debarred from appearing in the subsequent PGMEM till the duration of the course concerned is over.â??

xx xx xx

9. We have considered the rival contentions. The hard fact of the matter is that the petitioner took admission in the MS (Ophthalmology)

course in the year 2014 knowing fully well of Clause 9.11 aforesaid. The question is, whether she can now be relieved therefrom. We are of

the opinion that the petitioner, after applying for appearing in AIPGMEE on the terms and conditions contained in the Bulletin of

Information (supra) and after appearing in the examination and securing admission, cannot be heard to contend otherwise. The allegation,

of some officials of the respondent having assured the petitioner that upon paying the bond amount she would be entitled to take the

examination in the next year, is not only vague as particulars of any official(s) have not been given but unbelievable too. In fact, if the

petitioner had been so assured, she would in her letter dated 17th July, 2014 of resigning from the seat would not have sought the

permission of the respondent to appear in the next round of counselling. Admittedly, no such permission was granted to the petitioner.

Â xx xx xx

11. One of us (Rajiv Sahai Endlaw, J.) in *Jyoti Yadav v. Government of NCT of*

Delhi relying on *G. Orak Nath Balu Shinde v. State of*

Maharashtra and Amlan Jyoti Borooah v. State of Assam (2009) 3 SCC 227 held that the terms and conditions of a brochure of admission

are binding on all persons in the conduct of examination and all are expected to adhere thereto strictly in order to avoid prejudice to any

person and that candidates who take part in selection process knowing fully well the procedure laid down therein, cannot be permitted to

turn back and assail the same after having been declared unsuccessful. Mention may also be made of *Madan Lal v. State of Jammu &*

Kashmir (1995) 3 SCC 486 also laying down that if a candidate takes a calculated chance and appears at the interview, then only because

the result of interview is not palatable, he cannot turn around and subsequently contend that process of interview was unfair or the

Selection Committee was not properly constituted; when the petitioner appears at the examination without protest and when he finds that he

would not succeed at the examination, he files a petition challenging the examination, the Court should not grant relief to the petitioner.

Reference in this regard may also be made to *Manish Kumar Shahi v. State of Bihar* (2010) 12 SCC 576. Recently also in *C handigarh*

Administration v. Jasmine Kaur (2014) 10 SCC 521 it was reiterated that if the candidate takes a calculated risk/chance by subjecting

himself/herself to the selection process, after knowing his/her non-selection cannot turn around and contend that the process of selection

was unfair. It was further held that once the candidate is aware that he/she does not fulfil the criteria of the prospectus, he/she cannot be

heard to say that he/she chose to challenge the same only after preferring the application and after the same was refused on the ground of

eligibility.

12. The Supreme Court in *Mabel v. State of Haryana* (2002) 6 SCC 318 was concerned with a clause which barred a student who had taken

admission in any Medical/Dental College from seeking admission in another course during the period of the course in which the candidate

had taken admission. It was held that though such a condition may appear to operate harshly but is meant to ensure that a candidate who

has already secured admission should not abandon the studies to seek admission

in another course and that such a condition is in public interest for otherwise it would result in the wastage of the seat in the course in which the candidate had taken admission and that further such a change would deprive another eligible candidate from seeking admission to other courses. It was also held that such a condition could not be held unreasonable since the bar was with respect to that university/ college only and that too only for the duration of the course in which the admission had been taken.â?? (emphasis supplied)

10. In view of the aforesaid facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge while passing the judgement dated 21.12.2020 in W.P. (C) 10777/2020. Hence, there is no merit in this appeal and the same is therefore dismissed with no order as to costs.