

(2005) 05 DEL CK 0152

In the Delhi High Court

Case No : Writ Petition (C) 3537 of 2005

Arun Kumar Garg

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 20-05-2005

Acts Referred:

Citation : (2005) 122 DLT 579

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Petitioner-in-Perso, for the Appellant; S.K. Luthra, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The present writ petition brings to the fore the manner in which judicial pronouncements are not being given effect to in a timely manner thereby defeating the directions made therein. This Court vide a judgment which is reported at 112 (2004) DLT 53 entitled *Abhinitam Vs. University of Delhi and others* issued specific directions in its judgment dated 8th April, 2004 directing the respondents as follows:-

"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 shade 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 overlapping in this procedure. The University must consider the feasibility of a centralized 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 LLB course and two years of the LLM 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."

This judgment cited with approval yet another pronouncement by this Court reported at Manish Chandra Pathak Vs. University of Delhi and Others,

2. Despite these two authoritative pronouncements, students undertaking the LLB or the LLM courses in the Faculty of Law of the Delhi University are being put to tremendous difficulties in allocation of seats in the hostels.

3. The petitioner is one such student who appeared in the LLM Entrance Test 2004 conducted by the Faculty of Law of the respondent no.1 on 27th June, 2004. He secured 13th rank in the merit list and was admitted on 20th July, 2004 to the LLM first year course. As the petitioner hails from District Hisar (Haryana), he has no place of residence in the entire National Capital Region. The petitioner, for want of accommodation, was compelled to take on rent accommodation at expensive rent which he says he is unable to afford and is also facing difficulty on account of the expenses of food, lodging and transportation.

4. In these circumstances the petitioner applied for admission to the Jubilee Hall Hostel of the respondent no.1. Upon considering the rules set out in the Handbook for 2003-2004 for the Jubilee Hall Hostel, the directions were given by this Court in the case of Abhinitam on 8th April, 2004, yet the Handbook for the current academic year i.e. 2004-05 which was handed over to the petitioner was the same as for the year 2003-04. The respondents had taken no decision whatsoever in terms of the directions made. Perusal of the handbook which has been placed on record as annexure P-3 shows that merely by scoring out the year and insertion of the fresh academic year 2004-05 in hand, the earlier handbook was being treated as Handbook for the admissions to the current year. The petitioner's application form was dated 27th September, 2004. The first admission list displayed on 6th November, 2004 shows the name of one Mr. Prabhu Narayan Singh of LLM first year at Serial no.48 in the General Category Seat for LM first year students. This candidate however had been given admission to the PG means Hostel and had withdrawn his application for hostel accommodation in Jubilee Hall as back as on 1st November, 2004-5. It is contended that one Mr. Shailender Pratap Singh of LLM first year who was next in the merit list of LLM first year, filed his objection against the respondents for selecting the name of Prabhu Narain Singh despite his withdrawal. He was

assured that the respondents would issue a second admission list for the LLM first year general category which was stated as remaining vacant.

6. According to the petitioner out of 13 persons who were shown in the merit list dated 6th November, 2004, only five were eligible as the others were either residents of Delhi or admitted to the three year course of LLM. Finally all other candidates above the petitioner in the merit list lost their candidature on the ground of having been admitted to other hostels or because they withdrew from the admission process.

7. In these circumstances, as no action was taken by the respondents, to display a second admission list, the petitioner made a written representation to respondent no.2 on 28th January, 2005 requesting them to declare the 2nd admission list and to admit the petitioner as there was no other lawful claimant. No action was taken thereon. The petitioner again addressed representation on 5th February, 2005 and 8th February, 2005 to grant permission against the vacancy to the petitioner. The respondents informed the petitioner that as the admission committee would not meet for filling up the one seat which was lying vacant on account of withdrawal of Prabhu Narain Singh, there would be no occasion to issue a second list.

8. The petitioner has challenged the action of the respondents in refusing to fill up the vacancy against which they had wrongfully notified the name of Prabhu Narain Singh on grounds of arbitrariness, illegality, high handedness and has specifically contended that the respondents have failed to take any action as per the specific directions of this Court in *Abhinitam*'s case(supra).

9. In answer to the aforestated contentions Mr. S.K. Luthra, learned counsel appearing for the respondents has contended that the University was directed to specifically bifurcate seats under different categories for the three years of LLB and two years of LLM courses to obviate the possibility of arbitrariness or favoritism. Accordingly, it is submitted, that out of the total 40 seats available under the Law Faculty quota in Jubilee Hall, the respondents had effected admission strictly on the basis of the existing strength of students to each course in the Faculty. According to this two seats can be allotted to LLM course (1st and 2nd year) and rest of the 38 seats to LLB course (1st, 2nd and 3rd year).

Learned counsel has placed reliance on the averments made in the counter affidavit of the respondent no.1 wherein it is stated that in terms of the directions made in *Abhinitam*'s case (supra) the seats were bifurcated in the meeting held on 18th March, 2005 and 6th April, 2005. The aforestated bifurcation has been made in terms of this decision taken on 6th April, 2005. The material terms whereof read as under:-

"a) The total number of seats available in Jubilee Hall under the Faculty of Law is 40, which includes 13 reserve seats as per University Rules.

d) As per the direction of high court dated 8th April, 2004, in the case of

Abhinitam Vs. University of Delhi via WP 898/2004, it is quoted that:

"For the law faculty admission, there should be specified bifurcation of seats under different categories for the three years of LL.B. Course and two years of LL.M. Course to oblige the possibility of any arbitrariness or favoritism".

In the light of above directions, it was decided to divide the existing seats in the Faculty of Law for LL.B (1st, IInd, IIInd year) and LL.M (1 and IInd year courses on the basis of strength of students in each course.

e) Thus on the basis of point "c" and the decision in "d" the seats are divided as follows:

Out of total 40 seats, 2 seats should be allotted to LL.M. Course and rest 38 seats to LL.B. Course.

f) On the basis of total number of seats available in Jubilee Hall for the Faculty of law, the following should be the bifurcation under different courses (LL.B. 1St, IInd and IIInd and LL.M. 1St and IInd year) on the basis of strength of students in each course.

Course Present strength Seats to be allocated

i) LLB 1st year 494 14

ii) LLB 2nd year 441 13

iii) LLB IIInd year 371 11

iv) LLM 1st year 31 01

v) LLM IInd year 29 01

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.....40.....

According to the distribution in "f" no seat is available in LL.M. Course and all vacant seats should go to LL.B. Course."

It is further contended that three bonafide students of LLM course are staying in Jubilee Hall and hence no seat exists at the moment in the LLM course.

10. Based on these submissions it has been contended that the petitioner cannot be accommodated.

The petitioner had brought to the notice of this Court the fact that the respondents had given admission to one Mr. Febroneous Sil on 13th November, 2004 against the LLM quota even though he was not deserving as per the merit list. This was admitted in reply on behalf of the respondents and the defense taken was that this candidate was admitted on 13th November, 2004 prior to the decision with regard to the distribution of seats which was taken on 6th April, 2005.

Learned counsel has also urged that in view of the stipulation in clause 5.4 of the brochure, the academic year being over, this writ petition has been rendered infructuous.

In answer to the contention that all the seats for the foreign quota remained vacant and that the respondents could have very well converted the same for admission by the general category candidate of all Faculties, it has been urged that there are no rules for conversion of foreign quota seats and that these had to be kept vacant as there were no applicants for the same.

11. Having considered the entire matter, I am unable to accept the contentions raised on behalf of the respondents. It is an admitted fact that the respondents had wrongfully notified the name of a candidate namely Prabhu Narain Singh who had withdrawn his name for admission to the Jubilee Hall as back as on 1st November, 2004 Having so accepted the fact that one seat was available for the LLM general category candidate, the only option available to the respondents to effect admission to the said vacant seat in accordance with merit. The respondents have admittedly failed to adhere to the merit and have admitted one Mr. Febroneous Sil who has admittedly been given admission not as per merit. I find no force in the submissions made on behalf of the respondents that this admission was effected on his being a reserved category candidate. This submission is also devoid of any merit. Undisputably, the respondents had notified availability of one seat for the LLM first year candidate and there could possibly have been no reservation in respect of the only one available seat. The respondents were also not treating the same as a reserved category seat having allotted the same to the Prabhu Narain Singh and, Therefore, could have effected admissions there to only in terms of the merit list.

12. From the manner in which the respondents have proceeded in this matter, it is a glaring instance of failing to comply with the Court directive. Despite the judicial pronouncement on 8th April, 2004, the respondents commenced the admission process only after the academic courses began in September, 2004 Admissions were not complete even in November, 2004 and thereafter.

13. The respondents' reliance on the decisions taken on 18th March, 2005 and 6th April, 2005 is also wholly misconceived. The decision taken in these meetings can have no bearing on the admission process for which the handbooks have been distributed much earlier and admissions effected in November, 2004

14. The entire purpose of providing hostel facilities in the Delhi University is to enable deserving students the facility of campus accommodation so that their accommodation problems including messing etc. are obviated. Despite existence of vacancies and specific directions of the Court, the respondents are effecting admissions arbitrarily and long after the academic course has commenced. As noticed here-in-above, this Court in the judgment reported at Manish Chandra Pathak Vs. University of Delhi and Others, . had specifically held that seats pertaining to the foreigner's quota of the Law Faculty had to be allocated to the

general category of students of the Law Faculty. This judgment was cited with approval in *Abhinitam's* case (*supra*). Despite these pronouncements, undoubtedly four seats of the foreign quota candidates remained unfilled.

15. The petitioner has pointed out that no prejudice would result to any foreign student if these seats were made available to general category students, even in the future inasmuch as the LLB 3rd year candidate and the LLM 2nd year candidate would vacate the hostel on expiry of the academic session and consequently the seats would be available against which the quota can be maintained. I find force in this submission.

16. This writ petition was been filed by the petitioner in person as back as on 26th February, 2005 after the petitioner failed to get redressal of his grievances from the respondent no.1. The same has remained pending while the respondents took time to examine the issues. On 2nd March, 2005 this Court has recorded the following order:-

"Issue notice to the respondents to show cause why rule nisi be not issued against them, returnable on 21st March, 2005.

Mr. S.K. Luthra, Advocate accepts notice on behalf of the respondents and submits that the admission process to the hostel is still on and if the petitioner is eligible and entitled his case could be considered. Let the position in this behalf be placed on record within one week.

List on 21st March, 2005."

17. Then again on 21st March, 2005 it was stated as hereunder:-

"It is submitted by learned counsel for the respondents that the University is in the process of finalising the second list to the Jubilee Hall and the case of the petitioner shall be considered accordingly.

It is directed that this process shall be completed within two weeks.

Post on 14th April, 2005."

18. In order to establish that no candidates existed above him in the merit list, the petitioner has filed an affidavit dated 13th April, 2005 wherein it was stated that the candidates had visited the Jubilee Hall to submit their withdrawal of the candidature in writing but the authorities had refused to accept the same. Accordingly the withdrawals of the candidates was sent by post and copies thereof were placed on record. The petitioner had specifically set out the names of the candidates and the names of the other hostels to which they had been admitted in para 9 of such affidavit.

These facts have not been disputed on the Court record by the respondents. The admitted position remains that there is no other claimant from the LLM first year course to a seat in the Jubilee Hall or above the petitioner in the order of merit.

19. It has been pointed out that the final examinations of the petitioner are

starting from 27th May, 2005 and ending on 6th June, 2005 and that the academic session for the purposes of this course is not over. Perusal of the handbook also shows that a candidate is required to vacate the hostel only after the final examinations are over. It is, Therefore, not open to the respondents to contend that the academic year is over. Further, having failed to take action in the matter, the respondents cannot be permitted to fault the petitioner or defeat his claim on a plea of delay.

20. I have already found that the respondents have acted arbitrarily and illegally in not making admission to the LLM first year seat as per the order of merit. The respondents were bound by the representations made by them while notifying the name of the general category candidate Prabhu Narain Singh in the list on 6th November, 2004 to the effect that the same was a general category seat and could not have given admission subsequently to a candidate by treating the same as a reserved seat. There was, in any case, only one seat for admission.

21. The petitioner has also pointed out that Abhinitam, the petitioner in the aforesaid case has been admitted this year as a LLM second year against a foreign quota seat which was converted to the general pool. The petitioner further points out that there is only one student namely Alok Rajoria of the LLM 2nd year who is staying as a bonafide student in the Jubilee Hall and as such the seat for the LLM first year is a general category seat and is still lying vacant. There is no dispute on record to these facts by the respondents. It is also to be noticed that the decision dated 6th April, 2005 has been taken during the pendency of the present writ petition and two weeks before the filing of the counter affidavit.

22. In view of the foregoing discussion, I have no manner of doubt that the petitioner was entitled to be given the seat against the LLM first year quota. The vacancies in the hostel exist and the petitioner cannot be deprived of the benefit of hostel accommodation in such arbitrary manner.

23. I, Therefore, issue a mandamus to the respondents to admit the petitioner to the Jubilee Hall Hostel subject to the petitioner fulfilling all other requirements within a period of ten days from the date of this judgment. If necessary, the petitioner shall be accommodated against the vacancies of the foreign quota seats. The petitioner shall be liable to make payment of charges with effect from the date that he is given admission.

24. This Court also records its appreciation for the ability with which the petitioner has put forth his case and manner in which he conducted the arguments.

25. The writ petition is allowed in above terms.