
(1993) 01 DEL CK 0038

In the Delhi High Court

Case No : Civil Miscellaneous Petition No. 7914 of 1992 and Civil Writ Petition No. 3983 of 1992

Brij Narain Singh

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Citation : (1993) 50 DLT 89

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

Bench : Single Bench

Advocate : D. Khadaria, V.P. Chaudhary, A. Mariaputham and Sushma Sachdeva, for the Appellant;

Judgement

C.L. Chandhry, J.

(1) The petitioner is seeking admission to the 1st year LL.B. course conducted by the University of Delhi. The petitioner appeared in the LL.B. entrance examination and secured 150 marks out of 600. He was declined admission by the University of Delhi on the ground that he had completed graduation on the 10+2+2 pattern of education and he could be granted admission only if he had obtained 55% marks in Graduation. The petitioner filed writ petition being C.W.P. No. 3983/1992 challenging the eligibility condition of 55% marks prescribed by the University for admission to the LL.B. Course which provides that candidates who have passed Bachelor's degree examination in 10+2+2/11+3 pattern leading to the award of the degree after 14 years of study securing at least 55% marks in the aggregate and should have completed at least 19 years of age as on 31.10.1992. According to the petitioner, in Graduation he had secured 50.40% marks and he was entitled to the admission in the LL.B. course.

(2) The University is opposing the petition filed by the petitioner.

(3) In similar circumstances another student Dinesh Pal also filed a writ petition in this Court being C.W.P. 2562/1992 challenging the eligibility condition of 55% marks

for the Graduate students of 10+2+2 pattern. The writ petition filed by Dinesh Pal came up for hearing before a Division Bench of this Court comprising of Mahinder Narain and Jaspal Singh, JJ. The writ petition was decided by Judgment dated 15.12.1992. Mahinder Narain, J. held that the eligibility condition of 55% marks in Bachelor's degree examination was violative of Articles 14 & 21 of the Constitution of India and it was struck down and Mahinder Narain, J. allowed the writ petition. But Jaspal Singh, J. did not agree with the view expressed by Mahinder Narain, J. and upheld the eligibility condition of 55% marks. There was a difference of opinion between the learned Judges and that is how the matter has been placed before me in accordance with Clause 26 of the Letters Patent for the High Court of Delhi.

(4) The petitioner has filed a Civil Miscellaneous petition being 7914/1992 which is proposed to be disposed of by this order. By this application the petitioner is seeking direction to the University for giving him provisional admission to the LL.B. course till the final disposal of the writ petition. It is stated that the petitioner will suffer irreparable loss and injury if he is not granted admission to the LL.B. course of the University and the same cannot be compensated in terms of money if the petitioner ultimately succeeds in the writ petition.

(5) The application is contested on behalf of the University.

(6) I have heard the learned Counsel for the parties and have bestowed 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 :

"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 along 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 fade case and the matter needs thorough 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 :

"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 post-graduate 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 over all 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. Choudhury also relied upon a decision of the Division Bench of this Court in the case of Jayant Sudy. Faculty of Law, reported as 47(1992) Dlt 182. wherein the eligibility condition of securing 50% marks in the degree examination was upheld.

(10) On the other hand Mr. Khadaria appearing for the petitioner contented 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 55% marks is invalid, unconstitutional and vocative of Articles 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 K.P. Ganguly (Supra) the Supreme Court has laid down that the provisional admission could be granted only in a very special case. 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 55% marks on the ground that it is arbitrary and discriminatory and is violative of Articles 14 & 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 150 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 right in favor of the petitioner in case he ultimately fails in the writ petition.