

(1992) 03 DEL CK 0064
In the Delhi High Court
Case No : C.W.P. No. 2695 of 1991

Jayant Sud

APPELLANT

Vs

The Faculty of Law

RESPONDENT

Date of Decision : 03-03-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Delhi University Act, 1922 — Section 23

Citation : AIR 1993 Delhi 25 : (1992) 2 ILR Delhi 835

Hon'ble Judges : D.P Wadhwa, J;D.K. Jain, J

Bench : Division Bench

Advocate : Mr. Ravinder Sethi Mr. S.C. Gupta, Mr. Arun Jaitley and Mr. Daljit Singh, Mr. R.K. Saini, Mr. B.K. Aggarwal, Mr. L.R. Goel, Mr. A.K. Sikri, Ms. Sumita Kapil, Mr. N.S. Vashisht, Mr. Mukul Rohtagi, Mr. Vijay Sondhi, Mr. J.P. Sengh, Mr. S.P. Mehta, Mr. Rishi Kesh, Mr. B.S. Narula, Mr. Shailesh Kapoor, Mr. C.K. Mahajan and Mr. D.P. Khadaria, for the Appellant; Mr. V.P. Chaudhary Ms. Sushma Sachdeva, Mr. Aditya Kumar and Mr. S. K. Luthra for Delhi University, for the Respondent

Final Decision : Allowed

Judgement

D.P. Wadhwa, J.—In this batch of writ petitions there is challenge in effect to the entrance test for LL.B. First Year Course of the Delhi University. The challenge is of three types in different writ petitions : (1) to the eligibility condition of having secured 50% marks in graduation for appearance in the entrance test; (2) not reserving 5% of the total seats under sports quota and not giving relaxation/weight age in the eligibility conditions accordingly for appearance in the entrance test; and (3) prescribing same eligible condition of having secured 50% marks both for graduates and post-graduates students.

2. For the academic year 1991-1992 Delhi University prescribed admission test for LL.B. Three Year Course. This was for the first time that such a test was prescribed. Earlier the admission was open to students having more than 50% marks in graduation and coming in merit on basis of their having secured

number of marks. The advertisement which appeared in newspapers regarding admission test was as under :--

"Last date for receipt Friday, May 31,
of applications. 1991.

Place and date of Test Delhi, Sunday,
June 30, 1991.

LL.B. Classes are held at :

Campus Law Centre -- Day (Main Campus) -- 500 Seats

Law Centre-I -- Evening (Mandir Marg) -- 600 Seats

Law Centre-II -- Evening (Dhaura Kuan) -- 400 Seats

There will be One Paper of 2-1/2 hours duration containing 150 Multiple-Choice Objective type questions designed to test the Legal Aptitude-cum-General Awareness of the candidates.

Eligibility : Admission Test is open to (a) candidates who have passed Master's/ Bachelor's Degree Examination under the 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 1-10-1991 or (b) who have passed Bachelor's Degree Examination under 10+2+2/11+3/ any other scheme of examination leading to the award of degree after 14 years of study securing at least 55% marks and have completed 19 years of age as on 1-10-1991. Relaxation in age up to one year may be granted by the Vice-Chancellor.

The Scheduled Caste/Tribe candidates must have secured at least the same percentage of marks at the Master's/Bachelor's Degree Examination as prescribed for passing the equivalent examination of Delhi University.

Relaxation : Up to 10% in minimum marks as indicated above to the blind and physically handicapped and 5% to children/widows of personnel of Armed Forces killed/disabled in action. The physically handicapped candidates shall be examined before their results are declared for giving them appropriate weightage."

3. It so happened that since the results of the qualifying examinations to become eligible to appear in admission test were not out, writ petitions were filed and by interim orders the petitioners were allowed to take the admission test subject to their securing qualifying marks as given in the eligibility condition. The results of the admission test were out. The petitioners qualified and some of them were even higher in merit in the merit list, but then when the results of qualifying examinations were out the petitioners found themselves to be in quandary as they had secured less than 50% marks prescribed for appearing in the admission

test. Some of the petitioners, as noted above, contend that since they fell under sports quota the condition of their having secured 50% marks should have been relaxed as in any other examination held by the Delhi University. The petitioners challenge the very basis of the admission test and said it served no purpose. We will note that all the petitioners fall in category (a) as mentioned in the eligibility conditions reproduced above.

4. The petitioners who claim their right to admission under sports quota also rely on the Bulletin of Information for Admission to Post-Graduate Courses issued by the faculty of Arts & Social Sciences of Delhi University. In this it is provided that not more than 5% of the total number of seats in each of the courses may be offered for admission on the basis of sports. The Bulletin then sets out in detail as to how an applicant can claim admission on the basis of sports, as to who is the authority to whom the application is to be made and who is to finalise the same after evaluating the criteria laid. The Bulletin also specifically mentions that the criteria for admission of students on the basis of sports shall be applicable in respect of all Post- Graduate Courses except Engineering, Medical Sciences and Business Management Courses. The argument on this basis is that sports quota was not done away with for admission in LL.B. Course.

5. The University has justified its action in holding the entrance examination for admission to LL.B. Course, the laying of the criteria, and doing away with the sport is quota.

6. The University and its various bodies are governed by the Delhi University Act, 1922, the Statutes and Ordinances issued there under. Under Ordinance II the Law Courses Admission Committee has been constituted. It consists of the Dean of the Faculty of law, the Professors and Readers in Law and two members appointed by Academic Council. The Academic Council is the supreme body governing the affairs of the University. For the academic year 1991-1992 the Law Courses Admission Committee determined the principles on which admissions were to be made and procedure Therefore to be followed. This was subject to review by the Standing Committee of the Academic Council. The Standing Committee had reviewed the principles laid by the Admission Committee and finally on 5 April 1991 the Academic Council approved the recommendations of the Standing Committee with certain modifications. These modifications are not quite relevant for our purpose.

7. It is the admitted case that earlier to academic year 1991-1992 the admission to the first year of LL.B. Course used to be on the basis of percentage of marks secured in the examination which formed the basis for admission to the LL.B. Course. There used to be categorisation on the basis of various courses and percentage of marks and those falling in the first category were preferred to those in the second, and those falling in the second category to the third and so on. There also used to be reservation on the basis of sports. However, for the academic year 1991-1992 the Law Courses Admission Committee decided that the admission test be held and laid rules therefore. As noted above, these rules

have been approved by the Academic Council as per the procedure prescribed. The Rules stipulated that entrance test "will be open to all those who have obtained at least 50% marks in graduate/post-graduate degree examination". Since results of graduate/postgraduate degree examinations were not declared, or these examinations were still on when the entrance test was to be held, it was, Therefore, provided that "those who have appeared or are appearing in the final year graduate/post-graduate degree examination are also eligible to take the test. They would be eligible for admission only if they secure at least 50% marks in their graduation/post- graduation results and submit proofs to that effect before the last date fixed for admission to the Dean, Faculty of Law". The Rules also prescribed that there would be no reservation of seats for sports. Sports quota was, thus, specifically done away with. The respondents have contended that though for some years in University had been having reservation of seats in some post-graduate courses on the basis of sports but that this reservation was not available in those courses which were specifically excluded by the Academic Council from the purview of sports quota. Even for sports quota the University had laid down criteria for admitting students wherever such reservation was available. The respondents also contend that the Bulletin of Information on which the petitioners relied pertain to Faculty of Arts and Social Sciences and not to the faculty of law. They say the Academic Council in its meeting on 5 April 1991 had clearly resolved that there would be no reservation on the basis of sports for admission to LL.B. Course and any information in the Bulletin of Information applicable to Faculty of Arts and Social Sciences leading to believe that there was sports quota in Law Faculty admissions was wrong and irrelevant. Respondents say that in the form prescribed for admission to LL.B. Course for the academic year 1991-92 there was no column pertaining to sports and none of the petitioners who now claim their right under sports quota were ever in doubt, and they never applied for admission on that basis. Further, none of such petitioners could have been misled by Bulletin of Information issued by the Faculty of Arts and Social Sciences when it is well known that Bulletin of Information is separately issued by the Faculty of Law. Both these Bulletins have been filed in these proceedings, the Bulletin of Information of the Faculty of Law did not provide for reservation of seats on the basis of sports. The respondents then say that their decision to do away with the sports quota for admission to LL.B. Course is neither arbitrary nor capricious and there could be no warrant for the proposition that the reservation of seats on the basis of sports must be provided in respect of every course. They say Law Course is a professional course and in consonance with the trend that reservation on the basis of sports should not be made in the case of professional courses, the concerned academic bodies did not provide for reservation on the basis of sports in the LL.B. Course. It is the admitted fact that there is no reservation of seats on the basis of sports in Medical, Engineering and Business Management courses. The respondents then also contend that the requirements stipulating that the candidate appearing for admission test must have secured at least 50% marks in aggregate in the examination on the basis of which admission is sought is valid. They say this

eligibility requirement is not a new innovation introduced only for the academic year 1991 -92 and that it had been in existence since the academic year 1985-86. They also say that such types of eligibility requirements also exist for various other courses in the University like M.B.B.S., M.B.A., etc.

8. The petitioners have submitted that when the respondents are holding entrance test laying of criteria of having secured 50% marks in graduate or post-graduate examination is wrong. They say that in any case criteria for graduate and post-graduate students could not be same. They have also pointed out the anomaly that some of the students who secured less than 50% marks in graduation were much higher in merit list in the entrance examination than those students who had secured 50% and above marks. It was also submitted that the rule prescribing 50% marks in graduation etc. was invalid as not having been properly framed. The doing away with sports quota was also challenged being arbitrary when quota was there in other post-graduate courses of the Delhi University. Reference was also made to the Bar Council of India Rules laying Standards of Legal Education and Recognition of Degrees in Law for enrolment as Advocates framed under the provisions of the Advocates Act, 1961. The argument of sports quota further proceeded on the basis that not only benefit be given for taking the entrance examination but also in the merit list declared thereafter.

9. Our attention has been drawn to a Bench decision of this Court in Kanki Darang v. Faculty of Law (C.W.P. No. 2175 of 1991, decided on 2 August 1991) wherein of the two petitioners there one was allowed to get admission on the basis of sports quota for the academic year 1991-92 for LL.B. Course. It is a brief judgment and we find that attention of the court was not drawn to the Bulletin of Information issued by the Faculty of law. The court was led to believe that University of Delhi had issued a Bulletin of Information for the academic year 1991-92 containing information to the effect that weightage for sports was going to be available for admission in post-graduate courses, and, Therefore, it was not right for any department of the University of Delhi or any one who was a part of the University of Delhi to go contrary to the declared intent of the University of Delhi. We have not been shown to which particular Bulletin of Information this reference was made in the judgment. We believe it must be with reference to the Bulletin of Information issued by the Faculty of Arts and Social Sciences. We have already noticed above that Law Faculty issued a separate Bulletin of Information. The generalisation in the judgment, Therefore, that University of Delhi separately issued any Bulletin of Information does not appear to be correct. This decision of the court does not lay down any law and must be confined to the, facts of that case. As regards the second petitioner in that very case the court ordered that as soon as his B.A. results would be announced and if he qualified to take the entrance examination after securing qualifying percentage of marks as given in the bulletin of information of the University of Delhi, with or without the benefit of weightage of sports, as mentioned therein, then his LL.B. entrance examination result be declared and a seat in the LL.B/ Course be kept reserved

for him. The court there, Therefore, upheld the validity of the criteria of securing 50% marks before appearing in the entrance examination.

10. In *Sanatan Gauda Vs. Berhampur University and others*, one of the questions was regarding interpretation of a rule laying down qualification for admission to the Law Course. The rule said any registered candidate may be admitted to the degree of Bachelor of Laws if he secured 40% or more than 39.5% of marks in the aggregate of various degree examinations or any other higher degree examination passed after graduation. The court was of the view that rule of 40% or more than 39.5% marks was meant only for graduates and not for postgraduate purposes. The court repelled the argument that qualifying marks meant both for graduate and post-graduate students. The court also observed that distinction made between graduates and post-graduates in the matter of the qualifying marks was as it ought to be since graduates and post-graduates could not be treated equally. A post-graduate student had a minimum of two years more of academic pursuit to his credit than the graduate before he sought admission to the Law Course. The court held obviously, Therefore, they could not be treated equal. This judgment, however, considered other arguments as well which we need not refer to, but then the distinction made between graduates and post-graduates was upheld as there was direct admission to the Law Course. This is now not so in the case before us. Here both graduates and post-graduates are asked to appear in the entrance examination, and the University, Therefore, took the decision that they have to be treated equally for that purpose. Reference was also drawn to a Bench decision of this Court in *Kanishka Aggarwal v. University of Delhi* 1991) 43 DLT 670 wherein on the facts of that case the court held that it was true that the petitioner therein had not obtained the requisite percentage of marks and that he was below the expected standard, but "let the University polish him into a diamond". These observations may apply to the facts of that case. We do not see how that judgment is otherwise relevant in the present case.

11. We are of the opinion that the decision of the Supreme Court in *Sanatan Gauda* case is not applicable to the facts of the present case. The rules framed by the Bar Council of India are of no relevance as the whole of the matter of admission of students to the courses in law has been left to the Universities. It is not necessary for us to go into the questions as to how the Bar Council of India can control the imparting of instructions in law courses in Universities, but then perhaps that may be relevant when the Bar Council is to admit the Law Graduates to the profession of advocates. One of the arguments raised by the petitioners was that the doing away with the sports quota can be done only by the Sports Council constituted by the Academic Council. There is no force in this argument as the Sports Council itself is constituted by the Academic Council and its aims and objects do not prohibit dropping of sports quota for any particular course. In the present case the criteria has been approved by the Academic Council itself. The respondents submitted that they had to fix the criteria of 50% marks for taking entrance examination as otherwise a great number of students

would have been entitled to appear in the test which would have been difficult for the University to manage. We have already noted above that for earlier years the minimum condition for admission to LL.B. Course was securing 50% marks in the graduation. The entrance test is now open to students of all the Universities all over India and it was for this purpose that entrance test as well was prescribed. It was hinted that standard of all universities is not same all over the country.

12. The Law Courses Admission Committee framed the rules and laid down the criteria which was approved by the Standing Committee of the Academic Council and finally by the Academic Council as per rules. We have seen the constitution of the Law Courses Admission Committee. The academic Council under S. 23 of the Delhi University Act, 1922, shall be the academic body of the University and shall, subject to the provisions of the Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standard of instruction, education and examination within the University. It shall also exercise such other powers and perform such other functions as may be conferred or imposed upon it by the Statutes. The constitution of the Academic Council is prescribed by the Statutes. Now if we see the constitution of the Academic Council it consists of Vice-Chancellor; Pro-Vice-Chancellor; The Dean of Colleges; The Director, South Campus; Librarian; Deans of the Faculties; Heads of the Departments; The Dean of Students Welfare; Professors, Principals, Teachers as per the number prescribed; five students and two persons not being employees of the University or of a recognised College or Institution, co-opted by the Academic Council for their special, knowledge.

13. It will be, thus, seen that the Academic Council is a high powered body of the University. It has in its wisdom prescribed the eligibility requirements for admission to the LL.B. Course and approved the rules framed for the conduct of the admission test for admission to LL.B. Course and also done away with the sports quota. We feel High Court is ill-equipped to go into the standards set by the Academic Council and we are of the opinion that interference by the High Court in the University matters should be minimal. High Court can interfere only if the action of the respondents is arbitrary, unfair or unreasonable. We do not find the action of the respondents to be so in any way. If some students who did not get 50% marks in degree examination but because their results were not declared and they were allowed to take the entrance test and it so happened that in that test they secured higher marks than the students who had secured 50% or more marks in the degree examination, that is something inherent in our system of examination and no fault can be found with the resolution of the Academic Council on that account.

14. We may also note that when the Law Courses Admission Committee decided that there should be admission test for admission to LL.B. First Year Course for the academic year 1991-92 and prescribed the rules for the entrance test, the Committee was guided by the report of what is popularly known as Justice Deshpande Committee Report. This Committee was appointed by the Vice-

Chancellor under the Chairmanship of Mr. Justice V. S. Deshpande, a former Chief Justice of this Court, in December 1986 to critically assess the admission procedures, course structure and evaluation system in the Faculty of Law and to suggest necessary improvements therein. The Committee comprised of :

1. Mr. Justice V. S. Deshpande Chairman
2. Prof. Alice Jacob, Indian Law Institute
3. Prof. Rehmatullah Khan, School of International Studies, Jawaharlal Nehru University.
4. Prof. P. K. Tripathi, Faculty of Law
5. Prof. K. B. Rohtagi, Faculty of Law
6. Prof. Upendra Baxi, Law Centre-II
7. The Professor-in-Charge, Campus Law Centre
8. The Professor-in-Charge, Law Centre-I
9. The Professor-in-Charge, Law Centre-II
10. The Dean, Faculty of Law Convenor.

15. It will at once be seen that the members are all experts in the field of legal education. The report of the Committee has been shown to us and we find that the rules now laid by the Law Courses Admission Committee are based on the report. We do not think it was necessary for the Law Courses Admission Committee or for any other authority to give reasons or to record any minutes as to why it decided to hold admission test and to lay criteria for the same and why to do away with the sports quota. The Law Courses Admission Committee was not performing any quasi-judicial functions and the Act or Statutes of the University did not require it to perform its functions in any particular way.

16. The challenge of the petitioners therefore, must fail.

17. That, however, in our view, does not conclude the matter as far as the petitioners are concerned. A very profound question arises if the petitioners be asked to discontinue their studies when there is no apparent benefit to anyone. Though at the same time there are no equities in favor of the petitioners. They at the strength of court orders were allowed (1) to sit in entrance examination; (2) to get provisional admission; and (3) even to take first semester examination. It may also be that some students did not take the entrance test because they had secured less marks in the degree examination and did not approach the court as the present petitioners did and why should the petitioners be given any advantage which they could not get.

18. We have considered these matters with all the seriousness these deserved. It is not that seats in the LL.B. Course are not available. In this connection we may

refer to the affidavit of Prof. Mata Din of the Faculty of Law, Delhi University, and also a member of the Law Courses Admission Committee. He said the Committee had resolved that for the year 1991 -92 the three Centres conducting LL.B. Course should have in all 1500 students. Then he says there had been an unwritten practice in vogue that not more than 10% of the total seats allotted to various Centres may be filled up over and above the fixed number in order to cater for drop outs subsequently. Lastly, he says that total number of students admitted to the first year of the LL.B. Course in all the three Centres was 1576 which included those who had been admitted under the orders of this Court.

19. Arguments in all these petitions which are 28 in number have been spread over for many days because of number of counsel appearing. These cases have attracted quite a deal of publicity as well. Time for admission into the LL.B. First Year Course is long over. None of the students similarly placed to those of the petitioners having secured less than 50% marks in graduation have come forward to press his or her claim (see in this connection *State of Orissa and Another Vs. Dr Asim Kumar Mohanty and Others*,). In *Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others*, the Supreme Court disapproved the action of the High Court in the exercise of its extraordinary writ jurisdiction directing admission of some students when there were more meritorious students waiting in queue, but then went on to observe (at page 1224; of AIR) :

"Since the respondent-students stand already admitted, and the more meritorious students cannot now avail of the seats given to the respondents due to lapse of time, we do not propose to interfere with their pursuit of the course. It is for this reason that we are dismissing the appeals."

20. Then again in *U.P. Junior Doctors' Action Committee Vs. Dr B. Sheetal Nandwani and Others*, the Supreme Court was considering a dispute relating to admission to post-Graduate Course in Medicine. Here the High Court had granted provisional admission to some students. The Court did not approve such a course and observed as under :--

"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 to 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."

Nevertheless, the Supreme Court still did not interfere and went on to observe as

under :--

"On the basis of what we have said the order of the High Court should be reversed but we are not doing so on account of the fact that nine similarly placed medical graduates have already been given admission pursuant to such interlocutory orders by the respondents without even raising a challenge, the order was made as early as in February 1991 and for all these nine months no steps have been taken by the appellants to comply with the order and they are in fact facing a contempt proceeding. While on principle we indicate that such provisional admission should not be granted, we dismiss this SLP and sustain the order not on merits but for the reason indicated....."

21. In the present case though we have held that the petitioners cannot plead any equity, still we find that it was on Court's order that provisional admission was granted and for all this period when the matters are pending in this Court be better if the petitioners are allowed to pursue their studies as it does appear to us it will harm no one at this stage. Otherwise, petitioners may lose precious one year or even any chance of ever getting admission in LL.B. Course. After the Court granted provisional admission to the petitioners they certainly could not look to other avenues and could not apply for admission in any other course. We will not like them to lose one year in these times when there is so much competition.

22. Thus, though we have held that respondents validly framed the impugned rules for admission to LL.B. Three Year Course and requiring the students to take admission test, but in view of the circumstances narrated above we would allow the petitions and will make the Rule absolute. The petitioners will be entitled to continue their studies and their provisional admission shall be regularised by the respondents. For the purpose of grant of final relief this judgment will not serve as a precedent. There will be no order as to costs.

23. Order accordingly.