

**(1991) 03 DEL CK 0022**  
**In the Delhi High Court**  
**Case No : C.W.P. 3952 of 1990**

Kanishka Aggarwal

APPELLANT

Vs

University of Delhi and others

RESPONDENT

**Date of Decision :** 11-03-1991

**Acts Referred:**

**Citation :** AIR 1992 Delhi 105 : (1991) 2 ILR Delhi 491

**Hon'ble Judges :** M. Sharief-ud-din, J;Jaspal Singh, J

**Bench :** Division Bench

**Advocate :** Shanti Bhushan and Jayant Bhushan, for the Appellant; A. Mariaputhan, for the Respondent

## **Judgement**

Jaspal Singh, J.—T. Shaffer in his On being a Christian and a Lawyer (198 1) paints a devastating picture of the instruction, regulation, and practice of law in the law schools. Had he known that even in the matter of admission to law schools, the picture is not less dismal, we feel sure, almost, that he would have constructed a mental cloister and retreated into it, but not before proclaiming, in utter despair, Gold has rusted. This writ petition presents that sad spectacle. However, first a brief resume. of the backdrop, the same being essential for the ascertainment of both truth and justice.

2. University of Delhi (hereinafter called the University) has number of colleges affiliated to it. It has also various Faculties like faculties of Arts, Science, Social Sciences, Education, Mathematical Sciences, Management Studies and Law. The Faculty of Law has three Centres, namely, (1) Campus Law Centre, (ii) Law Centre- I and (iii) Law Centre 11. These Centres offer LL.B. (six terms) course. As in the past, for the academic year 1990-91 also Law Central-1 invited applications for admission to the LL.B. 1st year Course. The last date for submission of applications was July 17, 1990. It also issued "Bulletin of Information and Instructions to applicants for LL.B. Course 1990-91" (hereinafter called the Bulletin) which gave "an idea of the courses of studies, summary of the Ordinances, proper rules and regulations regarding payment of fees,

attendance, examination and other matters, pertaining to the students of this course". As per this Bulletin, and confining ourselves to only what is relevant for our purposes, there were two types of application forms, Abstract and Main. Only Abstract application form accompanied by the requisite certificates showing eligibility was to be filled in at the time of making an application for admission. It was to be addressed to the Professor-in-charge of the Centre. The Main application form was required to be filled in "only by those applicants" whose names were declared selected for provisional admission in the Provisional Admission List. Under the heading "Admission Procedure for effecting admission by payment of fees" (Cl. VII p. 16) it was mentioned in the Bulletin that lists of applicants selected for "provisional admission" would be notified on the Notice Board of the Centre, that the last such list shall be notified as the "Last List" and, if necessary, a waiting list of eligible applicants would be notified "along with" the "last list". It was further notified, and we quote:

(iii) All those applicants whose names are so notified in the waiting list will assemble. in person at a specified time and date to be notified on the Notice Board of the Law Centre-1 in a room of the Centre for that purpose, ready with the requisite amount of fees and other dues in cash and all the requisite certificates in original.

(iv) The Convener, Admission Committee, shall call out Or cause to be called out in his presence the names of applicants in order of merit. If an applicant whose name is called out, is not present or does not respond to the call or not in a position to pay the requisite amount of fees and other dues in cash then and there, and effect his admission, he shall forfeit his claim for admission and the Convener shall proceed to call on the next person in order of merit to effect his admission.

(c) All admissions will be provisional and subject to the production of all the requisite Certificates in original, and confirmation thereof by Professor-in-charge of Law Centre-1.

(d)The applicants selected provisionally -for admission to LL.B. 1st year course shall, at the time of depositing tuition fee, etc. be required to fill-in the Main Admission Form obtainable from the Centre's office and along with the same form submit the following certificates in original failing which his/her fees payable on admission shall not be accepted and his/her provisional admission shall automatically stand cancelled:

(i) to (v) .... (vi) Two copies of the recent passport size photograph one duly attested by any of the prescribed authorities listed in clause IV (e) (p. 1-12) and the other without attestation.

(vii) ....

3. Two more Clauses, namely Clauses VIII and IX may also be noticed at this stage. The other important Clause is Clause III which deals with the Order of

Preference. We shall be referring to it at a later stage. Coming to Clause VIII it is under the head "Discipline" while Clause IX is under the head "Payment of Fee etc.". As per Clause VIII no student will absent himself/herself from any of the lectures without leave having been obtained previously, from the Professor in-charge of the Centre and that too for sufficient cause, and that "if he/ she is irregular in attendance or fails to show progress, or is not diligent in his/her studies, his/ her name is liable to be struck off the rolls of the Centre.... Clause IX lays down that fees and other dues must be paid by the applicant "selected for admission" by the dates specified in each list and that on failure to do so the selection for admission will stand automatically cancelled and the vacancies so caused may be filled from the applicants next in order and further that every applicant selected provisionally for admission should furnish two copies of his/her latest photograph before he/she is allowed to effect his/ her "admission by payment of fees".

4. It so happened that Kanishka Aggarwal who had obtained a Bachelor's Degree in Science with 54. 13% marks from St. Joseph's College, Bangalore also submitted his application along with the requisite certificates for admission to LL.B. First Year Course. It was addressed to the Professor-in-charge, Law Centre-1. On October 8, 1990, which was the last day for deposit of fees, he deposited in the office the fees payable at the time of admission besides his two passport size photographs. A regular receipt evidencing payment of fees was issued, a roll number was given and he was put in one of the seven sections of the First year course. We may, however, note that a so-called Admission Committee had issued on different dates but all before October 8, 1990 six lists containing the names of applicants selected for provisional admission but none of them contained the name of the petitioner. Kanishka Aggarwal, with fees paid, Roll number allotted, a section assigned and an Identity card issued, started attending the classes. And, interestingly he was not the only one so allowed to attend the classes. He was in the company of more than seventy others who too had obtained less than the qualifying marks though all of them, like him, were graduates. They too, like him, had paid admission fees on October 8 and had been issued regular receipt for the same. They too, like him, were allotted roll numbers, were assigned to a section and were issued identity cards. Little did they know what was brewing in the Teachers Room.

5. On November 6 a resolution was passed by the teachers of Law Centre- I calling for the cancellation of all "illegal admissions in the "current academic year" and strict action against the persons responsible for "making or allowing" those admissions. The so-called illegal admissions was not a new phenomenon. There had been rumblings in the past too. On May 7, 1990, that is, much before the applications had been invited for the academic session 1990-91, a meeting had taken place of the Law Courses Admission Committee in which reference had been made to admission of ineligible applicants "during the last few years" and to the need to check "such a malpractice". It was decided that the Vice-Chancellor be approached to institute enquiry by the CBI "in respect of the admissions made

by Law Centre-I during the four years, i.e. 1986-87 to 1989-90." The decision, however, remained on paper. No action was taken. And we have a hunch that even the resolution of November 6 would have met the same fate had the news hounds not taken scent of it and splashed it in the newspapers. With so much of hue and cry, the authorities could remain no more oblivious to it. It is another matter they took precious fourteen days in the process. On November 20, the so-called Law Courses Admission Committee held an "emergent meeting". (Of course, it had to be an "emergent meeting", for how else could it be shown that they were really alive to the bungling of the last four years?) Interestingly, the person who was most vociferous in that meeting was none other than Dr. Gyan Chand, the Professor-in-charge of the Law Centre- I during whose time and under whose very nose (if not by him) the disputed admissions were made. He bemoaned the masterly inactivity (if we be permitted to borrow this expression so dear to the Historians) of the University over the decision of May 14, and when told that Admission forms and documents of students bearing Roll numbers 43,247 and 612 to 689 were missing he, strangely, felt content by only informing his worthy colleagues that he had already directed the two Section Officers of the Centre to send those forms to the Committee. What is however, more important is that the Committee "fully" endorsed and "unanimously" adopted the Resolution of November 6 and decided not to confirm the "provisional admissions" of students bearing the abovementioned Roll numbers and to ask them to take back the fee deposited by them. The reason? The reason being that their Application forms and relevant original certificates had "not been placed before the sub-committee for their confirmation". The worthy Law Professors forgot three things. They forgot that the students had actually submitted their application forms and documents. They also forgot that if those forms and documents were "missing" or had not been forwarded to the sub-committee in spite of the direction of the Professor-in-charge, how could the students be penalised for the same? They also forgot another thing. A basic principle of law. The principle of natural justice. They did not think of even issuing a show cause notice. Of course, later, much later, that is, during the writ proceedings, it was left to the sagacity of Mr. P. P. Rao, Senior Advocate to make an offer to consider the representations of eligible candidates and thereby avoid the grave. It may also be mentioned that in that emergent meeting the decision not to confirm admissions was not taken on the ground that the students affected were ineligible. Any how, after that meeting, a notice dated November 22 and under the signatures of Professor P. S. Sangal, Head of the Department and Dean, Faculty of Law was issued for "Information of all concerned" that the Law Courses Admission Committee had endorsed and adopted the Resolution dated November 6 and that it had resolved not to confirm the provisional admission of the students bearing roll numbers 43, 247 and 612 to 689 "since no application form and original documents were placed before the sub-committee." The said students were advised to collect the fees paid by them. On November 29, the Registrar of the University lodged a report with the Station House Officer, Police Station Mandir Marg. He enclosed a list containing 80 names (including that of

the petitioner) who had been "admitted" to LL.B. 1st year course "on the basis of application forms and several original degrees and character certificates" which they had deposited "on the date of their admission" and that although all those documents were required to be sent by the in charge of Law Centre-1, Dr. Gyan Chand, he had not responded. Hence the report for taking immediate action "against the persons responsible for withholding/ mis-appropriating/ removing/ stealing the aforesaid documents, forms and files". On December 5 the Admission Committee of Law Centre-1 held another meeting and on the basis of the decision taken, the following notice was issued under- the signatures of Dr. Hoti Prasad who, consequent upon the transfer of Dr. Gyan Chand, had, by then, become the in charge, Law Centre-1.

#### NOTICE

The provisional admission of the candidates of LL.B. 1st year course bearing Roll Nos. 43, 613, 616, 619 to 626, 628, 630, 632, 634 to 674 and 676 to 689, are not confirmed If their names have appeared in any of the admission lists sent by the Admission Committee, they should make a written representation along with supporting documents including photocopy of fees receipt to the undersigned latest by 8.00 p.m. on 12th December, 1990.

If the above applicants do not make the representation by the date and time specified above, their provisional admissions would stand cancelled automatically had no further correspondence will be entertained in this behalf.

(Dr. Hoti Prasad), in charge"

6. On December 13 Kanishka Aggarwal filed this writ petition under Art. 226 of the Constitution for order or direction quashing the cancellation of his admission and directing the respondents to confirm his admission. This writ petition was followed by a string of such petitions by some other similarly affected students. We may notice that we had directed the respondents to allow the petitioner to attend the classes and to sit for the 1st semester examination.

7. Having provided, in the preceding paragraphs, the essentials of the background, it is time to come into grip with the contentions raised.

8. Mr. Shanti Bhushan appearing for the petitioner sought the relief on four grounds. It was argued that the primary imperative of Arts. 14 and 15 being equal opportunity for all to attain excellence and this being an integral part of our Constitutional creed, the Delhi University by its scheme of admission giving preferential treatment to its own graduates, was acting in a manner which had neither the blessings of Art. 14 nor the sanction of Art. 15. He pointed out that Delhi being in no manner an educationally or economically backward human region, as compared to the rest of the country and it, in fact, being the capital of the country, it would be blasphemous to allow its educational institutions to become the cynosure of a few who had the privilege of having graduated from it. He also saw no justification for giving preference to Honour's degree over other

graduates, which according to him, amounted to creating a class within a class and that too without any rationale.

9. The next contention was that the procedure for admission being a matter related to the internal management of the University and the Bulletin made available to the applicants being silent about the role of any Admission Committee in the matter of provisional admissions or confirmation thereof and the general impression given by it being that the admissions were to be made by the Professor-in-charge, the petitioner and the like of him were justified in holding the view that they were rightly and legally admitted to the course. We may hasten to note that this argument was advanced in response to the contention of Mr. P. P. Rao, appearing for the University, that there being a statutory Admission Committee with the assigned role of first making provisional admissions and then finalising the same and the Admission Committee having at no stage admitted the petitioner even provisionally, he and the like of him, could not be taken to have been legally admitted even provisionally.

10. The third contention was that the University was estopped from taking any action against the petitioner.

11. Lastly, it was argued that as the petitioner had not suppressed any information from the University and as he had submitted the requisite Admission form along with the requisite certificates and further as, consequent upon the said application and as per the directions of the authorities of Law Centre-1, he had deposited the admission fee, and had been allowed to attend classes day after day and without even a whisper of protest, "it was not open to the University now to undo what had already been done and that too, to the great prejudice of the petitioner,

12. Needless to say Mr. Rao found the arguments advanced and the contentions raised unpalatable. It was argued that the scheme formulated by the University for admission to the LL.B. 1st year course, was neither discriminatory nor, for that matter, violative of the Constitution and that in practice it had enabled in the academic year in question itself, 36% of the applicants from outside Delhi to get admission. The Rule to give preference to applicants possessing Honour's degree over other graduates was also defended but on the ground of excellence. It was further argued, and as already noticed by us above, that it was only the statutory Admission Committee which could admit the applicants first provisionally and then finally and as neither the petitioner had been admitted provisionally nor his name, for that matter, had figured in any of the lists, his act of depositing the fee and the consequent issuance of roll number and allocation to one of the sections would be of no consequence. It was further argued that the admission being void ab initio, the act of attending the classes would not clothe the petitioners with any legitimacy. He admitted that during the last about four years some of the applicants, similarly placed, had managed to get admission and had been allowed by the University to continue on its Rolls. It was argued that the wrongs of the past could not be allowed to be raised as a

justification to the commission of further wrong and the University would be fully justified in calling it a day. It was further contended that the so-called admissions being the off springs of fraud and as the petitioner and the like of him had been active participants in the game which was far from cricket and as they had connived at with certain University officials having not even a semblance of authority, in perpetrating the fraud, they could not be taken to have been invested with any right, much less legal. He thus took the stand that the petitioner was not entitled to any relief. We may add that he also stoutly refuted the claim of estoppel for the reasons which we reserve for discussion at the appropriate stage.

13. Time now to examine the nuts and bolts of the rival contentions.

14. Before we embark upon the examination of the first issue springing from the protective tendency for institutional reservation of law course seats, a further preliminary narration providing the necessary back drop is called for. The Bulleting, already referred to above, provides the Order of Preference and lays down that admission to the First Year LL.B. course would be made in the following order:

Category 1. All those who have passed (1) Master's degree, (ii) Honour's degree, (iii) Bachelor's degree Examination in that order in Arts, Sciences, Business Management, Science or Commerce of the University of Delhi with not less than 55% marks (or equivalent grade).

Category 2. All those who have passed (i) Master's degree, (ii) Honour's degree, (iii) Bachelor's degree Examination in that order in Arts, Sciences, Business Management, Science or Commerce of any other University recognised as equivalent to that of this University of Delhi with not less than 55% marks (or equivalent grade)

Category 3. All those who have passed (i) Master's degree, (ii) Bachelor's degree Examination in that order in Engineering, Medicine (including Ayurvedic and Unani System of Medicine) Surgery, Education Architecture, Agriculture, Nursing, Home Science, Physical Education, Library Science, or any other such like course of Delhi University with not less than 55% marks (or equivalent grade).

Category 4. All those who have passed (i) Master's degree, (ii) Bachelor's degree Examination in that order in Engineering, Medicine (including Ayurvedic and Unani System of Medicine) Surgery, Education, Architecture, Agriculture, Nursing, Home Science, Physical Education, Library Science or any other such like course of any other University recognised as equivalent to that of this University with not less than 55% (or equivalent grade).

Category 5. All those who have passed (i) Master's degree. (11) Honour's degree, (iii) Bachelor's degree Examination in that order in Arts, Social Sciences, Business Management, Science or Commerce of Delhi University with not less

than 50% marks (or equivalent grade).

Category 6. All those who have passed (i) Master's degree, (ii) Honour's degree, (iii) Bachelor's degree Examination in that order, in Arts Social Sciences, Business Management, Science or Commerce of any other University recognised as equivalent to that of University of Delhi with not less than 50% marks (or equivalent grade.)

Category 7. All those who have passed (i) Master's degree, (ii) Bachelor's degree Examination, in that order, in engineering, Medicine (including Ayurvedic and Unani System of Medicine) Surgery, Education, Architecture, Agriculture, Nursing, Home Science, Physical Education, Library Science, or any other such like course of Delhi University with not less than 50% marks (or equivalent grade).

Category 8. All those who have passed (i) Master's degree (ii) Bachelor's degree examination, in that order, in Engineering Medicine (including Ayurvedic and Unani System of Medicine) Surgery, Education, Architecture, Agriculture, Nursing, Home Science, Physical Education. Library Science, or any other such like course of any other University recognised as equivalent to that of University of Delhi with not less than 50% marks (or equivalent grade).

15. Does it lay down a scheme which may be condemned as constitutional heresy? Does it provide a blanket ban to the talent waiting in its wings but outside the precincts of the University of Delhi? Is the Order of Preference so obnoxious as to suffer from the vice of excessiveness? Or is it societal so injurious as to cut the very roots of equal opportunity, for each according to his ability? The answer must be in the negative. The Order of Preference neither provides a blanket ban nor suffers from any other vice. In actual practice it has opened doors to not less than 36% of the aspirants from the outside universities, that is, much more than the required minimum of 25%. It escapes the gallows on this score alone. Reference, it may be mentioned, was made to Municipal Corporation of Greater Bombay and Others Vs. Thukral Anjali Deokumar and Others, . It does not infuse life to the lifeless. The facts would reveal that it was a case farthest from the issue before us. It was actually related to college-wise institutional preference and it was this which was struck down being violative of Art. 14. The order of Preference before us provides no such college wise reservation or preference. We thus refuse to lose more breath on it. More so, because complete answer is provided effectively and effusively by Dr. Jagdish Saran and Others Vs. Union of India (UOI), . The soul is in paragraphs 46 and 49 of the Report. They are:

"In the light of this discussion about the know-how and know-why of reservations, what are the conclusions that emerge vis a vis the Delhi graduates? Neither Delhi nor the Delhi University medical colleges can be designated as categories which warrant reservation. But there is one weighty circumstance which must be in our remembrance. Reservation for Delhi graduates is not that

invidious because, as stated in the beginning, the students are from families drawn from all over India. Not "sons of the soil" but sons and daughters of persons who are willy nilly pulled into the capital city for reasons beyond their control. This reservation is, Therefore, qualitatively different."

.... We recognise that institution-wise reservation is constitutionally circumscribed and may become ultra virus if recklessly resorted to. But even such rules, until revised by competent authority or struck down judicially, will rule the roost. That is why we have to concede that until the signpost of "no admission for outsiders" is removed from other universities and some fair percentage of seats in other universities is left for open competition the Delhi students cannot be made martyrs of the Constitution."

16. Mr. Rao rightly found solace from these paragraphs. However, what perhaps provided him further satisfaction is the fact that the counsel defending the interests of the University of Delhi in that case was none other than Mr. Shanti Bhushan.

17. An ancillary point remains- Honor's degree v. Simple graduates. Should the court sit in judgment on this matter? Is the University not best equipped to decide which degree or course should be given preference "having regard to the course, the syllabus, the quality of teaching or instructions and the standard of examination?" (to borrow the language from *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, . Honour's courses call for excellence, deeper and intensive study and require exacting standards of performance. That is why the preference. In any case, where is the expertise for us to sit on judgment? A few more words before we pass on to the next point. In the petition there is no prayer to quash categorisation. The challenge is limited - limited to University of Delhi v. outside universities and not between Honour's degree v. other graduates. Lastly, the challenge is merely hypothetical. The petitioner has not concretized alleged discrimination. There is not even an averment that in the Lists issued a simple graduate (as distinguished from the holder of an Honour's degree) from University of Delhi with lesser percentage of marks (as compared to the petitioner) had been admitted. The cry of discrimination must thus die in wilderness. It remains all fiction. It reverberates only in the realm of hypothetical proposition. We" need say no more.

18. Coming to the next contention, the Bulletin nowhere states that the applicants would be selected for provisional admission by an Admission Committee. It is nowhere points out that admissions would also be finalised by such a Committee. The only reference which is made to Admission Committee is in clause VII sub-sec. (iv). We have already reproduced it in the second paragraph of this judgment. We are inclined to agree with Mr. Shanti Bhushan, that even this reference does not provide sufficient notice to the applicants that it was in the domain of the Admission Committee to select the applicants for provisional admission and then to finalise the same. It was argued by Mr. P. P. Rao that the Bulletin had drawn the attention of the applicants to the Ordinances

and that as the Ordinances clearly provide for a statutory Admission Committee giving it alone the authority to first admit provisionally and then finally, Therefore, the applicants could not be allowed to plead that they had no notice of the same. As we shall presently show, the argument advanced is fallacious. In the Chapter entitled: Instructions to applicants for admission to the LL.B. (six terms) Course, the Bulletin contains as many as nine instructions. What is relevant for our purposes is contained in clause (iv). It says:

"(iv) Before filling in the forms (Abstract and Main) and signing it, read the whole of it carefully and also the booklet entitled "Bulletin of Information and instructions to Applicant". This Booklet gives an idea of the Courses of Studies, summary of the Ordinances, proper rules and regulations regarding payment of fees, attendance, examination and other matters pertaining to the students of this Centre."

The instruction has been reproduced verbatim only with a view to show that the Bulletin claims to be "the complete guide and nowhere advises the applicants to go through the Ordinances. In any case, even after having gone through the Ordinances with the help of counsel for the parties, we find that it nowhere provides that in the matter of admission to LL.B. 1st year Course provisional admissions would be made by the statutory Admission Committee or that the same would also be finalised by it.

19. Coming to the Ordinances, Ordinance 11 provides for Admission Committees including a Law Courses Admission Committee consisting of the Dean, Faculty of Law, the Professors and Readers in Law, and two members appointed by the Academic Council. As per Ordinance 11 Cl. 2(i) only those students are to be registered centrally by the University who seek admission to colleges "against reserved seats of Scheduled Castes/ Tribes and for Children of Armed Personnel disabled/killed in action during the wars in 1947-48 onwards or those who died on duty". Clause 2(ii) shows that in the case of admission to Master's courses in the Faculties of Arts, Mathematical Sciences, Social Sciences, Music and Science, the applications for admission as well as registration shall be sent direct to the Deans of the Faculties concerned and that for purpose of provisional admission to the Post-graduate courses, there shall be Standing Committees, one each for Faculty of Arts, Social Sciences, Mathematical Sciences and Music. These admissions, as per the third proviso to clause (3), must be finalised by the Standing Committees concerned by 15th October of the year in which admissions are sought. With regard to admission to courses other than those mentioned above, the applications for admission have to be made to the "Principal of College concerned". The "Note" in clause 2 makes it clear that for the purpose of the clause "Principal of College" shall include the Dean of the Faculty of Law. Clause 3 provides "Admissions shall be finalised by the Principals of Colleges and Deans of Faculties concerned, as the case may be, not later than such last date as may be prescribed by the `Academic Council from time to time." Clause 4 provides that although minimum qualifications and conditions of eligibility for

admission to various courses shall be as laid down in Ordinance I and is and/or Appendix 11 to the Ordinances yet, the Academic Council "on the recommendations of the Admission Committees" may review or modify the same. Then follow clauses (2) and (3). As these clauses witnessed some fire-work, it would be appropriate to reproduce them. They are as follows:

(2) The said Admission Committees shall determine the principles on which admissions are to be made and the procedure there for subject to review by the Standing Committee of" Academic Council as mentioned hereinafter. The said Admission Committees shall finalise the cases of admission where registration is centrally done by the. University (vide proviso to Clause 2(i) above). The Admission Committees shall also consider and make recommendations to the Standing Committee in respect of such admission cases as are referred to them by the Deans of the Faculties on account of any special factor and considerations involved in particular cases.

(3) Ther said Admission Committee shall also ascertain, as soon as may be, the number of places for various courses likely to be available in the various courses and shall notify the Heads of Departments and Principals of Colleges accordingly."

20. What do these different clauses of the Ordinance show? It was argued by Mr. P. P. Rao that the Ordinance shows firstly that there are statutory Admission Committees and secondly that provisional as well as final admissions are to be made by such Committees. We agree with the first. The second we find difficult to eat, chew and digest.

21. The first proviso to clause 2(ii) of Ordinance 11 lays down in clear and unambiguous terms that provisional admission to Post-graduate courses relating to "Faculty of Arts, Social Sciences, Mathematical Sciences and Music shall be made by Standing Committees to be appointed by the Vice Chancellor" and as per the third proviso these Standing Committees have also to finalise the provisional admissions. Thus the argument that it is only for the Admission Committees to first provisionally and then finally admit the students, is exploded.

22. That the role of the Admission Committees is extremely limited, is clearly brought out by clause (4) of Ordinance 11. The first role is spelt out by the Proviso to clause 4(I). That role is to make recommendations for the review and modification by the Standing Committee of the Academic Council, of the minimum qualifications and conditions of eligibility for admission to the various courses as laid down in Ordinances I and I-A and/or Appendix 11 to the Ordinances. The second role, and as brought out by Clause 4(2), is to "determine the principles on which admissions are to be made and the procedure thereof". But this is subject to review by the Standing Committee of Academic Council. The third role is also assigned by clause 4(2). It is to finalise the cases of admission "where registration is centrally done by the University (vide proviso to clause 2(i)). " The fourth is to "consider and make recommendations to the Standing Committee in respect of such admission cases as are referred to them

by the Deans of the Faculties on account of any special factor and considerations involved in particular cases." The last role is covered by clause 4(3) and it is to ascertain, as soon as may be, "the number of places for various courses likely to be available in the various courses" and to notify the Heads of Departments and Principals of Colleges accordingly.

23. As would be borne out from above, the Admission Committees finalise the cases of admission only where registration is centrally done by the University vide proviso to Clause 2(i) and in no other case. It is not the case of the University that the petitioner is covered by the proviso to clause 2(i). It is also not its case that for admission to the LL.B. 1st year course registration is done centrally. The statutory Admission Committee had thus no role to play in admissions.

24. In view of what has been discussed above, we are inclined to hold that provisional admissions to LL.B. 1st Year Course cannot be made by the Law Courses Admission Committee appointed under Ordinance 11 nor has it any authority to finalise such provisional admissions.

25. If the Law Courses Admission Committee has no role to play in the provisional admissions and subsequent finalisation, who is to play that role? The answer, we feel, is provided by Clause 2(ii) and Clause (2) of Ordinance 11. As, unlike the Faculties of Arts, Mathematical Sciences, Social Sciences and Music, there is no provision for appointment of Standing Committee by the Vice Chancellor, in the Faculty of Law, Therefore, applications for admission to LL.B. Course have to be made to the Dean of the Faculty of Law (See clause 2(ii) and the "Note" there under) and under Clause (3) it is again he who has to finalize the admissions to that course. This being the position, and in the Bulletin there being no reference to the role of any Admission Committee in the matter of admissions, obviously the applicants could not be in the know of the role of any such committee or sub-committee. Thus, if there was an Admission Committee with the assigned job of making provisional admissions and then to, finalise the same, it was a matter of internal management. The applicants had no notice of the same. Rather, keeping in view the fact that the applicants were but raw young blood, untrained in the intricacies of law, they would have, as rightly pointed out by Mr. Shanti Bhushan, got the general impression from the Bulletin that the person in authority was the Professor-in-charge and none else. Of course, the Bulletin does speak of Lists, the Last List and the Waiting List, but it throws no light that these Lists were to be prepared by some Admission Committee. Moreover, it appears that even the so-called Lists were merely" directory and that the Profess or-in-charge could, List or no List, make provisional admissions of his own. We say so on the basis of preliminary application form itself, which came to our notice at the fag end of the arguments, the last column of which, under the head "office Report" shows that it is the Professor-in-charge (who is shown also to be the Convenor, Admission Committee Law Centre-1) who is to admit the applicants provisionally. The

column nowhere speaks of or refers to any List. His authority to admit provisionally is thus independent of the Lists. That it must be so finds support from the fact that the Law Centre-1, the Faculty of Law and the University also showed the petitioner as having been provisionally admitted. In this connection reference may be made to number of documents placed on the record. The first is the Minutes of the emergent meeting of the Law Courses Admission Committee held on November 20, 1990. In its item 4(iv) reference is made to the "provisional admissions" of students bearing Roll Nos. 43, 247 & 612 to 689. The next is Notice dated November 22, 1990. It also speaks of "provisional admissions" of Roll Nos. 43, 247 and 612 to 689 (petitioner's Roll number included). The third document is the report lodged with the Station House Officer, Police Station Mindir Marg, New Delhi dated November 29, 1990. The very first sentence of the report is "I am enclosing herewith a list containing names and class roll numbers of the students who were admitted at Law Centre-I" (one of the students so mentioned happened to be the petitioner). Then follow the Minutes of the meeting of the Admission Committee of Law Centre-I dated December 5, 1990. In paragraph 2 again the Roll numbers already referred to above are repeated and they are shown to have been admitted provisionally. Lastly in the Notice of December 5, 1990 issued under the signatures of the then in charge Law Centre-1, what is mentioned is: "The Provisional admission of the candidates of LL.B. first year course bearing Roll Nos. 43, 613, 616, 619 to 626, 628, 630, 632, 634 to 674 and 676 to 689, are not confirmed. As would thus be clear, till December 5, 1990 it was the case of the Law Centre-I of the Faculty of Law and the University also that the petitioner had actually been provisionally admitted. Till December 5 none of these authorities had taken the stand that his provisional admission was unauthorised or illegal. The non confirmation of his provisional admission was only on the ground that his application form and the documents submitted along with the same were missing/ not forwarded to the Committee. Again till December 5, 1990 it was also not the case of the said authorities that the provisional admissions had been obtained fraudulently. The plea of fraud surfaced only during the pendency of this petition.

26. It may also be mentioned that on October 8, 1990 when the petitioner was admitted to the course there were still as many as 72 vacancies even after making admissions from out of the Last List. Thus on the last and final date of admission with no Waiting List and with none other available from out of the Lists issued, as many as 72 applicants could still be admitted and it was argued that it was in those circumstances that the seats available were filled out of the applicants available without regard to the known fact that they had not obtained the prescribed percentage of marks. We feel, it must have been so.

27. As already noticed above, till Dec. 5, 1990 it was not the case of the University that the admission had been obtained fraudulently. This plea was taken for the first time after the issuance of the show cause notice of the writ petition. Even otherwise it is a plea in the air. No particulars have been alleged. (See AIR 1937 146 (Privy Council) ). The petitioner had submitted the

application and in it neither any fact had been suppressed nor misstated. There is also nothing on the record to lead to the conclusion that the petitioner was in collusion with any official or with the Professor-in-, charge. Under the circumstances how can he, be taken to have obtained his admission by: fraud? (And, it is this which distinguishes Sanjai Kumar Singh and another Vs. Vice-Chandcellor, Purvanchal University, Jaunpur and others, , so forcefully referred before us by the respondents).

28. The ground having been prepared, let us proceed to examine the plea of estoppel. However, first the arguments against. And, we are doing it purposely. To clear the pitch.

29. The objections raised were three fold. First, the admission was obtained by fraud (A plea already condemned in the preceding paragraph). Secondly, there has to be some pronounced "act" or "conduct" to provide basis for the plea and that no such pronounced "act" or "conduct" could be attributed to the University. Thirdly, the admission being without authority and there being no representation of an existing fact, estoppel could not be secured. We were told that emphasis had to be more upon representation and conduct, the same being central to the plea, and not upon the effect on the mind of the party. In support our attention was drawn to Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, . Lastly, it was argued, where was the "detriment"?

30. We feel, with respect, that Mr. Rao was seeking, in effect, to re-enact the later half of the nineteenth century which had seen equitable estoppel being devastated first by the House of Lords in *Jordan v. Money* (1854) 10 ER 868 limiting estoppel by representation to representation of existing fact and then by Fry J. in *Willmott v. Barbet* (1880) 15 Ch D 90 which laid down a series of probanda (We got the impression, we wish wrongly, as if Mr. Rao was championing the probanda) and by Bowen LJ in *Low v. Bouverie* (1891) 3 Ch 82 Mercifully only *Ramsden v. Dyson* (1866) LRI 129 could escape the ravages of the nineteenth century, though it could not escape being bruised badly. It had broadly covered the area of estoppel by acquiescence. It was bruised as it had become subject to the qualifications of the probanda of Fry J. in *Wilmot* and to being limited to being a rule of evidence. It was left to the middle years of this century to break the shackles applied to the *Ramsden v. Dyson* 1866 LRI HL 129 principle by transforming it into what we now call "proprietary estoppel". It is not limited by the probanda of Fry J. (1977) 1 WLR 970: *Taylor's Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd.* (1982) 1 QB 133 : *Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank* (1982) 1 QB 84; it can operate as a cause of action, (See : *Amalgamated Investment*, *ibid*) it is of general applicability (See *Moorgate Mercantile v. Twitching* (1976) QB 225 *Western Fish Products Ltd. v. Pen with District Council* (1981) 2 All ER 204: *Habib Bank Ltd.v. Habib Bank AG Zurich* (1981) 1 WLR 1265 and above all it is not subject to categorisation (See *Crabb v. Arun District Council* 1975-3 All ER 865. It has been hailed as "one general principle shorn of limitation" (per Lord

Denning in *Amalgamated Investment supra*) and as a most "general", "flexible" and "useful principle" (*ibid*). We may, at this stage, also refer to that great Judge coming from Australia - Dixon J., and to his two judgments *Thompson v. Palmer* and *Grundt v. Great Builders Pty. Gold Mines Ltd.*(1937) 59 CLR 641. What is significant for our purposes is that in the later judgment Dixon J. took as the starting point for his estoppel in *paes*, the "assumption" made by the party seeking to set up the estoppel, rather than the conduct of the party sought to be estopped. The forms of "conduct giving rise to an estoppels" "to which Dixon J. referred to in *Thompson v. Palmer (supra)* may be summarised as "estoppel by convention ", "estoppel by exercise of rights", "estoppel by acquiescence in another's mistake", "estoppel by negligence" and "estoppel by representation". The notion of the making of a promise has no place in any of these.

31. Although Mr. Rao wanted us to place very heavy onus on the petitioner and although, according to him, the conduct on the part of the University must be shown to have been clear, unambiguous and pronounced (the same being, according to him, central to the plea) to satisfy the requirement of estoppel ,ind although he also wanted us to believe that the representation must be express and unerringly leading to the act of the petitioner, the legal position now appears to be as follows : (i) The onus placed on the party raising the plea of estoppel is very light, (ii) There need be no express representation; (iii) Form of representation is not material. The effect is. A mere raising of an expectation would suffice (iv) Acquiescence or standing by would be sufficient (per Lord Kingdom in *Ramsden* 1866 LR I HL 129 (v) A very minimum of conduct is normally required.

32. We feel that the judgment of the Supreme Court in *Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another*, no where comes into quarrel with what has been mentioned by us in the Preceding paragraph. Anyhow, what distinguishes it is the fact that in that case, there was no representation at all.

33. What do we find in this case? It is the Professor-in-charge who may make provisional admissions. It is he, who, as the so called Convener, may admit provisionally even those who do not find their names in any of the List. There was no Waiting List and as many as 72 vacancies were crying to be filled up on the very last date of admissions. The petitioner was there. So were the like of him. They were all waiting in the wings with money in their wallets to pay admission fees. They were invited. They paid the fees. (It was argued by Mr. Rao that the petitioner must have named the person who had invited him to pay the fees " We regard it immaterial. There was some Barkes somewhere who was Willing a la Divide Copperfield. And, then how could fees be deposited without the other side willing to accept? Have we not heard and heard again that line from the Goblin Market: "One may lead a horse to water, twenty cannot make him drink?") They were issued regular receipts for the same. Let us not forget that as per Clause IX of the Bulletin fees is to be paid only by an "applicant selected for admission". Let us also not forget that before the payment of fees,

the applicants admitted provisionally have to produce all the requisite certificates in original and their confirmation is to be made by none other than the Professor-in-charge himself, and as per the applicant, he had actually produced those certificates. (See Clause VII (c)) As per Clause IX (3). The applicant also furnished two copies of his latest passport size photograph, the same being essential to "effect his/ her admission by payment of fees". He was allotted a roll number. He was issued even the requisite Identity card. He was also assigned to one of the seven sections. He even started attending the lectures. And later, in all the communications of the University he was shown to have been provisionally admitted. Does all this not constitute a representation? What is all this if not the requisite conduct? Was the applicant not justified, under the circumstances, to raise the "assumption"? (See -. Sanatan Gauda Vs. Berhampur University and others, .

34. A word or two more before we come to judgment and the University to its grief.

Mr. Rao spoke of "detriment". We do not know if this expression has ever been defined. However, what we do know is that it is very much at the discretion of the court in individual instances. If that be so, has the "representation" and the "conduct" of the University not led the applicant to burn his boats? He could easily have looked out for other equally greener pastures. He has lost one full academic year. What is this, if not "detriment"?

We hold that the plea of estoppel is available and applicable.

35. Let us assume, the plea of estoppel is not available. Still, should the applicant be allowed to be thrown out? Should we deprive him of the rainbow of today and make his tomorrows bleak, barren and ominous? Whom shall we be serving thereby? As inefficient, if not corrupt, system which has been spreading its fangs year after year? The Rip Van Winkles who refused to come out of their deep slumber even in the face of the reverberations caused by loud protests of foul play and demand for a CB1 enquiry? Those who found it well nigh impossible to even transfer certain clerical staff in spite of pressing demand by the teaching community? Should we serve them or this innocent student who bought a dream with his time and money? He played no fraud. His only fault was his assumption that vistas of knowledge were being opened to him. Must he suffer for this innocence? Where lies his fault? How much do we wish, somebody had whispered to the University: *Un peu de charite, voyons*".

36. Yes, Wells is right (Situating Decision making 63 S Cal L Rev 1727 (1990)) in pointing out that judges remain impartial spectators while hearing the witnesses and going through reports, but at the end of the trial they become agents by interacting not only with those who are involved in the case, but with unknown others also whose cases will be decided in accordance with this case and ultimately they become "situation lists" or "formalists" in spite of their having been trained in the same legal system. John Dewey (Logical Method and Law, in

15th Middle Works 1889 68 LRI 1983 quotes Justice Holmes as saying. Im2.5"

"The whole outline of the law is the resultant of a conflict at every point between logic and good sense - the one striving to work fiction out to consistent results, the other restraining and at last overcoming the effort when the results become too manifestly unjust".

Though Dewey points out that Holmes uses "logic" in a narrow "syllogistic" sense, and himself advocates "experimental logic" (P. 69), let us say, the formalist judge represents logic, while the situation list judge represents good sense. With respect, it is the situation list judge we find working in Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, Thaper Institute of Engineering and Technology, Patiala (Deemed University) Vs. Abhinav Taneja and others, and Ashok Chand Singhvi Vs. University of Jodhpur and Others, . For, in all these cases, the Supreme Court protected the interests of the students though found having been initially ineligible for admission. Who would not love to be in such august company?

37. True, the petitioner has not obtained the requisite percentage of marks. He is below the expected standard, Let the university polish him into a diamond. In any case, let this "wide heath of Furze and briars" flourish with Pine and Oak for, who knows, this may lead to the realisation of Keatsian vision of "a grand democracy of Forest Trees".

38 We allow the writ petition, quash the notices dated November 22, 1990 and December 5, 1990 and direct the University to allow the petitioner to continue his studies in the LL.B. 1st year course at Law Centre-1.

39. Petition allowed.