

(2018) 03 DEL CK 0014
In the Delhi High Court
Case No : LPA 807 Of 2017

Kevin C.C. Wong

APPELLANT

Vs

The Delhi University And Anr

RESPONDENT

Date of Decision : 01-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0014

Hon'ble Judges : S. RAVINDRA BHAT, A. K. CHAWLA

Bench : Division Bench

Advocate : Sh. P.S. Patwalia, Sh. Arun Monga, Ms. Divya Sharma, Sh. Archit Upadhyay, Sh. S. Singh Paul, Sh. Mohinder. J.S. Rupal, Sh. Prang Newmai, Ms. Maneesha Dhir, Sh. Abhishek Kumar, Ms. Sharmistha Ghosh, Sh. Mahipal Singh

Final Decision : Dismissed

Judgement

1. The appellant is aggrieved by the decision of the learned Single Judge rejecting his writ petition; he challenged as unfair and arbitrary the selection

and admission of the second respondent in the undergraduation programs of the Delhi University [hereafter referred to as "the University" - the

first respondent in these proceedings].

2. The facts are few and not disputed. The appellant is a sportsman proficient in badminton. He competed for admission in the Sports Quota set-up for

sportspersons for admission to Delhi University colleges. The appellant was awarded 79 marks "including evaluation of past performance (29/40

marks) and current performance (50/60 marks). The appellant complained that the second respondent was issued a certificate by the School Games

Federation of India declaring his position to be the first whereas in reality he did not play the relevant match and was an extra though he was part of

the team. It was contended before the learned Single Judge that in the lone

contest, the second respondent was awarded 48/60 marks and that consequently his selection was arbitrary and unfair. Initially the writ petition was premised upon award of 32 marks to the second respondent and award of 29 marks to him.

3.The position taken by the respondents was that the procedure adopted for selection was transparent. The University contended that for past performance it went by the certificate issued by the concerned games or sports federations in that the weightage given could not be questioned as it was not the primary evaluating agency. The second respondent contends that though he was not an active participant, nevertheless he was part of a team that won the concerned match and championship and, therefore, was awarded the certificate. In these circumstances, the award of 32/40 marks could not be faulted.

4.The appellant had relied upon *Asha v. Pt. B.D. Sharma* University of Health Sciences 2012 (7) SCC 389 to argue that admission to an educational institution should be based on a fair and transparent procedure and that adoption of improbable methods can be interfered with in judicial proceedings as arbitrary.

5.Learned Single Judge accepted the plea of the respondents and held that a uniform criteria for evaluating past performance had been adopted.

Though the second respondent was a team participant and actually was not part of any particular game, nevertheless the system of marking and grading adopted by the concerned sports organization was such that he too was given the same ranking or rating as the other team members. The

University, therefore, could not have differentiated between the nature of certificates given by one or other organization for different events.

6.It was argued on behalf of the appellant that the learned Single Judge overlooked the material circumstance that not all of the so-called experts who were said to have evaluated the contest and awarded marks (out of the maximum of 60 marks) had seen the performance of each candidate. It was also contended the award of marks was not known to the appellant as it was disclosed later in the writ proceedings. Learned senior counsel for the

appellant had contended that the spread of marks given to each participant in the event conducted by the University could not have been reasonably given, having regard to the nature of the event. It was emphasized that at a

given time, three matches or events took place within the same premises; however, it was improbable that all the experts could have evaluated each candidates. Within these given constraints, the award of separate marks resulted in adopting an arbitrary process. So far as the award of marks based on past performance was concerned, the appellant did not press this ground initially made out in the writ petition.

7.This Court had called for the affidavits of the concerned experts who were present at the time when the events took place. The three experts, i.e.

Ms. Sunita Atwal, Sh. Vikas Sharma and Sh. Ashwini Kumar filed affidavits that are part of the record. All of them consistently affirmed that trials

were held by the University from 29.06.2017 to 01.07.2017 for admission to undergraduate courses in the Sports Quota. The affidavits also state that

143 candidates were evaluated by each expert who participated in the sports trials and that the marks were awarded under three different heads â

fitness, fundamental skills and overall playing ability, for which each candidate was evaluated and performance recorded by each expert through

separate marks. These were consolidated in the marking sheet duly sent by the expert and countersigned by the convener â" Dr. Prakash Saroha.

The University also produced 9 DVDs which had recorded the trial events which took place between 29.06.2017 and 01.07.2017. It is evident from

the above discussion that the appellantâ's grievance was two-fold; the first related to award of marks for pass percentage. The complaint here is

that the second respondent was awarded marks on the basis of a certificate of participation and not of performance. On the other hand, the appellant

was awarded marks for performance. The appellant urged that the criteria adopted was arbitrary. On this aspect, the Court is of the opinion that the

learned Single Judgeâ's conclusions cannot be disturbed. The University consistently went by the certificates issued by the concerned sports

organizations. In the present case, the second respondent was awarded marks based upon the certificate produced by him (issued by the School

Games Federation of India).

8.On an overall conspectus of the documents presented by the second respondent and the documents relied upon by the appellant, the University

awarded marks for past performance based upon the criteria evolved by it. The mere circumstance that this criteria resulted in apparent anomaly or

asymmetry inasmuch as one of the candidates was given marks for his being member of a team itself does not result in the process being characterized as arbitrary. The concerned candidate was a member of the team which won the championship whose members were entitled to the same kind of certificates. Unlike individual events, badminton is a team sport also. Furthermore, the appellant's overemphasis on a singular certificate, in the absence of any other material to say that the second respondent was less merited would be a factual dispute that the Court cannot adjudicate on merits in writ proceedings. In this regard, the University's explanation that it cannot go into the authenticity of certificates awarded to candidates by the respective authorities competent to do so in that regard, in the opinion of the Court, would be sufficient to end the discussion. As far as the complaint with respect to the improbability of the evaluation by the three experts, regard being had to the nature of the trial matches/events is concerned, here again, the affidavits of the three experts clearly affirm that each one of them evaluated all 143 candidates who had participated in the badminton sports trials. The Court too had the occasion to see the recordings. The location of the trial apparently was common, in a large stadium. Three badminton courts were set-up. The recordings show that when the trial matches took place, one expert was assigned to watch each event. At the same time, the location of the Courts is such that the possibility of the individual observers/experts either being able to evaluate candidates in all the courts at the same time or by sitting in one place or moving around from time to time cannot be ruled out. Furthermore, this Court cannot also rule out the possibility of experts having reviewed their decision based upon the viewing of the recordings. Regardless of the latter, the Court is of the opinion that there is no improbability on the part of the experts to have observed the performance of every candidate and awarded separate marks to them.

9. In view of the above discussion, this Court is of the opinion that there is no merit in the contentions urged by the appellant.

10. During the course of hearing, this Court was informed that the appellant was given admission in the Hansraj College even though the pleadings mention that he was admitted to the Kirorimal College in the Sports Quota and that since the academic year is drawing to a close, appropriate directions may be issued to ensure that migration is granted to the Shri Ram College of Commerce. On this aspect, the Court is of the opinion that if

such an application is made, the same should be considered appropriately, having regard to the overall circumstances of the case and subject to the University's migration rules in that regard. The appeal is dismissed; but subject to the observations in the preceding paragraphs. No costs.