

(2019) 05 DEL CK 0395

In the Delhi High Court

Case No : Civil Writ Petition No. 5170 Of 2019, Civil Miscellaneous Application
No. 22907 Of 2019

Nitin Sehrawat

APPELLANT

Vs

Guru Gobind Singh Indraprastha University & Anr

RESPONDENT

Date of Decision : 13-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 5 AD(Delhi) 101

Hon'ble Judges : C. Hari Shankar, J

Bench : Single Bench

Advocate : Siddharth Sharkar Ray, J; Abhik Kumar, Anita Sahani

Final Decision : Dismissed

Judgement

1. The petitioner, who is presently studying in the 4th Semester, in the 2nd year of the Bachelor of Journalism and Mass Communication course,

conducted by the Respondent No. 1-University (hereinafter referred to as "the GGSIPU"), completed the first two semesters of the said course

during the period 2017-2018. He also appeared in the third semester examination of the said course, the results of which are stated to be awaited.

2. The grievance of the petitioner is that he has been denied permission, by the GGSIPU, to appear in the fourth semester examination, on account of

shortage of attendance. It is admitted, in the writ petition, that the petitioner has only 27% attendance, whereas the minimum attendance, in order for a

student to be permitted to appear at the end semester examination, is 75%.

3. The reason for the petitioner's shortage of attendance, in the 4th semester, as set out in the writ petition, is that his maternal uncle is suffering

from various ailments, and that the petitioner had to remain absent in order to

attend to his daily needs and arrange medical treatment.

4. The petitioner submits, in these circumstances, that he ought to have been permitted to appear in the end semester examination of the aforesaid course.

5. The petitioner also avers, in the writ petition, that several students, who had secured less than the requisite 75% attendance, had been permitted to appear in the said examination.

6. Mr. Ray, learned counsel for the petitioner, reiterates the contents of the writ petition and also seeks to place reliance on para 9.31 (ii) at page 152-

153 of H.M. Seervai's classic Constitution of India, Fourth Edition. The said passage reads thus:

â??9.31 (ii) A law provides that if certain prescribed conditions are not fulfilled, a licence to trade in a particular commodity shall not be granted to

any person by designated officers. Two thousand persons who have not fulfilled the prescribed conditions apply for and are not granted licences by

the designated officers. Thirty persons who have not fulfilled the prescribed conditions apply for and are granted licences by the designated officers

as a result of inadvertence, mistake or even bribery. Can any one or more of the 2,000 persons who have been refused licences, apply to the High

Court or the Supreme Court to direct the designated officers to grant them a licence? The Answer must be: No, for the applicants having been rightly

refused a licence, they cannot complain that their right to obtain a licence had been violated. Article 14 requires that persons similarly situated must be

treated equally; but Art. 14 does not confer on any person a right to which he is not entitled under a valid law. And yet, by refusing licences to the

2,000 applicants and granting them to 30 applicants, who ought also to have been refused licences, persons similarly situated have been treated

unequally. Is there no remedy against a clear violation of the right to equality? It is submitted, that a writ of mandamus should lie at the instance of any

one of the 2,000 applicants against the designated officers, directing them to cancel the licences granted to the thirty applicants. When I made this

submission in the third edition of this book, difficult questions arose of an applicant's locus standi to apply for a mandamus. This was because in R.

v. Lewisham Union Guardians it was held that the applicant for a mandamus must show that his personal right was affected. However,

Lewisham's Case was overruled in R. v. I.R.C. Exp. Fed. of Self-Employed by all the 5 law Lords who heard the matter. The overruled case had

treated a writ of mandamus as if it was a private law remedy when in reality it was a public law remedy. Lord Diplock held in the Inland Revenue

Comms. case that a pressure group like the Federation of Self-employed, or even a single public-spirited person, acting in good faith, could approach

the Court for a mandamus directing a public authority to abstain from violating the law or for compelling that authority to set right its violation of the

law, where that is possible. In S.P. Gupta & Ors v. Union Bhagwati J. adopted Lord Diplock's view, and Gupta, D.A. Desai, Pathak and

Tulzapurkar JJ. Agreed that is, 5 out of the 7 Judges who constituted the Bench accepted Lord Diplock's view. Consequently, a writ of

mandamus directing the designated officer to cancel the licence illegally granted to 30 applicants would lie at the instance of an aggrieved party, or at

the instance of a public-spirited citizen acting in good faith to enforce the law.

7. I do not see how the above passage can come to the aid of the petitioner. If anything, the passage would seem to militate against the

petitioner's claim. The example cited in the above extracted passage refers to a case in which license had been granted to thirty persons, though

they had not fulfilled the requisite conditions, though two thousand others, who had fulfilled the requisite conditions, were not granted licences. The

passage clearly, addresses the issue of whether the two thousand persons who had not been granted licences, could maintain an action before a court,

seeking that licences be granted to them, at par with the thirty persons who had been illegally granted licences. The passage clearly notes that the

position, in law, is that no such right would enure, in favour of the said two thousand persons, whose right, at best, could be for revocation of the

licences granted illegally to the thirty other ineligible persons.

8. Analogizing the present case to the one cited by Seervai, the petitioner would, clearly, have no right whatsoever, to seek permission to appear in the

fourth semester examination, as he has admittedly less than 75 % attendance to his credit.

9. As such, the petitioner could not seek to piggy back on the fact that certain other students, who had less than 75% attendance, had been allowed to

sit in the examination.

10. The writ petition does not contain any prayer, seeking that the persons who had been permitted to sit in the examination " as the petitioner would

aver, illegally " should not be permitted to do so, or that the permission granted to the said students be revoked. Neither does this Court know

whether the said allegation is correct, nor have any of the said students been impleaded as parties in the writ petition.

11. As such, this Court does not need to venture into the said arena at all.

12. That apart, there are a catena of authorities, to the effect that Article 14 of the Constitution of India does not contemplate negative equality. The

grant of an illegal benefit to one person cannot justify another person seeking the same benefit. (State of Haryana v. Ram Kumar Mann, 1997 (3)

SCC 321).

13. The issue in controversy, I may note, has been dealt with, by me on facts, which are identical to those of the present case, in my judgment dated

6th May 2019 in W.P.(C) 4861/2019 (Kartik Chopra v. GNCTD).

14. The petitioner, in that case, was suffering from an ailment known as Paroxysmal Supraventricular Tachycardia (PSVT), which disabled him from

attending 75% classes, as required by the Ordinances of the GGSIPU, in order to enable him to appear in the end semester examination.

15. While sympathising with the predicament faced by the student, this Court clearly expressed its inability to direct the GGSIPU to allow the

petitioner to appear in the examination, contrary to its own Ordinance.

16. Mutatis mutandis, the said position would apply to the present case as well.

17. For the above reasons the writ petition is dismissed with no orders as to costs.