

(2011) 11 DEL CK 0280

In the Delhi High Court

Case No : Writ Petition (C) No. 3082 of 2010

P. Thulasidhass

APPELLANT

Vs

Jawaharlal Nehru University and Others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Citation : (2011) 10 AD 173

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Mohinder J.S. Rupal, for R-1-7, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The petitioner pursuing his Ph.D. (Provisional) first year in the Centre for International Legal Studies (CILS), School of International Studies, Jawaharlal Nehru University (JNU) filed this petition impugning the process of selection of candidates to the Fox International Fellowship 2010-2011 and seeking stay of the recommendations made therefor.

2. The petition came up before this Court first on 7th May, 2010 when this Court asked for the records to be produced by the respondent University. On 18th May, 2010, the counsel for the respondent University informed that four students had been selected by the Selection Committee for Fox International Fellowship against two names and placed the Minutes of the Meeting of the Committee constituted by the Vice-Chancellor for award of Fox International Fellowship for the year 2010-2011 before this Court. This Court was also told that of the four students, only one namely Ms. Abha Yadav had been finally chosen by the Yale University, USA (in conjunction with whom the respondent University grants the said Fellowship) to receive Fox International Fellowship for the year 2010-2011. Accordingly, the said Ms. Abha Yadav was impleaded as a respondent but interim relief of restraining further movement as sought was not granted to the petitioner. The petitioner preferred SLP(C) No.17265/2010 to the Apex Court

which was converted into Civil Appeal No.6726/2010 and disposed of vide order dated 16th August, 2010; though no interim relief was granted but petitioner was permitted to present his case in person. The petitioner appeared before this Court on 15th September, 2010 and again sought stay of the award of the Fellowship. However, the counsel for the respondent University informed that Ms. Abha Yadav had proceeded abroad upon the grant of scholarship. The said Ms. Abha Yadav failed to appear inspite of notice. The respondent University has filed its counter affidavit and to which a rejoinder has been filed by the petitioner. The counsels have been heard. After the close of hearing, the petitioner filed another application with respect to the Fellowship for the year 2011-12. It was his case that his application for the year 2011-12 had been rejected. The counsel for the respondent University informed that only those candidates studying between 3rd to 6th Semester of M.Phil/Ph.D. were entitled to apply and the petitioner having proceeded beyond 6th Semester was not eligible to apply. The said position was controverted by the petitioner. As such the pleadings on the said application have also been completed.

3. The position which emerges is that the respondent JNU has signed a memorandum with Yale University, USA for student exchange programme from JNU to Yale University every year and to administer the programme of Yale University through Fox International Fellowship and to do research at Yale for a period of one year; the said Fellowship is initially awarded to two students of M.Phil/Ph.D. in any of the prescribed subject areas including Law, Economics, Finance, Political Science, International Relations and Contemporary History; students who have completed 3rd Semester of their course in M.Phil/Ph.D. but not more than 6 Semesters of the programme are eligible to apply.

4. The case of the petitioner is that in the academic year 2009-2010 he was a student of M.Phil second year; however the Chairperson of Centre for International Legal Studies did not entertain his application for Fellowship since the said Chairperson was interested in another student who was senior to the petitioner and who was working under the guidance of the said Chairperson; that he was thus deprived of the opportunity in the year 2009-2010.

5. The petitioner claims to have been assured that he could apply for the Fellowship in the year 2010-2011; he however claims that no information in this regard was published till 17th February, 2010; that he was on 18th February, 2010 informed that applications for the Fellowship were being accepted; on enquiry, though he was told that a notification dated 7th January, 2010 and reminder dated 12th February, 2010 had been issued in this regard but according to the petitioner the same were not published. The petitioner further claims that this year also the Chairperson showed diffidence in entertaining his application; that however on his persistence his application was forwarded and he was called for an interview on 2nd March, 2010. The petitioner claims that no questions were put to him in the interview and his academic merit was not considered; that the results also were not declared till the filing of this petition on 4th May, 2010.

6. The petitioner avers favoritism having been practiced. It is contended that Ms. Balraj Kaur and Ms. Abha Yadav who were rumoured to have been selected were less meritorious than him but were the favourite of the Chairperson of the Centre for International Legal Studies.

7. The respondent University in its counter affidavit has pleaded that circular and reminder dated 7th January, 2010 and 12th February, 2010 respectively were issued inviting applications for the Fellowship for the year 2010-2011; 21 applications were received; all the applicants were called for interview in which fair opportunity was given to explain their research proposals; that the Selection Committee after due consideration of their academic credentials and based on their performance in the interview, recommended four candidates in the order of their merit as against two Fellowships, to provide for the eventuality of withdrawal by any candidate; that though the particulars of the first two students on the merit list were forwarded to the Yale University for consideration as the final decision of accepting the candidature of the recommended students lies with the Yale University, only Ms. Abha Yadav who was first on the merit list was accepted by the Yale University and Ms. Balraj Kaur who was second in the merit list was not accepted; that the petitioner did not even figure in the first four candidates and hence is not entitled to challenge the selection process.

8. It is further pleaded by the respondent University that the petitioner having earlier not challenged the selection process and/or the constitution of the Selection Committee, after failing in the selection, is not entitled to challenge the same.

9. The respondent University in its counter affidavit has further pleaded that the Selection Committee of six persons is constituted; that the Chairperson of the Centre for International Legal Studies against whom bias is alleged was but one of the six members of the Selection Committee and not even the Chairman of the Selection Committee; that the said Chairperson was originally not even in the Selection Committee and was appointed only when the Professors originally appointed expressed inability to participate. It is thus contended that no case of bias also is made out.

10. The respondent University in its counter affidavit has also denied that the petitioner wanted to apply in the year 2009-2010 also or was not allowed. It is pleaded that the question "why you want to go abroad" is asked to the applicants to prevent them from taking up the Fellowship as an academic tourism. The respondent University has further clarified that the recommendations of the Selection Committee are not immediately made public since the same are dependent upon clearance from the Yale University.

11. The petitioner in his rejoinder, besides lengthy legal submissions has pleaded that barely three minutes of time was given in the interview and in which time academic credentials cannot be judged; he has reiterated his pleas of bias of the Chairperson of Centre for International Legal Studies in favour of Ms. Abha Yadav

and Ms. Balraj Kaur; he contends that since the Chairperson was the guide of the said two students, there was a conflict of interest in his role as a guide and as a member of the Selection Committee; the petitioner has also referred to complaints made by other unsuccessful candidates in other years against the selection process.

12. As far as CM No.1853/2011 filed by the petitioner after the close of hearing with respect to the Fellowship for the year 2011-12 is concerned, the petitioner by then was admittedly not within the 3rd to the 6th Semesters within which only as per the averments in the petition also, is the eligibility to apply. Thus no illegality can be found in the rejection of the application of the petitioner for the said year. Even if the respondent University in the past had selected any candidate who was beyond 6th Semester, once the petitioner himself in the petition has admitted the rule of eligibility, he cannot claim negative equality (see Union of India (UOI) and Others Vs. M.K. Sarkar,) and the remedy if any of the petitioner, was to challenge the selection contrary to the rules. The same has not been done.

13. Coming back to the challenge to the selection for the year 2010-2011, undoubtedly the Apex Court in Madan Lal and Others Vs. State of Jammu and Kashmir and Others, , Amlan Jyoti Borooah Vs. State of Assam and Others, and Manish Kumar Shahi Vs. State of Bihar and Others, has held that a candidate, after remaining unsuccessful cannot challenge the selection process and the constitution of the Selection Committee. If the petitioner entertained any doubts as to the fairness of the members of the Selection Committee, he ought to have objected then. The petitioner however proceeded with his interview before the Selection Committee to which objection is now taken and cannot be permitted to object after remaining unsuccessful.

14. As far as the plea of bias is concerned, the said allegation is against one of the members of the Selection Committee only. When the recommendation of only two candidates is to be made by a Selection Committee of six members, the allegation of bias against one member of the Selection Committee cannot be said to have influenced the decision. Significantly there are no averments even, of the member who is alleged to have been biased having influenced the other members of the Selection Committee. Thus the selection of the merit list cannot be held to be vitiated for the said reason also. The counsel for the respondent University has in this regard also referred to M.V. Thimmaiah and Others Vs. Union Public Service Commission and Others, laying down that people are prone to making allegations of bias and mala fide but the Courts owe a duty to scrutinize the allegations meticulously because the person making the allegations himself has a vested right.

15. I had however during the hearing enquired from the counsel for the respondent University about the criteria followed for selection. No satisfactory reply was forthcoming. Ordinarily, one would expect the Selection Committee to be guided by a prescribed criteria i.e. of the factors to be considered and the

weightage to be given to each. In the absence thereof, arbitrariness and bias seeping into the selection process cannot be ruled out. Without such factors and weightage to be given thereto being listed, the selection criteria may vary year to year depending on the personal perception of the members of the Selection Committee. The same is not a happy state of affairs. The same is also likely to lead to a lot of heart burn with the applicants not knowing the reasons for which they have been rejected and others selected. Without intending to foray in any manner into the domain of the experts in this regard, in my opinion, the various factors for selection would be the past academic performance at various stages, the current academic performance, extra curriculum activities and readings, personal characteristics and communication skills to name a few. However the scheme/policy in this regard will also have to be determined by the experts in the subject. Now, when the Supreme Court in Central Board of Secondary Education and Another Vs. Aditya Bandopadhyay and Others, has held that an examinee has a right to inspect the answer sheets also, in the absence of the criteria being laid down and the marks/points secured by each of the contenders therefor, there will be no transparency. It is also now the settled position that decision making process in such matters are subject to judicial review. However in the absence of any criteria and the basis for the selection, the Courts would be unable to decipher the reasons which prevailed with the Selection Committee in making the selection.

16. It is also felt that as far as possible, Professors/Teachers close to or associated with the applicants as Guides for research work or otherwise ought not to be included in the selection process. The possibility of unintended bias in favour of those with whom the members or any of the members of the Selection Committee are familiar cannot be ruled out. The possibility of making the Selection Committee broad based and associating academicians from outside the respondent University, also ought to be explored.

17. As far as the grievance made of the selection process being not made public is concerned, in the present day, such allegations ought to be ruled out by publishing the Notifications inviting applications and also the result on the website of the University. Even if the result of the selection is dependent upon the Yale University, I see no harm in declaration of the tentative result so as to inform the successful as well as unsuccessful candidates of their future course of action.

18. I have ventured to make the aforesaid observations since it is felt that in the matter of making of the recommendations for Fellowship the respondent University is showcasing its talent to a foreign university; besides of course the factor of, most meritorious being selected has to be observed. Cases are not unknown where a bright mind owing to such frustration is extinguished for life.

19. The counsel for the respondent University has also invited attention to National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, to contend that selection is an administrative function and no

reasons are required to be given by the Selection Committee comprising of experts and the only test is of observance of reasonable and non-arbitrary procedure and that no extraneous or irrelevant considerations have prevailed. Though the said proposition cannot be doubted with but the aforesaid observations have been made for the reason of not finding any prescribed criteria for selection. Also, the Supreme Court in *Global Energy Ltd. and Another Vs. Central Electricity Regulatory Commission*, has itself emphasized on transparency and held that law has to provide a basic level of legal security by assuring that law is knowable, dependable and shielded from excessive manipulation. The Division Bench of this Court also in *Association For Development v. UOI* 167 (2010) DLT 481 emphasized the fairness and transparency in the selection procedure.

20. Thus while dismissing the writ petition, the Vice-Chancellor of the respondent University is directed to reconsider the selection process for making recommendation for the Fox International Fellowship as also the constitution of the Selection Committee in terms of the observations made hereinabove and if necessary, in consultation with other experts in the field and to revise the selection process in accordance with above.

No order as to costs.