

(1994) 07 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 5136 of 1993

Renu Sharma and Others

APPELLANT

Vs

Delhi University and Others

RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1994) 31 DRJ 423

Hon'ble Judges : Devinder Gupta, J;D.P Wadhwa, J

Bench : Division Bench

Advocate : Swantantar Kumar, Geeta Mittal, Arun Bhardwaj, Pawan Duggal, V.K. Shall and B.S. Nagar, for the Appellant;

Judgement

D.P. Wadhwa, J.

(1) The petitioners numbering eight, who got diploma in Physiotherapy from the Institute for the Physically Handicapped (I.P.H.) in the years 1979, 1984, 1989 and 1990, have filed this petition under Article 226 of the Constitution for a direction or order requiring the respondents to formulate a policy and offer a "Bridge Course" for them to get a degree of B.Sc.(Honours) Post Diploma in Physiotherapy or Occupational Therapy for the year 1993-94, and thus enabling them also to obtain a degree from the Delhi University in accordance with the rules. There is also a prayer to set aside the admission of the sixth respondent to this very course, but since respondent No.6 did not get any admission this prayer does not survive.

(2) There are six respondents, namely, (1) the Delhi University; (2) the Vice Chancellor; (3) Institute for the Physically Handicapped; (4) Union of India in the Ministry of Welfare; (5) Mrs. C.P. Gupta, Director of I.P.H; and (6) Ms. Puja Jairath. Facts are quite in brief. Respondent No.4 is the controlling authority of the I.P.H. which conducts courses in Physiotherapy and Occupational Therapy. I.P.H. is affiliated to Delhi University. Earlier it was awarding diplomas in Physiotherapy and Occupational Therapy which were of duration of two years

from the year 1960 till 1970. Thereafter, since 1971 the duration of these diploma courses was increased to three years. For the academic session starting from 1991 the authority decided to award degree, i.e., B.Sc. Course, in physiotherapy and occupational therapy which was for a duration of 3-1/2 years. The students who were already undergoing diploma courses and admitted for academic sessions starting from 1989 and 1990 agitated that they be also awarded a degree instead of diploma. These students were in the second and third year of diploma courses and pertained to batches of 28 and 29. It was batch No. 30 which was taken in for award of degree. Students of 28th and 29th batches represented that if they were awarded diploma after completion of their three years course, they would be at a disadvantageous position vis-a-vis degree holder students who had been admitted from 1991 session. I.P.H. and the Ministry of Welfare considered the matter and found that the grievance of students of 28th and 29th batches who were undergoing studies was genuine and the matter was, Therefore, taken up with the University for starting B.Sc. (Honours) Post Diploma in Physiotherapy and Occupational Therapy for students of 28th and 29th batches. This was approved by the Academic Council of Delhi University on 26 September 1991. However, this was specifically confined to the students of 28th and 29th batches. In the bulletin of information issued by the Institute for the Physically Handicapped for admission to B.Sc.(Honours) Physical Therapy (Post Diploma) (University of Delhi) eligibility conditions laid down were that a candidate should have Diploma in Physiotherapy (3 yrs) duration from the Institute for the Physically Handicapped and belonging to 28/29th Batch. This course was for a period of one year duration and for 1992-93 and 1993-94 sessions. This was called a "Bridge Course". After completion of this course the candidates of 28/29th batch were to be awarded a degree of B.Sc.(Honours) in Physical Therapy (Post Diploma). These two sessions of 1992-93 and 1993-94 are since over and so, Therefore, also the Bridge Course. Petitioners have not asked for any mandamus that the respondents should start another Bridge Course for them and other similarly situated diploma holders to join that course and to get degree in Physiotherapy and Occupational Therapy similar to that awarded to students of 28th and 29th batches. Mr. Swatantar Kumar, learned counsel for the petitioners, submitted that confining the Bridge Course to the students of 28th and 29th Batches only was discriminatory and arbitrary as well. He said all diploma holders of earlier batches had a right at the time the Bridge Course was introduced for the first time to be admitted to that course. He said it was a continuous course specially introduced for the diploma holders. We may, however, note at this stage that number of seats for this B.Sc.(Honours) Physical Therapy (Post Diploma) Course was limited to 25 seats and, of course, for the two batches mentioned above. Mr. Swatantar Kumar also submitted that there was no rationale behind having bridge course only for 28th and 29th batches and the authorities could not pick and choose these two batches, and as such they acted in an arbitrary manner violating the rights of the petitioners under Article 14 of the Constitution. In support of his submission he referred to a decision of the Judicial Commissioner in *Mukul Madhankar Sinai Mahatme and etc. v. Dean,*

Goa Medical College, Panaji and others, etc., Air 1981 G & D 39. To make his point Mr. Swatantar Kumar stressed on an observation by the court in that case wherein it was stated that the decision confining admission to the post graduate course of Goa Medical College to the students of current batch appeared to be unconstitutional in terms of Article 14 of the Constitution, but then we find that the facts are entirely different. In the Goa case the petitioners had completed their M.B.B.S. Course in the year 1975. They had qualified from Goa Medical College which was affiliated to the Bombay University. They sought admission in MS/MD. On 16 May 1978 the Dean, Goa Medical College, published a circular inviting applications from residents/demonstrators for admission to the MS/MD Course in the Goa Medical College. For a candidate desirous of appearing for MS/MD Examination was required to put in a minimum of six months in a resident post in the subject subsequent to his/her registration as a postgraduate student plus another six months in the same or allied subject. The circular provided that the application should be submitted on or before 15 June 1978. The petitioners submitted their application before the stipulated date. The date of submission of the list of selected candidates was extended to 9 September 1978 by the Bombay University. No selection was completed or announced up to such extended date. On 25 September 1978 the Dean, however, published a notice giving the list of selected candidates in which reference was made to a certain Government circular dated 16 September 1978 which restricted selections for post-graduate courses to students of the current batch only and precluded the students of earlier batches from competing or being selected. The aggrieved petitioners challenged the selection made on the basis of the circular and also the circular as well. The petitioners in Goa case said that in December 1977 fresh criteria/rules for selection of post-graduate courses/registrations were framed which entitled residents of all batches/years to compete and did not preclude any of them from selection. They, Therefore, said that there appeared to be no legal justification from excluding the otherwise eligible doctors and confining the selection to the present batch only. The court held that the Government having laid down certain rules for the purpose of selection of candidates for admission to the college and having invited applications pursuant to such rules, it could not go back on their earlier representation and that it was not open to the Government to change the rules containing the criteria for selection and admission after expiry of the period for submission of the applications without notice of the change. The court also said, as noted above, the decision of the concerned authorities confining admission to the post-graduate course of the Goa Medical College to the students of the current batch was unconstitutional in terms of Article 14 of the Constitution. It would, thus, appear that the facts" mentioned in Goa case have no bearing on the controversy raised in the present petition.

(3) Mr. Shali, learned counsel for the Union of India, submitted that the B.Sc. (Honours) Physical Therapy (Post Diploma) was a specially designed and developed course of one year duration for the diploma holders in physiotherapy of the I.P.H. belonging to 28th and 29th batches. He said Post Diploma Course

was introduced since 1992-93 to bring the students of 28th and 29th batches who are undergoing studies at par with the B.Sc.(Honours) students in these courses. The petitioners, he said, have qualified for the diploma before the B.Sc. Courses were introduced in the I.P.H. and no injustice had been done to them by the decision to confine the bridge course to 28th and 29th batches only

(4) We do not think that the action of the respondents in confining the bridge course only to 28th and 29th batches is in any way arbitrary or discriminatory or any right of the petitioners had been violated. Delhi University approved this bridge course for 28th and 29th batches which was introduced for two years, first bridge course being for the students of 29th batch and the second for the 28th batch. As noted above, seats for entrance to bridge course were also limited to 25 only. These two bridge courses are already over. It is not possible for this court to issue a mandamus to the respondents, to conduct another bridge course for the petitioner, or for that matter for all those diploma holders who passed out up to 27th batch. It is difficult to comprehend the situation where respondents can be asked to start a bridge course for all the diploma holders who had passed out earlier with the number of seats limited for the course. By way of argument it is also not possible to say that the bridge course could be limited to the diploma holders for five batches, i.e., 23rd to 27th batches or more batches. After all one has to draw a line somewhere though not arbitrarily. The respondents in their wisdom thought it fit that the bridge course should be confined to the candidates already undergoing studies and those were of batches 28th and 29th. We do not find the action of the respondents in so doing in any way arbitrary or unreasonable. It is a policy matter dealing with starting of a course for getting a degree where the Central Government cannot of its own start a bridge course. It has to get approval from Delhi University. The Academic Council of Delhi University approved the bridge course confined to the students of 28th and 29th batches. It is now all over. As far as the case of the respondent-I.P.H. is concerned Mr. Pawan Duggal, learned counsel, said that the degree can be given only if agreed to by the Central Government and approved by the Delhi University, which is not so here. We do not think in such a case judicial review is appropriate or even permissible. Petitioners are not entitled to any relief. This petition, Therefore, fails and is dismissed. We will, however, leave the parties to bear their own costs.