

(2009) 09 DEL CK 0112

In the Delhi High Court

Case No : Writ Petition (C) No. 9978 of 2009

Rohan Tomar

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 09 DEL CK 0112

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : Rajeev Bansal, for the Appellant; Mohinder J.S. Rupal, for the respondent No. 1 and Pawan Kumar Aggarwal, for the respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J.—The petitioner seeks a direction to the respondent to grant him admission under the sports quota on the ground that the marks awarded to him for admission under the sports quota are the same as that to Sh.Mibom Tako who has been given admission whereas he has been denied admission though the rules did not provide how to resolve such a tie.

2. Brief facts to comprehend the disputes raised by the petitioner are that petitioner passed higher secondary examination from Sardar Patel Vidyalaya in March, 2009 and applied for admission for B.Com (Hons) course in Delhi University by filling common admission form. The petitioner also filed a separate admission form under the sports quota for admission to Shri Ram College of Commerce, respondent No. 2.

3. The petitioner also submitted registration form for sports trial 2009-2010 with respondent No. 2 also known as `SRCC.. The admission procedure/guidelines and eligibility for sports trials were detailed in the registration form. Relevant clause is as under:

Admissions under Sports quota shall be made on the basis of level of competency of candidate in the Sport- determined only of the candidates who have achieved distinctions in Sports during the last three years. Trials and verification of Sports Certificates/Documents. Candidates must present themselves physically for Verification of Sports Certificates/Documents.

4. The petitioner contended that he was called for the sports trial on 16th June, 2009 at St.Xavier's School in which he participated and a select list of 7 candidates for football was displayed on 25th June, 2008. The short listed candidates were called to report on 26th June, 2009 for personal interview along with the relevant original sports and academic certificates. For the alleged interview on 26th June, 2009 no marks were given and only the certificates of the candidates were checked. List for selection on the basis of sports performance had already been put up on 25th June, 2009.

5. On the basis of the sports trial, the petitioner was awarded 11.33 points for his performance and 10 points on the basis of his testimonials. The petitioner was thus awarded 21.33 points. The petitioner has asserted that another candidate named Sh.Mibom Tako was also awarded 21.33 points which was apparent from the select list which was displayed on the notice board on 25th June, 2009. The grievance of the petitioner is that though the petitioner obtained 21.33 points and Sh.Mibom Tako also obtained 21.33 points, but the petitioner was placed at serial No. 4, whereas Sh.Mibom Tako was placed at serial No. 3 and later on given admission. On 25th June, 2009 there was no criteria to place petitioner below Sh. Mibom Tako.

6. The petitioner has contended that for eventuality that two candidates scoring equal marks in the sports quota there were no guideline, norms or rules. Therefore since he also secured 21.33 points as Sh.Mibom Tako, the respondents ought to have admitted both of them, however, the respondents have given admission to Sh.Mibom Tako and the admission has been denied to the petitioner. The learned Counsel for the petitioner contended that cut off percentage is fixed by the college for admission on the basis of merit in the qualifying examination and all the students who have marks above the cut off percentage are admitted even though on account of such admissions, the number of students admitted far exceed the sanctioned strength of the students. Petitioner also contended that the performance of the petitioner in the field trial was better than the performance of Sh.Mibom Tako, however, he has been given more marks on the basis of testimonials. In the circumstances, it is also pleaded by the petitioner that since his performance was better in the field trial which is almost equivalent to an entrance examination, he should have been preferred in place of Sh.Mibom Tako and in any case he should have also been granted admission.

7. The petitioner, therefore, made a representation against not granting him admission on 27th June, 2009, however, his representation had not been replied. Another representation was made by the petitioner through his father on 29th

June, 2009 to the Director of Sports pointing out that in case of such a tie, more weightage should be given to the performance of the student in the sports trials which are conducted by the College. The petitioner has also contended that the respondent should have admitted petitioner even though that would have led to granting admission to more students than the advertised seats under the sports quota as for admission on merit on the basis of qualifying examination all the students above cut off percentage are admitted far above the sanctioned strength. It is contended that in fact on some occasions the respondent No. 2 college has admitted more students in number under the sports quota than the declared number of seats under the sports quota. The petitioner also contended specifically that during the academic year 2008-09, the seats under the sports quota were 24, however, for the current academic year 2009-10 the seats under the sports quota have been reduced to 20 although the sanctioned intake is 551. It is further asserted that with the upper limit of 5% admission under the sports quota, on the basis of sanctioned intake can offer up to 28 seats, however, no reason has been disclosed for not granting admission to the petitioner.

8. The petitioner in the facts and circumstances challenged the action of the respondents contending inter-alia that placing Sh.Mibom Tako at serial No. 3 and placing the petitioner at serial No. 4 on 25th June, 2009 was without any logical rational and in consonance with the objective of granting admission under sports quota and without any authority, reason or rationale and, therefore, the action of the respondents is totally arbitrary. In the circumstances, it is contended that treatment given to the petitioner is not fair and is arbitrary and is in violation of his fundamental rights. Since there are no guidelines, norms and/or rules for such an eventuality, the respondents are liable to give admission to the petitioner also and cannot justify their action on the basis of any other criterion adopted by them later on which is also an attempt by them to justify their action illegal action in placing the petitioner below the other candidate having scored the same marks in the merit list declared on 25th June, 2009. The alleged criteria was evolved in the sports committee meeting held on 26th June, 2009, though the sports committee was competent to frame rules or modify the rules for admission under the sports quota.

9. The petitioner further asserted that the petitioner should have been given preference over other candidate on the basis of sports trials which were conducted by the respondent No. 2 college. The plea of the petitioner is that since under the sports quota the admission was based on the competency level of the candidates, therefore, preference should have been given to a candidate whose performance was better at the trials taken by the respondent No. 2. The petitioner also contended that the sports committee which has Principal of the College as its members, could not have decided any criteria, even if it had powers to do, in absence of Principal of the College. It is also argued vehemently on behalf of the petitioner that after the merit list was declared on the basis of performance on 25th June, 2009, the respondents could not have devised any other criteria and could not have changed the rules of the games and has relied

on Bank of Baroda Employees Union (Regd.) and Others Vs. Bank of Baroda and Others, ; Hemani Malhotra Vs. High Court of Delhi, and D.C. Aggarwal Vs. State Bank of India and others, .

10. The writ petition is contested by the respondents. A counter affidavit was filed on behalf of respondent No. 2 college contending inter- alia that the sports quota provided not more than 5% of total number of seats separately both in Honours and B.A for first year of the under graduate courses. The respondent No. 2 also relied on rules given in Information bulletin of 2009 relating to sports quota admission which are as under:

4.7.1 Procedure for admission under Sports Quota Not more than 5% of the total number of seats separately both in Honours and B.A (for 1st year of the Undergraduate Courses) except in Engineering and those other courses where there is an admission test or where there are centralized admissions, be offered for admissions on the basis of sports and co-curricular distinctions. The admission on the basis of the sports shall be finalized by each college on the recommendation of a Committee consisting of the Principal, Director of Physical Education and some teachers and students associated with the sports. This committee shall be constituted for the purpose by the respective colleges.

Dates for filling applications and date for admission on sports basis shall be notified by the College and displayed on Notice boards.

The Sports Admission Committee shall screen/evaluate the applications, hold interviews and trials on the ground and recommend admission on the basis of sports, as per Evaluation Chart given below. All sports certificates must be duly verified by the Head of the Institution last attended and by the Issuing Authority. All applications along with sports certificates may also be sent to the Conveners of the University Sports Admission Committee who will also scrutinize these applications.

The sports certificates should be accompanied by a photograph of the candidate duly attested by the respective issuing Authority and Head of Institution last attended. Any student submitting false/forged/fake certificate will be debarred from admission to any course in any college for three years. If he/she is admitted, his/her admission will be cancelled. Such cases will be notified to all colleges.

The level of competence in sports will be determined only if the candidate has achieved distinctions in sports during the last 3 years. Following is the order of preference for admission in the under graduate courses. Preference will be given to those sports activities in which Delhi University Inter-college and Inter-University Competition are held:

- a. Participated by representing India in any event/game at the International level (Certificate to be submitted from the Ministry of Sports/Sports Federations).
- b. Participated in any event/game in Junior National Championship (Certificate to

be submitted from the National Federation of concerned game/s).

c. Participated in the Winner/Runner-up teams and secured 1st, 2nd or 3rd position in individual even in National School Game/s (Certificate to be submitted from the National School Games Federation/Directorate of Education of the concerned State).

d. Participated in the All India Rural Sports and Women Sports Festival securing 1st, 2nd or 3rd position in individual even or a team (Certificate to be submitted from National Institute of Sports).

e. Participated and secured 1st, 2nd or 3rd position in Inter Zonal Tournament or 1st, 2nd and 3rd position in Individual Even (Certificate to be submitted from Director of Education of the concerned State).

Note: the level of competition in case of Sainik School, Kendriya Vidyalaya and Public School may be considered along with the last category i.e (e) Participated and secured 1st, 2nd or 3rd position in Inter-Zonal Tournaments or 1st, 2nd or 3rd position in individual Events. Regarding Extra-curricular activities, it is for the college concerned to decide.

A merit list of the students selected for admission to various courses on the basis of sports should be duly displayed on the College Notice Board. All admissions on the basis of sports must be completed by 16th July, 2008. The list of students admitted on the basis of sports should also be endorsed to the Convenor, University Sports Admission Committee.

Proper record of the candidates admitted under this category shall be maintained by the College so that the same is readily available, if required by the University. The applicant as per his/her age must be eligible to participate in Inter-Varsity Competitions during the next two years and should not be employed Part-time/ Full-time anywhere.

A committee at the University level has been set up to scrutinize and supervise all admissions made on sports basis in Colleges and to look into my complaint.

UNIVERSITY OF DELHI

Evaluation Chart for Sports Men/Women to prepare merit on the basis of Sports Certificates

Under-Graduate Course

A

B

C

D

E

Representation of India in International Meet during last three years

Participation in the Junior National Championships during last three years

Participation in National School Games during last three years

Participation in All India Rural Sports/Women Festival during last three years

Participation in the Inter-Zonal Tournament during last three years

1st

13

1st

10

1st

7

1st

4

1st

1

2nd

14

2nd

11

2nd

8

2nd

5

2nd

2

3rd

15

3rd

12

3rd

9

3rd

6

3rd

3

11. The respondent No. 2 admitted that there was a tie between the petitioner and Sh.Mibom Tako. The respondent No. 2, however, contended that the sports committee in its meeting held on 26th June, 2009 decided that the question of tie has to be decided on the basis of marks obtained by two students namely Sh.Mibom Tako and petitioner on the basis of 12th class examination passed by them. It is contended that Sh.Mibom Tako had obtained more marks than the petitioner and, therefore, he was preferred for admission under the sports quota.

12. The respondent No. 2 also contended that it sought a clarification from Delhi University/respondent No. 1 and a clarification dated 3rd July, 2009 was sent by the University. The clarification sent by the University dated 3rd July, 2009 is as under:

Please refer to your letter No. SRCC/PO/23/264 dated July 2, 2009.

In this regard I would like to state that the Sports Council and the University have no guidelines laid down for breaking the tie in sports cases. The college may use its direction. However, if sufficient number of seats are available both the candidates may be considered without putting to disadvantage any other candidate in the sports category.

13. The respondent No. 2 contended that though the University had clarified that if the seats are available both the candidates may be considered without putting to disadvantage any other candidate in the sports category, however, sports committee of the college in its meeting held on 9th July, 2009 reiterated the decision taken on 26th June, 2009 and it was maintained that Sh.Mibom Tako be admitted under the sports quota. However, the sports committee modified the criteria for breaking the tie and held that instead of taking all marks in the qualifying examination, marks in best of four subjects including a language be considered for such an eventuality and this criteria be also used in future. The principal of the college was not present in this meeting of the sports committee also. It was contended that the decision was taken in view of the limited number of seats available for admission under the sports quota in the discipline of football. It is contended that the decision taken by the committee is bonafide and not assailable under Article 226 of the Constitution of India.

14. The college later on filed additional affidavit giving details of intake of students in 2009-2010; 2008-2009 and 2007-2008 which far exceeds the sanctioned intake. The additional affidavit did not disclose as to how the admission of students could far exceeds the sanctioned intake. The college did

not disclose as to what is the power of the sports committee and how the sports committee could take decision and modify the rules for admission under the sports committee and how the alleged sports committee could take decision in absence of the Principal of the College who is an integral part of the committee. The affidavits filed by the college did not disclose on what basis in the merit list put up on the notice board on 25th June, 2009, the petitioner was put below the other candidate Mr. Mibom Tako, though both of them had scored same marks.

15. The respondent No. 1 has also opposed contention that the University of Delhi is constituted under the Act of Parliament and Academic Council is one of the bodies of the University which in its meeting dated 17th May, 1987 had laid down the procedure for admission on the basis of sports in colleges. It was held that not more than 5% of the total number of seats, separately in Hons and Pass Course be offered for admission on the basis of sports and other co- curricular activities. Regarding respondent No. 2 it has been admitted that the total seats are 551 and 5% of 551 shall be 27.55 and therefore the respondent No. 1 has contended that the maximum seats which can be filled in sports category are 27. It is also contended that the seats for discipline of Football are 3.

16. The respondent No. 1 also pleaded that the Sports committee of the college comprised of Principal, Director of Education, some teachers and students, however, exact constitution of sports committee has not been given by the respondent No. 1. The respondent No. 1 contended that the decision of the sports committee to admit a student in case of tie on the basis of performance in qualifying examination was considered by all the concerned authorities including the Vice Chancellor and that decision has been approved and therefore, the admission cannot be given to the petitioner and therefore, the writ petition to be dismissed. The respondent No. 1 has also given the constitution of academic council. It is contended that there is no illegality in the decision taken not to admit the petitioner and in case of academic matters the Courts are refrained from interference with the matters and there is no illegality in the decision not to admit the petitioner. The respondent No. 1, however, sought to withdraw an admission made regarding the number of seats in the sports quota deposed categorically by the Acting Vice Chancellor in its affidavit by contending that the number of seats shall be only 20 on the basis of sanctioned strength of 405 and filed an application for withdrawal of statement made on oath and substitute the same by another affidavit. The application of the respondent No. 1 was dismissed and the respondent No. 1 was not allowed to withdraw a statement made on oath. Learned Counsel for the respondent No. 1 also relied on *Narendra Bahadur Singh and Others Vs. Gorakhpur University and Another*, and *Medical Council of India Vs. Sarang and Others*, . and also relied on *Sri Jyotish Kaiborta and Others Vs. The State of Assam and Others*, and *Dr. Reema Chawla, Dr. Shashank Sharma, Dr. Sumi Prakash, Dr. Monika Sehgal, Dr. Shailja Kundra, Dr. Kapil Gulati and Dr. Anchal Jain Vs. University of Delhi*,

17. The learned Counsel for the parties have been heard at length and writ

petition, counter affidavits and documents filed and relied on by the parties have been perused by this Court. Admittedly the petitioner and the candidate placed 3rd in the select list, who has been given admission, had scored the same points for admission under sports category by the respondent No. 2. Admittedly, the rules relating to admission on the basis of Sports Quota as provided in Information Bulletin 2009 contains no provision as to the procedure to be followed in case of a tie arising between two or more candidates scoring equal points. However the rules specifically provide that the Sports Admission Committee should recommend admission on the basis of sports only. The "Preliminary Application Form for Admission on the Basis of Sports" issued by the Department of Physical Education of the respondent college also clearly stipulates that the admissions under sports quota would be made on the basis of level of competency of candidates in the sports (Clause 9 of General Instructions to candidates about admission procedures, guidelines and eligibility). Therefore, it can be safely inferred that merit in the sports field alone is contemplated as the criteria for admitting a student under the sports category. If that be so, then in the event of there being a tie between two candidates for a seat under the sports quota in a particular discipline, the criteria to be adopted for giving preference to one candidate over the others for admission under the sports quota should also bear some nexus with the level of competency of the candidates in the sports only and not any other criteria unless no criteria pertaining to sports can be carved out or adopted for resolving such a situation. After all the purpose of having a sports quota for admission to academic institutions is to promote and motivate excellence in sports so that the candidates admitted under sports quota would bring academic laurels to college.

18. The respondent No. 2 has filed a copy of the minutes of the sports committee meeting dated 26th June, 2009, which shows that it comprised of five persons. From the minutes it is clear that the Principal of the respondent No. 2 did not attend that crucial meeting. This fact has not been disclosed in the affidavit of the respondent No. 2. The respondent No. 1 has also proceeded in considering the decision of the sports committee on the premise that the principal of the college was present in the sports committee meeting dated 26th June, 2009 as the respondent No. 1 has filed the affidavit through its acting registrar deposing that the principal of the college was a part of the sports committee and so he must be present. The point for consideration is that in field trials the petitioner was given 11.33 marks and Mibom Tako was given 10.33 marks. The petitioner was given 10 marks for performance in the past on the basis of testimonials whereas the Mibom Tako was given 11 marks on the basis of testimonials and both were given 21.33 marks prior to 26th June, 2009, when the alleged sports committee meeting had taken place fixing the criteria to take the performance in the qualifying examination to resolve the tie. Though this criteria according to the respondents was fixed on 26th June, 2009, however, annexure P-2, the merit list was put up by the respondent No. 2 prior to 26th June, 2009. If the merit list had been finalized and put on the notice board prior to 26th June, 2009, then

how the petitioner had already been put at serial No. 4, whereas Mibom Tako was placed at serial No. 3 higher to the petitioner has not been explained in the counter affidavits filed by the respondents. Annexure P-2 shows that it was issued prior to 26th June, 2009 as it directed these two candidates who had already been placed at merit No. 3 and 4 to report on 26th June, 2009. If the decision to place them in merit list according to their performance in the qualifying examination was taken on 26th June, 2009, then how the petitioner was placed below the other candidate scoring same marks in sports trial. It appears that the respondents first decided to place at higher ranking the other candidate in preference to the petitioner and placed the petitioner below him and thereafter, a criteria had been evolved to justify their illegality and irregularity. Unfortunately this has been ignored by the Principal of the College and other authorities of the University including the Vice Chancellor and this irregularity is sought to be justified vehemently by the counsel for the respondents on the ground that the Courts should not and could not interfere in the academic matters.

19. Learned Counsel for the University rather contended that the final list for selection of the candidate was put up on 27th June, 2009 and the list relied on by the petitioner which is filed as annexure P-2 is not the final list. This is contended by the counsel for the respondent No. 1 to counter the allegation that the decision was taken first without any rule or rational to place the petitioner below the other candidate who had scored the same marks and giving admission to him and denying admission to the petitioner on the basis of their merit in the sports quota, and later on justifying the decision on 26th June, 2009 on the basis of alleged deliberations of the Sports Committee which deliberations were also in absence of the Principal of the College. The general instructions to candidate about admission procedure, guideline and eligibility for sports trials categorically stipulates that list of short listed candidates on the basis of the sports certificate and sports trial shall be notified on the college notice board on 25th June, 2009. The list was put on 25th June, 2009. Learned Counsel relied on the verification procedure of the sports certificates to contend that the list was finalized later on which was put up on 27th June, 2009, a copy of which was produced by the respondent No. 2. No doubt, a list was also put up on 27th June, 2009 after checking the certificates of the candidates, however, the grading of the candidates had already been done on 25th June, 2009. In the circumstances, it is apparent that arbitrarily petitioner was put below the other candidate although he had scored the same marks in the sports quota and later on this arbitrary decision has been justified by the respondents.

20. This cannot be disputed by the respondents that admission in the sports category is a class in itself different from admission on the basis of performance in the qualifying examination. In this category, admission on the basis of performance in sports, a candidate requires only 45% marks in the qualifying examination. No weightage is to be given for better performance in the qualifying examination under rules, while admitting a candidate in sports quota. Had that

been the intention, besides the marks/points for past performance in the sports and marks/points awarded to the candidates in the field trials, the respondents would have kept few marks/points also on the basis of performance in the qualifying examination. Perusal of General instructions regarding admissions under the sports quota reveals unequivocally that the admission has to be based only on performance in field trials and on the basis of previous sports performance of the candidates which is determined on the basis of their testimonials. Admission in sports quota is different from the general admission, can also be inferred from the fact that the migration of students admitted in sports quota is not permissible whereas the migration of other students is permissible. If the criteria for admission under the sports quota under rules is not based on the performance in qualifying examination, then could the sports committee introduce such a criteria?

21. This is not disputed that the rules for sports quota which are stipulated as Clause 4.7 in bulletin of information was not framed by the Sports Committee. If the criteria for admission under the sports quota was not decided by the Sports Committee then how that criteria could be changed or in case of tie how another criteria could be adopted by the Sports Committee, which committee was also not according to the constituted Sports Committee, as the Principal of the College had not been present, has not been explained by the respondents. The official of the respondent No. 1 including the Vice Chancellor in an utterly arbitrary manner has proceeded on the assumption that the Principal of the College was present in the meeting of the sports committee which is apparent from the affidavit filed by the acting registrar of the University. No rules and regulations or guidelines about the functioning of the sports committee have been produced nor any circular have been produced to show that the sports committee could take such decisions. If the absence of the Principal from the meeting of sports committee is not material, then a sports committee comprising of any teachers and students, shall be entitled to take any decision which will perhaps be accepted by the Principal and all the authorities of the University. Such important and relevant decisions cannot be allowed to be taken in such casual manner in the facts and circumstances and what is surprising is that highest authorities in the University has not bothered to consider the implication of this and has mindlessly approved the decision of sports committee which has taken the decision without any rational and changed it in the subsequent meeting, as in the first meeting on 26th June, 2009 it was decided that all the marks of the qualifying examinations shall be the criteria, however, in the subsequent meeting on 9th July, 2009, it was decided that best of four subject marks in qualifying examination should be the criteria which should include one subject of language for admission in the sports category in case of a tie.

22. The criteria for admission in the sports quota is performance on the basis of testimonials and performance in sports trials conducted by the respondent No. 2/ college. Then in case of tie, why one of these criteria could not be adopted, i.e., either performance in the testimonials or performance on the basis of field trials,

has not been explained by either of the respondents. Rather what is stated is that the Sport Committee, without the Principal of the College in the said meeting, decided on 9th July, 2009 that taking one of the sports component to break up the tie will be prejudicial. Neither the sports committee has elaborated as to why it will be prejudicial nor the respondents in their counter affidavits have given any rational for alleged prejudice nor any rational reason has been given for the same. If the sports category is a class in itself where the requirement for qualifying examination was only 45%, then how the performance in the examination could be a criterion, has not been explained by the respondents. Unfortunately some teachers of the college and perhaps some students in the name of `sports committee. justified the placement of petitioner in the merit list below the other candidate with same marks/points which has been approved by everyone without giving any rational at any level. Even in the counter affidavits filed on behalf of the respondents any rational is given except that the Courts do not have to interfere in the academic matters.

23. Utter casualness on the part of academic authorities, emboldened by the law laid down by the Courts that ordinarily the Courts should not interfere with the academic matters, is apparent in this case. The complaints regarding admission in the sports quota are to be considered by the Committee of sports of the University. A complaint was made by the father of the petitioner to said committee. The said committee instead of deciding it, forwarded it to the alleged `sports committee. comprising of some teachers and students without the principal of the College, which decided on 9th July, 2009 that taking any component of sports performance to resolve the tie will be prejudicial and laid down a new criteria of resolving the tie to take qualifying examination performance in the best of four subjects including one of the language. How the sports committee of the University could delegate its work and function to the alleged sports committee of the college without Principal and under what guidelines or regulations or circular? The affidavits filed on behalf of the University of Delhi are silent on these material controversies. Confronted with these situations the learned Counsel for the respondent No. 1/University has also raised a strange argument that he is representing the Director of Sports and not the University of Delhi. Learned Counsel, however, could not explain as to how the Director of Sports has to be sued independently of the University or since the University has been sued as respondent No. 1, how he can contend that he is not representing the University of Delhi as in reply to the show cause notice, the reply affidavits have been filed by Shri S.K. Jaipuriayar, Acting Registrar, University of Delhi. The contention of the learned Counsel for the respondent No. 1 is utterly illogical devoid of any legal rational. The officials of the University are to be sued through the University and not individually and the University has to defend the cases filed against it through the Registrar. Learned Counsel for respondent No. 1 raised yet another strange plea that the committee at the University level which deals with the complaints of admission in sports quota has not been impleaded to whom the representation was made by and on behalf of

the petitioner as only the Director of Sports has been sued who is only a member of the Committee at the University level and not the Committee itself. The argument is devoid of any legal rational. The grievance of the petitioner is that a representation was made to the Committee to resolve the tie between the petitioner and the other candidate who scored the same marks which should have been considered and this should have been resolved on the basis of the performance in the field trial. The said Committee instead of deciding the representation made to it forwarded it, strangely, to the Sports Committee of the college which decided it on 9th July, 2009 in the absence of the Principal of the college that adopting any of the two components of performance in the sports for admission under sports quota will be prejudicial. If the power was given to the Committee at the University Level to look into the complaints, how the same could be delegated by that Committee to the alleged Sport Committee of the College has not been explained rather illogical submissions have been made.

24. In D.C. Aggarwal (supra) relied on by the petitioner, the case of an employee was considered by a review committee for extension of his services up to the age of 60 years. The committee did not find him suitable and the recommendation of the committee was accepted by the appropriate authority. Appeal filed by the petitioner was dismissed. While challenging the order of the Appellate Authority, it was contended that the constitution of the committee was not proper inasmuch as the committee was constituted of persons other than those who were entitled to look into the matters of extension of service of officers of the category to which the appellant belonged. The Supreme Court while considering the case of the petitioner had held that the extension of service of an employee had to be decided objectively on material on record and in the case of the petitioner, the matter of extension had to be considered by a committee consisting of Managing Director and certain Deputy Managing Director, however, none of them were members of the committee. The final authority which had to pass the order under the rules was not the committee but a different person higher in rank than the member who constituted the committee, whereas the review committee was only a recommending body. The final order had to be passed by the competent authority on recommendation of the committee. It was stated that such officer is always higher in rank than the Deputy Managing Director, however, the final order had been passed by a person who was a member of the review committee. This was held to be in gross violation of the procedure and the guidelines and violative of fair play. The Supreme Court had held that the review committee was only a recommendatory body and the final order was to be passed by the competent authority which was not done though the appellate authority had examined the record but since the appellate authority did not apply its mind to this aspect which was basic and fundamental, therefore, the decision taken was held to be vitiated by violating the rules and guidelines provided for extension of service. In the case of petitioner, nothing has been produced to show as to what is the scope of the power of the Sports Committee. Even the Sports Committee is to be comprised of, as has been contended by the respondent No. 2/college

itself, of Principal and Director of Education, some teachers and students, however, from the minutes of the Sports Committee dated 26th June, 2009, it is apparent that the Principal of the college/respondent No. 2 had not participated in the deliberation of the committee which had decided about the criteria for admission of the students in the sports category in the case of tie. Learned Counsel for the University has raised another strange plea that the meeting of 26th June, 2009 was of 'sports admission. and not of Sports Committee. However, the said statement is also without and consequence as it has not been denied that the Sports Committee meeting was held on 26th June, 2009. This is rather reflective of how casually the minutes of the 'Sports Committee. are recorded and signed which are relied on by all the authorities of University. The affidavits have been filed on behalf of the University of Delhi in this case without considering the relevant record. Thereafter application was filed to withdraw the deposition. The depositions are not the pleadings. If something is stated on affidavit which is not correct, then with the permission of the Court another affidavit can be filed explaining the mistake, but an application cannot be filed seeking to completely withdraw the earlier deposition and to substitute it with entirely new deposition. Strangely pleas has been raised by the Counsel for the University which do not find any mention nor which have been dealt with in the affidavits filed on behalf of the respondents. The counsels for the respondents cannot be allowed to raise pleas and contentions which have not been taken specifically in the counter affidavits filed on behalf of the respondents. The Supreme Court in *New Delhi Municipal Committee Vs. State of Punjab*, etc. etc., had held that for additional points not taken in the writ petition, the opposite party should have been put to the notice to comply with the principles of natural justice. The respondents in the facts and circumstances cannot be allowed to take such pleas which have not been taken on their behalf in the counter affidavits, including the pleas that the petition is bad for non joinder of Mibom Tako, other candidate, and for non joinder of sports committee of the University.

25. How the sport committee could lay down the norms for admission and in absence of the principal of the college who is the essential members of the Sports Committee, how the decision is valid and binding has not been explained either by the counsel for the college or by the counsel for the University. Why the criterion was changed from the entire marks to the best of four subject has not been explained. Despite the matter being adjourned from time to time, the respondents have not produced or showed as to what were the marks of candidate, Mr. Mibom Tako, in the 12th class and his marks in best of four subjects.

26. If the merit list of the sports category had been put up on 25th June, 2009 putting petitioner below another candidate though both of them had scored same marks, then could the criteria be changed later on. In *Himani Malhotra* (supra), the minimum marks for selection in viva voce were not prescribed before the commencement of selection process, however, the minimum marks criteria for viva voce for selection was introduced during the process of selection and in the

circumstances the Supreme Court had held that the authority making rules regulating the selection can prescribe all rules, the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before commencement of the selection process, the authority concerned, cannot either during the selection process or after the selection process, add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. In Himani Malhotra (supra) relied on by the petitioner, the minimum marks for selection in viva voce was not prescribed before the commencement of selection process. The minimum marks criteria for viva voce for selection was introduced during the process of selection and in the circumstances the Supreme Court had held that the authority making rules regulating the selection can prescribe all rules, even the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before commencement of the selection process, the authority concerned, cannot either during the selection process or after the selection process, add an additional requirement/qualification that the candidate should also secure minimum marks in the interview.

27. From the affidavit filed by the respondent No. 1 it is apparent that admission in sports quota is given since 1987, when the academic Council decided to have not more than 5% admission in the sports quota. Surprisingly the college authorities did not visualize a situation of the two candidates obtaining same marks on the basis of their previous performance and the field trials. If the authorities could not visualize such a situation, then they should have thought of some criteria based on previous or present performance of the candidate in the field of sports to resolve the tie. It is not that it was not suggested to them. The father of the petitioner in his representation dated 29th June, 2009 suggested to take the performance in the field trial to resolve such a tie. Unfortunately none of the representations were considered and/or replied by the respondents. Even in the counter affidavits filed by the respondents, there is not a whisper as to why performance in the past based on the testimonials of the candidates or the performance of the candidate in the field trials, could not be a yardstick to resolve such a tie. Genesis of this, perhaps, is the belief of some of the academic authorities that they can do no wrong and their decisions are not to be interfered by the Courts in any circumstances, as has been emphasized by both the counsels. This is apparent from the fact that without any criteria prior to 26th June, 2009, the petitioner was placed below the other candidate who had also scored the same marks, and thereafter, justification has been given for the same which has been blindly upheld by the Principal of the college and the authorities at university including the Vice Chancellor. The attitude of the college and university authorities become more questionable in view of the suggestion of the Dean of Students Welfare suggesting to admit both the students. The sports committee in its meeting dated 9th July, 2009 mechanically reiterated its decision dated 26th June, 2009, however, further modified the criteria for admission in the sports category from the total marks in the qualifying

examination to best of four subjects marks in the qualifying examination and one of the subjects should be language also. Though the committee noted that it would be prejudicial to use one of the two components of the sports marks to prefer one candidate over the other, but why, it has not been explained either by the sports committee or by both the respondents in the various orders passed by them subsequently and even in the counter affidavits filed by them. From these facts it is inevitable to infer that the decision was taken to admit Mibom Tako for whatsoever reason, which are known to the college authorities, which decision has been persistently justified by the authorities in the most arbitrary manner.

28. The persistence to deny admission to equally meritorious petitioner at any cost is also apparent from the fact that though the Dean of the students welfare on behalf of the University had suggested to give admission to the petitioner also, which has been denied and not accepted on the grounds that the sports quota seat cannot be increased. According to respondents the admission on the sports quota cannot be more than 5%. There are 551 seats and according to their own formula not more than 27 candidates can be admitted under the sports category. The petitioner has categorically averred that only 20 seats had been earmarked for the sports quota for the year 2009-2010 whereas for previous year this number was 24. The fact had not been denied by the college and the University in the counter affidavits filed before this Court till the additional affidavits were filed. This cannot could not been denied that out of 20 seats, three seats are for admission in the sports quota for football. If there can be 27 seats for the sports category, and if out of 20 seats, three seats are for football, then out of 27 seats, even according to the allegations of the respondents, there can be four seats for admission in the category of football. No reason has been given by both the authorities either in their orders passed from time to time and produced before this Court including the decision taken by the sports committee and even in the counter affidavits filed on their behalf as to why there could not be four seats for sports quota in football.

29. Later on the plea of the respondents not to give the admission to the petitioner became that the intake of the students in the College is fixed especially in the sports quota and, therefore, another seat cannot be created and the petitioner cannot be accommodated despite the fact that in the sports quota he has scored the same marks as another candidate who has been given the admission whereas the petitioner has been denied the admission.

30. The petitioner had categorically contended that the sports quota had to be computed on the basis of total number of seats and in 2008- 2009 the sanctioned intake was 551, therefore, considering the alleged upper limit of 5%, the total seats would be 27 and as the college had notified only 20 seats. Since three seats out of 20 seats are for Football, therefore, considering that there are 27 seats on the basis of 5% of 551, therefore, out of 27 there can easily be four seats in the discipline of Football. These facts were categorically pleaded by the petitioner in paragraphs 15 and 16 of the petition, however, the College filed a

counter affidavit dated 18th July, 2009 and these facts were not denied. Even the University filed a short counter affidavit admitting that quota for sports and extra co-curricular activities at 5% of 551 seats come to 27 seats as per Resolution adopted by Academic Council dated 17th May, 1987. This affidavit was sworn by Shri S.K. Jaipuriyar, Acting Registrar of University of Delhi. This affidavit was duly sworn and verified stipulating that the contents of the affidavit are true and correct on the basis of record maintained by the University. Thereafter when it became apparent that on the basis of 551 seats 5% quota would be 27 seats and the petitioner shall become entitled for admission, an application was filed for amendment of deposition, i.e., affidavit filed on behalf of respondent No. 1. The application of respondent No. 1 being CM No. 10153 of 2009 seeking amendment to the deposition on affidavit of respondent No. 1 to withdraw the admission made by them which already created certain rights in favor of the petitioner was disallowed and dismissed by order dated 24th August, 2009. The College also filed another affidavit relying on the modalities for admission of OBC non creamy layer candidates to various under-graduate course. A circular by the Registrar dated 23rd May, 2008 regarding the modalities for admission of OBC candidates has been filed which does not stipulate that while computing the sports quota of 5%, the seats for OBC candidate in an institution has not be taken into consideration. However, another subsequent circular issued by the Office of the Dean of Student Welfare is relied on by the respondents dated 29th September, 2008 allegedly stipulating that since the admission for CW, foreign students and sports quota is not based upon an Act of Parliament, the number of seats may be frozen at pre-enhanced number of seats and counted as supernumerary. On the basis of this circular, it is contended by the respondents that the total sanctioned intake of the general candidate is 405 and for OBC candidate is 146 for the year 2009-2010, therefore, the 5% of the sports quota is to be computed on the basis of 405 seats comprising of General, Scheduled Caste and Scheduled Tribes candidates. Strangely the Dean of Students Welfare on whose circular dated 29th September, 2008 reliance has been placed for denying a seat to the petitioner on the ground that 5% of the sports quota seats has to be computed only on the basis of the sanctioned intake of General, SC and ST candidates, had himself recommended by his communication dated 3rd July, 2009, that both the candidates, i.e., the candidate Mr. Mibom Tako who has been admitted and the petitioner be considered without putting to disadvantage any of them. Since a specific query was raised to the Dean, Students Welfare, who has recommended that both the students be considered, it is apparent that he would not have made such a suggestion had he been certain that on account of his circular dated 29th September, 2008, the sanctioned intake cannot be increased at all in any circumstances.

31. The respondents. counsel, thought greatly emphasized that intake seats cannot be increased and, therefore, the sports quota of 5% also cannot be changed, however, pursuant to the directions given by this Court, an additional affidavit dated 31st August, 2009 was filed on behalf of respondent No. 2 as the

petitioner in reply to the application of respondent No. 1 for amendment of the counter affidavit, had contended that the respondent No. 2 has admitted more than 700 students against the sanctioned intake of 551. From the perusal of the additional affidavit dated 31st August, 2009, it has transpired that without any approval from the University authorities against the sanctioned intake of 405 of general, SC and ST candidates, the College has admitted 543 candidates. If the College has admitted 543 candidates in the general category, then why the sports quota should not be computed on the basis of the candidates which have been admitted and not on the basis of the sanctioned intake, has not been explained by the learned Counsel for the respondents. Against a sanctioned intake of 551 candidates including the OBC candidates, startlingly the College has admitted 749 candidates. The reason for admitting more students than the sanctioned intake as has been given by the respondent No. 2 is that if after declaring the cut off percentage, there are lot of students having same marks and there is tie between them, then in order to resolve the tie, all the students are given admission in the general category, SC and ST category which increases the number of intake substantially compared to the sanctioned intake of such candidates, which reason has not been disclosed by the respondents nor any thing has been filed to support this plea. If on account of a number of student scoring the same marks, admission is given to all of them, much beyond the sanctioned intake, then why in the case of tie in the sports quota the admission cannot be given beyond the alleged sanctioned intake, has not been explained and answered by the learned Counsel for the respondents.

32. Perusal of the circular of office of the Dean of Students. Welfare dated 29th September, 2008 also reveals that the discretion has been given to the College to freeze the seats at pre-enhanced number and it is not a direction to freeze the seats, as the word used is that number of seats "may" be frozen at pre-enhanced number of seats. If the circular on which the respondents rely does not mandate that the seats at a particular number be necessarily frozen, as the discretion is given to the college, then how in case of a tie the petitioner should be denied admission on this plea of sanctioned intake. According to the learned Counsel for the respondents, admission of more than the sanctioned intake is not restricted to the year 2009-2010. Even in the previous years, the number of candidates admitted, were far more than the sanctioned intake. In the circumstances, the action of the respondents not to admit the petitioner in the course of B.Com (Honours) in the sports category is highly arbitrary and is contrary to their own norms and on the basis of the criteria evolved by the alleged Sports Committee which was also not attended by the Principal of the College, cannot be sustained.

33. Learned Counsel for the respondents No. 1/University has also tried to justify that since the counter affidavits were filed in this case by the Principal ratifying the decision of the Committee, therefore, the decision of the Sports Committee cannot be challenged, cannot be accepted. The plea is an afterthought and not legally sustainable so as to deny admission to the petitioner in the facts and circumstances. This plea of ratification has not been taken.

34. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. The ratio of the decision relied on by the respondents are also not applicable in support of the contentions raised on behalf of respondents. In Medical Council of India (supra) relied on by the respondent, it was held that the interference in academic matters should normally be not done by the courts. The Supreme Court was dealing with a case where under Regulation 6(5) which contemplates that a student will pursue 18 months of prescribed study before appearing for second professional examination at the transferee medical college, it was held that it should not have been interpreted to mean that the students could have completed 18 months of study in both colleges together. The case of the petitioner is apparently distinguishable as the rule is not being interpreted by this Court. There is no rule by the respondents to resolve a case where two students score same marks in sports category. This criterion which was not there, could not be laid down by the alleged Sports Committee, as the rules for admission to the sports quota were not made by the Sports Committee. The Sports Committee has also taken different stands on different dates and also modified the criteria. The Sports Committee constituted should have had the Principal and other officials and teachers and students. In both the crucial meetings, the Principal was of respondent No. 2 was not present. In order to resolve the ties for general, SC and ST candidate securing the same marks or percentage, the college admits students much beyond the sanctioned intake, therefore, in case of tie in the sports quota why a candidate cannot be admitted beyond the alleged sanctioned intake has not been explained. Similarly, the case relied on by the respondents, Narender Bahadur Singh (supra) has no application as it was held that it is the duty of the University to see that no college affiliated to it shall give admission to students more than the prescribed number as student so admitted suffer in the process. If that be so, then how the respondent No. 2 college is admitting students much more than the sanctioned intake and what action has been taken by the respondent No. 1 has not been answered. If the general candidates can be admitted much beyond the sanctioned intake without any consequences, then how the college or other students shall suffer in case, where one more student is admitted in the sports quota has not been explained. If the sports quota is computed on the basis of actual number of

students than there will be 27 sports seats in place of 20 seats on the basis of sanctioned intake without considering the OBC seats and there will not be any alleged difficulty which have been created by the respondents in having another seat in discipline of football. The inevitable conclusion is that the action of the respondents and their officials in denying admission to the petitioner in the course of B.Com (Hons) is arbitrary, illegal and in denial of principles of fair play. Because of the arbitrary acts and actions on the part of the respondents and imputable to them, the petitioner has already been denied studies for over two months.

35. Therefore, for the foregoing reasons, the writ petition is allowed. The respondents are directed to admit the petitioner in the sports quota in the Course of B.Com (Hons) in the Sri Ram College of Commerce forthwith so that the petitioner does not lose his studies any further. Considering the facts and circumstances, the respondents are also burdened with costs of Rs. 20,000/- each payable to the petitioner.

Copies of the order be given to the counsel for the parties dasti under the signatures of the Court Master.