

(2014) 09 DEL CK 0086

In the Delhi High Court

Case No : W.P.(C) 4794/2014 and CM Appl. 9552/2014

Siddarth Singh

APPELLANT

Vs

The Vice Chancellor, Delhi University

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Citation : (2014) 09 DEL CK 0086

Hon'ble Judges : Manmohan, J

Bench : Single Bench

**Advocate : Virendra Rawat and Hitesh Kumar, Advocate for the Appellant;
Saurabh Banerjee, Amit Khemka and Rishi Sehgal, Advocate for the Respondent**

Final Decision : Dismissed

Judgement

Manmohan, J.—Present writ petition has been filed with the following prayers:-

"a) issue a writ of mandamus directing the respondents to grant the admission to the petitioner in B.Com (Hons.) for 2014 under the sports quota;

b) direct the respondents to relax the provisions where the Mathematics is one of the subject for getting admission in B.Com (Hons.)

c) direct the respondent No.4 to give provisional admission in B.Com (Hons.) till the representation decided by the respondent Nos. 1 to 3; and

d) pass such other and further orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

2. Briefly stated the facts of the present case are that petitioner has passed 12th Class from ISC Board from Sherwood College, Nainital with 86, 86 and 83 marks in Commerce, Economics and Accountancy respectively.

3. Petitioner claims to be an outstanding Basketball player having played at State and National level. According to the petitioner, though he was selected in the Sports Quota for B.Com(Hons.) in Maharaja Agrasen College, yet the Admission

Committee did not grant him admission as he did not have Mathematics as one of his subjects in 12th Class.

4. Mr. Avtaar Singh Rawat, the father of the ward, relies on the Admission Brochure for Four Year Undergraduate Programme 2014-15 (hereinafter referred to as "FYUP") to contend that on 10th June, 2014, when the petitioner applied for admission to respondent No.4-college, the basis of selection was to be merit determined on the basis of one language and three best elective subjects. The relevant portion of the Admission Brochure of FYUP and the admission schedule relied upon by Mr. Rawat is reproduced hereinbelow:-

A. Admission Brochure of Fyup

"4.1 Arts/Humanities/Commerce

B. Admission Schedule

5. Mr. Rawat submits that the Delhi University in the present case has retrospectively changed the basis of selection. In support of his submission, he relies upon a judgment of the Supreme Court in *Parmender Kumar and Others Vs. State of Haryana and Others*, wherein it has been held as under:-

"29. As has also been pointed out hereinbefore, this Court in *Rajiv Kapoor and Others Vs. State of Haryana and Others*, took notice of the fact that the Full Bench, on whose decision the High Court had relied, ultimately directed that the selections for admission should be finalised in the light of the criteria specified in the government orders already in force and the prospectus, "after ignoring the offending notification introducing a change at a later stage". (emphasis supplied) In fact, this is what has been contended on behalf of the appellants that once the process of selection of candidates for admission to the postgraduate and diploma courses had been commenced on the basis of the prospectus, no change could, thereafter, be effected by government orders to alter the provisions contained in the prospectus. If such government orders were already in force when the prospectus was published, they would certainly have a bearing on the admission process, but once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses."

6. Mr. Rawat further states that though the FYUP was rolled back by the Delhi University, yet in accordance with Clause 13 of the Notification dated 30th June, 2014, the procedure for admission in Sports Quota was to remain unaltered.

7. Mr. Rawat lastly submits that the academic eligibility for admission in B.Com(Hons.) could have been stipulated only by Delhi University and the basic eligibility could not have been tampered with by any college. According to him, the basic eligibility for admission has to be uniformly applied to all colleges under the Delhi University as the course contents, examination papers, evaluation of

answer sheets and Degree of the University is the same. He points out that many colleges in Delhi University have admitted students in B.Com.(Hons.) without they having studied Mathematics in 12th Class. Consequently, according to him, respondent No.4 could not have denied admission to the petitioner.

8. Mr. Saurabh Banerjee, learned counsel for Delhi University states that in accordance with the direction of the University Grants Commission, Government of India, the FYUP was withdrawn on 27th June, 2014 w.e.f. academic year 2014-15. He states that in view of scrapping of FYUP, the Delhi University had reverted back to the earlier three years Course as well as to the earlier admission policy of 2012-13.

9. He also draws this Court's attention to the fresh admission schedule that was issued by the Delhi University on 30th June, 2014.

10. Mr. Banerjee states that the roll back and the changes had been approved by the Vice-Chancellor on 27th June, 2014 as well as by the Academic and Executive Councils on 28th June, 2014, after which a formal Notification was sent to all the colleges including respondent No.4 on 30th June, 2014 directing them that, "additional eligibility criteria will be applicable as per the practice followed in the year 2012-13."

11. As some controversy was raised on a factual issue, Mr. Banerjee has today handed over a short additional affidavit dated 10th September, 2014. The same is taken on record. The relevant portion of the said affidavit reads as under:-

"8. I say that as a result of withdrawal of the "Four Year Undergraduate Programme", The University of Delhi has not followed the guidelines prescribed for the admission under FYUP academic year 2014-15 and no student has been given admission in The University of Delhi and/or any of the Colleges under it under the said "Four Year Undergraduate Programme". I further say that as a result of the statement issued by the Respondent no.1, duly approved/ratified by both the Academic Council and the Executive Council of The University of Delhi, the admission procedure was as per the practice followed by it in 2012-13.

9. I say that as per the admission guidelines for the UG courses for the academic session 2012-2013, each College of The University of Delhi has its own additional eligibility criteria as they are free to stipulate the minimum percentage with respect to any subject and also make any subject mandatory for a particular course. I further say that as per Bulletin of Information 2012-13, the Respondent no.4 College has stipulated minimum "60% aggregate" and also stipulated "Mathematics" as a compulsory subject at Class XII for admission to B.Com. [Hons.] [already annexed as Annexure R1/6]."

12. Mr. Banerjee further states that each college of Delhi University is free to stipulate the minimum percentage with respect to any subject and also make any subject mandatory for a particular course.

13. Mr. Amit Khemka, learned counsel for respondent No.4-college states that

after scrapping of FYUP, all colleges were directed to revert back to the procedure and criteria of the academic year 2012-13. He re-affirms that as per the procedure approved by the Delhi University, all colleges have liberty to prescribe additional eligibility criteria in respect of courses offered by them.

14. He further states that in accordance with the said liberty, respondent No.4-college had put in additional eligibility criteria of Mathematics as a pre-requisite for admission in B.Com.(Hons.) in the Bulletin of Information of Undergraduate Courses published by the Delhi University in 2012-13. The relevant portion of the Bulletin of Information relating to admission in B.Com.(Hons.) in respondent No.4-college is reproduced hereinbelow:-

15. Mr. Khemka also refers to the Bulletin of Information to show that additional eligibility criteria has been prescribed by other colleges for different courses. Some of the other colleges where Mathematics has been prescribed as a compulsory subject for admission to B.Com.(Hons.) are mentioned hereinbelow:-

16. Having heard learned counsel for the parties, this Court is of the opinion that in view of the Vice-Chancellor's Statement dated 27th June, 2014, Academic and Executive Councils' Resolution dated 28th June, 2014 as well as the Notification dated 30th June, 2014, petitioner's reliance on FYUP Brochure is mis-conceived.

17. The relevant portion of the aforesaid documents is reproduced hereinbelow:-

A. Vice-chancellor's Statement Dated 27th June, 2014

"27th June 2014

In line with the directive of the UGC the University has decided to roll back the FYUP. Consequently the admission process shall be conducted under the scheme of courses that were in force in the academic sessions 2012-13 in all the colleges of the University of Delhi....."

B. Academic Council's Resolution Dated 28th June, 2014

"Resolution No. 21

21. Resolved that the action taken by the Vice-Chancellor in exercise of his emergency powers under Clause (4) of Statute 11 (G) of the Statutes of the University in approving on 27.06.2014 the following amendments to Appendix-II to Ordinance-V(2) of the Ordinances of the University be reported, recorded and confirmed:

"Replace, with effect from the undergraduate admissions commencing in 2014-15, the syllabi/scheme of examination under the Four Year Undergraduate Programme with the syllabi/scheme of examination of the semester based undergraduate courses that had been in existence in 2012-13. All other relevant Ordinances shall stand amended accordingly".

C. Executive Councils' Resolution Dated 28th June, 2014

"4. Resolved that the action taken by the Vice-Chancellor in exercise of his emergency powers under Clause (4) of Statute 11 (G) of the Statutes of the University in approving on 27.06.2014 the following amendments to Appendix-II to Ordinance-V(2) of the Ordinances of the University be reported, recorded and confirmed:

"Replace, with effect from the undergraduate admissions commencing in 2014-15, the syllabi/scheme of examination under the Four Year Undergraduate Programme with the syllabi/scheme of examination of the semester based undergraduate courses that had been in existence in 2012-13. All other relevant Ordinances shall stand amended accordingly."

D. Notification Dated 30th June, 2014

"Sub: Guidelines for admission to various Undergraduate Courses for the academic session 2014-2015:

The following guidelines and schedule of admission proposed by the Monitoring and Advisory Committee constituted by the Vice-Chancellor for admission to various undergraduate courses for the academic session 2014-2015 duly approved by the Competent Authority are hereby notified for necessary compliance by all concerned:

1. The list of Courses and the Seats allotted for each course will be the same as it was in 2012-2013 in all colleges of the University .
2. The first cut off list will be declared on July 1,2014 and admission will start the same day. There will be 8 cut-off lists as per the schedule attached.

xxx xxx xxx

5. Additional eligibility criteria will be applicable as per the practice followed in 2012-2013.

xxx xxx xxx

8. All candidates who have not already registered will be required to fill the University registration form on the payment of 100 (General/OBC)/50(SC/ST/PwD), along with the college Admission form in case she/he meets the cut off and qualifies for admission. This registration made in a college will be valid in case the candidate take admission in another college/course in the subsequent cut- off lists .

xxx xxx xxx

10. Admission of SC/ST and PwD category candidates will be carried out by respective colleges in the same manner as for the General and OBC category candidates. However, there will be no additional eligibility criteria for these candidates i.e SC/ST/PwD candidates.

xxx xxx xxx

13. Procedure for admissions of Kashmiri Migrants, CWAAP, Foreign Students, Sports and ECA remains unaltered."

(emphasis supplied)

18. From the said documents, it is apparent that FYUP was scrapped prior to any admission having been made by any college. It is to be noted that the schedule of admission for the academic year 2014-15 was also replaced by another schedule dated 30th June, 2014. Consequently, there is no question of retrospective change of the basis of selection. In fact, Delhi University and all its colleges admitted students in accordance with the procedure and criteria of 2012-13 and not in accordance with FYUP Admission Brochure 2014-15.

19. Further, the judgment of the Supreme Court in *Permender Kumar and Others* (supra) has no application to the facts of the present case. In *Permender Kumar and Others* (supra), the prospectus was sought to be changed after the admission process had commenced and results as well as select list had been prepared. In the present case, the admission schedule, prospectus and the brochure were changed prior to beginning of counselling and prior to results being declared as well as a select list being announced.

20. This Court is further of the opinion that while the Delhi University prescribes the basic eligibility criteria, each college of the University is free to prescribe its own additional eligibility criteria inasmuch as they are free to stipulate a minimum percentage with respect to any subject and also to make any subject mandatory for a particular course.

21. The Supreme Court in *T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others*, has upheld the autonomy of private colleges in higher education. The relevant portion of the said judgment is reproduced hereinbelow:-

"65. The reputation of an educational institution is established by the quality of its faculty and students, and the educational and other facilities that the college has to offer. The private educational institutions have a personality of their own, and in order to maintain their atmosphere and traditions, it is but necessary that they must have the right to choose and select the students who can be admitted to their courses of studies. It is for this reason that in *St. Stephen's College* case this Court upheld the scheme whereby a cut-off percentage was fixed for admission, after which the students were interviewed and thereafter selected. While an educational institution cannot grant admission on its whims and fancies, and must follow some identifiable or reasonable methodology of admitting the students, any scheme, rule or regulation that does not give the institution the right to reject candidates who might otherwise be qualified according to, say, their performance in an entrance test, would be an unreasonable restriction under Article 19(6), though appropriate guidelines/modalities can be prescribed for holding the entrance test in a fair manner. Even when students are required to be selected on the basis of merit, the ultimate decision to grant admission to the students who have otherwise qualified for the grant of admission must be left

with the educational institution concerned. However, when the institution rejects such students, such rejection must not be whimsical or for extraneous reasons."

(emphasis supplied)

22. Even Clause 5 of the Notification dated 30th June, 2013 re-affirms the concept of autonomy of colleges.

23. The Bulletin of Information of Undergraduate Courses published by the University of Delhi 2012-2013 also shows that the additional eligibility criteria prescribed by different colleges with respect to different courses had been approved by the Delhi University and this practice had been consistently followed in the past.

24. Consequently, present writ petition and application are dismissed, but without any order as to costs.