

(2011) 12 DEL CK 0312

In the Delhi High Court

Case No : Writ Petition (C) 8138 of 2011 and CM 18335 of 2011

Vrinda Gaur and Others

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 14-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 12 DEL CK 0312

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Rekha Palli with Ms. Punam Singh, for the Appellant; Mukul Talwar, Advocate for R-1 and Mr. T.K. Joseph, Advocate for R-4, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition is filed by the petitioners seeking inter alia for directions to respondent No. 1/University to not cancel the provisional admission granted to them by the respondent No. 3/Institution in the BAMS Programme. It is further prayed that directions be issued to respondent No. 1/University for relaxation of the eligibility criteria for admission to the aforesaid course so that petitioners may take admission in the respondent No. 3/Institution.

2. The brief facts of the case are that the petitioners sat for the Central Entrance Test (CET) conducted by the respondent No. 1/University for admissions to the BAMS course in respondent No. 3/college on 14.5.2011. The result for the said examination was declared on 24.5.2011, by which date the results of the Class XII Board exams of the petitioners had already been declared on 23.5.2011. Admittedly, petitioner no.1, petitioner no.2 and petitioner no.3 had obtained 59.3%, 57.6% and 59.33% respectively as the aggregate marks in the subjects of Physics, Chemistry and Biology in Class XIIth examinations, and Ranks No. 407, 681 and 736 respectively as ranks in the Common Entrance Test.

3. The first counseling for the BAMS course was conducted by the respondent No.

3/Institution on 6.6.2011, and thereafter a second counseling was conducted to fill up seats left vacant. As there were still seats available even after both the counsellings were completed, respondent No. 3/Institution decided to conduct a third round of counseling on 16.10.2011, for which the petitioners were invited through call letters dated 3.10.2011. The petitioners duly declared in their verification forms, the aggregate percentage obtained by them in the subjects of Physics, Chemistry and Biology in the Class XII examination and filed the same with the respondent No. 3/Institution.

4. On appearing before the Institution for the third round of counseling, the petitioners were informed that since the aggregate percentages obtained by them fell marginally short of the percentage prescribed by respondent No. 1/University in its Admissions Brochure, as the eligibility criteria for the said course, was 60%, they would have to send applications to respondent No. 1/University to seek relaxation in the eligibility criteria. The petitioners duly forwarded their applications dated 14.10.2011 and 18.10.2011 to respondent No. 1/University requesting relaxation of the eligibility criteria. Their request was further supported by respondent No. 3/Institution vide a representation dated 18.10.2011 sent by it to respondent No. 1/University seeking a one-time relaxation in the eligibility criteria. It is the case of the petitioners that since no response was received to the said representation from respondent No. 1/University, respondent No. 3/Institution, was under the impression that its request was granted, and as a result, it gave provisional admission to them, by accepting the fee from them and allowing them to attend classes by 31.10.2011. However, the petitioners recently found out that respondent No. 1/University had not yet granted its concurrence to the provisional admission granted to them, and under the apprehension that their admissions may be cancelled, they have approached this court by filing the present writ petition.

5. On the last date of hearing i.e. on 7.12.2011, counsel for the respondent No. 1/University handed over a copy of a letter dated 5.12.2011 sent by respondent No. 1/University to respondent No. 3/Institution denying relaxation of the eligibility criteria as sought by the petitioners, on the ground that it would adversely prejudice the other candidates who were desirous of taking admission to the said Institution, but refrained from doing so as they did not meet the minimum criteria. It was further stated that the requirement of the minimum aggregate percentage for the academic year 2012-13 may be lowered from 60% to 50%, if so desired by the Institute.

6. At the very outset, counsel appearing for respondent No. 1/University disputes the maintainability of the present proceedings, on the ground that the petitioners herein have neither challenged the vires of the relevant provision in the Admission Brochure laying down the minimum eligibility criteria, nor have they questioned the legality or validity of the letter dated 5.12.2011, denying their request for relaxation of the eligibility criteria. It is his submission that the petitioners have, instead sought a positive mandamus from the Court to direct

the respondent No. 1/Institute to lower the aforesaid criteria, which is not permissible under Article 226 of the Constitution of India. Furthermore, he submits that the decision as regards the admission criteria rests with the University which is an expert body and this Court cannot interfere with the same unless and until some perversity or illegality is demonstrated by the petitioners. To support his submission, he places reliance on a recent decision of a Division Bench of this Court dated 2.12.2011 in WP (C) No. 7610/2011 entitled "Siddharth Kaul & Ors. v. Guru Gobind Singh Indraprastha University".

7. Counsel for the petitioner concedes that the petitioners have no quarrel with the provisions of the Admission Brochure laying down the minimum criteria, and no challenge has been laid to the same, either in the averments or the prayer clause of the petition. She, however, submits that the relief sought for may be granted to the petitioners as an exceptional case and in the special facts and circumstances of the case. She submits that the ground taken by respondent No. 1/University in its rejection order dated 5.12.2011 is unacceptable, as no students would be prejudiced if the petitioners are admitted to the Institute inasmuch as the students were called for counseling on the basis of their ranks and not on the basis of the aggregate percentage, hence any candidate, who at the time of the counseling fell short of the requisite aggregate percentage, would similarly have been granted provisional admission, as granted to the petitioners. She further submits that the petitioners have already been granted provisional admission and have even started attending the classes, therefore cancelling their admission at this stage would have an adverse impact on their academic future and besides, precious seats in the respondent No. 3/Institute would go abegging. It is lastly contended that as the petitioners are falling short of the required percentage by only a few points, if rounding off of their percentages is permitted, then they would satisfy the minimum criteria. In support the said submission, learned counsel for the petitioner relies on a decision of a coordinate bench of this court dated 23.11.2010 in WP (C) No. 12475/2009 entitled "Aditya N. Prasad v. The University of Delhi & Ors.", to claim that in the said case, concession of rounding off has been permitted. She urges that the Court must keep in mind that respondent No. 3/Institute itself has no objection to the lowering of the minimum eligibility criteria and as respondent No. 1/University has also accepted the request of the Institute to lower the eligibility criteria to 50% of aggregate marks for the academic year 2012-13, the same would clearly provide that there would be no dilution in the standards of education of the Institute if the petitioners are permitted admission at a lower percentage.

8. The Court has heard the counsels for the parties and has perused the judgments relied upon by them. First and foremost, the fact that provisional admission had been granted to them cannot be the basis for the petitioners to canvas that they are entitled to claim relaxation of the eligibility criteria for their admission to the course in question for the reason that being granted provisional admission to an Institute, does not in itself create a vested right in the petitioners to claim admission to the Institute. It cannot be overlooked that at

the time of taking admission and depositing their fee, the petitioners were well aware of the fact that their admission was subject to approval by the competent authority. Therefore they took a calculated risk in taking provisional admission to the said Institute. Furthermore, a plea of the seats going abegging can also not be taken, as the petitioners as well as respondent No. 3/Institute were aware of the fact that the petitioners' admission was provisional, and respondent No. 3/Institute had the option to conduct another round of counseling and admit students who could meet the eligibility criteria. In not having done so, it was the choice of the Institute to let its seats remain vacant. Furthermore, as held by the Supreme Court in the case of *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, , the object of prescribing eligibility criteria is to ensure maintenance of excellence in standards of education and not to fill up all the seats. Reducing the standards to fill the seats was held to be a dangerous trend which would lead to destruction of the quality of education. A warning was sounded of the creeping commercialization of education and it was reiterated that determination of such standards being part of an academic policy of the University, are beyond the purview of judicial review.

9. The contention of the counsel for the petitioners that if the Court permits lowering of minimum eligibility criteria, no student would be prejudiced, appears attractive at first blush but when examined closely is untenable, as the said argument does not take into consideration those students who fell within the ranks and were called for counseling by respondent No. 3/Institute but stayed away because they did not meet the minimum eligibility standards laid down by respondent No. 1/University, and who are not before the Court and would be adversely affected if such a plea of the petitioners is accepted. Therefore, the ground taken by the respondent No. 1/University in its letter dated 5.12.2011, denying relaxation of the eligibility criteria on the ground that it would prejudice the other students, is found to be a reasonable and valid ground.

10. Coming to the argument of the counsel for the petitioner regarding the rounding off of the aggregate percentage obtained by the petitioners, it has to be noted that the Admission Brochure of the respondent No. 1/University very categorically states in Clause 5.4, part C that no rounding-off of aggregate percentage would be permitted. In the face of a specific prohibition in that regard, the reliance of the petitioner on the decision in the case of *Aditya N. Prasad v. University of Delhi & Ors.* (Supra) is found to be misplaced, inasmuch as the said decision is distinguishable on its own facts. In the said decision, there had been some irregularities in the internal assessment of the petitioner therein, because of which he had fallen short of the minimum eligibility criteria. Based on the correction of the said irregularities, making the petitioner therein eligible, the Single Judge had upheld his admission, and had permitted rounding off of his marks. The said decision would have no application to the facts of the case in hand.

11. Lastly, the contention of the counsel for the petitioner that respondent No. 3/

Institute had no objection to the lowering of the criteria and even respondent No. 1/University had permitted the same for the next academic year, is also of no avail to the petitioners. It is settled law that policy decisions regarding the admissions in affiliated Institutes lies in the domain of the University in question. The decision-making power of the University cannot be interfered with under judicial review unless the petitioner is able to show some patent malafides on the part of the University, or point out instances of discrimination, or can make out a case that the criteria laid down is so perverse that it cannot be sustained. In the case of *Siddhartha Kaul & Ors. v. GGSIU* (Supra), the Division Bench has categorically held that merely because certain conditions imposed are inconvenient to some students, they cannot be said to be arbitrary. In the said decision, notice was also taken of a decision of the Supreme Court in the case of *Visveswaraya Technological University and Another Vs. Krishnendu Halder and Others*, wherein it had been held that the object of prescribing minimum standards is to ensure maintenance of excellence in standards of education and not to fill up seats, and lowering of such standards would result in destruction of the quality of education. In the present case, while the Court can sympathize with the predicament of the petitioners, it cannot help but observe that they have not been able to point out any such arbitrariness, illegality or perversity in the criteria laid down by respondent No. 1/University for interference in judicial review. The petitioners are seeking relief purely on the grounds of equity, which ought not to be exercised in their favour, given the facts of the case. The powers of judicial review of this court under Article 226 of the Constitution of India are well-defined, and a petition filed purely on the grounds of equity ought not to be ordinarily entertained, especially in the absence of any challenge laid in the petition to the vires of the relevant provisions of the applicable Rules.

12. Even though arguments on merits advanced on behalf of the petitioners have been dealt with in detail and turned down, this Court is inclined to accept the initial submission made by the counsel for respondent No. 1/University that the present petition is not maintainable as the petitioners herein have neither challenged the vires of the relevant provision in the Admission Brochure laying down the minimum eligibility criteria, nor have they questioned the legality or validity of the letter dated 5.12.2011, denying their request for relaxation of the eligibility criteria.

13. In the light of the abovementioned facts and circumstances of the case, the present petition is dismissed as being devoid of merits, alongwith the pending application.