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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: December **7**, 2006

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W.P.(C).No.15383/2006

Ms.Noorpreet Kaur

..... PETITIONER

Through: Mr.K.K. Rai and Mr.Abhishek
Singh, Advocates.

Versus

Institute of Home Economics

University of Delhi & Anr.

.... RESPONDENTS

Through: Mr.S.K. Luthra, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

1. Whether reporters of Local papers may be allowed to see the judgment?
2. To be referred to the reporter or not ?
3. Whether the judgment should be reported in the Digest?

Yes

ANIL KUMAR, J.

Rule.

1. The learned Counsel for the parties stated that no other affidavits were to be filed in support of respective contentions of the

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parties. The writ petition has therefore, been taken for final disposal with their consent.

2. The petitioner has prayed for quashing of the decision of respondent no. 2, Director, Institute of Home Economics, in allocating Apparel and Textile Design as the elective paper to the petitioner instead of "Developmental Journalism" as claimed by her and for issuance of direction to the respondents to assign her 'Developmental Journalism' as the elective paper.

3. Respondent no. 1 is a college affiliated to the University of Delhi and respondent No. 2 is the Director of the respondent no. 1.

4. Brief facts to appreciate the disputes are that the petitioner took admission to the respondent no. 1, Institute of Home Economics, in the year 2004 and is a third year student of B.Sc. Home Science (Pass) Course. According to the prospectus of said course, a student of third year can choose an elective paper of his choice. The petitioner asserted that an assurance was also given by the respondents that

the petitioner would be at liberty to choose the elective paper of her choice. In the second year of the course, the petitioner was given a form to mark her preference of the elective paper for the third year. The petitioner was asked to give her second, third and fourth preferences also. It was represented to her that other preferences have been taken so that if a student does not like his/her preference, the subject of second, third or fourth preference may be allotted. The petitioner opted for 'Development Journalism' as her first preference and 'Apparel and Textile Design' as her fourth preference.

5. Petitioner contended that on 17.7.2006 new session of III year began and the petitioner got to know that contrary to the first preference given by her for 'Development Journalism' the petitioner was assigned 'Apparel and Textile Design' as an elective subject. The petitioner contended that, therefore, she did not attend the regular classes of 'Apparel and Textile Design' as she had opted for 'Development Journalism' as the elective subject.

6. The petitioner, therefore, made several requests to the respondent no. 2 to allot her the subject 'Development Journalism' which was not assigned to her despite that being her first preference. The petitioner along with her father further discussed the matter with other members of the teaching faculty, but the desired subject was not assigned to the petitioner. The petitioner along with her father met the respondent no. 2 and requested him to change her elective paper from 'Apparel and Textile Design' to 'development journalism' however, the request has been turned down. The petitioner has also contended that other students namely, Ms Varnita Gill and Ms. Ritika, who had scored less mark than the petitioner, were given 'Development Journalism' as an optional subject in third year and it has been denied to the petitioner.

7. The petitioner has therefore impugned the action of respondent no. 1 on the ground that the same is arbitrary, illegal and violative of Article 14 and 21 of the Constitution of India as the respondent no. 2 has failed to appreciate that the prospectus specifically provided that a student can choose elective paper of his/her choice in the third year

of the course. She also emphasized that the prospectus neither mentions the preparation of merit list nor restricts number of seats available for the students in a particular subject. On respondents' failure to give her subject of her first preference 'Development Journalism', the petitioner has impugned their action and has filed the present petition.

8. The respondents have contested the petition and filed the counter affidavit of Dr. Kumud Khanna, Director, Institute of Home economics, University of Delhi, refuting the averments made by the petitioner. The respondents contended that the petitioner had no vested right to be allotted any elective subject and that the same are allotted to the students as per standard practice and procedure followed by the Institute from year to year and the same depends on the availability of seats and merit of the student .

9. The respondents further pointed out that petitioner did not clear "pass" in II year as she got ER (Essential to reappear) in Paper no. 22 (Housing Interiors and space design). Further for the allotment

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of elective paper in III year, first a list of all students who are clear "pass" is made and electives are allotted to those students according to their preferences based on merits and then merit list of the ER students is made and elective papers are allotted to them on the basis of number of vacancies available in each subject and the preference of the students on the basis of merit.

10. The respondents further contended that the students were required to fill the "option form" for B.Sc. Home Science, II year and submit the same in the office before proceeding for their summer vacations in May 2005 and out of 134 students the petitioner was the only one who did not fill the "option form" giving her marks for first year and marks of half yearly examination of second year. According to the respondents she was even telephonically informed to come to office and fill up the "Option Form". The respondents further asserted that the academic body met in July 2006 to allot the subjects according to the merit and since they were not aware of the marks obtained by the petitioner in first year examination and half yearly examination of second year, at the time of allocation of the elective

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subject, the marks of the petitioner were taken from the office record for allocation of the elective subject to the petitioner as the classes were to start from the 17th July 2006. The advisory committee prepared and placed on the notice board the list of students and the elective subject allotted to them on 15th July 2006 and the petitioner was given a subject which was available according to her merit. It was further submitted by the respondents that for allotment of elective subjects, a list was prepared by adding the aggregate marks of first year and half yearly examination of second year plus marks in that particular subject in first year plus half yearly marks in that particular subject in the second year. It was further asserted that in order to allot elective subject 'Developmental Journalism' the first and second year papers to be considered were paper number 15 which is "Fundamentals of Communication and Extension" (I year) and paper number 25 "Media Systems"(II year). There were total of 121 clear (pass) +13 ER students who were finally promoted to third year and there were six sections from A to F and all the students were equally divided into 6 sections each having 22 students. In the third year for allotment of electives, first the students who were clear "pass"

were allotted electives according to their preference based on merit and then the ER students merit list was made as per the above procedure. Then on the basis of the vacancies available in each section ER students were allotted the electives according to their preference based on merit amongst them.

11. The respondents denied the contention of the petitioner that the students with lower marks were allotted the subject of 'Development Journalism'. They submitted that both Varnita Gill and Ritika though were ER students like the petitioner but both had higher marks than the petitioner. The respondents further submitted that options were taken with the view that in case the first preference cannot be granted then depending upon availability of seats, on merit the students can be considered for the second and likewise the other lower options. Respondents have denied discrimination in any manner whatsoever being meted to the petitioner.

12. Respondents further contended that the attendance record of the petitioner is also very poor. She has attended only 47.29% classes

in practical and main papers up to 30.9.2006 during session commencing from the 17.7.2006. Further petitioner's second-year attendance in all theory papers was also less than 66% and that the petitioner received '0' marks towards attendance in the internal assessment in all the five subjects of second year. The allocation of internal assessment marks are made strictly in accordance with the rules laid down by the Executive Council of the University of Delhi vide resolution number 05 dated 1.5.2003. The respondent's asserted that the petitioner was assigned the elective subject, in accordance with the policy based on practice and procedure. On the basis of policy for allotment of elective subjects, the claim of the petitioner is not tenable.

13. The petitioner filed the rejoinder affidavit reiterating the averments made in the petition and contended that in terms of the Handbook of Information/Prospectus a student who had obtained 45% of the aggregate marks but has failed in one subject can reappear in that subject of second year along with third year examination and asserted that the distinction made between the

students who were clear pass and the students who had ER is without any basis and that the Handbook of Information does not provide for a such distinction between the students who are clear pass and students who have ER. The petitioner asserted that she filled up the option form clearly indicating her preference and submitted the same after the second year annual examination, and that he had marked "Development Journalism" as first preference and "Apparel and Textile Design" as 4th preference. The petitioner further contended that the method of calculating the merit as mentioned by the respondent is erroneous and has no basis and that the same ought to be based on the marks of the relevant subject only. The petitioner had also filed an additional affidavit submitting that the name of Ms. Ritika and any averment made in the petition regarding her be treated as deleted and she has been discriminated with Ms. Varnita Gill only.

14. The petitioner has placed reliance on (2002)3 Supreme Court Cases 586 K. Shekhar Versus V. Indramma and Others to contend that generally speaking the Courts have been reluctant to interfere

with the running of educational institutions however in order to avoid even the semblance of arbitrariness or extraneous considerations colouring the institution's action, the actions of educational institutions should not be immune to judicial scrutiny. Reliance was also placed on AIR 1995 Delhi 268, Dr.Sanjeev Dhadhwai versus All India Institute of Medical Sciences to contend that admissions should be made on the basis of the conditions laid down in the prospectus.

15. I have heard the Counsel for the parties and have perused the petition, counter affidavit and the rejoinder and the documents filed with them. The basic question which needs to be addressed is that whether the petitioner had the right to choose an elective subject of her choice as per the prospectus irrespective of merit and have the respondents erred in deciding the comparative merit of the students.

16. In the Lexicon Webster Dictionary, the meaning to the term 'Prospectus' has been given as follows:

"A brief sketch describing the main features of some proposed enterprise, as the plan of a literary work, or the proposals of a new business; a descriptive outline of an established organisation, as a college."

17. The prospectus provides that the students will have the freedom to choose the elective paper in the final year. The relevant extract of the Handbook of information , 2004-2005 Institute of Home Economics, University of Delhi is as under:-

“.....In the third year, the student chooses one elective paper of her choice along with papers from all the areas of home science. This provides her with an opportunity to have one specialization in paper in the chosen field.”

18. Though a candidate has a right to choose one elective paper, but allotment of that elective subject will depend on some criteria, if number of students are more than the seats available for a particular subject. Reading the entire prospectus, it can not be inferred that a student is entitled to get the elective subject of his/her choice irrespective of his/her merit and aptitude for a particular subject. If the number of students are more than the number of seats for a particular subject, the educational bodies are required to have some policy or criteria to allot the subject to the students. The prospectus of

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the respondents stipulates that besides the compulsory subjects, a student will be entitled for one elective subject which will provide him/her an opportunity to have specialization. The prospectus did not stipulate the criteria to be applied for allotment of elective subject in case the number of students is more than the number of seats available in elective subjects. This will not mean nor can be construed that the policy or criteria applied by the respondents is contrary to the stipulation made in the prospectus. Had the respondents disclosed the criteria or policy in the prospectus for allotment of elective subjects in that case they could not evolve a different criteria or policy for allotment of elective subjects nor could unilaterally change and apply rules not made known to candidates and would be bound and totally circumscribed by what was indicated in the prospectus. However, since no guidelines/rules had been provided by the respondents in the prospectus for allocation of the elective subject, the plea of the petitioner that criteria or policy applied by the respondents is contrary to stipulation made in the prospectus, is not tenable and can not be accepted in the present facts and circumstances of the case. The prospectus only specifies that the

students can choose the elective paper in which they would like to specialize. It nowhere provides for the criteria for allocating the elective papers which is, therefore, essentially governed by the rules as framed by the academic body. There is no conflict between the rules as framed by the academic council and the prospectus for determining which student should be allotted which paper taking into consideration the merit/performance of the students in the previous year examination. Had there been any conflict between the provision as laid down in the prospectus and the rules than the petitioners would have been justified in claiming allocation of elective paper as per the terms of the prospectus. But in the case in hand there is no such conflict.

19. Further if the criteria or policy for deciding the allotment of elective subject has been made reasonably and there is no arbitrariness and has been applied uniformly then the courts are not to interfere with the manner and method of making the policy or criteria. In a catena of cases the Supreme Court has held that Court cannot sit and adjudicate on the policies framed by the academic

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bodies for improving the Academic standards. It is the prerogative of the Academic bodies who have the necessary expertise in the field. Since the academic bodies have framed and applied the rules in a bonafide manner to all the students equally and uniformly there will be no justification to lay down a different policy or criteria.

20. In Maharashtra State Board of Secondary and Higher Secondary Education and another v. Paritosh Bhupeshkumar Sheth and others MANU/SC/0055/1984 the Supreme Court reiterated the proposition that the Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. Paragraph 29 of this judgment is relevant and is reproduced as follows:

"Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defensive of the same. As has been repeatedly pointed out by this Court, **the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day to day working of educational institutions and the departments controlling them.** It will be wholly wrong

for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this principle has not been adequately kept in mind by the High Court while deciding the instant case."

21. The Apex Court also held that the Court should not sit over the wisdom of the policy and will not strike it down on the ground that it is not wise or prudent in the opinion of the Court. The Supreme Court held:

"The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation making body. It may be a wise policy, which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy but is even a foolish one, and that it will not really serve to effectuate the purpose of the Act. The legislature and its delegate are the sole repositories of the

power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for any interference by the Courts unless the particular provision impugned before it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of Page 2012 the regulation-making power or it being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

22. The respondents have allotted elective subjects on the basis of performance of the students in the first year annual examination and in half yearly second year examination. In order to allot elective subject 'Developmental Journalism' the performance in first and second year papers were also considered which were paper number 15 "Fundamentals of Communication and Extension" (I year) and paper number 25 "Media Systems". This criteria or policy can not be considered irrational or arbitrary which has been applied uniformly. It is well settled that in policy matters this Court has a very limited scope of interference which has been held in Union of India v. International Trading Co., MANU/SC/0392/2003, State of Punjab v. Ram Lubhaya, MANU/SC/0156/1998, Krishnan Kakkanth v. Government of Kerala MANU/SC/0044/1997, G.B. Mahajan v.

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Jalgaon Municipal Council MANU/SC/0284/1991 and Federation of
Railway Officers Association v. Union of India, MANU/SC/0231/2003.
In Union of India v. International Trading Co. (supra) the Supreme
Court observed:

"The Courts as observed in G.P. Mahajan v. Jalgaon Municipal Council, MANU/SC/0219/1994 are kept out of the lush field of administration policy except where the policy is inconsistent with the express or implied provision of a statute which creates the power to which the policy relates, or where a decision made in purported exercise of power is such that a repository of the power acting reasonably and in good faith could not have made it. But there has to be a word of caution. Something overwhelming must appear before the Court will intervene. That is and ought to be a difficult onus for an applicant to discharge. The Courts are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy Page 2011 grounds the Court's view of the range of policies open under the statute or of what is unreasonable policy has not got public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism.

23. In Tamil Nadu Education Dept., Ministerial and General Subordinate Services Association v. State of Tamil Nadu and Ors., MANU/SC/0480/1979, the Supreme Court while examining the scope of interference by the Courts in public policy held that the Court

cannot strike down a circular/Government Order or a policy merely because there is a variation or contradiction. The Court observed: "Life is sometimes contradiction and even inconsistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factors fouls". In that decision the Court had observed :

"Once, the principle is found to be rational, the fact that a few freak instances of hardship may arise on either side cannot be a ground to invalidate the order or the policy. Every cause claims a martyr and however, unhappy we be to see the seniors of yesterdays becoming the juniors of today, this is an area where, absent arbitrariness and irrationality, the Court has to adopt a hands-off policy."

24. In *Netai Bag and Ors. v. State of West Bengal and Ors.*, MANU/SC/0604/2000, the Supreme Court observed:

"The Court cannot strike down a policy decision taken by the government merely because it feels that Anr. decision would have been fairer or wiser or more scientific or logical."

25. In Ugar Sugar Works Ltd. v. Delhi Administration and Ors. MANU/SC/0189/2001, it has been held that in exercise of their powers of judicial review, the Courts do not ordinarily interfere with policy decisions of the executive unless the policy can be faulted on the ground of mala fide, unreasonableness, arbitrariness or unfairness etc. If the policy cannot be touched on any of these grounds, the mere fact that it may affect the interests of a party does not justify invalidating the policy. In State of Himachal Pradesh and Anr. v. Padam Dev and Ors. MANU/SC/0329/2002, the Supreme Court held that unless a policy decision is demonstrably capricious or arbitrary and not informed by any reason or discriminatory or infringing any statute or the Constitution it cannot be a subject of judicial interference under the provisions of Articles 32, 226 and 136 of the Constitution. This Court cannot ordinarily interfere in administrative matters, since the administrative authorities are specialists in matters relating to the administration. The court does not have the expertise in such matters, and ordinarily should leave such matters to the discretion of the administrative authorities. It is

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only in rare and exceptional cases, where the Wednesbury principle applies, that the Court should interfere.

26. No doubt in the present case the policy decision is that of an educational institution and not of the Government, but in my opinion there is no real difference between the policy decisions of the Government and the policy decisions of other bodies so far as the principle enunciated above is concerned. Consequently the policy decision of the educational institution in fixing the criteria or policy for allocating the elective subject cannot be said to be so outrageous in defiance of logic or accepted moral standards that no sensible person could have arrived at it. The educational institution has to safeguard and uphold its reputation and at the same time it does not want to ignore those students who are more meritorious than other for a particular elective subject. In my opinion the educational institution has expertise in the matter and the Court should not strike down administrative decisions solely on the grounds as canvassed by the petitioner.

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27. It is well settled that in academic/educational matters Courts should be reluctant to interfere as has been held in *Rajendra Prasad Mathur v. Karnataka University*, MANU/SC/0107/1986, *J. P. Kulshreshtra v. Allahabad University*, MANU/SC/0066/1980, *University of Mysore v. Govinda Rao*, MANU/SC/0268/1963, etc. In *TMA Pai Foundation and Ors. v. State of Karnataka and Ors.* MANU/SC/0905/2002 the Supreme Court observed vide para 55:-

"the essence of a private educational institution is the autonomy that the institution must have in its management and administration. There, necessarily, has to be a difference in the administration of private unaided institutions and the Government-aided institutions. Whereas in the latter case, the Government will have greater say in administration, including admissions and fixing of fees, in the case of private unaided institutions, maximum autonomy in the day-to-day administration has to be with the private unaided institutions. Bureaucratic or governmental interference in the administration of such an institution will undermine its independence."

28. The respondent no.1 is an educational institution which is affiliated to the University of Delhi and these principles shall be applicable to this institution also.

29. If the students are given complete liberty to choose the optional subject of their choice, irrespective of their merit, then it might lead to an anomalous situation where all the students, irrespective of their marks, may choose for the same optional subject and in such a situation assigning all the students same subject may lead to a number of problems including overcrowding in classrooms. Therefore giving such a liberty to the students is not justifiable and restricting the number of seats in a particular elective subject can not be termed arbitrary or illegal or contrary to the prospectus or rules of the respondent no.1.

30. The case of Dr.Sanjeev Dhadhwai(supra) is distinguishable as in that case the practice adopted by the Institute in determining the eligibility criteria was contrary to the scheme provided specifically in the prospectus. In those circumstances the Court had held that the Institute should have acted according to the contents of the Prospectus and should not have adopted a practice contrary to the same. In the case in hand there is no such ambiguity as the

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prospectus is silent on the mode of allotting the elective subjects to the students and the eligibility is governed only by the rule as framed by the Academic Advisory Committee which has been uniformly applied without any kind of discrimination. Since there is no conflict and the rules have been uniformly applied, the criteria or policy cannot be held as erroneous, illegal or arbitrary. No arbitrariness in the acts of the respondents have been pointed out by the petitioner in order to invoke the jurisdiction of the Court under Article 226 of the Constitution of India. The respondents have evolved and applied the policy uniformly to all the students. In the Prospectus, information regarding admission is given only in brief. Once the rules of eligibility are followed strictly and applied uniformly then the petitioner cannot succeed in impugning them. The contention of the petitioner that Ms. Varnita Gill was allocated the 'Developmental journalism' as the elective paper despite her scoring less marks than the petitioner is also unsustainable as she had 970/1950 marks whereas the petitioner had 953/1950 marks.

31. The contention of the petitioner that the students were asked to give five preference of the elective subject which they wanted to choose as elective paper so that if they wish they can change their option in case they find the first option difficult is also untenable in the facts and circumstance. The students will have such an option only according to their merit and if the seats are available. In any case on this ground the petitioner is not entitled for elective subject 'Development Journalism' as claimed by her considering her relative merit. The petitioner has not been discriminated and has been allocated elective subject as per her merit.

32. In the totality of facts and circumstances, there are no grounds to interfere with the decision of the respondents in allocating a different elective subject to the petitioner, then her first option 'Development Journalism'. Consequently, the Rule is discharged and the writ petition is dismissed. Parties are, however, left to bear their own costs.

December 7, 2006
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WP(C) 15383 of 2006

*Data has been sent
to the main server.*
*At 10
07/12/06*


ANIL KUMAR J.