

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on : 14.06.2019

Date of decision : 14.06.2019

+ W.P.(C) 6751/2019 & CM APPL. 28336/2019

CHARANPAL SINGH BAGRI Petitioner

Through: Petitioner in person.

Versus

UNIVERSITY OF DELHI & ORS ... Respondents

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Aman Sinha, Sr. Advocate, Mr. Mohinder J S Rupal, Mr. Hardik Rupal, Advocates.
Mr. A. Mariar Putham, Sr. Advocate with Ms. Venkita Subramania, Advocate for R-2
Mr. Brajesh Kumar, Adv for R-3.
Mr. Romy Chacho, Adv for R-4
Mr. Apoorv Kurup & Ms. Nidhi Mittal, Adv for UGC.

+ W.P.(C) 6770/2019 & CM APPL. 28382-28383/2019

KHUSHI SRIVASTAVA Petitioner

Through: Mr. Dhairya Gupta, Advocate.

versus

UNIVERSITY OF DELHI Respondent

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. Aman

Sinha, Sr. Advocate, Mr.
Mohinder J S Rupal, Mr.
Hardik Rupal, Advocates.

+ W.P.(C) 6774/2019 & CM APPL. 28395/2019

MANAS SHUKLA

..... Petitioner

Through: Mr. Apoorv Sarvaria, Advocate

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Sudhir Nandrajog, Sr.
Advocate with Mr. Aman
Sinha, Sr. Advocate, Mr.
Mohinder J S Rupal, Mr.
Hardik Rupal, Advocates.
Mr. Abhinav Tyagi, Adv for
Mr. Anil Soni, CGSC for R-3/
Union of India.
Mr. Apoorv Kurup & Ms. Nidhi
Mittal, Adv for UGC.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

HON'BLE MR. JUSTICE TALWANT SINGH

JUDGMENT

ANU MALHOTRA, J.

1. The W.P.(C) 6751/2019, W.P.(C) 6770/2019 & W.P.(C) 6774/2019, all raise the same substantial question of law i.e. challenging the validity of the changes made in the year 2019-20 in the eligibility criteria, which have been announced on 29.05.2019 vide

the Bulletin of Information, Under-Graduate Admissions, 2019-20 of the University of Delhi, without adhering to Rule 14(1) of the Regulations made and notified on 06.05.2019 by the University Grants Commission vide notification F.No.14-4/2012 (CPP-II) issued by the University Grants Commission in exercise of powers conferred under Clause (g) of Sub-Section 1 of Section 26 of the University Grants Commission Act, 1956, in terms of which the mandatory publication of the prospectus, its contents and pricing 60 days prior to the date of commencement of the admission to any of the courses of the University of Delhi or its programme of study was not made, i.e. no such publication was made nor uploaded on the web site of the University of Delhi.

2. A further challenge made to the said change in the eligibility criteria of admissions to the under-graduate courses to the University of Delhi by way of the Bulletin of Information put forth for admission to the under-graduate merit based courses as published on 29.05.2019 is to the effect that if the University wanted to introduce any amendment or alteration in its existing eligibility criteria, then a public notice of at least a year was required to be issued in advance, in as much as the sudden change in the eligibility criteria in the admission policy made one day before the date when the admission seekers were to seek their choice of subjects and colleges, is wholly arbitrary and unreasonable and ought to have been declared at the time of the commencement of the examination process of the qualifying exam at least and not later and that the altered eligibility criteria as mentioned in the under-graduate courses Bulletin 2019-20 has put hundreds of

students, who prepared for the admissions in the respective courses of their interest by following the then existing eligibility criteria for admission as per the University Bulletin of 2018-19, to huge disadvantage.

3. The changes that have been made by the University of Delhi vide a Bulletin for information in the eligibility criteria for undergraduate courses (Academic year 2019-20) relate to the following:-

| S. No. | Course | Eligibility criteria 2018-19 | Eligibility criteria 2019-20 |
|--------|----------------------------|--------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | B Com (H) | 1. Passing Mathematics/Business mathematics as mandatory requirement 2. An Aggregate of 45% marks in qualifying examination | 1. 50% or more marks in mathematics/Business Mathematics 2. An aggregate of 60% with number of new conditionalities attached. |
| 2 | B Com | An aggregate of 40% marks in qualifying examinations | An aggregate of 60% with number of new conditionalities attached. |
| 3 | B A (H) (except languages) | An aggregate of 45% marks in qualifying examinations | An aggregate of different % marks in qualifying examinations for different subjects, for instance Economic – 60% English, History, Political Science, Philosophy, Social Work, Geography, etc. 55% |

| | | | |
|---|-----------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|
| 4 | B A (H) Economics | No additional criteria | Mathematics made compulsory in the best 4 subjects |
| 5 | B SC (H) Maths & Stat | An aggregate of 45% marks in qualifying examinations with 50% in Maths | An aggregate of 60% marks in qualifying examinations with 60% in Maths |
| 6 | B Sc (H) | Min. 55% marks in the best 3 subjects | Min 60% Marks in the best 3 subjects |
| 7 | B A (Prog) | An aggregate of 40% marks in qualifying examinations | An aggregate of 50% marks or more in qualifying examinations |

4. It is apparent that the said changes do not have the sanction of the Academic Council of the University of Delhi and in terms of the Delhi University Act, 1922, Section 23 thereof, it has been provided as follows:-

“23. The Academic Council shall be the academic body of the University and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of instruction, education’ and examination within the University, and shall exercise such other, powers and perform such other duties as may be conferred or imposed upon it by the Statutes. It shall have the right to advise the Executive Council on all academic matter. The constitution of the Academic Council and the term of office of its members, other than ex-officio, members, shall be prescribed by the Statutes.”

5. In terms of Section 31(1) proviso sub-clause (ii) of the said Delhi University Act, 1922, it has been provided that no ordinance shall be made affecting the admission or enrolment of students of

prescribing examination to be recognized as equivalent to the University examinations unless a draft of such Ordinance has been proposed by the Academic Council and the said provision would undoubtedly include the aspect of the eligibility criteria for admissions to the University. Section 31(1) proviso sub-clause (ii) (a) of the Delhi University Act, 1922, provides as follows:-

“31. Ordinance how made

(1) The Ordinances of the University as in force immediately before the commencement of the University (Amendment) Act, 1952, may be amended, repealed or added to at any time by the Executive Council:

Provided that-

(i) no Ordinance shall be made affecting the conditions of residence or discipline of students, except after consultation with the Academic Council;

(ii) no Ordinance shall be made-

(a) affecting the admission or enrolment of students or prescribing examinations to be recognised as equivalent to the University examinations. or

(b) affecting the conditions. mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study, unless a draft of such Ordinance has been proposed by the Academic Council.

6. Admittedly, the said provision of the Delhi University Act, 1922 as well as Rule 14(1) of the Regulations issued by the University Grants Commission notified on 06.05.2019 have not been complied with by the University of Delhi.

7. Whereas the petitioner in W.P.(C) 6751/2019 has sought a writ of mandamus seeking that the University of Delhi be directed to allow the students to apply to the under-graduate courses for the year 2019-20 on the basis of the earlier existing eligibility criteria i.e. in relation to all courses to which there have been deviations in the eligibility criteria made, which would be the seven courses as reflected elsewhere hereinabove, the petitioner of W.P.(C) 6774/2019 has sought a writ against the University of Delhi, University Grants Commission and the Union of India seeking that the altered criteria for the admission to B.A.(Hons.) in Economics and B.Com (Hons.) promulgated by the University of Delhi on 30.05.2019 submitting to the effect that the students of the year 2018-19 batch who have appeared for the Standard 12th examinations were not aware of the altered criteria for admission to the B.A.(Hons) course in Economics and B.Com (Hons.) whilst preparing for and whilst giving the Board examination for Standard 12th.

8. It has been submitted through this petition that the altered eligibility criteria of admissions in B.A.(Hons.) in Economics for the batch 2019-20 has made mathematics, which was only a *qualifying paper* as per bulletin 2018-19 to be a *mandatory subject* which would be included as ***one of the subjects in the best of four*** but that as per the existing eligibility criteria for admission at the time of commencement and completion of their Board Examinations 2018-19, they were only aware that the eligibility criteria made mathematics as a compulsory subject, which was required to be cleared by the students. The said petitioner has further contended that this change in

the eligibility criteria was not a minor variation made by the University of Delhi but has grave consequences on the future of the students who wish to apply in the Academic year 2019-20 for the B.A. (Hons.) courses and that in the present competitive times, where every decimal point counted, the respondents could not be allowed to play with the future of the students by prescribing such criteria for admission without any prior notice at this belated stage.

9. To similar effect, was the prayer made in the petition i.e. W.P.(C)6770/2019 titled as ***“Khushi Srivastava Vs. University of Delhi”***, seeking that the Rule 2.2 of the Bulletin of Information for admission to under-graduate courses for the year 2019-20 circulated on 29.05.2019, **making mathematics as one of the subjects in the best four for admission in B.A.(Hons.) in Economics and B.Com (Hons) from the Academic year 2019-2020, be quashed.**

10. Whereas W.P.(C)6751/2019 & W.P.(C)6774/2019 were filed as PILs and W.P.(C)6770/2019 was filed by the student herself and vide a separate order of even date, W.P.(C)6770/2019 has been directed to be taken up with the W.P.(C)6751/2019 & W.P.(C)6774/2019 in view of the virtual similarity of issues involved.

11. Though, on behalf of the respondents i.e. the University of Delhi and University Grants Commission, there was vehement opposition to the prayer made by the petitioners submitting to the effect that the Court could not substitute its own views in relation to the admission policy of the respondents which had been arrived at after much deliberations submitting to the effect that the eligibility criteria have been under consideration of the Standing Committee of

the Academic Council even in the year 2018-19 with respect to some departments and that there is a rational behind the insertion of additional eligibility criteria of mathematics in the best of four subjects in the B.A.(Hons) in Economics as provided by the Head of Department of Economics to the Admission Committee. As per the HOD, the use of mathematical and statistical theory in modern economics is pervasive and essential and that as in the case of physics, chemistry and engineering, it is simply not possible to conceive of modern economic theory and applied economics without the use of mathematics as an analytical tool, coupled with the factum that the under-graduate economics *syllabi* from around the world indicates that mathematical sophistication is required in the arena of economics, the Court ought not to interfere in the administrative matter of inclusion of mathematics as one of the best four subjects as the eligibility criteria for admission to the under-graduate courses for B.A.(Hons) in Economics to the University of Delhi.

12. It was also sought to be submitted on behalf of the respondents that the admission process is on and is to conclude on 14.06.2019 i.e. today and that if the prayers sought by the petitioners are granted, the same would delay the admission process for several days.

13. A catena of verdicts were relied upon on behalf of either side in support of their contentions.

14. On a consideration of the rival submissions as it is apparent that there have been fundamental changes made in the eligibility criteria for admission to the under-graduate courses by the University of Delhi without even the sanction of the Academic Council of the University

of Delhi which have been made suddenly on 29.05.2019 without giving any prior notice to the students who have appeared in the examinations of the year 2018-19 in April, 2019 and who commenced their education in Standard 12th in the year 2018. In view of the verdict of the Hon'ble Division Bench of this Court in ***"Siddarth Singh Vs. Vice Chancellor"*** in L.P.A.679/2014 decided on 29.10.2014, which places reliance on the verdict of the Hon'ble Division Bench of Punjab & Haryana High Court in ***"Mamta Bansal Vs. State of Punjab"*** MANU/PH/2376/2001 wherein, it was held that in a case where mid-term changes in the admission policy were made, the same cannot be allowed to be sustained and the students cannot be taken by surprise.

15. Reliance placed by the petitioner in ***"Kush Vs. The State of Maharashtra and Ors."*** 1994 (3) Bom CR532, is on facts *pari materia* to the instant case, wherein it has been observed vide paragraphs 6, 20, 21, 22 & 24 to the effect:-

"6 . In appreciating the rival submissions, it may be seen that at the time when the petitioners in these writ petitions, appeared for March, 1992 XIIth Examination of the Board in the above subjects only, the rules applicable for admission to the Medical Colleges were the rules framed under the G.R. dated 30th May, 1991. Rule C of the said rules for admission deals with qualifying Examinations and Eligibility. Clause (3) of the said Rule (C) prescribed that the qualifying examination for admission to the Medical Colleges was Higher Secondary Certificate i.e. XIIth Standard Examination conducted by the Maharashtra State Board of Secondary and Higher Secondary Education and consisting of the subjects of Physics, Chemistry, Biology and English amongst others.

Clause 4 of the said Rule (C) then laid down that a candidate for admission against the open seats to the medical course must have obtained not less than 50% of the total marks in English and the Science subjects (i.e. Physics, Chemistry and Biology) taken together at one and the same attempt in the qualifying examination. However, for the backward classes the percentage of marks for admission to the medical course was not less than 40% in the above subjects in one and the same attempt in the qualifying examination.

20. As regards the question of giving due notice and publicity to the rules of policy, the judgment of the Supreme Court in the case of Harla v. State of Rajasthan, MANU/SC/0014/1951 : [1952]1SCR110 , can also be usefully referred to. The Supreme Court has held in the said case that in the absence of any special law or custom to the contrary, the principles of natural justice require that before a law can become operative, there must be some sort of reasonable promulgation or publication of the said law so that those who are governed by it have its knowledge before they are punished or penalised for its breach. The question of giving reasonable notice and publicity to the rules of admission is emphasised in the Gujarat judgment cited supra which is approved by the Full Bench in its judgment. In the instant case, there is no reasonable notice or publicity given to the new rules for admission to the Medical Colleges in the academic session 1992-93 since they are framed just prior to the date when the admissions to the said colleges were to commence after the result of the XIIth standard examination of March/April, 1992 was declared in June, 1992.

21. In our view, there cannot be any dispute about the enforcement of the new Rule C(4) under the Govt. Resolution dated 29-5-1992 for admission to the Government Medical Colleges or Rule 4(ii)C of the Govt. Resolution dated 10-6-1992 regarding 20% Government

quota in admission to the Private Medical Colleges in the case of students who would appear for the XIIth standard examination held after the said rule has come into force, because the said examination would be held in March/April 1993 (even supplementary examination for ex-students would be in October, 1992), because they have due notice of the said rule.

A. However, as regards the students like the petitioners who have appeared for the XIIth Standard Examination of March/April 1992, they did not have any knowledge about such a change and, therefore, they had, as held by us above, planned their strategy under Regulation 101 of the Educational Board to appear for the Science subjects and English only to get more marks in the said subjects by concentrating upon them only taking advantage of the then existing Rule C(4) of the rules for admission to the Medical Colleges framed under the Govt. Resolution dated 30-5-1991 which made such students eligible for admission. There is obviously no provision made for such students in the new rule although as pointed out on behalf of the petitioners, there were many such cases of students who took advantage of the earlier Rule C(4) to better their prospects. In these circumstances, if the new rule is enforced against the petitioners, it would cause them great inconvenience and hardship and would result in penalizing them for no fault of theirs as they would lose one valuable academic year being ineligible for admission under the new Rule C(4) or Rule 4(ii) (C) as the case may be. The enforcement of the new Rule C(4) or Rule 4(ii) (C), as the case may be against them is thus arbitrary and unreasonable.

22. We are supported in our aforesaid view by the Doctrine of Legitimate Expectation which, according to us, is attracted in the facts and circumstances of the instant case narrated above. It is true that the Full Bench has held in its judgment cited supra that the said doctrine is not applicable in the facts and circumstances present

in the case before it. But then the applicability of the said doctrine has to be considered in the set of facts and circumstances in a particular case. H.W.R. Wade has considered the said doctrine in his Book on Administrative Law (Vth Edn) at pages 464-465. The learned author has observed that in many situations where there is no legal right involved, it may still involve what the courts sometimes call "legitimate expectation". He has then observed that in the application of the principles of natural justice what matters is not whether the claimant has some legal right but whether legal power is being exercised over him to his disadvantage. Thus, according to him, it is not a matter of property or vested interests, but simply of the exercise of governmental power in a manner which is fair and considerate.

24. The Supreme Court has now in the case of Food Corporation of India v. M/s.Kamdhenu Cattle Feed Industries, MANU/SC/0257/1993 : AIR1993SC1601 (reported after our judgment was dictated) put its inprintur (sic) upon the Doctrine of "legitimate expectations" in the following words in paragraph 8 of its judgment.

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important

considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of nonarbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent".

16. Reliance was also placed on behalf of the petitioners on the verdict of the Hon'ble Division Bench of this Court in **"GNCT of Delhi & Ors. Vs. Naresh Kumar"** 2010 SCC Online Del 3942, observing vide paragraphs 21 & 22 to the effect:-

"21. After a survey of leading decisions on the point, the legal position with respect to legitimate expectation can be summarized as under:

I Mere reasonable or legitimate expectation of a citizen may not by itself be a distinct enforceable right, but failure to consider and give due weightage to it may render the decision arbitrary.

II Legitimate expectation may arise (a) if there is an express promise given by a public authority; or (b) because of acceptance of a regular practice, a claimant can reasonably expect it to continue; and (c) such expectation may be reasonable.

III For a legitimate expectation to arise, the decision of administrative authority must affect the person by depriving him of some benefit or advantage which he had in the past been permitted, by the decision maker, to enjoy and which he can legitimately expect to be permitted to continue, until some rational grounds for withdrawing it have been communicated to him.

IV If the authority proposes to defeat a person's legitimate expectation, it should afford him an opportunity to make a representation in the matter.

V The doctrine of legitimate expectation permits the Court to find out if the change in policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made.

22 . Having noted the general principles pertaining to doctrine of legitimate expectation, let us proceed to note judicial decisions where applicability of said doctrine was examined by the Courts in similar facts situation.”,

to contend that there exists ‘a doctrine of legitimate expectation’ which has arisen to the students in the instant case in view of the previous years’ eligibility criteria having not been proposed to be changed even six months before the commencement of the Academic Session of 2019-20.

17. On behalf of the University of Delhi, reliance was, however, placed on the verdict of the Hon’ble Supreme Court in **“P. Suseela and Ors. Vs. University Grants Commission and Ors.” AIR 2015 SC 1976**, to contend that the legitimate expectations, if any, of students had to yield to the larger public interest of selection of the most **meritorious amongst candidates to gain education**. In relation to this aspect, it is essential to observe that the verdict in **P. Suseela (supra)** relates to the minimum eligibility conditions for recruitment and appointment of lecturers, which was held to be in the larger public interest of selection of the most meritorious amongst candidates to **teach in institutions**, governed by the UGC Act, whereas in the instant case, **there is a change in the eligibility conditions for admission to the under-graduate courses of the University of Delhi**

made one day before the commencement of the admission programme to the University of Delhi for the year 2019-20, which sudden changes without prior public notice in term of Rule 14(1) of the Regulations notified on 06.05.2019 by the University Grants Commission and also which are without even a previous notice of six months to students preparing for their eligibility for admission to the University of Delhi, cannot be held to be valid.

18. In the circumstances, the W.P.(C) 6751/2019, W.P.(C) 6770/2019 & W.P.(C) 6774/2019 are disposed of with directions to the University of Delhi and the University Grants Commission to allow the students to apply for the under-graduate courses for the year 2019-20 to the University of Delhi on the basis of the eligibility criteria for admissions to the under-graduate courses for the year 2018-19.

19. Since a submission, during the course of submissions, was made that the Delhi University portal for filing up the common admission form would close today, the University of Delhi shall permit students to apply for the under-graduate courses to the University of Delhi till the date 22.06.2019.

20. The above directions, however, shall not preclude the University of Delhi from making the changes in the eligibility criteria for the forthcoming years to its under-graduate courses as required, to keep education in tune with the necessities of the present day as also for maintenance of high standards of education, but the same can only be done in accordance with law, which would require a minimum of

six months of public notice to the public at large of the eligibility criteria for admission to its under-graduate courses.

21. The petitions i.e. W.P.(C) 6751/2019, W.P.(C) 6770/2019 & W.P.(C) 6774/2019 and the accompanying applications are disposed of accordingly.

**ANU MALHOTRA, J
(VACATION JUDGE)**

**TALWANT SINGH, J
(VACATION JUDGE)**

JUNE 14th, 2019/NC



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