



2023:DHC:8586

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 13022/2023 & CM APPL.51471/2023, CM APPL.57431/2023**

Date of Decision: 29.11.2023

MR. MAAHI NEIL JAIPAL (MINOR)

DOB: 01/12/2005

S/O MR. RAJIV JAIPAL

R/O 5130, SECTOR B, POCKET 7

VASANT KUNJ

NEW DELHI – 110 070

THROUGH HIS NEXT FRIEND

MR. JAI PAL SINGH

S/O LATE BALDEV SINGH

R/O 5130, SECTOR B, POCKET 7

VASANT KUNJ

NEW DELHI – 110 070

.....Petitioner

Through: Mr.Rajiv Jaipal, Ms.Priti Agarwal,
Mr.Tara Shankar Jha and Mr.Sumit Suri,
Advocates.

Versus

1. UNIVERSITY OF DELHI
THROUGH ITS VICE-CHANCELLOR
NORTH CAMPUS
NEW DELHI – 110 007

2. FACULTY OF LAW
UNIVERSITY OF DELHI
CHHATRA MARG, NORTH CAMPUS
NEW DELHI – 110 007

3. FOREIGN STUDENTS' REGISTRY

UNIVERSITY OF DELHI
ROOM NO. 11, FIRST FLOOR
CONFERENCE CENTRE, NORTH CAMPUS
NEW DELHI – 110 007

.....Respondents

Through: Mr.Mohinder J.S.Rupal, Mr.Hardik
Rupal, Ms.Amisha Jain and Ms.Sachpreet Kaur,
Advocates.

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

PURUSHAINDR KUMAR KAURAV, J. (ORAL)

1. The petitioner has filed the instant writ petition seeking directions to the respondents to make provisions for admission for foreign nationals/students in the integrated five-year BA LLB (Hons.) or BBA LLB (Hons.) courses, in accordance with Foreign Students' Registry (FSR) guidelines for the current Academic Session 2023-2024.
2. The facts of the case, as have been unfolded in the writ petition, indicate that the petitioner was registered with respondent no.3 under the foreign student category. Respondent nos.1 and 2 got approval from Bar Council of India to introduce integrated five-year BA LLB (Hons.) and BBA LLB (Hons.) course in the Academic Session 2023-2024. Thereafter, the said respondents sought to admit the students on the basis of the merit in Common Law Admission Test, 2023 (*hereinafter referred to as "CLAT, 2023"*) result. However, the said notification was challenged before this court by one of the students in W.P.(C)10737/2023 titled as ***Prince Singh v. Faculty of Law.***
3. The Division Bench of this court in the said writ petition permitted the

respondents to go ahead with admission on the basis of the result of CLAT, 2023.

4. The respondent no.1-University, thereafter, on 26.09.2023 published the prospectus for integrated five-year BA LLB (Hons.) and BBA LLB (Hons.) courses where no provision for admission to foreign national students was made. The petitioner tried to contact respondent no.1-University to seek necessary clarification with respect to the aforesaid aspect, however, no satisfactory answer was given, therefore, the petitioner has approached this court in the instant writ petition.

5. Learned counsel *Mr. Rajiv Jaipal* assisted by *Mr. Tara Shankar Jha*, appearing on behalf of the petitioner, vehemently submit that the action of the respondents in not providing adequate reservation upto 10% is *de hors* the provisions of the Delhi University Act, 1922 (*hereinafter referred to as Act of 1922*) as well as the explicit decision taken by the Academic Council on 27.12.1983 and 10.12.2021.

6. Learned counsel for the petitioner, while drawing the attention of this court to the aforesaid notifications and the relevant provisions of Sections 23 and 31 of the Act of 1922, submits that a combined reading of the aforesaid legal provisions and the resolution passed by respondent no.1-University unequivocally makes it clear that respondent no.1-University is obligated to provide up to 10% seats for foreign national students. He, therefore, submits that when the prospectus was issued, the said respondent no.1-University should have provided the reservation up to 10% for the foreign national students.

7. Learned counsel further submits that in all other courses, such a provision has been made and whenever it is not done, adequate reasons are

assigned. He further submits that even in all previous years, the provisions for 10% seats to foreign national students have been made by respondent no.1-University. Therefore, respondent no.1-University in the instant case, cannot turn around and say that for integrated five-year BA LLB (Hons.) course, there could not be any provision for foreign national student. He also submits that such a conduct of respondent no.1-University deprives genuine foreign national category students to take advantage of the aforesaid legal provision.

8. He also submits that the grant of admission up to 10% seats to this category is over and above the approved intake capacity of the respective courses, therefore, respondent no.1-University would not be losing any seats. He contends that while granting admission, the eligible candidate would be benefitted without causing any loss to respondent no.1-University, therefore, the respondents should have made the necessary provisions in the respective prospectus and accordingly, the admission should be granted.

9. Learned counsel appearing for the petitioner has also placed reliance on the decisions of the Division Bench of this court in the cases of *S.N. Singh v. Union of India (UOI) and Ors.*¹ and *Charanpal Singh Bagri v. University of Delhi & Ors.*². He submits that in both the decisions, the Division Bench of this court has unequivocally held that the Academic Council is the supreme body of the respondent no.1-University and the decision taken by the supreme body has a binding effect.

10. Learned counsel *Mr. M.J.S. Ruppal* assisted by *Mr. Hardik Ruppal*, appearing on behalf of respondent no.1-University, opposes the submissions

¹ 106 (2003) DLT 329

² W.P.(C) 6751/2019

and he submits that the petitioner does not have any vested legal right to claim admission against foreign national students category. According to him, there is no quota fixed by respondent no.1-University for foreign national students with respect to the concerned course. Learned counsel further submits that the approval to integrated five-year BA LLB (Hons.) course has been received by respondent no.1-University from Bar Council of India only in August, 2023 and by the time, the said approval was received, the admission process already got delayed.

11. He further submits that there was further delay caused to the admission process on account of pendency of the case of *Prince Singh (supra)* whereby, the interim order dated 18.09.2023 allowed the respondent no.1-University to proceed with the admission process. He, therefore, submits that in all other Universities, the registration for five-year integrated law course was over in June/July, 2023 itself and the first semester classes began immediately thereafter. According to him, since there was already substantial delay in the commencement of the academic session, therefore, respondent no.1-University, in order to ensure that the admissions are smoothly conducted, did not enter into any other correspondence with other stakeholders, seeking approval for foreign national quota. According to him, if the respondent no.1-University was to carve out a foreign national quota for the concerned year i.e. 2023-2024, the same required various approvals from different Government agencies.

12. He further submits that there are several new courses which were introduced by respondent no.1-University in August, 2023 and in late September, 2023 which include courses of B.Tech in three disciplines, Masters in Hindu Studies and Bachelor of Law etc. According to him, in

none of these newly introduced courses, the students of foreign national category were admitted as no quota was prescribed in their respective prospectus. He further submits that the admission process with respect to BA LLB (Hons.) five-year integrated programme is already over, whereas the admission to BBA LLB (Hons) five-year integrated programme (spot round-1) will be over on 30.11.2023. He, therefore, submits that if the provisions of Sections 23 and 31 of the Act of 1922 are perused, the same are not mandatory and therefore, the resolution of the Academic Council dated 27.12.1983 and 10.12.2021 have to be read in the context of the nature of the provisions. He further submits that, at this belated stage, in absence of there being any quota prescribed under the prospectus, no directions can be issued to respondent no.1-University to admit the petitioner.

13. Learned counsel appearing on behalf of respondent no.1-University has placed reliance on the decisions of this court in the cases of *Ansuya Ahluwalia v. Union of India (UOI) and Ors.*³ and paragraph no.41 and 46 of the decision in the case of *Yogesh v. University of Delhi and Anr.*⁴

14. In rejoinder submissions, learned counsel appearing on behalf of the petitioner submits that the petitioner has earnestly approached this court, well within time i.e., in the first week of October, 2023 itself. According to him, the prospectus was issued only on 26.09.2023 and without wasting any time, the petitioner knocked the doors of this court and therefore, only on the ground that the admission process has been completed, the petitioner should not be deprived of his legal right.

15. He further submits that the registration or non-registration with FSR

³ MANU/DE/0991/2009

⁴ W.P.(C) 7763/2019

would not make any difference for the reason that the prospectus for the aforesaid course itself has been issued on 26.09.2023 and there was no reason for the petitioner to register himself prior to 26.09.2023. In any case, even after 26.09.2023 i.e., after issuance of the prospectus, since respondent no.1-University has not provided any quota for the concerned category, therefore, there was no reason for the petitioner to register for the said course. Notwithstanding the aforesaid, the petitioner had already registered with respect to other courses, as were available. He also submits that even as per respondent no.1-University's own showing, the admission process for BBA LLB (Hons.) five-year integrated law programme is ongoing and the petitioner's candidature can still be considered for the said course. The petitioner although has prayed for admission in BA LLB (Hons.) five-year integrated law programme, however, he can alternatively take admission in BBA LLB (Hons.) five-year integrated law programme, if the same is offered to him.

16. I have considered the submissions made by learned counsel for the parties and perused the record.

17. Much emphasis has been laid on the decision of the Academic Council dated 27.12.1983 and 10.12.2021.

18. If the decision of the Academic Council dated 27.12.1983 is perused, the same would indicate that the Academic Council has decided that more than 5% seats in the first year of each course in colleges and 10% seats of total number of seats in hostel be reserved for foreign students. For the sake of clarity, Clause 6 of the Academic Council decision dated 27.12.1983 reads as under:-

"6. Not more than 5% seats in Ist Year of each Course in Colleges and 10%

seats of total number of seats in Hostel be reserved for foreign students. If adequate number of foreign students do not seek admission, these seats be declared open for the Indian students after 10th August of each year and filled in usual manner. But the Colleges are free to admit more than 5% quota on the recommendation of the 'Foreign Students' Adviser as in the past."

19. In continuation to decision dated 27.12.1983, it would be appropriate to consider the further decision taken on 10.12.2021 which reads as under:-

"A.C. resolution no. 304 dated 27.12.1983 Resolved the proposal regarding enhancement of the supernumerary Foreign Students Registry (FS) seats from 5% to 10% in Ist year of each Course in the Colleges Departments/ Centres be approved."

20. It is discernible that the provision for grant of admission up to 5% has been increased to 10% *vide* Academic Council decision dated 10.12.2021.

21. The first question that arises for consideration is whether the decision taken by the Academic Council mandates respondent no.1-University to necessarily provide upto 5% or 10% seats or the provision is discretionary. A bare reading of the decision dated 27.12.1983 indicates that the same provides for not more than 5% seats in first year of each course in colleges and 10% seats of total number of seats in hostel which has been modified by decision dated 10.12.2021 to the extent of 10%.

22. The salient aspect which emerges from the said Clause 6 indicates that the same is not mandatory for respondent no.1-University to necessarily provide for at least 5% seats in first year of each course for all courses, rather what is provided is the ceiling of 5% seats. In case respondent no.1-University decides to grant admission to foreign national students category, the same should not exceed 5% as per decision dated 27.12.1983 and 10% as per decision dated 10.12.2021.

23. It is a settled position pertaining to interpretation of provisions of law

that the language alone most often is not decisive in order to determine whether a particular provision is mandatory or directory and regard must be given to the context and object of the provisions in questions. The discussion in Crawford on Statutory Construction- Article 261 at p. 516, which has found approval by the Constitution Bench of the Hon'ble Supreme Court in the case of *State of U.P. v. Manbodhan Lal Srivastava*⁵, reads as under:

“The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other....”

24. The decision of the Hon'ble Supreme Court in the case of *Hari Vishnu Kamath v. Ahmad Ishaque*⁶, reckons that an enactment, mandatory in form, might in substance be directory. It was further observed that various rules for determining when a statute might be construed as mandatory and when directory are only aids for ascertaining the true intention of the legislature which is the determining factor and that must ultimately depend upon the context.

25. A bare perusal of the aforesaid orders of the Academic Council would indicate that the Academic Council has only prescribed the percentage upto which the admission against foreign national category can be granted. In sum and substance, the concerned order cannot be construed to create an indefeasible right in favour of the petitioner and neither does it appear to be of mandatory in nature. The said orders can best be described as enabling provisions which could benefit the similarly situated candidates as that of

⁵ AIR 1957 SC 912

⁶ AIR 1955 SC 233

the petitioner herein.

26. So far as the decision relied upon by the learned counsel appearing on behalf of the petitioner and the provisions referred under Sections 23 and 31 are concerned, there is no doubt about the principle laid down by the Division Bench of this court that the Academic Council is the supreme body in the respondent no.1-University. However, when the Academic Council itself has not mandatorily provided for grant of 5% or 10% admission to foreign national students category, there is no question of any direction to that effect, therefore, the decision relied upon by the learned counsel would not have any relevance.

27. This court on 09.10.2023 passed an interim order, whereby, the prayer for grant of interim relief was rejected and that order was challenged by the petitioner in LPA No. 706/2023, however, the same was withdrawn with liberty to request for preponement of the date in the instant case.

28. That apart, it is to be noted that respondent no.1-University in its counter-affidavit and also in its reply to the application filed by the petitioner has indicated various reasons, as to why, the admission in the present Academic Year cannot be granted to foreign national students. Since respondent no.1-University has taken a policy decision to not to provide admission in the concerned Academic Year i.e. 2023-2024 for which almost the entire admission process is over, except for BBA LLB (Hons) five-year integrated programme (spot round-1) is going on, this court finds no reason to interfere into the aforesaid decision and to direct the respondent no.1-University to grant admission the petitioner against this category.

29. Further, with respect to the intermeddling of writ courts in the academic matters, this court in the case of *Devendra Singh Chaudhary v.*

*Jawaharlal Nehru University & Ors.*⁷, while relying upon the decision of the Hon'ble Supreme Court in the case of *Maharashtra State Board of Secondary and Higher Education v. Paritosh Bhupeshkumar Sheth*⁸ has held as under:

“17. In my considered opinion, it is prudent to leave the onus of deciding the matters concerning eligibility criteria for admission in particular courses, on the respective institutions, which shall decide the same in adherence to the extant regulations. The position of law regarding the interference of writ courts in policy decisions is well settled and expounded through catena of judgments, which succinctly affirm that the writ courts should keep their hands off, unless the concerned policy is grossly arbitrary or mala fide or suffers from patent illegality. Reliance may be placed on the decision in the case of Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth, wherein, the Hon'ble Supreme Court has held as under:

*29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive 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.*

[Emphasis supplied]”

⁷ 2023 SCC OnLine Del 5876

⁸ (1984) 4 SCC 27

30. However, there can be no gainsaying that respondent no.1-University must endeavour to include the concerned quota from the upcoming academic session as per the extant regulations.

31. Accordingly, the instant petition stands dismissed along with pending applications.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

NOVEMBER 29, 2023/MJ