

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

+ **W.P.(C) 5269/2008**

% **Date of decision: 01.08.2008**

ABHISHEK VERMA Petitioner
Through: Mr. Harish Malhotra, Sr. Advocate
with Mr. Rajinder Aggarwal,
Advocate

versus

NATIONAL LAW SCHOOL OF DELHI & ANR. Respondents
Through: Mr. Rajiv Bansal, Advocate

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers
may be allowed to see the judgment?
2. To be referred to Reporter or not? No
3. Whether the judgment should be No
reported in the Digest?

VIPIN SANGHI, J. (Oral)

C.M. No.10486/2008

Notice. Mr. Rajinder Aggarwal accepts notice on behalf of petitioner. With the consent of the parties, I have heard the application as well as the writ petition. Learned counsel for the respondent states that this application may be treated as the respondents' counter affidavit to the writ petition as well. Since I am proceeding to dispose of the writ petition, no separate orders are called for in this application.

W.P.(C) No.5269/2008

1. The petitioner challenges as arbitrary the condition/clause

inserted by the respondent in their communication dated 11.06.2008 which disqualifies the aspirants who pass the senior secondary school examination (10+2 system) or equivalent examination in the year 2008 after appearing in compartment examination, from seeking admission in the five year B.A. LL.B. (Hons.) programme/course.

2. The petitioner appeared in the Senior Secondary School Education (10+2) Examination in March-April 2008 conducted by the Central Board of Secondary Education (CBSE). The marks secured by the petitioner in the said examination were as follows:-

English	-	70%
Biology	-	63%
Bio-technology	-	60%
Physics	-	49%
Chemistry	-	44%

3. The petitioner was placed in compartment in Chemistry Theory paper since he did not secure the passing marks. The compartment examination has been held on 19.07.2008 in which the petitioner appeared and is awaiting his compartment result.

4. The petitioner was desirous of pursuing the law course and appeared in the entrance examination conducted by the respondents on 01.06.2008. In the said examination, the petitioner has secured 7th rank amongst the Scheduled Caste candidates to which category the petitioner belongs. With this rank, there is no dispute that the petitioner would normally have got admission in the respondent law school, but for the impugned condition prescribed by the respondents in their letter dated 11.06.2008. The eligibility condition prescribed by

the respondent for the five year B.A. LL.B. (Hons.) programme in the admission notice reads "*Senior Secondary School Examination (10+2 System) or equivalent Examination with not less than 50% of marks in the aggregate (those who have appeared in the examination in March/April, 2008 can also apply)*". Therefore, there was no restriction in the eligibility conditions that the candidate should have passed the Senior Secondary School Examination (10+2) system without a compartment.

5. On 11.06.2008 the respondent issued a communication to the students in the merit list, including the petitioner. In this communication it was, inter alia, stated:

"Based on your performance at the All India Entrance Test held on 1st June, 2008, you are being offered provisional admission to the 5-year integrated B.A., LL.B (Hons.) Degree programme of National Law School of Delhi. Your admission is subject to your fulfilling the following conditions:

*You have passed the Higher Secondary School Examination (10+2 system) or an equivalent examination thereto securing in the aggregate not less than 50% of the total Marks. **If you have passed any subject in the year 2008 after appearing in compartment examination in the said subject, you will not be eligible for admission irrespective of your merit position in the entrance examination.**"*(emphasis supplied)

6. The respondent further stated that the students would be required to meet the admission committee alongwith their parents on the date to be informed on 02.08.2008, alongwith the specified documents. Amongst these documents the original statements of marks of the qualifying examination (10+2/intermediate/PUC/HSC/

etc.) and 10th standard were also specified. The successful students were informed that in case they intended to join the course, they should send the enclosed proforma alongwith a demand draft for Rs.1,51,000/- (Rs.1,48,500/- for SC/ST candidates). They were also required to submit for advance verification, the attested copies of Class 10th and Class 12th mark statements, birth certificate, character and transfer certificates and SC/ST/persons with disability certificate, wherever applicable, so as to reach the University on or before 08.06.2008. The 25.06.2008 the petitioner responded to the aforesaid communication by depositing the fee of Rs.1,48,500/- and he informed the respondent that he had secured compartment in Chemistry Theory paper for which the results are likely to be declared some time around 10.08.2008.

7. The respondent refunded the amount deposited by the petitioner on and around 17.07.2008 by stating that since the petitioner was not found eligible, the same was being refunded. Since the respondent has not entertained the petitioner on account of the aforesaid condition laid down in the communication dated 11.06.2008, the petitioner has filed this petition wherein the petitioner seeks the quashing of the condition/clause inserted in the aforesaid communication dated 11.06.2008 which disqualifies candidates who have secured a compartment in a subject in the qualifying Examination 2008.

8. The submission of the petitioner is that merely on account of the fact that a candidate has secured compartment in one subject in

the qualifying examination held in 2008, the candidate cannot be rendered ineligible and denied admission in case he clears the compartment examination and the result of the said examination is available before the scheduled date, on which all candidates are required to produce their original documents including the marksheet issued by the CBSE or the concerned Board. Mr. Harish Malhotra, learned senior counsel for the petitioner submits that in the admission notice while specifying the eligibility criteria, no such condition was put that candidates who clear the qualifying examination with compartment in 2008 would not be eligible. Therefore, it was not open to the respondent to have introduced an additional condition subsequently as is contained in the communication dated 11.06.2008. He submits that the scheme of examination conducted by CBSE itself provides that a candidate who fails in any one particular paper/subject while passing in the others is entitled to reappear in the compartment examination with a view to clear the said subject/paper and it is the finally compiled result after the compartment examination, which is to be treated as the result of the candidate. He submits that no other university such as Guru Gobind Singh Indraprastha University, NALSAR, Delhi University or even other universities, which subscribe to the Common Law Admission Test (CLAT) have a similar disability clause for students who pass the qualifying exam with compartment.

9. Mr. Malhotra further submits that the petitioner is not seeking any deferment of the admission process, and he states that the petitioner would produce his compartment result on the scheduled

dates fixed by the respondent for the said purpose, which the respondents have now admittedly fixed for 22nd/23rd August, 2008. He submits that in case the petitioner does not produce the compartment result, or in the compartment result the petitioner does not pass with the requisite percentage, the petitioner would obviously not press for being granted admission merely on the basis of his merit position in the entrance test conducted by the respondent.

10. Mr. Malhotra also relies upon AIR 2004 Uttranchal 34 “**Km. Shilpi Saini v. State of Uttranchal & Ors.**” and on this basis he submits that the petitioner’s result is presently eclipsed and once the compartment result is declared, the eclipse would be over and the said result would take effect. He particularly relies on paragraphs 9 to 11 of this decision which read as follows:

“9. It is a case where at the time of first counselling the petitioner was not eligible but subsequently having passed her compartment examination, she has become eligible. As held by the Apex Court in the case *Dularey Lodh v. Illrd Addl. District Judge, Kanpur*, 1984 All Ren Gas (SC) 82 : AIR 1984 SC 1260, that in such circumstances doctrine of Eclipse will apply. The judgment of the Apex Court in *Dularey Lodh* case (supra) has also been followed in the case *Kailash Sonkar v. Maya Devi*, (1984) 2 SCC 91 : AIR 1984 SC 600. In Paragraph 34 doctrine of Eclipse has been discussed. In the case *Dularey Lodh* it has been observed as under :

"Once the bar placed by the 1972 Act, is removed, by virtue of the doctrine of eclipse the decree will revive and become at once operative and executable. The Courts below have rightly decided that after the 1976 Amendment Act the decree became legally executable."

10. Applying the aforesaid test once the bar has been removed with regard to the eligibility there should not

be any impediment to appear in the second counselling as entrance test by which the petitioner has derived right to get admission in the same. It has been shown on her score card as under: -

'X-State/Category, Rank is provisional subject to verification of documents at the time of counselling.'

Therefore, she cannot be deprived from admission on account of mere technicalities as it is a well known fact that one has to put hard labour in participating in entrance test and once the petitioner was covered under the eligibility criteria the technicalities should not come in her way."

11. On the other hand Mr. Rajiv Bansal, learned counsel for the respondent submits that since the respondents are starting the aforesaid 5 year B.A. LL.B. (Hons.) Programme for the first time in the current academic session, the entire process has already got delayed. He submits that institutions imparting law degrees all over the country have commenced their academic session. He submits that the impugned condition, whereby students who have appeared in the qualifying 10+2 examination in 2008 and have got compartment have been made ineligible for grant of admission in the current academic session, has been laid down with a view to complete the admission process at the earliest so that no seat in the said programme remains vacant and the start of the academic session is not delayed. He submits that it is upto the respondent to lay down its eligibility criteria and the same cannot be interfered with. He further submits that there is nothing unreasonable in the impugned condition as laid down by the respondent.

12. Upon being asked by the Court, he states that the

respondent university has nothing against students with compartment, who otherwise qualify in the qualifying examination, but if the respondents were to wait for the result of the compartment examination, other students who are waiting to take admission and whose result in the qualifying examination meet the eligibility criteria would have to wait. He submits that students who have already taken admission in various other institutions would not be able to seek refund of their fee in case the respondent is required to wait for the compartment result of the petitioner to be declared, and they are not granted admission in the meantime.

13. Admittedly, in the admission notice 2008-2009 issued by the respondents while laying down the eligibility criteria, the respondent did not debar any student, who has passed the qualifying senior secondary school 10+2 examination with compartment, from seeking admission to the said five year B.A. LL.B. (Hons.) programme/course. That being the position, in my view it is not open to the respondent to subsequently alter the eligibility condition so as to exclude those students who appear in the aforesaid qualifying examination in the year 2008 and who pass the said examination with compartment. Pertinently, the impugned condition does not debar all candidates who have passed senior secondary school 10+2 examination with compartment. It is only those candidates who have appeared in the said qualifying examination in the year 2008 and have secured a compartment who are sought to be barred from seeking admission by the impugned condition contained in the communication

dated 11.06.2008 issued by the respondent. Therefore, students who have passed the qualifying senior secondary school 10+2 examination or any other equivalent examination with compartment in any earlier year are not sought to be altogether excluded from the process of admission by the respondents.

14. No doubt it is for the respondents to lay down the eligibility criteria/condition for grant of admission to the aforesaid course and the Court would not go into the propriety of the same. However, that does not mean that the Court is precluded from even examining whether any particular condition is fair and reasonable and whether it suffers from the vice of arbitrariness or discrimination if a challenge is raised to the criteria by a candidate. Therefore, it needs examination whether the impugned condition as laid down in the communication dated 11.06.2008 is discriminatory or arbitrary as contended by the petitioner, or reasonable and fair as contended by the respondents. The only justification given by the respondents to debar candidates/students, who pass with compartment in the qualifying senior secondary school 10+2 examination or any equivalent examination in the year 2008, is that the admission process cannot be put on hold to await the result of the compartment examination of such like candidates. This reasoning of the respondent would be acceptable in respect of those candidates whose compartment examination results are not declared and available before the date fixed by the respondent for production of the same. This reasoning of the respondents, however, does not justify the impugned condition laid

down by the respondent whereby a blanket ban has been put in respect of all such candidates who have taken the compartment examination in 2008. Pertinently, even the petitioner does not expect the respondent to delay or withhold its admission process for the sake of candidates whose results in the compartment examination are not declared upto the relevant time, when they are required to produce the same.

15. The respondents have themselves fixed the date for production of the marksheets of the qualifying examination by the candidates as 22nd/23rd August, 2008. This is evident from the communication dated 26.7.2008 issued by the respondents, a copy whereof has been produced by the petitioner during the course of hearing and is not disputed by the respondents. In case by that time the result of the compartment examination is declared and meets the eligibility criteria, and the candidate's result in respect of the qualifying examination made available by the examining board which the candidate is able to produce before the respondents, there would be no justification to deny admission to him since he is higher in merit, and to grant it to another candidate, who is lower in merit. From the communication dated 11.06.2008 itself it is seen that the mechanism worked out by the respondents is that candidates/ students higher in merit were offered "**provisional admission**" and they were required to deposit an amount of Rs.1,51,000/- (Rs.1,48,500/- in case of SC/ST candidates) by way of demand draft with the respondent by 28.06.2008. All the students who deposited the fee/documents, as

desired by the respondents, were informed that they would be required to present themselves with their parents on the notified date with the original documents. Students who failed to produce the documents or fulfill the other requirements forfeited their admission in the respondent institution. By repeating this process, the respondents have been able to prepare the list of students who have opted to seek admission in the law school by depositing fee and the documents required of them, by granting them provisional admission.

16. The submission of learned counsel for the respondent that other eligible students are being denied the right to seek admission and in case the respondents are made to wait until 22nd/23rd August, 2008 to fill up all the seats, it is likely that all the seats may not get filled up at all, does not appear to be convincing. The purpose of conducting an entrance examination by the respondents was to select the most meritorious students in the different categories. It should, therefore, be the concern of the respondents that merit should be allowed to prevail *inter se* amongst the candidates belonging to different categories. Since the respondents have decided to require the admitted students to appear with their original documents on 22nd/23rd August, 2008 and till then the admission is only provisional, and the session is to commence only from 25.08.2008, it is only fair that the petitioner should be allowed the chance to seek admission in case he clears the senior secondary school 10+2 qualifying examination with the requisite percentage by the time that all the students are required to produce the original documents or at any time

before that.

17. For the aforesaid reasons, I allow this petition and quash the impugned condition contained in the communication dated 11.06.2008 which reads *"if you have passed any subject in the year 2008 after appearing in compartment examination for the said subject, you will not be eligible for admission irrespective of your merit position in the entrance examination"*, subject to the conditions laid down hereunder.

18. By the order dated 25.07.2008, the respondents were directed to keep one seat reserved for the petitioner. The same shall be kept reserved for the petitioner upto 23.08.2008 unless, upon the earlier declaration of the compartment result of the petitioner in the qualifying examination i.e. senior secondary school 10+2 examination it becomes clear that the petitioner has not qualified in the said examination with the requisite 50% marks in the aggregate, or in the event the petitioner fails to comply with the condition No.1 laid down hereunder.

19. I allow this petition, however, subject to the following conditions:

1. The petitioner shall deposit by 14.08.2008 the amount of Rs.1,48,500/- with the respondent by demand draft drawn in favour of the Registrar, National Law School, Delhi, drawn on Uco Bank or any other nationalized bank payable at Delhi alongwith attested copies of the class 10 and class 12 mark statements (as presently available), date of birth, category

certificates and SC certificates for advance verification by the respondents.

2. The petitioner shall produce before the respondents at the earliest the result of the qualifying 10+2 senior secondary school examination soon after its declaration and in any event not later than 23rd August, 2008. In case the petitioner produces the aforesaid result and passes the qualifying examination with the requisite percentage of marks, the respondents shall grant admission to the petitioner against the seat reserved for him under the orders of the Court.
3. In case the petitioner is not in a position to produce the result of the qualifying 10+2 senior secondary school examination by 23rd August, 2008, or in case he does not secure at least 50% of the total marks in the said qualifying examination, the respondents shall be free to fill up the aforesaid seat in the SC category.
4. It shall be open to the respondents to keep the next eligible SC candidate lower in merit than the petitioner informed of the possibility of the seat reserved for the petitioner falling vacant so that he/she may appear to seek admission along with requisite fee and documents in the eventuality of the petitioner not qualifying with the requisite marks in the qualifying examination by 23.08.2008.
5. In case the petitioner fails to qualify in the qualifying

examination by 23.08.2008 and the seat reserved for the petitioner does not get filled up by any other candidate, the petitioner has agreed to forfeit the deposit of Rs.1,48,500/- that the petitioner may make by 14.08.2008, as aforesaid.

Petition stands disposed of.

Dasti under the signature of Court Master.

VIPIN SANGHI, J.

AUGUST 01, 2008
rsk