

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

Date of decision: 10th March, 2011

+ **W.P.(C) No.8151/2010 & CM No.21007/2010 (for directions)**

% SANWAL RAM Petitioner

Through: Mr. S.C. Pathak & Mr. R.R. Jangu,
Advocates.

Versus

UNIVERSITY OF DELHI & ORS. ... Respondents

Through: Mr. Mohinder J.S. Rupal & Mr.
Aravind Varma, Advocates for DU.

AND

+ W.P.(C) No.8521/2010

% VARUN KAPUR Petitioner

Through: Mr. J.P. Sengh, Sr. Adv. with Mr.
Dheeraj Sachdev. Adv.

Versus

UNIVERSITY OF DELHI & ANR. ... Respondents

Through: Mr. Mohinder J.S. Rupal & Mr.
Aravind Varma, Advocates for DU.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Yes

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| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. These two writ petitions concern admission to the Bachelor of Law (LLB) course of the respondent University for the academic year 2010-2011. The eligibility criteria for admission to the said course as prescribed in the Bulletin of Information 2010-2011 of the respondent University was Graduate/Post Graduate Degree from the University of Delhi or any other Indian or Foreign University recognized as equivalent by the University of Delhi, with at least 50% marks or an equivalent grade point in the aggregate in either of them. The admission to the said course was to be on the basis of merit in the LLB entrance test. It was however provided that the candidates appearing in the qualifying degree examination and who were awaiting the result of such examination, were also eligible to appear in the LLB Entrance Test, 2010 but their admission would depend on their securing the minimum prescribed eligibility marks.

2. The petitioner in W.P.(C) No. 8151/2010 was pursuing his Bachelor of Business Administration (BBA) course from Jai Narain Vyas University, Jodhpur, Rajasthan and was to complete the same in the year 2010. The petitioner in W.P.(C) No.8521/2010 was pursuing Bachelor of Arts (BA) programme from a College affiliated to the respondent University and was also to complete the same in the year 2010.

3. The petitioners in both the writ petitions appeared in the LLB Entrance Test held by the respondent University. While the petitioner in W.P.(C) No.8151/2010 secured the rank of 272 in the OBC Category to which he belongs, the petitioner in W.P.(C) No.8521/2010 secured the rank of 1149 in the unreserved category. Both petitioners were called for counselling and were admitted to the LLB course, albeit provisionally since their results of the qualifying examination had not been declared till then.

4. The result of the BBA course aforesaid was declared by the Jai Narain Vyas University in the last week of June 2010. The petitioner in W.P.(C) No.8151/2010 had compartment in one of the papers of the three

year BBA course. He appeared in the supplementary examination held on 13th October, 2010, however the result of the said supplementary examination was not declared.

5. Similarly, the petitioner in W.P.(C) No.8521/2010 also in the result declared, had not cleared one of the papers and was placed in compartment in the said subject. It is his case that though the said compartment examinations are held by the respondent University in the month of September, 2010 so that the students if able to clear the same qualify for the further education intended by them but owing to the Commonwealth Games, 2010, the compartment examination was held only on 14th December, 2010.

6. The Bulletin of Information aforesaid provided that those provisionally admitted were required to have their admission confirmed not later than 15th October, 2010, failing which the provisional admission was to stand automatically annulled. Such confirmation was to naturally be by production of documents of having cleared the qualifying examination with the requisite marks, though it is not so expressly

provided in the Bulletin. Both petitioners having not in the first instance cleared the qualifying examination and having appeared in the compartment/supplementary examination naturally could not have their provisional admission confirmed. In the meanwhile, the first semester end term examination of the LLB course to which they had been provisionally admitted were to be held in December, 2010.

7. W.P.(C) No.8151/2010 was filed when the petitioner therein was prevented from appearing in the end term examination averring that the respondent University had allowed documents of eligibility to be submitted till 25th November, 2010 and seeking direction to the respondent University to accept the result of the petitioner therein of the qualifying examination which had by then been declared and to allow the petitioner therein to appear in the first semester end term examination. W.P.(C) No.8151/2010 came up first before this Court on 6th December, 2010 when in the Court the result of the petitioner therein of the qualifying examination was perused and finding the petitioner therein to have cleared the qualifying examination i.e. BBA course from Jai Narain Vyas

University, vide interim order, the said petitioner was permitted to take the first semester end term examination, subject to further orders in the writ petition.

8. The result of the compartment examination taken by the petitioner in W.P.(C) No.8521/2010 was however not declared till the first semester end term examination of LLB course. The said petitioner was therefore unable to appear in the same. He filed the writ petition impugning the cancellation of his provisional admission contending that the delay by the respondent University itself in declaring the result of the compartment examination should not lead to cancellation of his provisional admission. Notice of the writ petition was issued and the said petitioner permitted to continue to attend classes.

9. Pleadings have been completed and the counsels for the parties have been heard.

10. The core question for decision in these writ petitions is, whether the petitioners were required to clear their qualifying examinations in the

examinations already held and awaiting result whereof they were provisionally admitted or they could clear the qualifying examination by taking the compartment/supplementary examination also. There is no categorical/unequivocal answer thereto in the Bulletin of Information aforesaid.

11. The contention of the respondent University is that it was earlier not admitting students till the result of their qualifying examination was declared and till they were found to have cleared the same. It is contended that the same however often led to delay in admission owing to the delay in declaration of the result of the qualifying examination. It is yet further contended that pursuant to the directions of the Division Bench of this Court in *S.N. Singh Vs. Union of India* 106 (2003) DLT 329 and order dated 5th December, 2006 in W.P.(C) No.7701/2005 titled *S.N. Singh Vs. Delhi University*, and to enable those whose result of the qualifying examination was awaited to attend all the classes of the semester, the system of provisional admission was devised. Reference is also made to judgment dated 4th October, 2010 of Division Bench of this Court in LPA

No.539/2010 titled *Sukriti Upadhyay Vs. University of Delhi* emphasizing importance of attendance in LLB course. It is contended that however the same cannot change the basic rule for admission to LLB course; the candidate had to be a Graduate with the requisite marks. It is urged that if the candidate had taken the qualifying examination prior to the date prescribed for admission, the candidate would be eligible for admission even if the result of the qualifying examination had not been declared till the prescribed date for admission; however taking the qualifying examination (as would be the case with respect to supplementary/compartement examination) after the prescribed date for admission to LLB course is not permissible.

12. Per contra, the senior counsel for the petitioner in W.P.(C) No.8521/2010 has contended on the basis of Ordinance IX of the respondent University that a candidate clearing the examination in a compartment/supplementary examination is deemed to have passed the qualifying examination in that year only and cannot be said to have passed the qualifying examination in a subsequent year. He thus contends that the

result of the compartment examination would date back to the year in which the qualifying examination had been taken.

13. Neither counsel has cited any judgment in this regard. However, I find that the Division Bench of this Court in ***Sh. Prashant Srivastava Vs. C.B.S.E.*** AIR 2001 Delhi 28, relying on the earlier judgment dated 7th September, 1999 of another Division Bench in LPA No.385/1999 titled ***Neha Kattiyar Vs. C.B.S.E.***, held that once the supplementary examination is passed, the result thereof would relate back to the first appearance in the examination and the effect of that would be treated as if the candidate had passed the examination on the date when the result was declared initially. Of course, both the cases were with respect to class XIIth examination and not with respect to Delhi University.

14. I however find a Single Judge of this Court in ***Ankur Vahi Vs. Union of India*** 2004 (72) DRJ 428 to have taken a different view. Nevertheless another Single Judge in ***Deep Gupta Vs. Guri Gobind Singh Indraprastha University*** MANU/DE/1187/2008 again held that the candidates who cleared qualifying examination in first attempt and those

who cleared the same with a compartment, for the purposes of determining eligibility cannot be discriminated.

15. In view of the aforesaid and further for the reason that the respondent University in its Bulletin of Information did not so clearly provide that those awaiting results of their qualifying examination are required to clear the qualifying examination in the first instance only and not in the compartment/supplementary examination, it is deemed expedient to allow the petitioners to continue in the LLB course. A reference in this regard may also be made to ***Jayant Sud Vs. The Faculty of Law*** AIR 1993 Delhi 25 where the petitioner even though securing less than 50% marks in the eligibility examination was allowed to continue in the LLB course for the reason of having cleared the admission test. Needless to state that the petitioners herein also have cleared the admission test with good ranks. Because of the ambiguity in the Bulletin of Information, the petitioners did not take admission to any course/college to which they may have been entitled to take admission and continued pursuing the course and it is now

deemed inequitable to waste their valuable year and to make them appear again in the admission test in the ensuing year.

16. There is also some controversy as to whether the petitioners inspite of succeeding, would be eligible to appear in the next semester end term examination or not, for the reason of not having the requisite attendance. To avoid any further litigation and in the absence of any clear stands with respect thereto and for the reason of the uncertainty which had prevailed with respect to the continuance of the petitioners in the course, it is deemed expedient to clarify herein that subject to the petitioners diligently attending the remaining classes of the term, they shall be entitled to appear in the examination.

17. However, in view of the dissent expressed in *Ankur Vahi* (supra) and further since this Bench had not deemed it necessary to attempt to deal with the diverse opinion, it is deemed expedient to clarify that this judgment shall not constitute a precedent and has been pronounced on its own facts.

18. The counsel for the respondent University after close of hearing has also invited attention to my judgment dated 20th August, 2010 in W.P.(C) No.2475/2010 titled *Anju Vs. University of Delhi* contending that the same covers the subject. However in that case the petitioner therein had misrepresented facts to the University as well as to the Court and was denied relief on that ground.

19. The writ petitions therefore succeed. The petitioners are declared to be entitled to confirmation of their provisional admissions. The respondent University is directed to confirm the provisional admissions of the petitioners and to allow the petitioners to take ensuing semester end term examination in accordance with its rules.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 10, 2011
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