

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

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Date of decision: 17th July, 2015

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W.P.(C) No. 6282/2015

THUFAIL & ANR

..... Petitioners

Through: Mr. Deepak Prakash, Ms. Shruti
Srivastava & Mr. Venkat, Advs.

Versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Ankur Chhibber, Adv. for R-1.
Mr. Jogy Scaria, Adv. for R-2.

AND

+

W.P.(C) No. 6325/2015

AAKANKSHA

..... Petitioner

Through: Mr. Bharat Bhushan Jain, Adv.

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for
University of Delhi.
Mr. S.S. Ahluwalia, Adv. for R-2.

AND

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W.P.(C) No.6337/2015

AAKASH

..... Petitioner

Through: Mr. Bharat Bhushan Jain, Adv.

Versus

UNIVERSITY OF DELHI & ANR

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. for
University of Delhi.
Mr. S.S. Ahluwalia, Adv. for R-2.

AND

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W.P.(C) No.6362/2015

SAUMYA ARYA & ORS.

..... Petitioners

Through: Mr. Tanmay Mehta, Mr. Anunaya Mehta & Mr. Nikhil Palli, Advs.
Mr. Deepak Prakash, Ms. Shruti Srivastava & Mr. Venkat, Advs. in CM No.11797/2015.

versus

MIRANDA HOUSE & ORS.

..... Respondents

Through: Mr. Ankur Chhibber, Adv. for R-1.
Mr. Mohinder J.S. Rupal, Adv. for University of Delhi.
Mr. Dev. P. Bhardwaj, CGSC for UOI.

AND

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W.P.(C) No.6480/2015

AALOK KAMBOJ

..... Petitioner

Through: Ms. Shalini Kaul & Ms. Pushpinder Singh, Advs.

Versus

SHRI VENKATESWARA COLLEGE & ORS **..... Respondents**

Through: Mr. Rajinder Dhawan & Mr. B.S. Rana, Advs. for R-1.
Mr. Mohinder J.S. Rupal, Adv. for University of Delhi.
Mr. Abhay Prakash Sahay, CGSC for UOI.

AND

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W.P.(C) No.6481/2015

ANKUR RAWAT & ANR.

..... Petitioners

Through: Mr. Deepkaran Dalal, Adv.

Versus

UNIVERSITY OF DELHI & ANR. Respondents
Through: Mr. Mohinder J.S. Rupal, Adv. for
University of Delhi.
Mr. Ankur Chhibber, Adv. for
respondent no.2.

AND

+ **W.P.(C) No.6657/2015 & CM No.12141/2015 (for stay)**

RAVINDRA KUMAR & ANR. Petitioners
Through: Mr. Deepkaran Singh Dalal and Mr.
Vivek Malik, Adv.

Versus

UNIVERSITY OF DELHI & ORS. Respondents
Through: Mr. Mohinder J.S. Rupal, Adv. for
R-1/DU.
Mr. Ankur Chhibber, Adv. for
respondent no.2.

AND

+ **W.P.(C) No.6658/2015 & CM No.12143/2015 (for stay)**

MEENAL AGRAWAL & ANR. Petitioners
Through: Mr. Akhand Pratap Singh, Mr.
Tungesh and Mr. Pravesh Sharma,
Adv.

Versus

UNIVERSITY OF DELHI & ANR. Respondents
Through: Mr. Mohinder J.S. Rupal, Adv. for
R-1/DU.
Mr. Ankur Chhibber, Adv. for
respondent no.2.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All these petitions concern the following Clause in Annexure 1 to the Notification dated 20th May, 2015 of the respondent University of Delhi laying down the guidelines and schedule of admission to various undergraduate courses for the academic session 2015-16.

“Admission to Science Courses

The Basis of Selection for Mathematical Sciences / Science / Home Science courses remains unchanged. However the subjects to be included for Basis of Selection (PCM/PCB/PCMB) must have at least 70% component of theory exams (theory exam does not include internal assessment / continuous evaluation etc.) in the qualifying exam otherwise a disadvantage of 10% of the maximum marks may be levied on each such subject.”

2. The petitioners in all the petitions are seeking admission to the respondent University / its affiliate colleges on the basis of having cleared qualifying examinations held by the Boards of Examination of different States having less than 70% component of theory examination but recognized by the respondent University as equivalent to the Senior Secondary School Certificate Examination (SSSCE) (Class XII) held by the Central Board of Secondary Education (CBSE). In accordance with the

Clause aforesaid, the respondent University and its affiliate colleges have levied a disadvantage of 10% on the petitioners and aggrieved wherefrom these petitions have been filed.

3. Though the grounds on which the challenge is made may be different in different petitions but having heard the petitions together and being of the view that the Clause aforesaid, unless discretionary, as has also been contended, has to be uniformly applied, it is not deemed appropriate to deal with the challenge in each petition separately depending upon the grounds taken therein. What is however important to note is that the petitioner in W.P.(C) Nos.6362/2015, 6657/2015, 6480/2015, 6658/2015, 6337/2015 & 6325/2015 were granted admission in the affiliate colleges but which admissions were subsequently cancelled, citing the aforesaid clause and stating that the admissions granted were in ignorance and violation thereof.

4. Since the admissions to the respondent University and its affiliate colleges are underway and calling for counter affidavits would have made the petitions infructuous and any interim order reserving seats for the petitioners would also have interfered with the admission process in general and affected large number of other admission seekers, with the consent of

the counsels the matters were heard without counter affidavits. It may however be noticed that while issuing notice of W.P.(C) No.6362/2015 on 4th July, 2014 the operation of the letters dated 1st July, 2015 of cancellation of admission of six petitioners therein was stayed and Miranda House College, respondent therein, restrained from filling up the seats against cancelled admissions.

5. At one stage of the hearing, on enquiry being made as to the authority / power of the University to issue the Notification aforesaid, the counsels for the petitioners had contended [though no such plea / ground was / is taken in the writ petitions] that the respondent University had no authority to issue the said Notification but upon it being pointed out that in that event the entire admission process to the undergraduate courses for the academic year 2015-16 would be bad, the counsels gave up / waived the said ground and did not press the same.

6. At the same stage it was also enquired as to how these petitions, if challenging the *vires* of the clause aforesaid, were maintainable before this Bench and would not the same, as per Roster of this Court, be entertainable by the Division Bench. However the Registry of this Court has drawn

attention to the Listing Guidelines dated 31st January, 2013 to the effect that writ petitions challenging any Policy, Scheme or Guidelines are to be treated as not constituting a challenge to the *vires* of the Act, Rules or Regulations.

7. The counsels for the petitioners have contended:

- (i) that the respondent University having prescribed the SSSCE (Class XII) of the CBSE or an 'examination recognized as equivalent thereto' as the qualifying examination for the purpose of admission to the first year of undergraduate courses of the respondent University and its affiliate colleges and having recognized the examinations of the different State Boards which the petitioners have passed as equivalent to the SSSCE (Class XII) of CBSE, cannot undo the said equivalence by levying a disadvantage of 10% of the maximum marks, as has been done by the impugned clause;
- (ii) that the Clause aforesaid by use of the word 'may' vests a discretion in the affiliate colleges of the respondent University to levy or not to levy the disadvantage of 10% of the maximum

marks and the said clause cannot be said to be mandatory or binding on all the affiliate colleges;

- (iii) that the affiliate colleges of the respondent University who have granted admissions to the petitioner in W.P.(C) Nos. 6362/2015, 6657/2015, 6480/2015, 6658/2015, 6337/2015 & 6325/2015 have thus exercised and / or are deemed to have exercised the discretion not to levy the said disadvantage of 10% and having once waived the said Clause cannot as an afterthought apply the same and cancel the admissions already granted;
- (iv) that the admissions already granted cannot be cancelled as no fault is attributable to the students and the mistake even if any is of the affiliate colleges;
- (v) that the petitioners who have been granted admission, have on the basis thereof changed their position and have not availed of opportunities then available for admission to other universities and the affiliate colleges of the respondent University are now estopped from contending to the contrary and cancelling the

admissions; reliance is placed on *Ruchika Duggal Vs. AIIMS* 2012 SCC Online Del 208 LPA No.470/2012 preferred whereagainst was dismissed by the Division Bench on 4th July, 2012;

- (vi) that the aforesaid Clause even if mandatory and binding on all the affiliate colleges of the respondent University, is applicable only to the internal assessment / continuous evaluation component of the examination and if the same is 30% or less, the said Clause has no application; it is argued that the marks of the practical examination which are assessed not by internal examiners but outside examiners would have to be counted in theory examination;
- (vii) that the aforesaid Clause amounts to impermissible discrimination based on region;
- (viii) that the aforesaid Clause in effect ousts the students, who though have qualified an examination recognized as equivalent to the CBSE (Class XII) examination, from admission to respondent University inasmuch as with the prevalent state of

cut offs, with a disadvantage of 10% no admission can possibly be expected; the Courts cannot be oblivious of the said effect of the Clause;

- (ix) that the Scheme of Examination is in the hands of the State Boards and the students have no control thereover and cannot be made to suffer for the State Board Examinations which they have qualified having a theory component of less than 70%;
- (x) that the aforesaid Clause is arbitrary in as much as it though on the one hand lays emphasis on the result of theory examination by levying a disadvantage of 10% on students whose qualifying examination has less than 70% component of theory examination and on the other hand ousting as aforesaid from admission a student who though may be having 100% marks in the theory examination, even if component thereof is of less than 70%;
- (xi) that the aforesaid clause has to be interpreted as vesting a discretion in the affiliate colleges to admit such students who notwithstanding the theory component of the examination being

less than 70%, have secured cent percent or high marks therein or in whose marks in theory and in practical or in continuous evaluation, there is no huge difference;

- (xii) that in Science courses to which the aforesaid Clause is applicable, a practical examination conducted by an outside agency is also a test of knowledge and the levying of disadvantage for a more than 30% component of practical examination is arbitrary; reliance in this regard is placed on *Francisco D Luis Vs. Director, Board of Secondary and Higher Secondary Education and the State of Maharashtra* 2008 LawSuit (Bom) 3400 and on the final report on Quality in School Education prepared by the Institute for Studies in Industrial Development for Quality Council of India;
- (xiii) that the respondent University, being a Central University, cannot give preference to the CBSE Board and discriminate against other Boards;
- (xiv) that the aforesaid Clause ought to be interpreted at best as excluding the marks of internal assessment and / or continuous

evaluation and not marks of practical examinations held in Science subjects and which practical examinations marked by external examiners and not by the schools in which the petitioners have studied; owing to involvement of an outside agency, there is no scope of favoritism in the marking in the practical examination;

(xv) that the other State Universities are treating the CBSE at par with the State Boards of examination and the situation has to be the same all over;

(xvi) that there is no basis for adopting the pattern of CBSE as the criteria;

(xvii) that even if it were to be held that the respondent University has a valid basis for judging the merit of the candidates on the basis of result the theory examination only, even then the solution applied thereto of levying a disadvantage of 10% of the total marks on the student in whose qualifying examination the component of theory is less than 70% is arbitrary and bears no rational nexus to the object sought to be achieved; it would be

understandable if the respondent University judges the comparative merit on the basis of the marks secured in the theory paper, by treating the component thereof whether of 70% as in CBSE or of 60% or 50% as in some other qualifying examinations subject matter of these petitions, as 100%; alternatively it is suggested that the deduction should only be from the marks in internal assessment or continuous evaluation or in practicals by 10%, and by not levying deduction of 10% of the total marks; yet alternatively it is suggested that a formula for giving equivalent weightage should be devised (I may notice that this argument has been raised only by the counsel for the petitioners in W.P.(C) Nos.6325/2015 and 6337/2015 but was subsequently adopted by other counsels as well);

8. I may notice that applications for impleadment have been filed in W.P.(C) No.6362/2015 and in W.P.(C) No.6282/2015 by candidates claiming to be similarly placed as the petitioners therein and claiming the same relief.

9. The counsels for the respondent University argued:

- (a) that all the petitions do not even challenge the validity of the Clause and the challenge in W.P.(C) Nos.6325/2015 and 6337/2015 is not even to the current notification but to the notification of the previous year though identical.;
- (b) it is not as if the aforesaid Clause has been sprung as a surprise on the students; it was in force in the previous year as well and is also contained in the Bulletin of Information for Admission to Undergraduate Courses for the academic session 2015-16 released by the respondent University as far back as on 19th May, 2015;
- (c) no challenge thereto was made by any of the students;
- (d) the first of such challenges in these petitions came up before this Court only on 30th June, 2015 i.e. after the first list of cut off marks for admissions had been released on 25th June, 2015 and admissions pursuant thereto been made; on 30th June, 2015, the second list of cut off marks had been released and admissions pursuant thereto also have been completed; that the

third list of cut off marks also stands released on 4th July, 2015 and admissions in pursuance thereto also stand completed;

- (e) any interference with the Clause aforesaid at this stage would create chaos, unsettling the entire admission process and would require the entire process of admissions to begin afresh, delaying the commencement of the academic session;
- (f) that there are 45 different Boards of Examination in the country and each of which follows its own pattern, with the component of theory examination varying from 20% to 70%;
- (g) that in comparison, CBSE, even in subjects of Music and Painting has a theory component of 60% -- the disadvantage of 10% in terms of aforesaid Clause is applied even to those though passing CBSE examination but in the said subjects having a theory component of less than 70%; it is thus not as if the respondent University gives preference in any manner to the CBSE; the respondent University is applying the aforesaid Clause uniformly;

- (h) because of such disparity in the different Boards of Examination, it becomes essential for the respondent University to adopt such a criteria;
- (i) that the criteria of CBSE of 70% component of theory in most of its subjects has been accepted because CBSE conducts examinations all over the country and has the widest spectrum in comparison to the State Boards of Examination;
- (j) that the respondent University cannot possibly be expected to harmonize the pattern of examination of all the Boards and has to necessarily evolve its own method;
- (k) reliance is placed on para 6 of *Anvita Singh Vs. Union of India* 2012 III AD (Delhi) 133 to contend that the possibility of abuse is no ground to set aside the otherwise valid criteria adopted;
- (l) that the petitioners having participated in the selection process on the basis of the Bulletin of Information aforesaid are now not entitled to challenge any clause thereof;

- (m) that the Clause ought not to be quashed and the selection criteria adopted ought not to be set aside at this stage when most of the seats in the respondent University and its affiliate colleges have already been filled up and the admittees whereto would be affected by the said outcome, at least without impleading them;
- (n) that there is an intelligible rationale to the aforesaid procedure adopted; it is common knowledge that the results of internal assessment / continuous evaluation or of practical examinations even if with outside examiners cannot be said to be totally objective and element of subjectivity is bound to and definitely creeps in therein;
- (o) that the argument, that the Clause aforesaid does not exclude practical examination and only excludes internal assessment and continuous evaluation, is contrary to the emphasis therein by use of the words “must have at least” and of the phrase “theory exams” which has a definite connotation and which is understood as excluding practical examination;

- (p) that the word “may” in the aforesaid Clause has to be read as “shall”; finding that some of the affiliate colleges were making admissions in contravention thereof, a letter dated 29th June, 2015 by the Dean Students’ Welfare Office of the respondent University was also issued informing the colleges to enforce the said Clause; the colleges thus do not have a discretion to apply or not to apply the aforesaid Clause;
- (q) that the respondent University has a centralized process for admission to undergraduate courses in its affiliate colleges and the Clause aforesaid being contained in the Bulletin of Information published by the respondent University, the contention that the affiliate colleges have a discretion to apply or not to apply the aforesaid Clause is misconceived;
- (r) it is the respondent University which has been announcing the cut off marks for admissions at the successive stages and the role of the affiliate colleges is confined merely to admitting students having marks above the said cut off;

- (s) Guideline 4 in the Notification dated 20th May, 2015 (supra) also provides “There shall be no ‘Additional Eligibility Criterion’ for any category in any college / course” – this Clause is not under challenge;
- (t) it is not as if the impugned Clause or the Notification dated 20th May, 2015 (supra) of which it is a part has been issued without deliberation; in view of the complaints of disparity in the examinations held by different State Boards, the respondent University constituted a Committee of 30 Experts including members of Administrative Council and Executive Council, headed by Justice (Retd.) S.K. Aggarwal and which Committee submitted its report on 30th March, 2014 and which report was accepted by the respondent University in April, 2014 and whereafter the identical Notification for the academic year 2014-15 was issued;
- (u) it is settled principle of law that the decision of the Academic Experts who have devised academic / educational policy after

deliberation, should not be interfered with merely because another view may be possible;

- (v) attention is invited to the Guidelines contained in Ordinance II of the respondent University to contend that the eligibility conditions prescribed by the respondent University for admission and selection of candidates are binding on the affiliate colleges;
- (w) attention is invited to paras 31 to 33 and 53 of ***Dr. Vibha Jain Vs. The Director National Board of Examination*** MANU/DE/7380/2007 to contend that allocating high percentage of marks to *viva voce* for admission to undergraduate courses should be avoided as there is a certain amount of arbitrariness which may lead to frustration of the very object of selection and disrepute the system;
- (x) that the admission of the petitioners who were mistakenly admitted in violation of the aforesaid Clause, was cancelled immediately within one to seven days of admission and the

students asked to take back their original documents, for using the same for admission to other courses at other places;

- (y) attention was invited to the Handbook of Information for the year 2015-16 published by Dayal Singh College (respondent in W.P.(C) No.6337/2015 and W.P.(C) No.6325/2015) to show that the admissions granted in any case were provisional, till verification of documents;
- (z) that the reliance placed by the counsel for the petitioner in W.P.(C) No. 6282/2015 on *Francisco D Luis* (supra) is entirely misplaced inasmuch as the same is merely an order of reference to a third Judge, on a dichotomy of opinion of the Judges of the Division Bench;
- (aa) that all the petitioners are from outside Delhi; admissions to colleges / universities in other States are still open; it is thus not as if even those petitioners who were wrongly admitted and whose admissions have since been cancelled will end up losing one year; it is just that they would not be able to get admission

to the respondent University which appeared to be their first choice; and,

(bb) reliance is placed on *Arpit Singh Vs. GGSIU* 184 (2011) DLT 119 to contend that misplaced sympathy with the students should not be a ground to interfere with the decision of the academic experts.

10. The counsels for the respondent Colleges have adopted the arguments of the respondent University.

11. The counsels for the petitioners in rejoinder have argued, (i) that the arguments of the counsel for the respondent University of selected candidates being not before this Court does not apply to students who were admitted and whose admissions have been thereafter cancelled; (ii) that in the impugned clause, the expression “must have” is viz-a-viz the 70% component of theory but the expression “may be” is used before providing for the levy of 10% disadvantage; thus though the component of 70% in theory is a must for admission at par with CBSE but the levy of 10% disadvantage has been left to the discretion of the college; (iii) that the argument of delay and laches also cannot be applied viz-a-viz the petitioners

who were granted admission and whose admission has subsequently been cancelled in as much as the cause of action to them accrued only when the colleges as an afterthought cancelled the admission and immediately whereafter this Court has been approached; attention is invited to the Admission Brochure for the year 2015-16 of Miranda House College where the admission granted is not shown as provisional but it is rather stated that the admission is complete on payment of fees, issuance of role number and identity card and all of which has been done; (iv) that the last date for applying for admission to Kurukshetra University is already over; (v) that it has been held by this Court in ***Ruchika Duggal Vs. AIIMS*** that for a default of the institution, the student should not be made to suffer; (vi) that there is no uniformity in the criteria for admission in all the colleges and each college has its own criteria of admission; and, (vii) that the modern view is that theory examination cannot be the only basis of examination, specially in Science subjects.

12. The counsel for the respondent University has added that the admissions being centralized, the colleges are not even required to publish their prospectus. Attention has also been drawn to Ordinance- XVIII Clause

6-A (5)(a)(v) and 6-A (5)(b)(ii) to contend that the criteria for admission prescribed by the respondent University is binding on the affiliate colleges.

13. I have weighed the rival contentions and am unable to agree with the counsels for the petitioners for the reasons following:-

- A. The applicants for admission to the respondent University and / or its affiliate colleges are deemed to be aware of the contents of the Information Bulletin 2015-16 for admission to undergraduate courses, listing the courses offered for admission, requirements for admission, qualifying examination, age requirement, equivalence criteria, grade conversion and procedure for calculation of 'Best of Four' (admission to Science courses). There is no reason to disbelieve the stand of the respondent University and the colleges that the impugned clause is also to be found in the Information Bulletin on the website of the respondent University.
- B. The petitioners are thus deemed to have applied for admission to the respondent University and its affiliate colleges with knowledge of the aforesaid clause i.e. of levy of disadvantage

of 10% of the total marks while considering them for admission.

- C. The cut-off marks above which admissions are made to the respondent University and its affiliate colleges in the previous year / s are widely reported in the news media. The petitioners themselves have admitted that with the levy of the 10% disadvantage, they would possibly have no chance of admission and would be ousted from admission in the respondent University and its affiliate colleges. The petitioners thus, at the time of applying for admission, with the knowledge of the cut-off marks of previous year and of the clause aforesaid, are deemed to have merely taken a chance while applying for admission to the respondent University and its affiliate colleges.
- D. When the petitioners are found to have taken a chance, they cannot in any way be said to be sufferers, upon failing such a chance.
- E. The Supreme Court in *Madan Lal Vs. State of J& K* (1995) 3 SCC 486 held that when a candidate who takes a calculated

chance to get himself / herself selected without protesting against the procedure therefor, cannot, when ultimately fails therein turn around and challenge the procedure. Again, in ***Manish Kumar Shahi Vs. State of Bihar*** (2010) 12 SCC 576 it was held that such conduct of a petitioner, of taking a chance, disentitles him / her from invoking the jurisdiction under Article 226 of the Constitution of India and the High Court should refuse to entertain the writ petition. The same view has been reiterated recently in ***Ramesh Chandra Shah Vs. Anil Joshi*** (2013) 11 SCC 309 and followed by a Division Bench of this Court recently in ***Rajesh Kumar Vs. State Bank of India*** MANU/DE/0310/2015.

- F. No merit is found in the contention of the petitioners, of being under the impression that the impugned clause was directory and not mandatory. The argument, that owing to the use of the word “may, the clause has to be read as directory and not mandatory, is an argument of law which has been taken in the Court of law and it is not the case of any of the petitioners that they or any of them prior to deciding whether to apply for

admission or not obtained any legal opinion as to the interpretation of the said clause. It is also not the case of any of the petitioners that they, before applying for admission, made any queries from the respondent University or any of the colleges whether they intended to apply the said clause or not.

G. Even if the argument of the petitioners, that they believed the said clause to be directory, is to be accepted, their applying for admission would still remain a chance in as much as even as per their case it was up to the colleges to apply or not to apply the said clause. It is not the case of the petitioners that they received confirmation from any of the colleges that the impugned clause will not be applied.

H. Supreme Court in *Dr. Preeti Srivastava Vs. State of Madhya Pradesh* (1999) 7 SCC 120 held that the criteria for selection of candidates has an important bearing on the standard of education. The contention that the rules for admission do not have any bearing on the standards was negated. Similarly a Division Bench of which the undersigned was a Member in

Siddharth Kaul Vs Guru Gobind Singh Indraprastha University MANU/DE/6677/2011 also observed that a University is always entitled to set higher bench mark and it is not without any reason that a handful of universities of the world qualify to be in the Ivy League. I have similarly in *Gitarattan Institute of Advanced Studies and Training Vs. Director Higher Education* MANU/DE/2730/2010 also elaborately dealt with the role of the university and held that eligibility for admission has a connection with the standard of education and prescription of standards of education is always accepted to be an appropriate exercise of power by the bodies such as the universities granting affiliation.

- I. Look at this perspective also, there is nothing strange in the respondent University prescribing the mode of selection for admission to undergraduate courses in Science and there was no scope for anyone to believe that the affiliate colleges were free to follow their own selection criteria.
- J. It cannot be lost sight of that the admissions to the respondent University and its affiliate colleges were centralized, with a

single admission form prescribed by the respondent University being required to be filled and with the students being not required to at all approach the affiliate colleges for admission. Once the admissions are found to be centralized, with common rules for admission to all the affiliate colleges being laid down, no reasonable person could have formed an opinion that the aforesaid clause is not mandatory but directory.

K. All the affiliate colleges of the respondent University also have understood the impugned clause as mandatory and not as directory. Though some of them made admissions in contravention thereto but immediately upon the mistake being pointed out, not only admitted the mistake but also cancelled the admissions made in contravention thereof.

L. There is no reason to prefer the understanding of the students' seeking admission of the said clause, over the understanding of the respondent University and the affiliate colleges, of the selection criteria prescribed.

M. No inconsistency is found in the impugned clause and in the clause in the prospectus / information bulletin providing that the qualifying examination for the purposes of admission shall be Senior Secondary School Certificate Examination (Class XII) of the CBSE or an examination recognized as equivalent thereto. Recognition by the respondent University of the Senior Secondary School (Class XII) examination held by the State Boards as equivalent to that held by CBSE and the resultant recognition by the respondent University of the said State Board examination as qualifying examination for admission to undergraduate course in the respondent University and its affiliate colleges does not in any manner prevent the respondent University from laying down the admission criteria. While one is a matter of eligibility for admission, the other is a process for selection from amongst all eligible. Mere adoption by the respondent University, for the purpose of selection criteria, the percentage of theory component in an examination as that prescribed by CBSE for most of the subjects does not mean that the respondent University is tinkering with the recognition of

examination held by State Boards as equivalent to that held by CBSE. The impugned clause, neither is with reference to examinations held by State Boards only nor is it the case of the petitioners that the same is not applied to CBSE examination even if having component of less than 70% in theory. On the contrary, it is the un-rebutted stand of the respondent University that the said clause is uniformly applied. There is thus no merit in the contention that the impugned clause is contrary to the clause making the examination conducted by the State Boards equivalent to the (Senior Secondary School Certificate Examination of the CBSE).

- N. A challenge to a clause on the ground of arbitrariness and unreasonableness, within the meaning of Article 14 of the Constitution of India, cannot be adjudicated without inviting counter affidavits. The said position, during the course of hearing was made known to the counsels for the petitioners and an option was given to them to, if press for a finding thereon, agree to opportunity for filing counter affidavits to the respondent University and the affiliate colleges. However for

the sake of expediency, since owing to the delay in decision, the petition would have become infructuous, they agreed to this Court not rendering any definite judgment on the said arguments.

- O. However on the *prima facie* view of the matter, no arbitrariness is found in the decision of the respondent University to provide for levy of disadvantage on the results of an examination, the component of theory wherein is less than 70%.
- P. It is for this reason only that the Courts, as noticed in ***Ashok Kumar Yadav Vs. State of Haryana*** (1985) 4 SCC 417 held that allocation of 22.2% marks for viva voce test, though conducted by external agencies, was excessive and unreasonably high, tending to leave room for arbitrariness. In ***Vishnu Biswas Vs. Union of India*** (2014) 5 SCC 774 also, it was also observed that the Courts have always frowned upon prescribing higher percentage of marks for interview even when the selection has been on the basis of written test as well as interview. This is more so, for purpose of admission in an

educational institution. Reference in this regard may also be made to *Minor A. Peeriakaruppam Vs. Sobha Joseph* (1971) 1 SCC 38 observing that even when the interviews are conducted by impartial or competent person on scientific lines, very many uncertain factors like the initial nervousness on the part of some candidates, the mood in which the interviewer happens to be and the odd questions that may be put to the persons interviewed may all go to affect the result of the interview.

- Q. Notice may also be taken of *Maharashtra University of Health Sciences Vs. Paryani Mukesh Jawaharlal* (2007) 10 SCC 201 where the contention of the University, that the intention of the Regulation Making Authority was to give the dominant and pre-eminent position to the examination where students are assessed by external examiners in an objective manner and that in an internal assessment, an element of subjectivity is likely to creep in and thus the weightage to be given to internal assessment has to be restricted, was accepted.

- R. It cannot also be lost sight of that not only the schools compete with each other for best results but even the Boards of Examination aspire to produce the best of the results, in a game of upmanship, and all of which results in the examiners desiring to, wherever possible, award high marks in internal assessment / continuous evaluation / practical marks. It is thus only the examination in theory, in which the identity of the examinee is not disclosed to the examiner, that objectivity in result can be achieved.
- S. There cannot thus be said to be any arbitrariness in the decision of the respondent University to, while selecting from amongst eligible candidates, levy a disadvantage on the scores of candidates the qualifying examination taken by whom had a component of theory of less than 70%.
- T. Even otherwise this is a decision of the academic / educational experts and with which it is the settled principle of law, the Courts would not ordinarily interfere.

- U. Supreme Court, in *Sanchit Bansal Vs. The Joint Admission Board* (2012) 1 SCC 157, observed that the process of evaluation and selection of candidates for admission with respect to their performance, process of achieving the objective of selecting candidates who will be better equipped to suit the specialized courses, are all technical matters in academic field and the Courts will not interfere in such processes.
- V. There is however some merit in the contention that the formula adopted by the respondent University in the aforesaid clause to levy a disadvantage is arbitrary. *Prima facie* merit is found in the contention of the counsels for the petitioners in W.P.(C) No.6325/2015 and W.P.(C) No.6337/2015 that even if the marks scored in internal assessment / continuous evaluation / practical examination are to be disregarded, levy of disadvantage of 10% of the total marks works injustice to the students whose qualifying examination has less than 70% component of theory. Again, it *prima facie* appears, that such students should be graded on the basis of the marks scored by them in theory examination even if component thereof is less

than 70% but which theory examination the respondent University itself treats at par with the theory examination of the CBSE. However as aforesaid, in the absence of counter affidavits and which owing to the urgency expressed were not called for, no definite finding in this regard can be returned. We, in the absence of counter affidavits, do not know the conditions which prevailed with respondent University in devising the criteria so. The Supreme Court in *Union of India Vs. Shah Goverdhan L. Kabra Teachers' College* (2002) 8 SCC 228 held that Courts, before interfering, have to give due weightage to the reasons which prevailed with the experts. Without counter affidavits, we do not know such reasons. All that can be done is to direct the respondent University to at least three months before the commencement of admissions for the next academic session, re-consider the said aspect and to publically announce its decision thereon including by communicating it to the various State Boards of Examination for further dissemination to the students who would be eligible and aspiring for admission in the next academic year.

- W. The argument raised by petitioners, of estoppel is also misconceived. For a plea of estoppel to succeed there has to be first a representation as to a certain state of affairs. It is not the case of petitioners that the University or colleges represented that the clause aforesaid would not be applied. The plea of the petitioners, of their having interpreted and understood the clause so has already been negated above.
- X. A Division Bench of this Court in *Siddharth Kaul* (supra) also held that mere payment of fee would not create any rights in favour of students and that the principle of estoppel do not arise when the petitioners are fully aware of the situation. Notice may also be taken of *National Board of Examinations v. G. Anand Ramamurthy* (2006) 5 SCC 515 laying down that the principle of legitimate expectation has no application in such matters.
- Y. There is similarly no merit in the argument, of the impugned clause discriminating one region from another. There is no discrimination without showing that the persons discriminated

against are equally situated. Candidates who have scored high marks owing to an element of subjectivity in the qualifying examination which they have passed cannot be said to be similarly placed as candidates who have passed their qualifying examination with a lower element of subjectivity. Moreover, as aforesaid, the impugned clause is applied uniformly, even to subjects of CBSE having less than 70% component in theory. Even otherwise, Universities, as institutions of learning, are entitled to lay down the criteria for selection of their students and which criteria owing to vastness of the country and the different Boards of Examination cannot possibly be uniformly applied to all.

Z. That brings me to the students who were mistakenly admitted by the colleges and whose admissions have been cancelled. After giving considerable thought to the said cases I am of the view that no special class of such students can be carved out, by allowing their admissions to stand inspite of otherwise dismissing the petitions. It cannot be lost sight of that they took a chance as aforesaid. It cannot thus be said that they are

innocent or have been entrapped. It cannot also be lost sight of that their admissions are illegal and contrary to the eligibility criteria prescribed by the respondent University. An admission to an educational institution which is contrary to the conditions prescribed therefor, is illegal and void and does not vest any right in the student who has been so admitted. Supreme Court, in *State of Orissa Vs. Mamta Mohanty* (2011) 3 SCC 436 held, though in the context of appointment but also discussing admissions in the field of education, that if a candidate does not fulfill the criteria, the appointment is void and cannot be regularized.

ZA. If we were to hold that an admission contrary to the Rules & Regulations governing the same and which is thus illegal, once effected vests a right in the student who has been so admitted, it can lead to grave consequences. Admissions are generally and largely conducted by the clerical and administrative staff of the colleges and University. The possibility of the said staff or even of lecturers and professors of the University making an admission which ought not to have been made, and which

admissions are highly coveted, with the intent of vesting a right in a student so wrongly admitted cannot be ruled out.

ZB. It cannot also be lost sight of that such wrongful admission is always to the prejudice of a candidate who is rightfully entitled thereto and whose career may be marred on being deprived thereof. The Court cannot be blind to the fate of such deprived student. For this reason, a myopic view of the plight of the petitioners whose admission is cancelled, cannot be taken.

ZC. It cannot also be lost sight of that the petitioners wrongfully admitted and whose admission on detection of wrong has been cancelled, are themselves contributory to the commission of wrong. They, as aforesaid, were aware or are deemed to be aware of the clause aforesaid and ought not to have approached the colleges for admission claiming to have marks above the cut off announced, without levying the disadvantage prescribed. The colleges proceeded to admit them presuming that they were rightly claiming to have above the cut off marks prescribed. Had the said petitioners levied the disadvantage prescribed,

they could not have claimed having above the cut off marks announced.

ZD. I am even generally of the opinion that a time has come for our country to strictly enforce rules and regulations, the challenge to validity whereof is negatived, and not allow deviations therefrom on any account whatsoever. Till now, not only the authorities concerned but also the Courts have been liberal in allowing such deviations, in the name of justice, to avoid hardship, doing equity, estoppel, special case, position having become irreversible and the like. It is not as if this trend was without any cause. We were a nascent democracy with long lineage of servitude to foreign rule and a new set of laws, rules and regulations and a large illiterate population not well versed in exercising their rights and options. Most of the other legal systems of the world are not found to be exercising such powers of grant of relief or concession inspite of not finding the petitioner entitled thereto under the laws, rules and regulations. However, now there is no need for continuing this practice, particularly where highly literate students with more literate

parents guiding them are competing for admission to elite educational institutions. Non-enforcement of laws, rules and regulations and frequent deviations therefrom, in my view, has led to the country having a weak governance and rule of law and which appears to be the root cause of all the maladies facing the country. A student, who inspite of being not entitled to admission is allowed to retain the admission wrongly given to him and to which wrong he himself also is a contributory, will grow into a citizen with this understanding only of the country and its administration and in whatever vocation he / she chooses, continue to be guided by this philosophy only that whatever is achieved, even if by hook or by crook,, cannot be taken back from him. It is such frequent application of considerations of mistake and the consequent injury on account thereof for allowing deviations from laws, rules and regulations which has led a large section of the population to repeatedly and intentionally commit mistakes, knowing that the action mistakenly done would attain permanence. The same can no longer be permitted.

ZE. Even otherwise it is settled principle of law that a person who is equally guilty of the illegality or mistake committed cannot be permitted to derive any advantage thereof. The petitioners were aware and / or are deemed to be aware of their having no chance of admission owing to levy of the disadvantage aforesaid. They, at the earliest did not say that the said disadvantage ought not to be levied on them. They now cannot be heard to say that admission wrongly or mistakenly granted to them should be sustained.

ZF. There is yet another aspect. Having held the petitioners not eligible to admission and having been wrongly admitted, no direction to the respondent University to, in contravention of its rules aforesaid, not cancel the admission, can be issued. Supreme Court, in *Maharishi Dayanand University Vs. Surjeet Kaur* (2010) 11 SCC 159 reiterated that the High Courts, under Article 226 of the Constitution are required to enforce rule of law and not pass order or direction which is contrary to what has been enjoined by law, rules and regulations.

14. All the petitions are accordingly dismissed. The interim order granted in WP(C) No. 6362/2015 is vacated. Though the interim order as aforesaid was only in WP(C) No.6362/2015, it is further clarified that whichever respondent Colleges have not made admissions against the admissions which have been cancelled and which cancellations were impugned in these petitions, shall now be entitled to do so. A direction is however issued to the respondent University to reconsider the clause aforesaid in terms of para 13.V.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 17, 2015

‘gsr’ / pp