

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

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Date of decision: 19th April, 2016

+ W.P.(C) 7582/2012 & CMs No.19254/2012 (for stay) & 3524/2015 (for interim relief)

AMITA AGARWAL

..... Petitioner

Through: Mr. Anjani Kumar Mishra, Adv. with petitioner in person.

Versus

NATIONAL LAW UNIVERSITY DELHI & ORS Respondents

Through: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. S.D. Sharma, Adv and Mr. Ravindra Chingale, Adv. for R-1.
Ms. Padma Priya and Ms. Nivedita Ghosh, Advs. for R-3.
Mr. Anant Prakash, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition was filed impugning the list of provisionally selected candidates for admission to Doctor of Philosophy (Ph.D.) Programme 2012-13 published at the respondent no.1 National Law University's website on 1st October, 2012 and 12th October, 2012 and seeking mandamus to the respondent no.1 University to cancel / modify the result, with the averments:

- (i) that the petitioner was a candidate for admission to the Ph.D. course 2012 conducted by the respondent no.1 University;

- (ii) that the admission was to be through a written test conducted by the respondent no.1 University, with the candidates who have qualified for University Grants Commission–National Eligibility Test (UGC-NET) / Junior Research Fellowship (JRF) / State Level Eligibility Test (SLET) / Master of Philosophy (M. Phil.) being exempt from taking the admission test and on the basis of a presentation by the qualifying candidates before the Doctoral Committee on the proposed topic of research;
- (iii) that the petitioner submitted her Ph.D. thesis within the prescribed time till 12th May, 2012 but the last date for submitting the thesis was extended to 13th August, 2012;
- (iv) that the petitioner was by e-mail dated 9th August, 2012 of the respondent no.1 University informed of her selection in the written test and was asked to appear before the Doctoral Committee on 8th September, 2012;
- (v) that the Doctoral Committee asked the petitioner to submit the revised synopsis with some minor amendments and which was also submitted by the petitioner;

- (vi) that in the list of 13 candidates selected declared by the respondent no.1 University on its website on 1st October, 2012, the name of the petitioner did not find mention and on making enquiries the petitioner was told on 3rd October, 2012 that the Doctoral Committee had already selected 11 candidates during interviews held on 8th and 9th September, 2012 and subsequently two more candidates had been selected;
- (vii) that the respondent no.1 University on 12th October, 2012 uploaded a new version of the list of selected candidates with addition of Ms. Deepika Prakash;
- (viii) that it is quite evident that Ms. Deepika Prakash's name was not among the seven candidates required to submit their revised Ph.D. synopsis by the Doctoral Committee;
- (ix) that on making further enquiries, the petitioner was told that owing to a inadvertent mistake, the name of Ms. Deepika Prakash was left out in the list of selected candidates declared on 1st October, 2012;
- (x) that two of the selected candidates viz. Sh. Ram Kumar and Ms. Nivedita Ghosh had secured 44 and 43 marks respectively in the

written exam and which were far below the requisite minimum 50% marks needed to qualify for interview;

- (xi) that Ms. Dikshan Munjal and Mr. J.S. Dahiya whose names were also included in the list of selected candidates were faculty members of the respondent no.1 University and their admission is also in violation of Ph.D. regulations;
- (xii) that since the Doctoral Committee had not awarded marks for synopsis and viva voce, ranking of the candidates for taking decision for admission could not be done in an objective, prudent and transparent manner.

2. Notice of the petition was issued and a counter affidavit filed by the respondent no.1 University pleading:

- (a) that the Doctoral Committee seeks to understand the research proposal, evaluates research aptitude of the candidate and the ability to undertake intensive and vigorous research on the research proposal and on the basis thereof either recommends the candidate for admission and if is of the opinion that research proposal needs improvement, calls upon the candidate to submit a revised proposal on the line suggested by it and after considering

the revised proposal decides whether the candidate is to be offered admission or not;

- (b) that the Doctoral Committee consists of senior professors and experts in the field and the opinion of the said Committee is to be given primacy as to whether the candidate is to be admitted to the Ph.D. programme or not;
- (c) that the petitioner had applied for admission to the Ph.D. programme in the year 2011 and though qualified the entrance test but was unable to successfully defend her research proposal before the Doctoral Committee and therefore could not be considered for admission;
- (d) that the petitioner again applied in the year 2012 and again qualified the entrance test and submitted a different research proposal;
- (e) that the Doctoral Committee in the meeting held on 8th and 9th September, 2012 recommended admission of 12 candidates and asked seven candidates to re-submit their proposal after revision;
- (f) that the name of the petitioner figured in the list of candidates who were asked to re-submit their research proposal;

- (g) that the revised proposal submitted by the petitioner was also not upto the mark; in fact the petitioner hardly carried out any revision in her proposal and the revised proposal was a virtual reproduction of the original proposal; accordingly, the Doctoral Committee out of the seven candidates who were asked to re-submit their proposal recommended only two candidates viz. Ms. Manvi Tiku and Ms. Kimmi Singla for admission; and
- (h) that the petitioner cannot derive any advantage of the inadvertent error while uploading the list of candidates on the website who were granted admission.

3. Vide order dated 11th February, 2014, the candidates who according to the petitioner had been illegally admitted were ordered to be impleaded as respondents to this petition and three candidates were so impleaded and notice issued to them and replies / counter affidavit have been filed by Ms. Deepika Prakash and Ms. Nivendita Ghosh.

4. The counsels were heard on 10th July, 2015 and 19th August, 2015 and judgment reserved.

5. The counsel for the petitioner argued i) that though as per the prospectus the number of seats for Ph.D. were to depend on availability of suitable

candidates but not to exceed 10 students in an academic year but 14 candidates were admitted; ii) that no objections were raised to the revised synopsis submitted by the petitioner; iii) that the respondent no.1 University in reply to the letter of the petitioner had disclosed that Ms. Deepika Prakash was selected by the Doctoral Committee on 22nd September, 2012 but there was no meeting of the Doctoral Committee on that date; iv) that the Doctoral Committee constituted a Sub-Committee to go through the revised synopsis and which was also not permissible under the rules of admission approved by the Academic Council; v) that the marks obtained by each candidates before the Doctoral Committee were not disclosed; vi) that the respondent no.1 University has not disclosed the Ph.D. Regulations applicable at the relevant time and the Regulations relied upon in response to the letter of the petitioner are of 18th September, 2012 i.e. of subsequent time; and, vii) that the entire admission process was biased and prejudiced.

6. Per contra, the senior counsel for the respondent no.1 University contended that a) the petitioner in the petition has not raised any ground of the respondent no.1 University having admitted candidates in excess of the number prescribed to be admitted; b) that only 12 candidates have been ultimately admitted; c) that the cut off percentage for the entrance test was not 50% but

40% for general category students and 30% per Scheduled Caste and Scheduled Tribe category students – attention in this regard was invited to the document dated 30th August, 2011; d) that no case of bias or prejudice to the petitioner has been established least made out.

7. The counsel for the respondent no.3 Ms. Nivedita Ghosh contended i) that no marks were prescribed in the prospectus or in the Ph.D. Regulations for qualifying the entrance test – in the absence there of, the principle of 40% followed in LLB was to be followed for admission to Ph.D. programme also; ii) that the eligibility marks of 40% have been followed uniformly; iii) that she has been pursuing the programme for three years and now admission could not be cancelled. Reliance in this regard was placed on ***Javed Akhtar Vs. Jamia Hamdard*** MANU/DE/4078/2006; and, iv) that no case of irregularity in admission is made out.

8. The counsel for respondent No.4 Ms. Deepika Prakash argued a) that her name was not in the list of seven candidates who were directed to re-submit their research proposal – in fact she had been recommended for admission but her name remained to be included in the list of said candidates; b) that she had secured 56% marks in the admission test i.e. more than the petitioner; c) that she was issued the letter of admission along with other candidates; d) that there

was no sanctity to the number of seats in the Ph.D. programme and the petitioner if had been found fit could have also been called for admission; e) it is not the case of the petitioner that if Ms. Deepika Prakash and Ms. Nivedita Ghosh are not admitted she would have been admitted; f) that even if the admission of Ms. Deepika Prakash and Ms. Nivedita Ghosh were to be cancelled, the same would still not entitle the petitioner to admission; g) reliance was placed on *A. Sudha Vs. University of Mysore* (1987) 4 SCC 537 and *Aman Deep Jaswal Vs. State of Punjab* (2006) 9 SCC 597 to contend that only admission of that student can be cancelled by substituting whom the petitioner can be granted relief.

9. The counsel for the petitioner in rejoinder contended i) that as per UGC Rules, the number of seats have to be decided well in advance; ii) that in the advertisement published inviting applications, it was clearly stated that there were 10 seats only; and, iii) that the arbitrariness is evident from the marks of the interview being not disclosed or for the research papers the Regulations on which reliance is now being placed are not available on the website.

10. I have considered the controversy. The petition is with respect to admissions of the year 2012. Three academic years had passed by the time arguments in the petition were heard. I had in the circumstances enquired from

the counsel for the petitioner at the outset only whether not the petition has become infructuous and why should this Court proceed to hear and adjudicate the same. However it was the contention of the counsel for the petitioner that the petitioner, if succeeds, can be granted admission even now. Though I was then and even now am of the opinion that the petitioner cannot in the academic year 2016 get admission on the basis of the competition, in which she participated, of the year 2012 in accordance with the dicta of this Court in ***Shivam Shresthi Vs. Delhi Technological University*** MANU/DE/1757/2014 and since reiterated by the Supreme Court in ***Aneesh D. Lawande Vs. The State of Goa*** (2014) 1 SCC 554 but since the matter had remained pending and the petition had not been dismissed at the threshold and had remained pending, it is deemed appropriate to adjudicate the same on merits also.

11. The senior counsel for the respondent no.1 University in response to the query as to how, when the prospectus clearly provided that not more than 10 students shall be admitted in the Ph.D. programme in an academic year, could more be admitted, merely stated that the nature of the programme is such where if more candidates are found eligible, can be accommodated. I however find it difficult to accept. If that were to be so, the respondent no.1 University ought not to have in the prospectus provided that in no case more than 10

candidates will be admitted in an academic year. It is settled principle of law that rules of a game cannot be changed after it has begun. If it were to be held that notwithstanding a provision to that effect, the respondent no.1 University is entitled to admit students in excess or students below that number, even if otherwise found eligible for admission, the same would vest arbitrariness and discretion in the persons for the time being manning the process of admission of the respondent no.1 University and which cannot be permitted. The counsel for the petitioner during the hearing handed over copy of UGC (Minimum Standards & Procedure for Award of M.Phil. / Ph.D. Degree) Regulations, 2009 *inter alia* requiring number of seats for Ph.D. to be decided well in advance and notified and advertised. The respondent No.1 University appears to be in violation thereof also.

12. The respondent no.1 University has also not been able to give any satisfactory reply of the argument, of arbitrariness inherent in not prescribing the qualifying marks in the written test to be held nor the basis on which the Doctoral Committee is to assess and evaluate the candidates. No merit list also appears to have been drawn by the Doctoral Committee. The said process also cannot be sanctioned. According to the petitioner, the qualifying marks were 50%. The petitioner in this regard relies on the contemporaneous website

notification and which appears to be in consonance with the Regulations supra of the year 2009. However, according to the private respondents it was intended to be 40% and the respondent No.1 University relies on the decision of 30th August, 2011 in this regard. However there is no explanation for the website notification cited by the petitioner.

13. Similarly, in the absence of any laid down criteria for the assessment to be made by the Doctoral Committee and prescribed and declared weightage for the marks of the written test and the assessment by the Doctoral Committee, the possibility of abuse of discretion cannot be ruled out. James Hart in his 'An Introduction to Administrative Law' observed "A test or examination, to be competitive, must employ an objective standard of measure. Where the standard of measure is wholly subjective to the examiners, it differs in no respect from an uncontrolled opinion of the examiners and cannot be termed competitive". Supreme Court, in *Minor A. Peeriakaruppan Vs. State of Tamil Nadu* (1971) 1 SCC 38, finding that interview marks had not been divided under various heads and not given on itemised basis but given in a lump, held the same to be illegal.

14. I am therefore compelled to observe that all does not appear to be well with the admission process of the respondent No.1 National Law University,

Delhi at least qua admission to Ph.D. programme, unless it has been rectified since then; I was however not told so. I take this opportunity to remind the respondent No.1 University that its reputation is as good as products it produces and any dilution in competition at the stage of admission can be an obstacle in the path to achieving academic greatness.

15. Though no relief can be granted to the petitioner but a direction is accordingly issued to the respondent no.1 University to before commencing the admissions to the Ph.D. programme in the year 2016 revisit the admission criteria in terms of the observations herein above and to clearly advertise the same so that the possibility of officials of the respondent No.1 University manning the admission process granting admission to whomsoever they desire can be ruled out and admissions are strictly as per declared criteria.

16. The petition is disposed of.

A copy of this order be sent to the respondent no.1 University.

RAJIV SAHAI ENDLAW, J.

APRIL 19, 2016

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