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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:02.11.2017

Judgment delivered on:22.11.2017

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W.P.(C) 5960/2017 & C.M. Nos.24762/2017 & C.M. No.25079/2017

KEVIN CC WONG

..... Petitioner

Through Mr. Arun Monga, Ms. Divya Sharma,
Ms. Mascellina Kalikotey and Mr.
Suryajyoti Paul Singh, Advs.

versus

UNIVERSITY OF DELHI

..... Respondent

Through Mr. Mohinder J.S. Rupal and Mr.
Prang Newmai, Advs. for R-1.

Ms. Maneesha Dhir, Mr. Abhishek
Kumar, Ms. Sharmistha Ghose and Mr.
Mahipal Singh, Advs for R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner had applied for admission at the Delhi University in the sports quota in the year 2017-2018. He is stated to be a sportsman; proficient in the sports of badminton. In the trial held of the badminton

players (between 27.06.2017 to 06.07.2017), the petitioner had reached the semi-final stage. The petitioner had been awarded 79 marks all inclusive which included his past performance as also his current performance. For his past performance, he was awarded 29 marks out of 40. For his current performance, he was awarded 50 marks out of 60. The bone of contention is qua the marking awarded to another candidate Arjun Sachdeva (now impleaded as respondent No.2 pursuant to the amended writ petition filed by the petitioner under the orders of the Court dated 28.07.2017 in LPA No.507/2017).

2 Submission of the petitioner is that Arjun Sachdeva without participating in the sport of badminton has been issued a certificate by the School Game Federation of India declaring his position to be first. This is not correct as respondent No.2 had never played the game; he was an extra and although admittedly he was a part of the team yet he had not played the actual game and his having been awarded a first position pursuant to which he has secured 32 marks is wholly unjust. The petitioner on the other hand who had reached the semi-final stage has been awarded only 29 marks.

3 The amended writ petition and the arguments addressed before this Court are largely confined to this grievance of the petitioner i.e. award of 32

marks to respondent No.2 when he had not even participated in the game and he having secure 32 Marks and given first ranking is an illegal and arbitrary exercise by respondent No.1.

4 Pursuant to the amendment in the writ petition, respondent No.2 has also put in appearance. A separate counter affidavit has been filed by respondent No.2. Counter affidavit of respondent No.1 is already on record.

5 Record shows that on 17.07.2017, the contention of the petitioner had been noted. His grievance that Arjun Sachdeva had been given 32 marks whereas the petitioner had been awarded only 29 marks reflected the opaque system of marking adopted by respondent No.1. No interim relief had been granted to the petitioner in terms of the subsequent application filed by the petitioner which was dealt with on 18.07.2017.

6 The petitioner had preferred an LPA No. 507/2017 against the orders dated 17.07.2017 & 18.07.2017. His grievances were noted by the learned Division Bench. His particular reference to the effect that Arjun Sachdeva had not even participated in the game who had managed to secure 32 marks for a certificate wherein he had been shown as a first position ranker was illegal system of marking. Submissions and counter submissions of the

parties having noted, the appeal was disposed of inter-alia with the following directions:-

“Considering the aforesaid, we dispose of the present appeal by permitting the appellant to amend the writ petition to make necessary averments in relation to the assessment of past performance of, inter alia, Arjun Sachdeva - and, if he considers appropriate, to implead the affected persons as party respondents. If any such amendment is made, the same should be brought on record by 31.07.2017 with advance copy to counsel for the respondent/ university so that the university may keep its reply ready when the matter is listed before the learned Single Judge on 03.08.2017.

So far as the order dated 18.07.2017 is concerned, counsel for the appellant does not press his appeal in that respect, and he states that he shall argue C.M. No. 25079/2011 which is listed on 03.08.2017 before the learned Single Judge.

The petition stands disposed of in the aforesaid terms.

Order dasti under the signatures of the Court Master.”

7 Pursuant to the disposal of the LPA, the present writ petition was amended. Since Arjun Sachdeva was not a party in the earlier petition, he was permitted to be impleaded as respondent No.2. The response of both the respondents is on record. Para 4.7 of the amended writ petition has been highlighted by the petitioner to substantiate and advanced the argument

noted supra. It is reiterated that no.2 never having participated in the game and being only an extra in the team could not have been given first position for a game that he did not play; 32 marks awarded to him is incorrect. On the other hand, the petitioner having participated in the game had been given only 29 marks. This is only with a means to push respondent No.2 to a higher pedestal.

8 The specific reply in the counter affidavit of respondent No.2 qua the stand of the petitioner in para 4.7 has also been perused. The answering respondent No. 2 has admitted that it was a team effort but in this team effort, since their team had secured the first position, respondent No.2 was well entitled to the certificate which was granted to him. Additional submission being that it is not this certificate which is under challenge before this Court. This is an online certificate which has been submitted by respondent No.2 to respondent No.1 which has been considered in his favour. It cannot be examined by this Court at this stage.

9 Respondent No.1 has supported the stand of respondent No.2. Submission of respondent No.1 is that the certificate issued to respondent No.2 was a well deserving certificate and as per the rules and guidelines of the School Games Federation, each member in the team would be entitled to

such a certificate if the team has secured a first position. This was an answer to the specific query put by the Court to the respondents as this Court in the first instance appreciated the argument of the petitioner that it is an individual effort and an individual capability of the candidate which has to be counted for the purpose of admission and it is not team effort which has to be considered by the Delhi University for the purpose of admission in the sports quota. It is informed by respondent No.2 to this Court that when the team has secured a first position, the certificate of merit or 1st position will be granted to each member of the team and each one would be entitled to get a first position certificate which has thus been granted to respondent No.2.

10 Noting this stand of respondent No.1 which is in conformity with the stand of respondent No.2 as also the additional fact that the certificate (granted to respondent No.2) has not been challenged before this Court, the LPA having been confined to the challenge by the petitioner only to the manner in which respondent No.2 was able to secure this certificate and a consequential 32 marks without a participation in the sport. The authenticity of the genuineness of the certificate is not in dispute.

11 It has been informed to this Court that Annexure R-1 (certificate of merit granted to respondent No.2 by the School Games Federation of India)

pursuant to which he had secured 32 marks is a certificate of merit issued to respondent No.2 noting that he has been declared first in the sports of badminton and his achievement as a team. It has been clarified by respondent No.1 that each member of the team has got an identical certificate and had the same issue arisen in the case of the petitioner, he would have also been given such a benefit.

12 There is thus nothing wrong in the manner in which Annexure R-1 has been issued and the benefit of which has accrued to respondent No.2.

13 At this stage, learned counsel for the petitioner points out that a videography of the manner in which the marking had been carried out by the respondent would reflect the bias attitude of the assessing team; although a panel of three persons had to sit as an examination panel yet the videography would show that it is only one person who is sitting at the examination panel. This Court notes that this averment has not been pleaded either in the earlier writ petition or in the amended writ petition. This submission has been set up only in the rejoinder in the first instance and it was rightly pointed out by the learned counsel for the respondents that this averment not having been pleaded in the initial writ petition and nor in the subsequent petition, this argument cannot be available to the petitioner. The LPA Court has disposed

of the petition giving permission to the petitioner to amend the writ petition only qua the discrimination that the petitioner has alleged to have suffered qua respondent No.2 who had then been directed to be impleaded. This Court, thus, cannot go into this aspect about the panel members. This was never a part of the earlier writ petition or even of the amended writ petition. This aspect has been urged only in the rejoinder.

14 Reliance by the learned counsel for the petitioner upon (2012) 7 SCC 389 Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others is mis-placed in the factual scenario. There is no doubt to the settled legal proposition that merit, fairness and transparency are the etho of the process for admission to courses in a University; rule of merit cannot be given a go-bye by inefficiency, inaccuracy or improper methods of admission. Nothing contained in this judgment would come to the aid of this factual scenario.

15 Reliance by the learned counsel for respondent No.2 on the judgment of the Apex Court on AIR 1993 SC 1313 Sandeep Barar and Another Vs. State of Punjab and Others as also (2012) 1 SCC 157 Sanchit Bansal and Another Vs. Joint Admission Board and Others also comes to the aid of the respondents. In Sandeep Barar (supra), the Apex Court has rightly noted

that it is the function of the Executive to lay down the process for admission to categories for sportsmen or sportswomen and this is the function of the State; although there is a power of judicial review available to the Court but it is only if the validity of these instructions are in challenge; this is not so in this case. Prayer (b) in the amended writ petition is outside the scope of the amendment which had been permitted to the petitioner in terms of the order passed by the Division Bench while disposing of the LPA No.507/2017 on 28.07.2017. In the judgment of Sanchit Bansal (supra), the Apex Court had reiterated the well settled legal proposition that an action is said to be arbitrary and capricious where a person in authority basis his decision on an individual discretion by ignoring the prescribed rules or procedure or law or the decision is founded on prejudice or preference rather than reason or fact. This Court notes that there is no preference which has been given to respondent No.2 over and above the petitioner. No case of discrimination is made out. Respondent No.2 has earned the certificate on his own merit. The petitioner has been given 29 marks only for the reason that he had participated in the event; admittedly he had not secured either a first, second or a third position. This is also not his case. In fact this petition is largely premised on the alleged extra marks awarded to respondent No.2; the

petitioner does not appear to have any grievance qua himself. He has not challenged the fact that he was himself entitled to better marks than 29 for his past performance; he not having secured either first, second or third position could obviously not have got better marks.

16 The prayers made in the writ petition cannot be answered in favour of the petitioner. Dismissed.

NOVEMBER 22, 2017

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INDERMEET KAUR, J

