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

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Judgment reserved on : 22.09.2020
Judgment Delivered on : 28.09.2020

+ W.P.(C) 4001/2020
PRAYRAK MEHTA & ORS. ... Petitioners
Through Mr.N.Hariharan, Sr. Adv. with
Mr.Sudeep Singh, Adv.
Versus
UNIVERSITY OF DELHI ... Respondent
Through Mr.Sachin Datta, Sr. Adv. alongwith
Mr.Mohinder Rupal & Mr.Hardik
Rupal, Adv.
+ W.P.(C) 3943/2020
HRITIKA ANEESH THROUGH ANEESH P B LEGAL
GUARDIAN FATHER & ANR. ... Petitioners
Through Mr.Manoj V. George & Ms.Bhavika,
Adv.
Versus
DELHI UNIVERSITY THROUGH ITS VICE
CHANCELLOR & ANR. ... Respondents
Through Mr.Sachin Datta, Sr. Adv. alongwith
Mr.Mohinder Rupal & Mr.Hardik
Rupal, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. These Writ Petitions are filed by the petitioners seeking appropriate direction directing the respondent to recognise and include all 14 Extra Curricular Activities for the purposes of consideration and admission under Extra Curricular Activity (ECA) & Sports Quota for the Academic Session

2020-21, as per existing Policy/Practice followed by respondent in the last Academic Session 2019-20. Other connected reliefs are also sought. Arguments in the lead matter being WP(C)4001/2020 were heard. For the purpose of this judgment the facts of the said case are narrated herein.

2. Petitioner No.1 is said to be performing at the stage as an enthusiastic child dancer and theatre artist since the tender age of 4. Petitioner No.2 is said to be a gifted and hugely talented classical singer and is a 5th year student from Gandharva Mahavidyalaya. She has been learning Indian Classical Music since the tender age of 4. Petitioner No.3 is a musician specializing in 'drums'. He has been playing drums for over 12 years and is deeply passionate about his instrument.

3. It is pleaded that the respondent University mandates admission of at least 1% each of the total intake capacity of students under the ECA Category and Sports Quota subject to a ceiling of 5%. It is the grievance of the petitioners that for the Academic Session 2020-21, as per the Bulletin of Information for admission, due to Covid-19 respondent University has scrapped the admissions of most of the Extra Curricular Activities restricting admissions for sub-category of NCC and NSS certificate holders only. Further, admission based on sports were to take place without conduct of trials. It was strenuously pleaded that the rational appears to be arbitrary and unreasonable under the given circumstances. Hence, present writ petition.

4. I may note that during pendency of the present writ petition, the respondent University decided to include all 14 categories of last year ECA category for admission through ECA category for the UG course. The respondent university has filed its short counter-affidavit where it has been pointed out that a decision to the above effect was taken and a Press Release

was accordingly issued on 25.7.2020. Time was given to the eligible candidates to register under ECA category from 1.8.2020 to 31.08.2020. It was further stated in the counter-affidavit that the applicants under the ECA category would be assessed only on the basis of the maximum of best 5 certificates of preceding three years i.e. from 01.05.2017 to 30.04.2020 in the concerned discipline of ECA, which the applicant wishes to apply. The certificates uploaded by the applicants would be scrutinized and evaluated out of a maximum of 100 marks. Applicants scoring 20 marks and above in the uploaded certificate shall be eligible for final merit list for admission on the basis of the ECA. The marks under the ECA category would be awarded based on the sum of the total marks awarded in the three best certificates uploaded by the candidate. It is also stated that the respondent is unable to conduct any trials for the selection Online or Offline due to prevailing Pandemic situation. It is pleaded that in 2019-20, 20,257 applications from Pan-India with diverse backgrounds were received by the respondent University and that it would be impossible to conduct Video (online) trials. It is further stated that the respondent University does not have IT support and infrastructure to conduct Online trials. Further, it is stated that it would be impossible for the respondent University to check impersonations, video editing, photoshop and therefore Online trials are in any case not feasible. Further, the rich and privileged applicants would be able to get videos recorded in studios using sophisticated recording and music instruments whereas poor and underprivileged applicants cannot afford to do the same. There would hence be discrimination which would hamper fair opportunity and transparent selection.

5. The prayer in the present writ petition was to direct respondent

University to bring back the ECA quota. The respondent University has agreed to the same. The petitioners, however, are not satisfied. It is the contention of the petitioners that the criteria chosen for selection under the ECA Category is grossly arbitrary and subject to manipulations. The following submissions have been broadly made by the petitioners challenging the criteria for selection in the Rejoinder:-

(i) That admission to undergraduate courses through ECA quota solely on the basis of certificates is arbitrary, irrational and unfair. There are 14 different categories and 39 sub-categories across separate disciplines which require evaluation of different skills and talents. The disciplines have no common or standard certifying authority and mere certificates could not be made the basis of evaluation. The respondent has ousted trials for consideration of the applications illegally.

(ii) It is stressed that the straight jacket formula for marking merit through ECA certificates as stipulated by the respondent University fails to appreciate the salient differences between 14 disciplines and 39 sub-categories.

(iii) It is stated that disciplines like music, theatre, creative writing and Fine Arts are performance, publication and exhibition oriented. The practitioners spend their life training and perfecting public performances, exhibition and publication. However, under the present scheme only a maximum of 12 marks are awarded for such achievements. On the other hand disciplines like debating, quizzing are competition oriented and afford several opportunities for the practitioners to amass participation and prize certificates which amounts to 44 marks. The 'one size fit' to all activities adopted by respondent University, rewards achievements disproportionately across

disciplines.

(iv) It is stated that the decision to accept only 5 certificates for a period of three years is arbitrary as 5 best certificates cannot serve as a reliable index of extra-curricular proficiency.

(v) It has further been pleaded that the respondent university ought to redesign the marking scheme of evaluation of certificates for each of the 14 categories separately on the basis of advice and opinion of experts in each discipline. Further, the respondent should publish the names and qualifications of luminaries who comprise these committees as this would allay fear and apprehension of the petitioners of fair marking.

vi) It has been stressed that trials through virtual platforms can only be the effective means to ensure fairness in admissions through ECA quota. Granting a three minute time at a virtual platform is not a Humungous task and does not require any extra ordinary set up considering the fact that the University has already taken up a task of conducting Online exam/classes for 1.3 lac students. The ECA category applicants are in contrast only about 20,000 for the Academic Year 2019-20.

6. The rejoinder ends with suggestions for a fair ECA admission process. The suggestions are as follows:-

"i. The respondent University should appoint a separate panel of experts for each of the 14 Categories specified in the Press Release and Additional Guidelines submitted by the Respondent University in the Short Counter-affidavit (Annexure R1 and R2). These Expert panels should determine the relative weightage allotted to the fourfold marking criteria outlined for evaluating the merit of certificates in each of the 14 Categories.

ii. To limit the margin of error and to ensure greater accuracy in

the absence of auditions/trials, the respondent University should increase the number of certificates accepted for consideration.

iii. The respondent University should extend the period of certificates accepted for consideration to the preceding five years instead of the three currently specified

iv. The respondent University should clarify that the certificates provided by applicants should only contain the date or indicate the period under consideration for evaluation. The respondent University should not bar certificates from evaluation simply because they are dated after the period under consideration, especially when their content attests to achievement in the relevant period."

7. On 31.08.2020 this court passed an order directing the University to place on record an affidavit with various details. Relevant portion of the order reads as follows:-

"2. Let the respondent/University place on record an affidavit with the following details:

I. The detailed procedure for grading by the Assessment Committee;

II. The seats available in different fields for the students under the ECA category in different colleges;

3. A suggestion was mooted during the course of hearing that it would be appropriate that the Assessment Committee may also hold personal interaction with the candidates through video conferencing.

4. Learned senior counsel for the respondent had submitted that the respondent/University expects about 30,000 candidates to apply this year and given the logistics and technical problem, it may not be practically feasible to carry out the personal interaction.

5. Let the above noted affidavit to be filed by the respondent/University. The respondent/University also deal with the above aspect. Needful be done within one week.

6. I am informed that the last date for submission of the application under the ECA category is 31.08.2020, however, the

assessment of the candidates is not commencing before the next date of hearing. "

8. Pursuant to the order of this court dated 31.8.2020 the respondent has filed an additional affidavit. It has been stated in the said affidavit that admissions to undergraduate courses under ECA category will be done in accordance with Guidelines published in the Under-Graduate Bulletin of Information and Additional Guidelines notified on 29.07.2020 and uploaded on the University's Website. It is stated that the respondent University has constituted an Admission Committee consisting of specialized proficient members who will supervise the admission to undergraduate courses based on extra-curricular activities. The composition of the committee for assessing the ECA certificates in each category of ECA is spelt out as follows:-

"i. Chairperson - One of the University
Representatives to the G.B. of the college

ii. Co-Chairperson - Principal of the College

iii. Convener - In-charge, Cultural Committee
or a Member of the Cultural Committee of
the College.

iv. Observer - VC Nominee, appointed by the
VC and shall not to be part of the assessment committee

v. Judges -Three"

9. On the issue of personal interaction it has been reiterated that it is not practically feasible to carry out personal interaction or Online interaction. It is in this scenario that the University has released the assessment criteria which is entirely based on certificates.

10. I have heard learned senior counsel for the petitioner and learned senior counsel for the respondent again today. I have also heard Professor Shobha Bagai from Delhi University, who is the Dean of Admissions. On earlier hearings learned senior counsel for the petitioner had reiterated the contentions of his rejoinder affidavit. Today, however, learned senior counsel for the petitioner has made the following two salient submissions:-

(i) He has firstly stated that as per the criteria laid down which is stipulated in the Press Release issued by the respondent University the maximum marks of 44 are awarded for participation/prizes and competition, 28 marks for training/examination, 16 marks for workshop and 12 marks for performance/publish work/exhibition (public). It has been strenuously urged that the respondent has also stated in the said Press Release that the marks under the ECA category will be awarded based on the sum total marks awarded in the three best certificates uploaded by the candidate. It is pleaded that there are four separate categories under which marks can be scored. But the Number of certificates to be considered is only three. It has been urged that there is clearly an error in the criteria for assessment of merit.

(ii) It is further pleaded that the criteria for marking requires that the applicants can upload maximum of 5 best certificates of preceding three years (1.5.2017 to 30.4.2020). It has been pleaded that this criteria completely ignores children who may have enrolled at an early age for learning the activities. In theatre, music, dancing, lot of children enroll as early as 8 years of age and hence by fixing a criteria whereby certificates prior to 1.5.2017 cannot be looked into, the early activity of the children would get ignored.

11. Learned senior counsel for the respondent has refuted the aforesaid

contentions. Regarding the fact that only 3 certificates are being taken into account he states that a level playing field has been created and all the students who apply under different ECA category will be adjudged on the same basis as there are different committees for different activities. Regarding the submission of the certificates being considered only for the period from 1.5.2017 to 30.4.2020 it has been stated that even if a certificate is dated 1.5.2017 it can prescribe an experience of far more than 7-8 years also. Such certificates would be valid. It has also been urged by learned counsel for the respondent that approximately 20,000 students have applied for admissions in the ECA Category. It has been pleaded that it would not be feasible or possible for the University to carry out trials or personal interaction either physically or Online for such large number of candidates. Regarding Online it has also been stressed that the issue of manipulating such performances through Online cannot be completely ruled out.

12. I may now deal with the aforesaid contentions. The petitioner alongwith the petition has attached an extract of Bulletin of Information for Admission to the Under-Graduate courses for the year 2019-20. As per the said Bulletin applicants for ECA Category were to upload only one certificate (preferably with the highest achievement) issued for the period 1.5.2016 upto 30.04.2019 in each category they wish to apply for as proof of their involvement in the relevant category. Thereafter trials were to be held at two levels i.e. preliminary trials and final trials. These trials were to be conducted by the ECA Committee (admissions). Evaluation of certificates by the ECA Admission Committee was to be done of only those applicants who qualify for the final trial. The final merit list was to be based on ECA performance in the final trial and certificate evaluation with a weightage of

75:25 respectively.

What follows from a perusal of the above Bulletin for the Academic Year 2019-20 is that for the ECS selections, weightage for certificates was being given earlier also. As the University is unable to carry out the trials this year the entire marking is now based on certificates.

13. The criteria for marking is that the applicant has to upload 5 best certificates for the period 1.5.2017 to 30.04.2020. The best of the three certificates are to be considered. Marks are to be awarded based on the sum total of marks awarded in the 3 best certificates uploaded by the candidates.

14. On 4.9.2020 the University has constituted the ECA Admission Committee which comprises of 8 different senior Professors of the University/various colleges. Alongwith the additional affidavit a copy of the seats matrix for the different colleges has also been stipulated. Different seats have been reserved for different categories or sub categories of Extra Curricular Activities.

15. In my opinion there is merit in the contention of the respondent that they are not in a position to hold physical trials and thus the alternate evaluation mechanism now put in place, namely, evaluation of merit through certificates is the appropriate method of selection. As noted above, even for the last year the evaluation of the certificates carried 25% marks. It is not hence a wholly irrelevant or a new criteria for selection which has been introduced by the respondent University.

16. I will now deal with the contentions raised by learned senior counsel for the petitioner. He had firstly urged that while giving marks for the various 5 certificates uploaded by the students the University should award marks for the said 5 certificates rather than for the best 3 certificates. The

reason for pleading the same was that there are four different categories stated in the marking criteria for awarding marks for the certificates. It is pleaded that if only three such certificates are to be marked no student would be able to get marks for all four criterias mentioned in the marking criteria. The marking criteria is stated as follows:-

Sr. No.	Category	Maximum Marks
1.	Participation/Prizes in Competition	44
2.	Training/Examinations	28
3.	Workshops	16
4.	Performance / Published work / Exhibition (Public)	12
	Total Marks	100

17. What follows is that separate marks are given for participation/prizes and competition, training/examinations, workshops and performance/published work/exhibition. In case three certificates are taken for awarding marks to a student it is manifest that in one of the categories the student would get zero marks.

18. It had been clarified by the learned senior counsel for the respondent that there is a separate admission committee for each of the different activities. These committees will function from separate colleges of the University. Hence, candidates from one activity will only be competing with each other. Given this explanation, no prejudice would be caused by the fact that only three of the best certificates are being evaluated.

19. The next contention raised by learned senior counsel for the petitioner

related to the period for which certificates are to be uploaded, namely, 1.5.2017 to 30.4.2020. It has been pleaded that some students have been participating in these activities since the age of 8 years and hence the period for uploading certificate should be enlarged.

20. In my opinion, this plea of learned senior counsel for the petitioner is without merits. The ECA Category for admission would necessarily be available to those students who are presently participating actively in those such activities. It is possible that some students may loose out some marks based on the criteria fixed by the respondent University but that itself cannot be a ground to modify or set aside the said criteria fixed by the University.

21. In the above context reference may be had to the judgment of the Supreme Court in *N.Vasundhara vs. State of Mysore*, (1971) 2 SCC 22 where the Supreme Court held as follows:-

"8. The petitioner's argument that candidates whose parents have of necessity to remain out of Mysore State and who have also by compelling reasons to shift their residence frequently from one State to another without completing ten years in any one State would suffer because their parents cannot afford to arrange for their children's residence in Mysore State for ten years during the first 17 years of their age, merely suggests that there is a likelihood of some cases of hardship under the impugned rule. But cases of hardship are likely to arise in the working of almost any rule which may be framed for selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule the petitioner has to approach elsewhere because it relates to the policy underlying the rule. Redress for the grievance against the wide gap between the number of seats in the medical colleges and the number of candidates aspiring to become doctors for earning their own livelihood and for serving the needs of the country, is also to be sought elsewhere and not in

this Court, which is only concerned with the constitutionality of the rule."

22. Clearly, the criteria for selection framed by the respondent cannot be faulted with. It is no doubt true that perhaps a different rule may have better merits or the present rule may cause hardship to some candidates. But that cannot be a ground to strike down the said selection criteria.

23. It is settled legal position that normally, it would be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally. In this context reference may be had to the judgment of the Supreme Court in the case of *Maharashtra State Board of Secondary & Higher Secondary Education & Anr. vs. Paritosh Bhupeshkumar Sheth & Ors., (1984) 4 SCC 27* where the Supreme Court held as follows:-

“29. Far from advancing public interest and fair play to the other candidates in general, any such interpretation of the legal position would be wholly defeasive of the same. As has been repeatedly pointed out by this Court, the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them. It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view as opposed to a pragmatic one were to be propounded. It is equally important that the Court should also, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice. It is unfortunate that this

principle has not been adequately kept in mind by the High Court while deciding the instant case.”

24. Reference in this context may also be had to the judgment of the Supreme Court in the case of *University of Mysore & Anr. vs. C.D. Govinda Rao & Anr.*, AIR 1965 SC 491 wherein the Court held as follows:-

“12. Before we part with these appeals, however, reference must be made to two other matters. In dealing with the case presented before it by the respondent, the High Court has criticised the report made by the Board and has observed that the circumstances disclosed by the report made it difficult for the High Court to treat the recommendations made by the expert with the respect that they generally deserve. We are unable to see the point of criticism of the High Court in such academic matters. Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before courts, normally the courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the courts generally can be. The criticism made by the High Court against the report made by the Board seems to suggest that the High Court thought that the Board was in the position of an executive authority, issuing an executive fiat, or was acting like a quasi-judicial tribunal, deciding disputes referred to it for its decision. In dealing with complaints made by citizens in regard to appointments made by academic bodies, like the Universities, such an approach would not be reasonable or appropriate. In fact, in issuing the writ, the High Court has made certain observations which show that the High Court applied tests which would legitimately be applied in the case of writs of certiorari. In the judgment, it has been observed that the error in this case is undoubtedly a manifest error. That is a consideration which is more germane and

relevant in a procedure for a writ of certiorari. What the High Court should have considered is whether the appointment made by the Chancellor had contravened any statutory or binding rule or ordinance, and in doing so, the High Court should have shown due regard to the opinion expressed by the Board and its recommendations on which the Chancellor has acted. In this connection, the High Court has failed to notice one significant fact that when the Board considered the claims of the respective applicants, it examined them very carefully and actually came to the conclusion that none of them deserved to be appointed a Professor. These recommendations made by the Board clearly show that they considered the relevant factors carefully and ultimately came to the conclusion that Appellant 2 should be recommended for the post of Reader. Therefore, we are satisfied that the criticism made by the High Court against the Board and its deliberations is not justified.”

25. In view of the above, in my opinion, the basic grievance of the petitioners already stand addressed by the respondent, namely, by introduction of the ECA category for admissions to the UG Courses. The challenge to the criteria for evaluation, in my opinion, is without merits.

26. The writ petitions are disposed of accordingly. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

SEPTEMBER 28, 2020/n