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

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Date of Decision: 5th November, 2020

+ LPA 266/2020, CM No.28062/2020 (*for early hearing*)

AVIRAL SHANKAR PANDEY THROUGH
HIS FATHER VINAY SHANKAR PANDEY Appellant

Through: Mr. V. Shekhar, Sr. Adv. with
Ms. Sheetal Rajput, Mr. Mukesh Kumar Singh,
Mr. Shashank Shekhar, Advocates

versus

UNIVERSITY OF DELHI
THROUGH ITS REGISTRAR & ANR. Respondents

Through: Mr. M.J.S. Rupal, Advocate with
Mr. Hardik Rupal, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D.N. PATEL, Chief Justice (Oral)**

Proceedings of the matter have been conducted through video conferencing.

CM APPL. 28062/2020 (*for early hearing*)

This application has been preferred for preponing the date of hearing in this Letters Patent Appeal.

Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, the Letters Patent Appeal is taken up for hearing today itself.

The application is allowed and disposed of.

LPA 266/2020

1. This Letters Patent Appeal has been preferred by the original petitioner in W.P.(C) No.5623/2020. The appellant (original writ petitioner) is aggrieved by the judgment and order dated 16th September, 2020 (Annexure P1 to the memo of this LPA) as, according to him, the learned Single Judge declined to grant relief to him despite accepting the contentions raised by him on merits.

Factual Matrix

2. This appellant is the original writ petitioner, who had cleared XIIth Standard examination with the following marks:

<i>Subject</i>	<i>Marks obtained</i>
<i>English:</i>	89
<i>Mathematics:</i>	99
<i>Physics:</i>	96
<i>Chemistry:</i>	92
<i>Computer:</i>	100

3. The appellant (original writ petitioner) has applied for admission in B.Sc. (Hons.) Physics course in Delhi University for the Academic Year 2020-2021.

4. As per the bulletin of information for merit-based admission to the undergraduate courses (2020-2021), the eligibility criteria for B.Sc. (Honors) for Chemistry, Physics and Polymer Science is as under:

<i>Course</i>	<i>Course-specific Eligibility Criteria and Combination of Subjects for Calculation of Merit</i>
xxxx	xxxx
xxxx	xxxx
<i>B.Sc. (Hons.) Chemistry/Physics/ Polymer Science</i>	● 55% or more marks in the aggregate of Physics, Chemistry and Mathematics and 50% or more marks in one

	<i>compulsory language.</i> • <u>Merit will be calculated based on aggregate percentage in Physics, Chemistry and Mathematics.</u> ॐ
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5. This appellant (original writ petitioner) was unable to get merit-based admission in B.Sc. (Hons.) Physics in one of the top colleges of Delhi University because the merit is being calculated on aggregate percentage of marks secured in Physics, Chemistry and Mathematics.

6. The Petitioner sought amendment in the admission rules of the Delhi University. It is the contention of this Appellant (original writ petitioner) that the Delhi University should have considered 55% or more marks in the aggregate of Physics, Chemistry and Mathematics **OR** 55% or more marks in the aggregate of Physics, Computer Science and Mathematics as one of the qualification for B.Sc, Physics, as per choice of the students.

7. A writ petition was preferred by this appellant being W.P.(C) No.5623/2020. The said writ petition has been decided by the learned Single Judge vide impugned judgment and order dated 16th September, 2020, whereby it has been observed by the learned Single Judge in paragraph 21 onwards that once the admission process is started, the rules cannot be altered. Moreover, observations have been made by the learned Single Judge to the effect that the University may relook for calculation of the merit for admission of students in B.Sc. (Hons.) Physics with the best of the marks of three subjects out of four subjects, namely, Physics, Chemistry, Mathematics and Computer Science. This was a suggestion made by the learned Single Judge in the facts and circumstances of the case from the next academic year.

8. As no relief was granted to this appellant (original writ petitioner) for the present/current academic year, he has preferred the present LPA.

Arguments canvassed by learned Senior Counsel for the appellant (original writ petitioner)

9. Much has been argued by the learned senior counsel for the appellant (original writ petitioner) that the learned Single Judge has decided all contentions on merits in favour of the appellant (original writ petitioner), but, no relief has been granted. This aspect of the matter ought to be appreciated in the present LPA.

10. It is further submitted by the learned senior counsel that from a reading of the impugned judgment and order of the learned Single Judge, it is clear that the contention of this appellant (original writ petitioner) is that best and highest marks of three subjects should be considered out of the marks of Physics, Chemistry, Mathematics and Computer Science obtained in standard XII for admission in B.Sc. (Hons.) Physics in Delhi University. This main contention was accepted by the learned Single Judge and, therefore, the consequent relief, that is, admission ought to have been given to this appellant (original writ petitioner) in B.Sc. (Hons.) Physics in the current Academic Year 2020-2021. According to the appellant, this aspect of the matter has been lost sight of by the learned Single Judge and hence the said relief may be granted in this LPA.

11. Learned senior counsel for the appellant (original writ petitioner) has relied upon the decision rendered by Hon'ble Supreme Court reported in ***Ashok v. State of Karnataka, (1992) 1 SCC 28***, specifically paragraph 3 of the aforesaid decision, and has submitted that even if other students have not approached this Court, the relief can be granted to the present appellant

(original writ petitioner). This aspect of the matter has also not been properly appreciated by the learned Single Judge and hence the relief, that is, admission may be given to the present appellant in B.Sc. (Hons.) Physics in Delhi University.

Arguments canvassed by learned counsel for Delhi University

12. It is submitted by learned counsel for Delhi University that there is no writ of mandamus issued by the learned Single Judge for change in the admission rules, especially for B.Sc. (Hons.) Physics in Delhi University for the Academic Year 2020-2021.

13. It is further submitted by learned counsel that the learned Single Judge has directed Delhi University to re-look the course structure and eligibility criteria, especially for B.Sc. (Hons.) Physics admissions, keeping in mind the observations made in the judgment, meaning thereby that the process of change of the rules/procedure/eligibility criteria for admission of students in B.Sc. (Hons.) Physics should be carried out by Delhi University in accordance with law and the statutes which require a detailed procedure to be followed by Delhi University. All these rules have not been given a go-bye, by the learned Single Judge.

14. It is further submitted by learned counsel for Delhi University that the learned Single Judge has not amended the admission rules of Delhi University. As per the observations of the learned Single Judge, the amendment procedure shall have to be followed by Delhi University for admission in B.Sc. (Hons.) Physics, which can be done only on and from the next academic year because the process of admission in B.Sc. (Hons.) Physics for the current academic session has already been commenced.

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or direction in the nature of mandamus or certiorari:

a. for quashing the prospectus/bulletin released by University of Delhi, New Delhi for academic session 2020-21, as violative of article 14 of the Constitution of India in so far as it provides eligibility criteria for B.Sc. Physics has been provided as 55% or more marks in the aggregate of physics, chemistry and mathematics and 50% or more marks in one compulsory language and merit will be calculated based on aggregate percentage in physics, chemistry and mathematics and thereby direct the respondent university for amending the information bulletin as per prayer b below;

b. directing the respondent/university to consider 55% or more marks in the aggregate of physics, chemistry and mathematics OR 55% or more marks in the aggregate of physics, computer science and mathematics as one of the qualification for B.Sc. Physics, as per choice of the students.

c. Pass any other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in the interest of justice and to

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- ii. It also appears from the facts of the case that the present appellant (original writ petitioner) has cleared his XIIth Standard examination with Physics, Chemistry, Mathematics and Computer Science subjects and has obtained the following marks:

<i>Subject</i>	<i>Marks obtained</i>
<i>English:</i>	89
<i>Mathematics:</i>	99
<i>Physics:</i>	96
<i>Chemistry:</i>	92
<i>Computer:</i>	100

- iii. This appellant had applied for admission in B.Sc. (Hons.) Physics in Delhi University. As per the Delhi University Admission Rules, the

eligibility criteria for getting admission in B.Sc. (Honors) for Chemistry, Physics and Polymer Science is as under:

<i>Course</i>	<i>Course-specific Eligibility Criteria and Combination of Subjects for Calculation of Merit</i>
Xxxx	Xxxx
Xxxx	Xxxx
<i>B.Sc. (Hons.) Chemistry/ Physics/ Polymer Science</i>	● 55% or more marks in the aggregate of Physics, Chemistry and Mathematics and 50% or more marks in one compulsory language. ● <u>Merit will be calculated based on aggregate percentage in Physics, Chemistry and Mathematics.</u> ॐ

- iv. In view of the aforesaid eligibility criteria, this appellant (original writ petitioner) could not get the admission.
- v. Now it is the desire of this appellant (original writ petitioner) that the eligibility criteria fixed by Delhi University requires necessary amendments. This appellant has suggested the amendment that the admission ought to be granted considering the best marks secured by the candidate in three out of four subjects, namely:
 - (a) Physics
 - (b) Chemistry
 - (c) Mathematics
 - (d) Computer Science,
- vi. Therefore, for the prayers as stated hereinabove, this appellant had preferred the W.P.(C) No.5623/2020 and it was contended that instead of insisting for the aggregate percentage in Physics, Chemistry and Mathematics, it should have been “best of aggregate percentage in any three subjects out of Physics, Chemistry, Mathematics and Computer

Science”.

- vii. Thus, it was the desire of this appellant (original writ petitioner) that the Delhi University has to change the criteria of admission in B.Sc. (Hons.) Physics for the logic advanced by this appellant in his writ petition as above. The writ petition was argued at length by this appellant and ultimately it was decided by learned Single Judge vide detailed judgment and order dated 16th September, 2020 (Annexure P-1 to the memo of this LPA). It has been observed by learned Single Judge that Delhi University may relook at its course structures and eligibility criteria and modify the same, well within time, so that students like the petitioner are not put to hardship in the forthcoming academic years.
- viii. In view of the observations of the learned Single Judge from paragraph 26 onwards, it appears that the learned Single Judge took the view that, once the admission process has already been started by Delhi University, especially for B.Sc. (Hons.) Physics, no question whatsoever arises of change of eligibility criteria and that too at the behest of this appellant (original writ petitioner). Otherwise, there will be several suggestions by several petitioners and no admission process can be finalised at all. It has been observed by the learned Single Judge in paragraphs 26 to 29 as under:

"है। Students who have studied in Class XII and who have already scored marks in various subjects would already be having an assessment as to the aggregate of their best-of-four subjects and the colleges where they may be entitled to get admission. At this stage, directing Computer Science to be added to the eligibility criteria for B.Sc. (Hons.) Physics would upset the apple cart, i.e. various students may be disadvantaged and various students like the Petitioner would obtain an advantage. Adding Computer Science may tilt the balance and

27. A three judge bench of the Supreme Court in ***K.Manjushree (supra)*** has held as under:

Thus, whether it is the case of selection for employment or admission in educational courses, the rules of the game cannot be changed after the race has begun. The process of admission to undergraduate courses is a two year long process which commences with students taking admission in class XII, choosing the subjects, undertaking preparations, giving various tests and examinations finally culminating in the Class XII board exams or the Pre-University examinations. Students have specific targets in mind and prepare to achieve the same. They are aware of the nitty-gritties of the eligibility criteria for various courses and are extremely focussed on which Universities/Colleges they wish to seek admission. Most students who wish to seek admission in B.Sc. (Hons.) Physics course in DU would be more than aware that Computer Science will not be counted in calculating merit. They would have undertaken their preparation and given the examination in the said backdrop.

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already been announced and the registration process has already been completed. Only the cut-offs are to be announced. At this stage, this Court is of the opinion that change in the eligibility criteria would not be permissible as the race has already begun. The hardship which would be caused would be much more, if this Court interferes with the admission process at this stage. The judgments cited by both sides in terms of the power of this Court for judicial review is not in doubt. The question as to whether the Court ought to exercise the said power would depend on the facts and circumstances of each case. In the present case, at this stage, this Court is not inclined to direct the addition of Computer Science in the calculation of the aggregate best of four percentage for admission to the B.Sc. (Hons.) Physics course.

29. However, DU is directed to take a relook at its course structures and the eligibility criteria and modify the same, well within time, so that students like the Petitioner are not put to hardship in the forthcoming academic years. Needless to add, the same would have to be done in complete compliance of the applicable regulations and after seeking approvals, as per the statutes applicable to the University.

- ix. We are in full agreement with the reasons given by the learned Single Judge starting from paragraph 26 onwards. It appears that no error has been committed by the learned Single Judge in appreciating the facts and circumstances of the case and the judgments delivered by the Hon'ble Supreme Court and the rules and regulations of Delhi University for admission in B.Sc. (Hons.) Physics. The judgment of the Hon'ble Supreme Court in *Ashok v. State of Karnataka*, **(1992) 1 SCC 28**, cited by learned counsel for the appellant is of little assistance to him, as the eligibility criteria employed for appointment in that case were violative of existing judgments of the Hon'ble Supreme Court. In these circumstances, the Hon'ble Supreme Court granted relief to the

appellants therein in the matter of appointment to the concerned posts. This situation does not prevail in the present case at all.

- x. Much has been argued by learned senior counsel for the appellant that a direction has been given by the learned Single Judge for change of eligibility criteria for admission in B.Sc. (Hons.) (Physics), but no relief has been granted to the appellant (original writ petitioner). We are not in agreement with this contention of the appellant mainly for the reasons that:

- (a) No writ of Mandamus has been issued by the learned Single Judge that Delhi University must alter the eligibility criteria for B.Sc. (Hons.) Physics. It ought to be kept in mind that it is the power vested in the Delhi University to change the eligibility criteria for admission of students in B.Sc. (Hons.) Physics. Once there is a power vested in Delhi University, there is no corresponding right vested in students like this appellant. They can challenge the admission criteria only on limited grounds, such as manifest arbitrariness, but the writ Court will be slow to interfere in the expert determination in these matters. Only Delhi University can change the admission criteria. It may be upon suggestions of experts of the subjects, because of the need of the society, looking to the curriculum and course and may also be because of suggestions by the competent Courts, but, the fact remains that the change in eligibility criteria has to be undertaken by Delhi University in accordance with the statutes applicable to it. It is also to be kept in mind that there is a detailed procedure to be followed by Delhi University for change in admission criteria in a particular course and the whole procedure cannot be bypassed at the instance of the writ

petitioner. It should be properly publicised also, so that students can know the new criteria in advance for getting admission in B.Sc. (Hons.) Physics. This aspect of the matter has been properly appreciated by the learned Single Judge and, therefore, it has been observed in paragraph 29 of the impugned judgment and order that on and from forthcoming academic year, the Delhi University can take a relook at its course structures and eligibility criteria and modify the same.

- (b) Categorically the learned Single Judge has observed in paragraph 29 of the impugned order that Delhi University shall re-look at its course structures and eligibility criteria as per statutes applicable to the University.
- (c) Once the admission process has already been commenced in Delhi University, especially for B.Sc. (Hons.) Physics, the criterion for admission cannot be altered in view of the decision rendered by the Hon'ble Supreme Court in *K. Manjushree vs. State of A.P. and Ors.* [Civil Appeal No. 1313/2008, Decided on 15th February, 2008].
- (d) If such type of criteria are altered for grant of admission in the Delhi University, then several students who have applied looking at the prevailing admission criteria will be affected, and students have not applied would also have missed a chance for admission. It will be near impossible to conclude the admission process for B.Sc. (Hons.) (Physics) for the current academic year, i.e., 2020-2021 and the whole admission process will continue until Delhi University is relooking at its course structures and the eligibility criteria and till they modify the same as per statutes applicable to the University. Such a

consequence cannot be countenanced.

- (e) The change of admission rules in any of the courses in Delhi University cannot be done overnight. There is a proper methodology for change of eligibility criteria which ought to be followed by Delhi University as per the statutes applicable to it. Such a change of criteria may take considerable time. Till then, for the present Academic Year 2020-2021, the admission process cannot be held up and, therefore, it has been rightly observed by the learned Single Judge that such type of change should be carried out for the forthcoming academic years.

17. We are in full agreement with the aforesaid reasons given by the learned Single Judge while deciding W.P.(C) 5623/2020 vide the impugned judgment and order dated 16th September, 2020.

18. In view of the aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain the present LPA as no error has been committed by the Learned Single Judge in the impugned judgment and order.

19. Hence, the LPA is hereby dismissed.

CHIEF JUSTICE

NOVEMBER 5, 2020
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PRATEEK JALAN, J