

\$~4 (2021 Cause List)

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

Date of Decision: 13th August, 2021

+ W.P.(C) 8181/2021 & CM APPL. 25424/2021

SRAJIT GAUR

..... Petitioner

Through: Ms. Namrata Mukim,
Ms. Garima Jindal, Advocates
with Mr. Nirmal Gaur, Father of
petitioner.

versus

**MINISTRY OF COMMERCE AND
INDUSTRIES & ANR.**

..... Respondents

Through: Mr. Jaswinder Singh, CGSC
with Mr. Kavindra Gill, GP for
UoI/R-1.
Mr. Binay Kumar and Mr.
Avinash Tripathi, Advocates for
FDDI/R-2.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through
video conferencing.

1. The petitioner is an aspirant for a Bachelor Degree course in the
respondent no.2-Footwear Design & Development Institute ["FDDI"].
The grievance with which the petitioner has approached the Court is
that the FDDI has cancelled the All India Selection Test ["AIST"] for
session 2021-22, on the basis of which admissions were originally
intended to be based, and has instead proposed to admit students on
the basis of the marks obtained by them in Class-XII.

2. Ms. Namrata Mukim, learned counsel for the petitioner, has drawn my attention to the prospectus issued by the FDDI on 01.02.2021, in which it was contemplated that the AIST entrance examination would be held at examination centres designated by the Institute. She submits that the cancellation of the examination, which would have tested the candidates' suitability for the intended course, and its replacement by admissions on the basis of the Class XII examination results, is an arbitrary and irrational departure from the prospectus issued by the FDDI.

3. Ms. Mukim submits that, in terms of the prospectus, a candidate would only have to pass the Class XII examination to be eligible for admission to the Bachelor Degree programme. For this purpose, she refers me to the following clause of the prospectus:

"1. Eligibility for admission to Bachelor Degree Programmes (B.Des / BBA)

A. A candidate who has passed,-

- a) 10+2 in any stream, from any recognized Board; or*
- b) any School or Board or University examination in India or in foreign country recognized by the Association of Indian Universities as equivalent to 10+2 system; or*
- c) School Examination conducted by the National Open School with a minimum of five subjects; or*
- d) All India Council for Technical Education (AICTE) approved three-years full time Diploma after Class X offered by Board of Technical Education of any state or Union territory;"*

4. The AIST was postponed from 04.07.2021 due to the Covid-19 pandemic. Finally, by way of the impugned communication dated 21.07.2021, the candidates were informed as follows:

“Dear Candidate,

In view of various instructions and guidelines issued by various state and central governments with regard to COVID-19, FDDI recently reviewed the prevailing situation and found that because of continuing lockdown in some form in various parts of the country, it will be difficult to hold All India Selection Test (AIST) for the academic session 2021-22. Therefore, FDDI has decided to cancel AIST for the 2021-22 academic session.

For detailed notification, please click here

<https://resources.aima.in/temp/Notification-4-2021.pdf>

Best

Best Wishes,

FDDI¹”

5. The aforesaid communication refers to a notification of the FDDI, which has not been placed on record. However, a copy of the notification was screen-shared during video conference hearing, which provides as follows:

“NOTICE

Ref. No.: FDDI/ADM/2021-22/004

Dt.: 20/07/2021

In view of various instructions and guidelines issued by various state and central governments with regard to COVID-19, FDDI recently reviewed the prevailing situation and found that because of continuing lockdowns in some form in various parts of the country, it will be difficult to hold All India Selection Test (AIST) for the academic session 2021-22. Therefore, FDDI has decided to cancel AIST for 2021-22 academic session. Instead, merit list for admission to FDDI's Bachelor's and Master's programmes will now be prepared as per following criteria:

A. Criteria for admission to undergraduate programmes (B.Des. / BBA)

Candidates applied for undergraduate programmes (B.Des. / BBA) will be assigned ranks (General, Reserved, EWS, and PH) based on their aggregate percent marks scored in all subjects in 12th standard (or equivalent)/ 3-year AICTE approved diploma.

If aggregate percent marks of two or more candidates are same, then the older candidate as per date of birth will be ranked higher.

A merit list will be prepared on the basis of above criteria, and candidates will be assigned campus and programme based on their choice, merit, and availability of seats through a counselling session for which the institute will issue guidelines in due course.

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xxxx

xxxx

Next steps for candidates who have already submitted application on the admission portal

All candidates who have already submitted application on the admission portal of FDDI need to provide information as mentioned in criteria A or B, whichever is applicable. They may provide this information at <https://applyadmission.net/fddi2021/> using their existing username and password from 5 PM onwards on 31st July 2021 till 10th August 2021.

Sd/

In Charge (Admissions)''

6. Ms. Mukim submits that, even in the wake of the Covid-19 pandemic, several admission tests have been conducted, which demonstrates that the reason offered by the FDDI is untenable.

7. Ms. Mukim further submits that the notification, signed by the In-charge (Admission), has not been issued by the competent authority to take the decision to cancel the entrance test.

8. Mr. Binoy Kumar, learned counsel for the FDDI, on the other hand, submits that the decision to cancel the AIST was taken to ensure that the admission process is completed within a reasonable period, despite the lockdown in several parts of the country. He further submits that the decision was taken at the level of the Managing Director of the Institute, who is the highest executive functionary of the FDDI.

9. Mr. Kumar has screen-shared the note approved by the Managing Director, which reads as follows:

“NOTE

Ref: FDDI/NOIDA/10(1)/ADMISSIONS/2021:06

Monday, July 12, 2021

Subject: Cancellation of All India Selection test (AIST) for academic session 2021-22 reg....

- 1. In subsequent to the approval note FDDI/NOIDA/10(1)/ADMISSIONS/2021:01 dt. 07/01/2021, details at 1/N, the admission process was started for the academic session 2021-22 since 1st February 2021.*
- 2. Keeping in view the ongoing COVID-19 outbreak, lockdown is imposed by various State Governments, and therefore; in wake of the present unforeseen circumstances, the last date of online submission of application form for admission to various programmes offered at FDDI was extended till 20th July, 2021.*
- 3. Due to the ongoing situation of pandemic caused due to Covid 19 across India the empaneled agency AIMA was contacted to discuss about the future course of action pertaining to the smooth conduction of AIST 2021-22. In subsequent to the discussion, AIMA has proposed to go with Internet-Based Test (IBT) instead of Paper-Based Test (PBT) because PBT cannot be*

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 17.08.2021

14:28:52

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conducted at all examination centres other than FDDI campuses due to Covid-19.

- 4. The matter has been discussed with the committee members & with concerned authorities at FDDI and it has been come to a conclusion that many candidates who have applied for FDDI's AIST 2021 won't be able to meet pre-requisites for IBT. And even if we provide option of PBT (at FDDI campuses) to candidates who don't meet IBT pre-requisites, many won't be able to travel to FDDI campuses because of varying degree of lockdown in different parts of the country and general fear of travelling. Therefore, the committee is of the opinion that we cannot go ahead with IBT for candidates applying for our next year's programs.*
- 5. Hence, keeping in view the aforementioned scenario where AIMA is unable to conduct PBT at 31 proposed examination centres across India, it has been recommended to not conduct AIST 2021 for Academic Session 2021-22.*
- 6. Further mechanism to draw ranking is being worked out and shall be put-up soon for approval of the competent authority.*

Submitted for your kind approval, please.

***Dharmendra Jaiswal
(In-charge-Admission)***

***V.N. Roy
Asst. Manager (A&P)***

***Sandeep Bhatia
DGM (Training)"***

- 10. Having heard learned counsel for the parties, I am of the view that it is not possible for the writ court to interfere in the present matter. Ms. Mukim is right in saying that the original proposal was to hold a selection test. That was reflected in the prospectus. However, the prospectus was issued prior to the second wave of the Covid-19*

pandemic hitting the country with its devastating consequences. While fidelity to the prospectus is normally expected of an institution, the second wave of the pandemic posed an unforeseen and unprecedented circumstance. A certain degree of administrative flexibility and agility has to be afforded to the institution in such a situation. For an institution to take a cautious approach in these circumstances, and forsake an entrance examination, cannot be said to be arbitrary or irrational, warranting the interference of the writ court.

11. Ms. Mukim's reliance upon entrance examinations having being held by other institutions is, in my view, misconceived. Different institutions have different resources, capabilities and wherewithal to conduct examinations in centres all over the country while maintaining adequate precautions. If the FDDI took the position that it was unable to do so and the appropriate course would be to do away with the entrance test altogether, I am unable to find any arbitrariness or unreasonableness in employing an alternative method of selection. The note extracted above, relied upon by Mr. Kumar, demonstrates that the FDDI considered the alternative of an internet based test also, and come to the conclusion that such an alternative would also not be feasible.

12. The contention that the decision has been taken by an incompetent authority as the notification was issued by the In-charge Admissions, is similarly untenable. The signatory to a notification may not be the authority who has taken the decision. It is pointed out by Mr. Kumar that the decision was in fact taken at the level of the Managing Director. As long as the decision is taken at the appropriate level, it is not necessary that the decision-maker signs the public

notification.

13. In academic matters of this nature, the scope for interference of the writ court is limited. Matters regarding the method of admissions and assessment are best left to academic experts in the institutions concerned, unless manifest unreasonableness or arbitrariness is shown. The judgments of the Supreme Court in *Rachna and Others vs. Union of India and Anr.*² and *National Board of Examinations vs. G. Anand Ramamurthy and Others*³ are relevant in this regard. They underscore the restraint of the writ court in interference with policy matters.

14. Having come to the conclusion that no such cause for interference is made out in the present case, I am unable to grant any relief to the petitioner. However, it will be open to the respondent to consider the petitioner's request and take an appropriate decision in its own discretion.

15. The writ petition, alongwith pending application, is disposed of in these terms.

PRATEEK JALAN, J

AUGUST 13, 2021

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² 2021 SCC OnLine SC 140 [Writ Petition (Civil) No. 1410 of 2020, decided on 24.02.2021]

³ (2006) 5 SCC 515; paragraph 7