

\$~57 (2021 Cause List)

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

Date of Decision 11th October, 2021

+ W.P.(C) 11676/2021

GUNISHA AGGARWAL

..... Petitioner

Through: Mr. Parag Tripathi, Senior Adv. with
Mr. Vipul Ganda, Mr. Annirudh
Sharma and Mr. Aman Choudhary,
Advocates
versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Through: Mr. Mohinder JS Rupal and
Ms. Bhawani Vemban, Advocates for
University of Delhi
Mr. Rupesh Kumar, Advocate with
Ms. Neelam Sharma, Ms. Pankhuri
Shrivastava, Mr. Pravesh Bahuguna,
Mr. Alekshendra Sharma, Advocates
for R- 6/CBSE.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

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

CM APPL. 36148/2021 (exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

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W.P.(C) 11676/2021 with CM APPL. 36149/2021 (for stay)

1. The petitioner has filed the present writ petition claiming the following reliefs:-

“1. Pass an appropriate writ of Certiorarified Mandamus, order or direction thereby quashing the policy of the Respondent No.1 to consider marks awarded by different Boards at par without any equalizing mechanism. and;

2. Pass an appropriate writ of Mandamus, order or direction thereby directing the Respondent No.1 to 5 to notify a scaling mechanism either percentile or any other mechanism whereby the marks scored by students of different state examination boards are equalized/moderated; or;

3. Pass any such other/further order as this Hon’ble Court may deem fit.”

The University of Delhi [“the University”], four of its affiliated colleges, and the Central Board of Secondary Education [“CBSE”] have been arrayed as respondents.

2. The petitioner has completed Class XII from a school affiliated to the CBSE. As the examinations were not held in the year 2021 due to the Coronavirus pandemic, the petitioner has been assessed on the basis of a scheme approved by the Supreme Court of India vide order dated 17.06.2021 in W.P.(C) 522/2021 [*Mamta Sharma vs. Central Board of Secondary Education & Ors.*]. She has secured the following marks:-

SUBJECT CODE	SUBJECT NAME	THEORY	PRACTICAL	TOTAL	TOTAL (IN WORDS)	POSITION AL GRADE
301	ENGLISH CORE	077	020	097	NINETY SEVEN	A1

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030	ECONOMICS	079	020	099	NINETY NINE	AI
041	MATHEMATICS	079	020	099	NINETY NINE	AI
054	BUSINESS STUDIES	079	020	099	NINETY NINE	AI
055	ACCOUNTANCY	079	020	099	NINETY NINE	AI
500	WORK EXPERIENCE			-		AI
502	HEALTH & PHYSICAL EDUCATION			-		AI
503	GENERAL STUDIES			-		AI
RESULT: PASS						

She has thereafter applied to the University for admission to its undergraduate courses, but despite her high marks, she has found herself unsuccessful in the first cut-off list for her preferred course, i.e. B.A. Honours (Economics). She has however secured admission in Lady Shri Ram College in B.A Programme (Economics and Computer Applications).

3. The grievance sought to be ventilated by the petitioner is that students who have taken the Class XII examinations from some of the State Boards have been marked on a much higher scale than the CBSE and ICSE [Indian Certificate of Secondary Education] examinees. As a result, the students from those boards have, according to the petitioner, achieved disproportionate admission in the University. She

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therefore seeks an order quashing the University's policy to consider the marks awarded by different Boards at par, and a direction upon the University to evolve a mechanism for scaling of the marks scored by students of different boards.

4. Mr. Vipul Ganda, learned counsel for the petitioner, seeks to rely upon a chart to contend that the percentage of CBSE applicants who have secured admission is much lower than the percentage of successful candidates from the State boards in question. He submits that the University is required to take into account the differences in the scheme of marking of various examining bodies in order to arrive at the relative merit of the competing candidates.

5. Mr. Mohinder J.S. Rupal, learned counsel for the University, who appears on advance notice, submits that as a central university, Delhi University cannot distinguish between CBSE students and students of State boards in the manner suggested. He states that the policy of the University does not permit an assessment of the relative marks granted by the several boards from which candidates have passed their qualifying examinations, which in any event would be a cumbersome exercise.

6. Having heard learned counsel for the parties, I am of the view that the relief sought by the petitioner cannot be granted in the present petition under Article 226 of the Constitution. The matter, as the petitioner herself acknowledges, is one of policy of the University. The judgments of the Supreme Court *inter alia* in *Rachna & Others vs. Union of India and Another* (2021) 5 SCC 638 and *National Board of Examinations vs. G. Anand Ramamurthy and Others* (2006) 5 SCC

515 [paragraph 7] make it clear that in matters of policy, particularly in academic matters, the writ court should be slow to interfere.

Paragraph 43 of the judgment in *Rachna* is reproduced below:

“43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in Union of India v. M. Selvakumar [Union of India v. M. Selvakumar, (2017) 3 SCC 504 : (2017) 1 SCC (L&S) 668] . The relevant portion is as under : (SCC p. 523, para 47)

“47. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court [M. Selvakumar v. Central Administrative Tribunal, WP No. 18705 of 2010, order dated 24-1-2012 (Mad)] and the Delhi High Court [Tushar Kesharao Deshmukh v. Union of India, 2014 SCC OnLine Del 1977] . The horizontal reservation and relaxation for physically handicapped category candidates for Civil Services Examination, is a matter of governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the physically handicapped candidates belonging to the reserved category as well as general category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution.””

(Emphasis supplied.)

To the same effect is the Division Bench decision of this Court in *Dr. Rajat Duhan and Others vs. All India Institute of Medical Sciences and Others* 2019 SCC OnLine Del 11437 [judgment dated 22.11.2019 in LPA 655/2019].

7. Mr. Ganda cited the following extract of the decision of the Supreme Court in *Directorate of Film Festivals and Others vs. Gaurav Ashwin Jain and Others* (2007) 4 SCC 737:-

*“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide *Asif Hameed v. State of J&K* [1989 Supp (2) SCC 364] , *Sitaram Sugar Co. Ltd. v. Union of India* [(1990) 3 SCC 223] , *Khoday Distilleries Ltd. v. State of Karnataka* [(1996) 10 SCC 304] , *BALCO Employees' Union v. Union of India* [(2002) 2 SCC 333] , *State of Orissa v. Gopinath Dash* [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and *Akhil Bharat Goseva Sangh (3) v. State of A.P.* [(2006) 4 SCC 162])”*

(Emphasis supplied.)

This judgment does not derogate from the aforesaid principle. In fact, the Supreme Court has reiterated the narrow scope of judicial review when it comes to policy matters.

8. The policy of the University in the present case does not demonstrate such arbitrariness or irrationality as to warrant the interference of the writ court. The University receives applications from students who have taken the examinations through several boards. The petitioner's argument would require it, in each academic year, to analyse all the applications received, come to a conclusion about the relative standard of assessment in each board and then devise an equalisation formula. If the University authorities have not found it necessary to adopt such a course, that is, in my view, unexceptionable as a policy decision. As held in the decisions mentioned above, the writ court cannot examine the wisdom or merits of the policy, but test it only on the anvil of arbitrariness and irrationality.

9. It may be mentioned that the petitioner has participated in the admission process pursuant to the Bulletin of Information released by the University in July, 2021. It is only at this stage, after the first cut-off list has been announced, that the present writ petition has been filed. Thousands of candidates have applied on the basis of the policy disclosed in the Information Bulletin, and their positions can also not now be disturbed by directing implementation of a different policy. Mr. Ganda has not been able to demonstrate any practice in previous years which lends support to the petitioner's case that the University is bound to take into account the differentiation in marks awarded by

different boards while determining the cut-off for undergraduate admissions.

10. As far as the present year is concerned, the petitioner's grievance with regard to the assessment undertaken by the CBSE is also untenable. As a consequence of the pandemic, in a situation where it was impossible to hold examinations, the CBSE came up with an alternative scheme of assessment which was approved by the Supreme Court. The Supreme Court came to the conclusion that, subject to incorporation of a mechanism for dispute resolution and a time frame, the scheme would be an appropriate manner of assessment. The fact that certain State Boards may have evolved different modes of assessment, leading to some variation in the average results, does not render the admissions criteria of the University so arbitrary as to require the interference of the writ court under Article 226 of the Constitution.

11. For the reasons aforesaid, I am of the view that the grievances raised by the petitioner are incapable of adjudication under Article 226 of the Constitution. The writ petition, alongwith the pending application, is therefore dismissed.

PRATEEK JALAN, J

OCTOBER 11, 2021/'j'

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