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

Reserved on: 10th September, 2020.

Date of decision: 16th September, 2020.

+ **W.P.(C) 5623/2020 & CM APPLs.20372/2020, 20373/2020,
22041/2020**

**AVIRAL SHANKAR PANDEY THROUGH HIS FATHER VINAY
SHANKAR PANDEY.....Petitioner**

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

versus

**UNIVERSITY OF DELHI THROUGH ITS
REGISTRAR.....Respondent**

**Through: Mr. Mohinder Rupal and Mr. Hardik
Rupal, Advocates for Delhi
University.**

**Ms. Subhash Prashar & Mr. Virender
Pratap Singh Charak, Advocates for
R-2. (M:8076023522)**

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The question raised in this case is - Whether marks in Computer Science in class XII ought to be considered while adjudging merit for admission to the B.Sc. (Hons.) Physics course in University of Delhi (*hereinafter 'DU'*)? The immediate and natural answer would be a `YES`, as there can be no doubt in anyone's mind that Computer Science has enormous relevance to Physics, and as a discipline, Computer Science would be taught and would form an integral part of a Physics (Hons.) graduation program.

2. However, in the context of the present petition, the issue has gotten a bit complex, owing to the fact that DU's Prospectus/Brochure and Bulletin of Information have not been amended at least for the last 3 to 4 years and the prevalent eligibility conditions as advertised do not consider Computer Science marks as part of 'Best of four' while adjudging merit for the B.Sc. (Hons.) Physics course. Thus, while the Petitioner insists that his Computer Science marks in class XII should be considered in calculation of the aggregate of best-of-four subjects for admission to B.Sc. (Hons.) Physics, DU argues the contrary.

3. The Petitioner is a Class XII pass-out from the science stream of the The Indian Certificate of Secondary Education Board (*hereinafter 'ICSE Board'*). His marks in Class XII are as under:

Subjects	Percentage Marks
<i>English</i>	89
<i>Mathematics</i>	99
<i>Physics</i>	96
<i>Chemistry</i>	92
<i>Computer Science</i>	100

4. The Petitioner wishes to pursue B.Sc. (Hons.) Physics in DU in the academic year 2020-21 and has registered for the said course. As per the Bulletin of Information for Admission to Undergraduate Courses (2020-2021), the eligibility criteria to be satisfied for this course are as under:

“2.9 Merit-based admission to courses offered through the Faculty of Science and Inter-Disciplinary & Applied Sciences

Course	Course-specific Eligibility Criteria and Combination of Subjects for Calculation of Merit
xxxx	xxxx
xxxx	xxxx
B.Sc. (Hons.) Chemistry/ Physics/ Polymer Science	<ul style="list-style-type: none">• 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>

5. The Petitioner's results were declared by the ICSE Board on 14th July, 2020. He scored a centum in Computer Science and realized that he has a very high chance of getting admitted into one of the top colleges in DU, if the marks of this subject are counted for the aggregate of best-of-four subjects. The Petitioner also came to know that a representation had been made by one - Mr. Rajeev Kumar Dubey to DU on 24th July, 2020, raising grievances about the said eligibility criterion and requesting DU to add Computer Science as one of the subjects for calculation of aggregate for admission to B.Sc. (Hons.) Physics. However, DU rejected the said representation on 29th July, 2020. A copy of the said rejection was forwarded to the Petitioner as well.

6. A writ petition in the form of a PIL being W.P(C) 4710/2020 dated 21st July, 2020, was filed before this Court by Mr. Dubey. The said writ

petition was dismissed by a Id. Division Bench on 5th August 2020, as withdrawn.

7. Having come to know about the dismissal of Mr. Dubey's PIL, the Petitioner herein filed a writ petition before the Supreme Court being W.P. (C) 857/2020. In the said writ petition, vide order dated 21st August, 2020, he was given liberty to approach this Court. The order of the Supreme Court reads as under:

“Learned counsel appearing for the petition prays for and is allowed to withdraw this petition with liberty to approach the High Court. The High Court may consider, notwithstanding the dismissal of a public interest litigation on the same issue.

Accordingly, the writ petition is dismissed as withdrawn with the liberty aforesaid.”

8. The present petition has been filed on the strength of the order of the Supreme Court, extracted above. On 25th August 2020, notice was issued in this writ petition and an affidavit was called for from the DU. Today, parties have made their submissions.

Submissions

9. Mr. V. Shekhar, Id. Sr. Counsel appearing for the Petitioner submits that the Petitioner does not seek a change in the eligibility criteria for admission to B.Sc. (Hons.) Physics i.e. he is not seeking deletion of Chemistry. However, he merely seeks addition of Computer Science as one of the subjects for calculation of the aggregate that is considered for deciding the merit list. He submits that while the score in Physics is considered to be relevant for admission to the B.Sc. (Hons.) program in Computer Science, the vice-versa is not true. The submission of Id. counsel is that the exclusion of Computer Science from the eligibility criteria is

irrational, arbitrary and defies logic. He submits that for studying Physics, a knowledge of Computer Science would be very relevant.

10. Dealing with the objections raised by the DU in its counter affidavit, it is argued by ld. Sr. counsel for the Petitioner that though this is stated to be a policy matter, following the judgment in *Kumari Shrilekha Vidyarthi v. State of U.P & Ors. [1991 (1) SC 212]*, judicial review in policy matters is completely permissible. If any condition or policy decision is irrational or discriminatory, then the same can be quashed. It is submitted that exclusion of Computer Science is bad, and therefore the same deserves to be interfered with. Reliance is placed on the Full Bench decision of this Court in *Jayshree Ravi & Anr. v. University of Delhi & Anr. [53 (1994) DLT 801]*, wherein the criteria of minimum 50% marks B.A/M.A examinations for LL.B first year entrance test was quashed and held to be irrational, improper and arbitrary.

11. It is further urged that though DU relies upon the decision of the Academic Council and other relevant bodies, there is no reasoning given, whatsoever, for excluding Computer Science. Hence there is a complete non-application of mind and lack of intelligible differentia in the classification that is created. Reliance is also placed on the course content for B.Sc. (Hons.) Physics, which does not have any Chemistry related subjects in the course. However, computer related subjects are there in almost all semesters. This itself shows the relevance of Computer Science in a B.Sc. (Hons.) Physics course. Reference is also made to other universities/colleges such as St. Xaviers College, and Banaras Hindu University (BHU), which provide great flexibility in considering the subjects for adjudging the merit list. It is finally urged that inclusion of

Computer Science would not cause any detriment to other students, however, its exclusion is detrimental to the Petitioner.

12. On the other hand, Mr. Mohinder Rupal, Id. counsel for DU places enormous reliance on paragraphs 10 to 15 of his Counter Affidavit, which according to him give adequate reasons for not including Computer Science. He submits that the entire challenge is bereft of merit as the Bulletin of Information was released in June 2020, but the challenge is made only after the Class XII results were announced. He further submits that the Petitioner was not aggrieved by the eligibility criteria for B.Sc. (Hons.) prior to the results being announced, which itself shows that because the Petitioner has scored a 100/100 in Computer Science, he wants the said subject to be considered.

13. It is further argued by Mr. Rupal, Id. counsel, that the judgment of the Id. Division Bench of this Court in ***Charanpal Singh Bagri and Ors. v. University of Delhi & Ors. [W.P. (C) 6751/2019, decided on 14th June, 2019]*** makes it clear that before the eligibility criteria can be amended, there are various steps that have to be taken. He submits that the University Grants Commission's (*hereinafter 'UGC'*) regulations provide a mandatory 60 days period before notifying any change in the eligibility criteria.

14. Mr. Rupal further submits that by the time the writ petition was filed, the registration process had already commenced and other students could be put to enormous disadvantage, if the criteria are changed at this stage, when the admission process is at an advanced stage. According to him, the addition of Computer Science would be a fundamental change in the eligibility criteria, which cannot be directed suddenly. Moreover, there is sufficient logic and rationale behind non-inclusion of Computer Science. It

is his submission that experts ought to be allowed to take decisions in these kinds of situations. He, however, agrees to the fact that the eligibility criteria have remained the same over the last 3 to 4 years. Mr. Rupal, ld. counsel relies upon the following judgments:

- *Charanpal Singh Bagri & Ors. (supra)*
- *K. Manjushree v. State of A.P. and Ors. [Civil Appeal No. 1313/2008, Decided on 15th February, 2008] – Para 28*
- *Parmender Kumar and Ors. v. State of Haryana and Ors [Civil Appeal No. 9717/2011, Decidd on 14th November, 2011] – Para 21*
- *Vidhi Himmat Kataria and Ors. v. The State of Gujarat and Ors. [W.P. (C) 885, 900 AND 1026/2019, Decided on 4th October, 2019] – Para 8*
- *N. Vasundara v. State of Mysore and Ors. [W.P. (C) 606/1970, Decided on 15th April, 1971] – Para 10*

15. In rejoinder, Mr. Shekhar, ld. Sr. Counsel urges that the process has not yet started and the submission of DU that the admission process has commenced is incorrect. He highlights the fact that DU on one hand argues that the petition is pre-emptive in nature and on the other, it is now being urged that the process has started and the petition is delayed. As far as the Petitioner is concerned, he submits that when the representation of Mr. Dubey was rejected by the DU, the cause of action had arisen and hence steps have been taken for filing the writ petition.

Analysis and Findings

16. A perusal of the Bulletin of Information prescribes the following eligibility criteria of DU for B.Sc. (Hons.) Computer Science and B.Sc. (Hons.) Physics:

2.8. Merit-based admission to B.Sc. (Hons) courses offered through the Faculty of Mathematical Sciences

Course	Course-specific Eligibility Criteria and Combination of Subjects for Calculation of Merit
<u>B.Sc. (Hons.) Computer Science</u>	Merit will be calculated based on “Best Four” of Mathematics, one language and two other subjects listed as academic/elective subjects, as specified in List A and List B above, as per the following: <ul style="list-style-type: none"> • 60% or more marks required in Mathematics; • 60% or more marks in aggregate of four subjects including Mathematics, <u>one language and any two of Physics, Chemistry and Computer Science/Informatics Practices</u> • Applicants from other streams (with Mathematics in Class XII), will have a disadvantage of 2% in aggregate of required four subjects
xxxx	xxxx

2.9 Merit-based admission to courses offered through the Faculty of Science and Inter-Disciplinary & Applied Sciences

Course	Course-specific Eligibility Criteria and Combination of Subjects for Calculation of Merit
xxxx	xxxx
<u>B.Sc. (Hons.) Chemistry/ Physics/ Polymer Science</u>	<ul style="list-style-type: none"> • 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>

17. The above extracts clearly show that insofar as the B.Sc. (Hons.) Computer Science course is concerned, Physics, Chemistry and Computer Science are part of the best-of-four subjects which would be considered for admission. However, in the case of B.Sc. (Hons.) Physics, Computer Science is not included.

18. The relevance of Computer Science in an under-graduate Physics course need not be emphasised. Any course in Physics would require teaching of Computer Science. In the counter affidavit of DU itself, it is admitted that computer programming is taught in the B.Sc. (Hons.) Physics course to students. The relevant extract of the counter reads as under:

“Computer programming is taught to the B.Sc. Physics students and therefore even students who did not opt for computer programming related courses in their school do not face problems while solving physics problems using computers.”

Thus, the non-inclusion of Computer Science as part of the subjects for calculation of merit for admission, does not stand to reason.

19. Moreover, technological developments have shown that Computer Science would be a subject which would be relevant not just for Science stream under-graduate courses but even for various other courses such as Economics, Statistics, Finance etc., Flexibility and choice in subjects is absolutely essential, in as much as, it is not uncommon to see students wishing to pursue Economics or History, also wanting to study Computer Science. Such strict boundaries in fact tend to ignore the overlaps and requirements of modern education. Even students studying Economics and Statistics may have pursued Computer Science in their XII standard and it cannot be said that the said subject is not relevant for pursuing B.A. in

Economics or Statistics. Any rigidity in providing combination of subjects results in stultifying growth of students.

20. A perusal of the Information Bulletin of DU and the eligibility criteria clearly shows that the same can be better adapted to the times and the strict boundaries between subject streams need not be maintained. Schools across India offer various multi-disciplinary courses at the XI and XII grade or in the Pre-University courses. Since these students form the pool of students who could seek admission to undergraduate courses in Delhi University, the eligibility criteria ought to become more flexible. There is a clear need to have a relook at the eligibility criteria and the structuring of courses. In fact, a perusal of the recently announced National Education Policy 2020 (“NEP 2020”) also highlights the need for offering inter-disciplinary courses and permits a student to obtain a dual majors bachelor’s degree. The relevant extract from the Introduction of the NEP 2020 reads as under:

“The fundamental principles that will guide both the education system at large, as well as the individual institutions within it are:

•**XXXX**

- **flexibility**, so that learners have the ability to choose their learning trajectories and programmes, and thereby choose their own paths in life according to their talents and interests;
- **no hard separations** between arts and sciences, between curricular and extra-curricular activities, between vocational and academic streams, etc. in order to eliminate harmful hierarchies among, and silos between different areas of learning;

- ***multidisciplinarity and a holistic education across the sciences, social sciences, arts, humanities, and sports for a multidisciplinary world in order to ensure the unity and integrity of all knowledge;***
- ***xxxx***

Globally even, this is a recognized phenomenon i.e. courses in multiple disciplines being allowed to be combined with each other, though they may be contrary to the strict and traditional perception of education in separate slots of Humanities, Science and Commerce.

21. Thus, this Court is of the opinion that ideally Computer Science ought to be a subject which should be taken into consideration for drawing the merit list for taking admission to B.Sc. (Hons.) Physics or any other such related subjects. However, the question here is as to whether the same can be directed at this stage by the Court.

22. Admittedly, the Information Bulletin of DU was released in June 2020. In 2019, when DU had amended its eligibility criteria, several writ petitions had been filed which had resulted in the judgment titled ***Charanpal Singh Bagri and Ors. (supra)***. The Id. Division Bench of this Court had held that DU had failed to follow the mandatory condition of publication in changing the eligibility conditions for admission, as per Rule 14(1) of the Regulations issued by the University Grants Commission (UGC), notified on 6th June, 2019. The operative portion of the Division Bench order reads:

“18. In the circumstances, the W.P.(C) 6751/2019, W.P.(C) 6770/2019 & W.P.(C) 6774/2019 are disposed of with directions to the University of Delhi and the University Grants Commission to allow the students to apply for the under-graduate courses for the year 2019-20 to the University of

Delhi on the basis of the eligibility criteria for admissions to the under-graduate courses for the year 2018-19.

19. Since a submission, during the course of submissions, was made that the Delhi University portal for filing up the common admission form would close today, the University of Delhi shall permit students to apply for the under-graduate courses to the University of Delhi till the date 22.06.2019.

20. The above directions, however, shall not preclude the University of Delhi from making the changes in the eligibility criteria for the forthcoming years to its under-graduate courses as required, to keep education in tune with the necessities of the present day as also for maintenance of high standards of education, but the same can only be done in accordance with law, which would require a minimum of six months of public notice to the public at large of the eligibility criteria for admission to its under-graduate courses.”

As a result, the eligibility criteria for the year 2019-20 were directed to be the same as the criteria published in 2018-19. The 2018-19 eligibility criteria were itself taken from the previous academic year.

23. Ld. counsel for DU has also informed the Court that after the judgment in **Charanpal Singh Bagri and Ors., (supra)**, various students have raised challenges and have sought directions that DU should be allowed to adopt new criteria and petitions are pending before this court.

24. In **Jayshree Ravi & Ors Vs. University of Delhi AIR 1993 Delhi 171** relied upon by the Petitioner, the Full Bench of Delhi High Court was dealing with the question as to whether the fixation of 50% minimum marks

for students from all streams for admission to the LL.B. course in DU was rational and legal. The Court had by interim orders allowed the Petitioners to take the entrance examination and finally held that the said fixation of 50% lacked any rational basis. The said condition was then quashed. The said judgement would not assist the Petitioner to seek relief in the present petition in as much as the LL.B. course had a two-level eligibility – first a minimum percentage for attempting the entrance examination and thereafter qualifying the entrance examination itself. In the present case, the computing of the merit is on the basis of the aggregate of best-of-four subjects scored in Class XII and there is no entrance examination at all. The two situations cannot be equated.

25. Owing to the pandemic situation, DU has not changed the eligibility criteria for the academic year 2020-21 and is following the same criteria as was prevalent in 2019-2020 as per ld. counsel for DU. Thus, the criteria which is presently under challenge has been in operation for more than 3 to 4 years. The ld. Division Bench had made it clear that DU would have the flexibility to make changes to its eligibility criteria, in accordance with law. However, for whatever reasons, no change has been made for the current academic year.

26. 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 jeopardise those students who appeared in the Class XII board examinations on the presumption that Computer Science would not be part of Best-of-four for the B.Sc. (Hons.) Physics undergraduate course.

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

“28. In Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve MANU/SC/0737/2001:(2002)ILL J819SC, this Court observed that "the rules of the game, meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced." In this case the position is much more serious. Here, not only the rules of the game were changed, but they were changed after the game has been played and the results of the game were being awaited. That is unacceptable and impermissible.

Thus, whether it is in 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 admissions 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.

28. In the present case, the process has started in June 2020, examinations have been conducted, results have 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.

30. The Petitioner may not get any solace from the above directions as he may not get the benefit of Computer Science being added for calculating best-of-four subjects in his case. However, the fact that the challenge is sought to be raised after the Board results were announced and the delay in

raising the challenge, leaves no room for any other directions for being passed.

31. The petition is accordingly disposed of, in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 16, 2020

Rahul/Ak/A

