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

***Reserved on: 22 April 2024***
***Pronounced on: 24 April 2024***

\+ W.P.(C) 12771/2023

VAIBHAV ..... Petitioner

Through: Mr. Bhagabati Prasad Padhy, Adv.

Versus

JAWAHARLAL NEHRU UNIVERSITY ..... Respondent

Through: Ms. Monika Arora, CGSC with Mr. Subhrodeep Saha and Ms. Radhika Kurdukar, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT**
**% 24.04.2024**

**W.P.(C) 12771/2023**

**1.** The petitioner is aggrieved by Clause 12 of the Admission Policy and Procedure of the respondent Jawaharlal Nehru University (JNU), applicable for admission to the B.A (Hons) course in Foreign Languages for the 2023-2024 academic session. The Clause reads thus:

> "12. **Admission to B.A(Hons) First Year in Foreign Languages:**
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> For admission to B.A (Hons) First Year 80% of the seats in the First Year of 3 year B.A (Hons) programme in the School of Languages, Literature and Culture Studies are earmarked for those who have either passed the Senior Secondary School Certificate (10+2) or equivalent examination in the year of

> admission or in the previous year subject to fulfilling minimum eligibility requirements. Those 80% seats fall under Code 1 category. Rest of 20 % of seats for admission to B.A (Hons) First Year of 3-year B.A. (Hons) Programme are open to those who otherwise meet the eligibility requirements. These seats fall under Code-II category."

**2.** According to the petitioner, the impugned Clause 12 results in an arbitrary distinction between students who have cleared their Senior Secondary School Certificate (10+2) (Class XII) examination in the year of admission to the B.A. (Hons) course or in the previous year, and the students who have cleared the Class XII examination prior thereto, and classify them as Code I and Code II students respectively.

**3.** This distinction, according to the petitioner, is not based on any intelligible differentia having a rational nexus with the object of creating the distinction and is therefore, violative of Article 14 of the Constitution of India.

**Facts**

**4.** The petitioner is a student belonging to the Scheduled Caste (SC) category, who passed his Class XII examination, conducted by the Central Board of Secondary Examination (CBSE) in 2021. Under the New Education Policy (NEP) 2020, the students who have passed Class XII have to undergo a Central University Entrance Test (CUET) for admission to undergraduate courses in Central Universities.

**5.** The petitioner has applied for admission to the B.A. (Hons)

Chinese course in the JNU on the basis of his CUET 2022 score, for admission in the 2022-2023 academic session, but could not make the grade.

**6.** In 2023, the petitioner again undertook the CUET, for admission to the BA (Hons) Chinese course in the JNU for admission to BA (Hons) Chinese in 2023-2024. He scored 63.7174%. The petitioner was admittedly 12th rank in the SC category students who desired admission to the B.A. (Hons) Chinese course in the JNU, in Code II.

**7.** Four lists of students, who were found entitled for admission to the BA (Hons) Chinese course, were released for the academic session 2023-2024 by the JNU. The fourth list was released on 8 September 2023. The petitioner's name did not figure in any of the four lists. However, another SC category student, who secured 62.7708% and, therefore, did not fare as well as the petitioner in the CUET and who was placed 14th in the list of SC students who desired admission to the B.A. (Hons) Chinese course, was granted admission. This was apparently because the said student was *in Code-I*, whereas the petitioner, who had passed his Class-XII examination two years earlier in 2021, was placed in Code-II. The student, who secured 62.7708% and was admitted was, therefore, inducted in the 80% quota available for Code-I candidates, whereas the petitioner, who was eligible only for induction against the 20% quota available for Code-II candidates, could not secure admission.

**8.** The petitioner contends, as already noted, that there is no justification in segregating the candidates for admission to the B.A. (Hons) course in Foreign Languages provided by the JNU into Code-I and Code-II. Predicated on this submission, the petitioner prays, by means of the present writ petition, that Clause 12 of the JNU Admission Policy 2023-24, which provides for the 80% - 20% quota be struck down, and directions be issued to the JNU to admit the petitioner to the B.A. (Hons) Chinese course.

**Rival Contentions**

**9.** I have heard Mr. Bhagabati Prasad Padhy, learned Counsel for the petitioner and Mr. Subrodeep Saha, learned counsel for the respondent, at length.

**10.** Mr. Padhy submits essentially that the distinction that Clause 12 of the Admission Prospectus of the JNU draws between candidates who have passed their Class XII in the year of admission to the B.A. (Hons) programme or in the previous year, and candidates who have passed their Class XII in earlier years, is not based on any intelligible differentia which may be said to have a rational nexus to the object of making the said distinction and is, therefore, violative of Article 14 of the Constitution of India. He places reliance on the judgment of the Supreme Court in ***Meeta Sahai v. State of Bihar***[1], para 64 of ***State of West Bengal v. Anwar Ali Sarkar***[2], paras 9, 14, 31 and 32 of ***Deepak***

[1] **(2019) 20 SCC 117**
[2] **1952 SCC Online 1**

***Sibal v. Punjab University***[3], and para 43 of ***Javed Akhtar v. Jamia Hamdard***[4] and para 34 of ***Abhay Singh Kushwaha v. Jamia Milia Islamia***[5], of which the last two judgments have been rendered by a learned Single Judge of this Court.

**11.** Responding to the submissions of Mr. Padhy, Mr. Saha, appearing for the JNU, advances a preliminary objection that admissions to the B.A. (Hons) Chinese in the JNU for the academic year 2023-2024 were over long back and that, therefore, in any event, the petitioner cannot be granted the relief sought in the petition. On merits, he submits that the B.A. (Hons) Foreign Language course is one of the most coveted courses in the JNU, which is a reputed university in its own regard. No SC category candidate who scored less than the petitioner and who falls within Code-II has been admitted to the B.A. (Hons) Chinese course in the JNU for 2023-2024. The petitioner, therefore, has no legitimate grievance. The candidate who secured 62.7708% was eligible for admission in Code-I. As such, the petitioner cannot claim to be aggrieved by the admission of the said candidate.

**12.** Mr. Saha submits that the division of the candidates in Code-I and Code-II is legitimate and is in fact based on an intelligible differentia, having a rational nexus with the object of the distinction. The aim of creating this distinction, he submits is to ensure a fair and transparent admission process, giving preference to recent academic

[3] **(1989) 2 SCC 145**
[4] **2007 (94) DRJ 299**
[5] **164 (2009) DLT 402**

qualifications to streamline the procedure and provide opportunity to students who had recently completed their Senior Secondary examinations, so as to ensure that those possessing most upto date knowledge and skills are given priority.

**13.** Mr. Saha submits that the idea is to encourage freshers, even while ensuring that older candidates, who may have passed their Class XII examination much earlier in time, are not completely blocked. In order to draw a balance between the two categories of candidates, he submits that the JNU took a policy decision to reserve 80% of the seats for admission to B.A. (Hons) Chinese courses in Foreign Languages for candidates, who had cleared their Class XII that year or in the year immediately preceding the year in which the admission was being sought and 20% for the candidates, who had cleared their Class XII examination earlier.

**14.** Mr. Saha also submits that the judgments, on which Mr. Padhy places reliance, are completely distinguishable on facts and in law.

**Analysis**

**15.** If one examines the issue in controversy facially, it may appear, at first blush, that the basis for drawing a distinction between the students who passed their Class XII in 2023 or 2022, as against the students, who passed their Class XII prior to 2022, for admission to BA (Hons) Chinese courses in Foreign Languages for the academic year 2023-2024, may be superficial. After all, how is a candidate, who passed his Class XII examination in 2022 any less, or more, intelligent

than a candidate who passed his Class XII in 2021?

**16.** On a deeper analysis, however, it may be difficult for the Court to declare the basis for this distinction, as drawn in Clause 12 of the Admission Prospectus of the JNU, as completely arbitrary. The Court has also to bear in mind, in this context, the principle that the scope of interference under Article 226 of the Constitution of India, with issues of academic policy is extremely circumscribed. The Courts have to be careful not to interfere with the policy decisions taken by the academic bodies, unless the decision is patently illegal or offends common-sense or is arbitrary or capricious on the face of it. The Court cannot substitute its wisdom in place of wisdom of academic authorities. The effect of decisions of policy of academic matters is never localized, and most of such decisions affect large number of persons, mostly students. The Court, therefore, has to be vigilant in ensuring that, merely because a decision of academic policy may appear, *prima facie*, to be arbitrary, it does not proceed to eviscerate it, unless on an incisive study, the policy decision is found to be totally unsustainable in law. In ***Parshvanath Charitable Trust v. A.I.C.T.E.***[6], the legal position was thus expressed:

> "25. It is also a settled principle that the regulations framed by the Central authorities such as AICTE have the force of law and are binding on all concerned. Once approval is granted or declined by such expert body, the courts would normally not substitute their view in this regard. Such expert views would normally be accepted by the court unless the powers vested in such expert body are exercised arbitrarily, capriciously or in a manner impermissible under the Regulations and the AICTE Act. In ***All India Council for Technical Education v. Surinder Kumar Dhawan***[7], this Court,

[6] **(2013) 3 SCC 385**
[7] **(2009) 11 SCC 726**

while stating the principles that the courts may not substitute their opinion in place of the opinion of the Council, held as under:

> "17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in. In ***J.P. Kulshrestha v. Allahabad University***[8] this Court observed:
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> > '*11. … Judges must not rush in where even educationists fear to tread. …*
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> > ***
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> > *17. … While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies*.'
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> > (emphasis supplied)
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> 18. In ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth***[9] this Court reiterated:
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> > '29. *… 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*.' "
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> > (Italics in original; underscoring supplied)

**17.** Viewed from this angle, I am not convinced that the distinction drawn between the students, who have cleared their Class XII examination in the year of seeking admission to the B.A. (Hons) Chinese course in Foreign Languages in the JNU or in the year immediately preceding the said year and the students who have

**[8] (1980) 3 SCC 418**

cleared their examination in earlier years is completely arbitrary. The admission policy of the JNU for its undergraduate courses does not place any cap on the number of years which have elapsed since an aspirant to a bachelor's degree course has cleared her Class XII examination. In other words, a student, who has cleared her Class XII examination in 2023 and a student, who has cleared her Class XII in 2010 or even earlier, would be equally eligible for admission to the B.A (Hons) Chinese courses in Foreign Languages provided by the JNU.

**18.** If I were to agree with the contention of the petitioner and strike down Clause 12 of the Prospectus of the JNU, it would mean that all students, who seek admission to the B.A. (Hons) course in Foreign Languages in the JNU would be placed at par. The student, who has cleared Class XII twenty five years ago would be at par with the student, who has cleared Class XII in 2024.

**19.** The Court here is concerned with the validity of the impugned Clause 12. The exercise before the Court is, therefore, not to arrive at a subjective decision as to whether all students, who are eligible for admission to B.A. (Hons) course in Foreign Languages in the JNU, irrespective of the year in which they cleared their qualifying Class XII examination, ought or ought not to be placed at par. Such an approach would be erroneous. What the Court has to see is whether, if the JNU has sought to draw a distinction between the students, who have cleared Class XII recently, and the students who have cleared

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**[9] (1984) 4 SCC 27**

Class XII years earlier, the said distinction can be said to be arbitrary or violative of Article 14 of the Constitution of India.

**20.** In arriving at this decision, the Court is not required to substitute its own wisdom for the wisdom of the JNU. The Court cannot embark on an exercise of subjectively deciding itself as to whether the Court would, given a choice, have made the distinction which the JNU made, or not. The Court has only to examine whether, if the JNU makes the said distinction, the said distinction is vulnerable to invalidity as being arbitrary and violative of Article 14 of the Constitution of India. In so deciding, the Court has, to repeat, bear in the mind the fact that the decision in question is one of academic policy, crafted by the JNU, presumably by persons of authority, and has, therefore, to accord due deference thereto. Of course, if the decision is incapable of constitutional scrutiny, the Court would be bound in law to eviscerate it, unmindful of the authority or authorities who are its progenitors.

**21.** Viewed through this prism, the answer to the question of whether Clause 12 of the JNU Prospectus is, to the extent it categorizes B.A. (Hons) Foreign Language aspirants into Codes I and II depending on the year in which they cleared their Class XII examination, and in providing quotas for the two Codes in the matter of admission to the B.A. (Hons) course, arbitrary or unconstitutional has, in my considered opinion, has necessarily to be in the negative. When the catchment area of students, who can apply for admission to the B.A. (Hons) Foreign Languages course in the JNU is vast and has

no outer limit with respect to the year in which a student may have passed her Class XII examination, the JNU is certainly entitled to draw a distinction between students, who have recently passed Class XII and those who have passed Class XII earlier.

**22.** For example, if the JNU decides not to treat the students, who passed Class XII twenty five years ago on par with the students, who passed Class XII in 2023 for admission to the 2023-2024 academic year, that distinction cannot be said to be arbitrary or violative of Article 14 of the Constitution of India. There is an intelligible differentia between these two categories of students. Given the fact that the student is intending to pursue a collegiate course, for which purpose the familiarity of the student with the latest advances in knowledge is of the essence, the decision of the JNU to prefer students who have recently passed their Class XII examinations to students, who have passed their Class XII earlier, even while retaining the right of such earlier students to obtain admission to the B.A. (Hons) Chinese course in Foreign Languages, cannot be said to be arbitrary or whimsical. I am in agreement with Mr. Saha that the JNU has managed to strike a balance, preserving the interest of both categories of students, even while ensuring that the students who are younger and who are whose sphere of knowledge is more up to date, are given a leg up. The fixation of a quota between these two categories of students cannot, therefore, be said to be so arbitrary as to justify interdiction by a Court.

**23.** While exercising jurisdiction under Article 226 of the

Constitution of India, the Court cannot embark on a subjective analysis of the justification of the quota that has been fixed by the JNU. Instead of 80:20, should it not be rather 70:30 or 60:40? This is not a question which the Court can pose to itself or even attempt to answer. Once the Court finds that the decision to fix a quota of seats for recent Class XII students vis-à-vis those who have passed Class XII in earlier years, is sustainable in law, the quota to be allotted to each category is a matter which has necessarily left to the subjective discretion of the JNU. It cannot be said that the quota of 80:20 is so arbitrary, as to invite interference under Article 226 of the Constitution of India.

**24.** The judgments on which Mr. Padhy sought to place reliance are clearly distinguishable.

**25.** Para 64 of Anwar Ali Sarkar, to the extent Mr. Padhy relies on it, merely states that classification, for it to be permissible under Article 14 of the Constitution of India, "must be based on some real and substantial distinction bearing a just and reasonable relation to the objects sought to be attained and cannot be made arbitrarily and without any substantial basis". Para 9 of ***Deepak Sibal*** reiterates the same principle. Paras 31 and 32 are merely the concluding paragraphs of the judgment. Para 14 is, however, of some relevance, and may be reproduced thus:

> "14. It is difficult to accept the contention that the government employees or the employees of semi-government and other institutions, as mentioned in the impugned rule, stand on a different footing from the employees of private concerns, insofar as the question of admission to evening classes is concerned. It is

> true that the service conditions of employees of government/semi-government institutions etc. are different, and they may have greater security of service, but that hardly matters for the purpose of admission in the evening classes. The test is whether the employees of private establishments are equally in a disadvantageous position like the employees of government/semi-government institutions etc. in attending morning classes. There can be no doubt and it is not disputed that both of them stand on an equal footing and there is no difference between these two classes of employees in that regard. To exclude the employees of private establishments will not, therefore, satisfy the test of intelligible differentia that distinguishes the employees of government/semi-government institutions etc. grouped together from the employees of private establishments. It is true that a classification need not be made with mathematical precision but, if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case, the classification cannot be said to be a reasonable one.

Thus, the Supreme Court held, in the above passage, that, *for the purpose of admission to evening classes*, there was no intelligible differentia between government employees and employees of semi-government and other institutions. The distinction between these two categories of employees, it was held, may, at best, have related to their service conditions, but stood on an equal footing in so far as attending classes. The requisite nexus between the distinction between government and semi-government employees, and attending classes, was, therefore, found to be absent.

**26.** In the present case, though, the decision to provide for quotas of 80% for admission to the B.A. (Hons) course in Foreign Languages for students who passed their Class XII examinations in the year of seeking admission or the preceding year, and 20% for other students, is impelled by the desire to promote fresher talent, which is equipped with the most recent knowledge, even while extending the opportunity

to obtain admission to older students as well. The decision is clearly one which falls in the realm of the academic policy of the JNU. It has not been shown to infract any binding statutory provision. The prayer for invalidation of the clause is founded entirely on Article 14 of the Constitution of India. As a provision which partakes of the character of academic policy of the JNU, I am not convinced that a case is made out, for doing so.

**27.** I am also in agreement with Mr. Saha's contention that, having admitted to obtain admission to the B.A. (Hons) in Chinese as a Code-I candidate in 2022 and failed to obtain admission, the petitioner cannot now raise a grievance against preference being given to Code-I candidates. Mr. Padhy has sought, in this context, to rely on the judgment of the Supreme Court in ***Meeta Sahai***. The decision is clearly distinguishable. In ***Meeta Sahai***, the plea of the appellant before the Supreme Court was not that the provision in question was illegal, but that it was being misconstrued. In fact, the Supreme Court also noticed this point of distinction, in paras 16 and 17 of the report, which read thus:

> "16. *It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it* as iterated by this Court in a plethora of judgments including ***Manish Kumar Shahi v. State of Bihar***[10], observing as follows:
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> > "16. We also agree with the High Court that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have

[10] **(2010) 12 SCC 576**

> even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition." [See also: ***Madan Lal v. State of J & K***[11], ***Marripati Nagaraja v. State of A.P.***[12], ***Dhananjay Malik v. State of Uttaranchal***[13] and ***K.A. Nagamani v. Indian Airlines***[14]]

The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process."

**28.** In the present case, the petitioner staked a claim to admission in the 2022-2023 academic session under the 80% quota. Had he succeeded in obtaining admission, this petition would never have been filed. Having failed, the petitioner tried his luck under the 20% quota in 2023-2024, but could not make the grade. Had he succeeded here, too, the present challenge would never have been raised. Having failed on both occasions, the petitioner now seeks to question the validity of the 80% quota, of which he himself attempted to take

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[11] **(1995) 3 SCC 486**
[12] **(2007) 11 SCC 522**
[13] **(2008) 4 SCC 171**
[14] **(2009) 5 SCC 515**

advantage.

**29.** This is clearly impermissible.

**30.** Having sought the benefit of a provision and failed to qualify, a candidate cannot turn around and question the validity of the provision itself.

**Conclusion**

**31.** For all the aforesaid reasons, I am of the opinion that the petitioner is not entitled to relief. The writ petition is accordingly dismissed, with no orders as to costs.

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**32.** This application does not survive for consideration and is disposed of.

**C.HARI SHANKAR, J**

**APRIL 24, 2024**
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*Click here to check corrigendum, if any*