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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 17th August, 2022

+ W.P.(C) 5666/2022

SELF-FINANCING EDUCATION INSTITUTIONS, (REGD.)

..... Petitioner

Through: Mr. Sameer Rohatgi, Mr. Namit Suri, Ms. Purnima Singh, Mr. Rameezuddin Raja and Mr. Sushil Singhal, Advocates.

versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ANR.

..... Respondents

Through: Ms. Anita Sahani, Advocate for R-1.
Mr. Anuj Aggarwal, ASC with Ms. Ayushi Bansal and Mr. Sanyam Suri, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Petitioner – an association of colleges/ institutions affiliated with Respondent No. 1 – Guru Gobind Singh Indraprastha University [*hereinafter*, “***the University***”], is primarily aggrieved by the adoption of Common Law Admission Test [“***CLAT***”] as the mode of admissions to the integrated B.A. LL.B. (Hons.) /B.B.A. LL.B. (Hons.) courses [*hereinafter*, “***LL.B. courses***”] by the University. This change has allegedly disadvantaged them and impeded the filling up of the total sanctioned seats for the LL.B. courses. A writ petition

[W.P.(C) 2353/2019] has been filed impugning the adoption of CLAT as the criteria of admission. Notwithstanding the pending challenge, by way of the instant petition, a direction is sought to the Respondents for concluding/ finalizing the admission process against vacant seats in LL.B. courses offered by colleges/institutions affiliated to the University by approving Common Entrance Test [“**CET**”] or allowing ‘10+2’ examination as the qualifying examination(s) for academic year 2022 and onwards. The reliefs sought, read as follows:

“a. Issue a Writ, Order or Direction in the nature of Certiorari or any other appropriate writ, order or direction to the Respondents for concluding/ finalizing the admission process for vacant seats in law courses offered by colleges/institutions affiliated to Respondent no.1 University by approving Common Entrance Test (“CET”) or allowing qualifying exam (10+2) as the mode and manner for administering admissions for filling vacant seats in colleges/institutions for the Academic Year 2022 onwards in terms of the Orders dated 16.07.2020 and 02.02.2021 passed by this Hon'ble Court; and

b. Issue a Writ, Order or Direction in the nature of Certiorari or any other appropriate writ, order or direction to the Respondent no. 1 to amend the Admission Brochure for the Academic Year 2022-2023 to provide for an alternative mode/mechanism in the form of Common Entrance Test or allowing qualifying exam (10+2) as the mode and manner for administering admissions for filling vacant seats in colleges/institutions for the Academic Year 2022 onwards;”

2. *Vide* order dated 03rd August, 2022, the instant petition was directed to be listed along with W.P.(C). 2353/2019 (challenging CLAT as the mode for admissions to LL.B. courses) and W.P.(C) 3838/2019 (challenging NIT MCA Common Entrance Test as the mode for admissions to the MCA course), which are shown in the causelist for today. It is also noticed that an interim order dated 01st April, 2019 was passed in W.P.(C) 2353/2019 in favour of Petitioner-institutions staying the adoption of CLAT as the admission criteria for LL.B. courses. However, the said interim order was challenged before the Supreme Court *vide* SLP Diary No. 18943 of 2019 and S.L.P.(C) No. 13559-

60 wherein the stay was vacated. Further, *vide* a combined order passed by the Supreme Court dated 22nd July, 2019 in the SLPs, it was held that the aforesaid interim order had been worked out and the SLPs became infructuous. The question of law was however, left open. Mr. Sameer Rohatgi, counsel for Petitioner-institutions, submits that the issue of adoption of CLAT as the mode of admission would be urged before this Court on its own turn. However, the instant petition is independent and distinct and should be heard, regardless of the pendency of the above-stated petitions.

3. In the opinion of the Court, the issue raised in the afore-noted petitions and the instant one are related, particularly since orders dated 16th July, 2020 and 02nd February, 2021 passed in W.P. (C) 2353/2019 form the foundation for the instant petitions. Nonetheless, since Mr. Rohatgi presses urgency, the Court has proceeded to hear this matter

4. In order to comprehend the grievance of Petitioner-institutions, a brief introduction to the background of the case is necessary. The admissions to the Petitioner-institutions were originally on the basis of the CET till academic year 2018-19. Thereafter, Respondent No. 2—Directorate of Higher Education, Government of NCT of Delhi [*hereinafter*, “**GNCTD**”], *vide* order dated 11th February, 2019, permitted the University to adopt National Level Tests/ All India Entrance Tests, such as JEE-Main Paper, CAT, CLAT, etc. as the basis for admissions to certain courses from the academic year 2019-20. The University effected the said change in the admission policy *vide* order 26th February, 2019 and the same has continued to the present academic year. Petitioner-institutions contend that this fundamental change in the admission

policy has worked to their detriment. Despite having adequate infrastructure in place, they have been unable to fill the sanctioned strength of seats fixed/ approved by the University and Respondent No. 2– GNCTD. This, according to Mr. Rohatgi, is attributable entirely to the adoption of CLAT as the basis for admissions to LL.B. courses, which were originally carried out through CET. Mr. Rohatgi contends that ever since CLAT was adopted as the admission criteria, the number of vacant seats of Petitioner-institutions have gradually increased. For the academic year 2020-21, the number swelled from 708 to 755 and then further increased to 1207 in the academic year 2021-22. Reliance is placed on a chart demonstrating the progression in the vacant seats from academic years 2019-2020 till 2021-2022 (*annexed as Annexure P-3 to the petition*). He argues that vacant seats do not benefit anyone and are a waste of national resources and therefore, the University must devise a mechanism for filling up the vacant seats.

5. Mr. Rohatgi has taken the Court through the relevant portion of the admission brochure for the academic year 2022-23, prescribing the admission criteria, to draw a comparison between the admission policy for the LL.B. courses and other professional courses, wherein the criteria for the LL.B. course is as follows:

“1.1 National Level Tests Based Admissions

1.1.1 National Level Test for Admissions (Non-Medical)

For the following CET Codes the University shall use the merit / score of the National Level Test Conducted by agencies other than the University. They are:

<i>S.No</i>	<i>Name of Programme</i>	<i>Course Duration</i>	<i>Abbreviated Name of Programme</i>	<i>CET Code</i>
4.	1. <i>Integrated B.A.LL.B.(Hons.)</i> 2. <i>Integrated B.B.A.LL.B</i>	5 yrs	<i>Integrated B.A. LL.B. (Hons.)</i>	121”

	(Hons.) Note: All admissions shall be on the basis of the merit of Common Law Admission Test - Under Graduate, 2022 (CLAT - UG, 2022) that is conducted by National Law University's on a rotational basis. The University shall not conduct its own CET for admissions, but shall be utilizing the merit prepared on the basis of (CLAT - UC, 2022) for its admissions.		I Integrated B.B.A.LL.B. (Hons.)	
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6. In comparison, the admission criteria for MBA and MCA courses, is as under:

“CHAPTER- 3 : Admissions Criteria for Admission in Programmes MBA (Code 101) i.e. MBA, MBA (International Business), MBA (Financial Management), MBA (Financial Analysis) and MBA (Analytics):

3.1 Admission Criteria on the basis of merit in CAT 2021 (Common Entrance Test)

S. No.	Name of Programme	Code	ADMISSION CRITERIA
1	MBA, MBA (International Business), MBA (Financial Analysis) and MBA (Analytics)	101	Admission Criteria: All admissions shall be made on the basis of overall Percentile of Common Admission Test (CAT) 2021 that was conducted by Indian Institute of Management.

3.2 Admission Criteria on the basis of merit in CMAT 2022 (Common Management Admission Test)

S. No.	Name of Programme	Code	ADMISSION CRITERIA
1	MBA, MBA (International Business), MBA (Financial	101	Admission Criteria: 1. All admissions shall be made on the basis of overall Percentile of

	Analysis) and MBA (Analytics)		Common Admission Test (CAT) 2021 that was conducted by Indian Institute of Management. 2. If seats remain vacant after counselling on the basis of Score in CMAT 2022 (another National Level Test).
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3.3 Admission Criteria on the basis of merit in GGSIPU CET 2022 (Common Entrance Test)

S. No.	Name of Programme	Code	ADMISSION CRITERIA
1	MBA, MBA (International Business), MBA (Financial Analysis) and MBA (Analytics)	101	Admission Criteria 1. All admission shall be made on the basis of overall Percentile of Common Admission Test (CAT) 2021 that was conducted by Indian Institute of Management. 2. If seats remain vacant after counselling on the basis of overall percentile of CAT 2021, then only the counselling shall be conducted on the basis of Score in CMAT 2022 (another National Level Test) 3. In case seat still remain vacant even after exhausting CAT 2021 and CMAT 2022 Merit, University will consider admissions in Programme MBA (Code 101) on the basis of merit in GGSIPU CET 2022 conducted by GGSIP University.

S. No.	Name of Programme	Course Duration	Abbreviated Name of Programme	CET Code
1.	xxx	xxx	xxx	xxx
2	Master of Computer Application/ Master of Computer Applicants (Software Engineering) <i>Note: All admissions shall be on the basis of Merit of NIMCET 2022.</i> <i>If Seats remain vacant after counselling on the basis of merit of NIMCET 2022, the University will consider admission in MCA/ MCA (SE) programmes on the basis of merit of Common Entrance Test (CET) to be conducted by GGSIP University</i>	2 yrs	MCA	105''
3.	xxx	xxx	xxx	xxx
4.	xxx	xxx	xxx	xxx
5.	xxx	xxx	xxx	xxx
6.	xxx	xxx	xxx	xxx
7.	xxx	xxx	xxx	xxx
8.	xxx	xxx	xxx	xxx

7. Mr. Rohatgi argues that while multiple admission tests have been prescribed for MBA and MCA courses, admissions to LL.B. courses can be made on the basis of CLAT alone and CET is expressly barred. The University has arbitrarily devised a different criterion for LL.B. courses without any rationale, thereby precluding admissions through other entrance examinations, which are allowed for other courses. It is contended that there is no reasonable explanation for not placing LL.B. courses on a similar footing

as MBA and MCA courses. Such a discrimination between courses offered by the same University is therefore, unreasonable, whimsical and arbitrary. Thus, devising alternative mechanisms to fill up the vacant seats is imperative.

8. Further, Mr. Rohatgi has also relied upon orders dated 16th July, 2020 and 02nd February, 2021 passed in W.P.(C) 2353/2019 to emphasise that despite repeated directions to Respondents to devise alternative mechanisms to fill the large number of seats going vacant, the Respondents have completely ignored Petitioner's grievances. In absence of any proper and effective mechanism to fill the vacant seats, Petitioner-institutions are severely prejudiced and their fundamental right under Article 19(1)(g) of the Constitution of India, 1950 stands defeated. Reliance is placed on ***Index Medical College, Hospital and Research Centre v. State of Madhya Pradesh***.¹

9. Lastly, to buttress his submissions, Mr. Rohatgi places reliance on notification dated 28th March, 2016 issued by Respondent No. 2-GNCTD (*annexed as Annexure P-8 to the petition*) pursuant to which, admissions to LL.B. courses were done on the basis of CET and vacant seats which could not be filled in counselling through the regular mode, permitted to be filled on basis of CLAT. There was a reserve/alternative mechanism in place for filling vacant seats which has now been arbitrarily amended.

10. *Per contra*, Ms. Anita Sahani, counsel for the University, submits that

¹ 2021 SCC Online SC 318

Petitioner-institutions being affiliated to the University, are bound by its policies pertaining to admission criteria. No right accrues in their favour to insist on issuing a mandamus for fixing an admission criteria, which is contrary to the policies of the University itself. The criteria for MBA/ MCA courses are different and no uniform admission policy can be prescribed for all courses, given the difference in admission timelines and ratio of applicants to the number of seats in the said courses, *vis-à-vis* LL.B. courses.

11. Ms. Sahani has also pointed out that pursuant to order dated 16th July 2020 in W.P.(C) 2353/2019, the University considered the representation of Petitioner-institutions and passed order dated 17th August, 2020, but rejected the request to consider an alternative mechanism for vacant seats. The said decision was rendered after due consideration of all facts and circumstances; in absence or any manifest unreasonableness or arbitrariness, there can be no ground for interference.

12. Further, Ms. Sahani contends that Petitioner-institutions have been repeatedly seeking identical relief as sought in the present petition from this Court in W.P.(C) 2353/2019 which is evident from the prayers in C.M. APPL. 11957/2020 and C.M. APPL. 29489/2020 in the said petition (*annexed as Annexure R-4 and R-8 to the counter affidavit of Respondent No. 1, respectively*).

13. Mr. Arun Aggarwal, ASC for GNCTD, supports the submissions made by Ms. Sahani, and states that in academic matters such as this, the interference of Court should be minimal. Since there is no irrationality borne

out from the facts presented, the Court should not be inclined to entertain the present petition. Separately, Mr. Aggarwal pointed out that Petitioner-institutions have been increasing the seats for the LL.B. courses which has contributed to increase in vacancies. Moreover, aspirants consider and weigh several factors, *inter alia*, geographical remoteness of institutes for applying to institutes. Providing for other modes is neither desirable nor conducive.

14. The Court has heard the counsel for the parties at sufficient length. At the outset, it is noted that Petitioner had sought a similar relief, as in the present petition, viz. a direction to University to “*formulate a mechanism for admission of students to fill up the vacant seats in the colleges institutions offering the LL.B. course for academic year 2020-21 as has been provided for other courses, namely, MBA and MCA courses*” vide an interim application in W.P.(C) 2353/2019 before this Court. On the said request, directions were issued vide order on 16th July, 2020, relevant extract whereof reads as under:

“5. I cannot help noticing that respondent No. 1 has given the number of seats that have remained vacant in the past years for LLB course. In 2016- 17, out of 2700 seats, 399 seats remained vacant for LLB course. In 2017- 18, 276 seats remained vacant. In 2018-19, 356 seats remained vacant. In the year 2019-2020, out of 2670 seats, 712 seats for the 13 colleges remained vacant.

xx ... xx ... xx

7. Given the above situation, let respondent No. 1 treat the present application as a representation of the petitioner. Let respondent No. 1 take a decision on the said representation based on the observations made in this order and keeping into view that fact leaving a large number of seats vacant would be waste of resources. Let respondent No. 1 take a decision within three weeks from today.”

15. Thereafter, in another interim application in W.P.(C) 2353/2019, the Petitioner-institutions sought direction to the University to “*formulate a mechanism for admission of students to fill up the vacant seats in the colleges institutions offering the LL.B. course for academic year 2020-21*”. The said

application was decided *vide* order dated 2nd February 2021, wherein the University was requested to consider and evolve a proper mechanism for filling up vacant seats in future academic sessions. It was observed that the afore-said statute had admittedly not been amended, and further, that this was a matter for the Respondents to decide themselves, in order to ensure benefit to all involved parties whilst not compromising on academic standards. The relevant portion of the said order reads as under:

“10. However, the University and the GNCTD are directed to consider evolving a proper mechanism for future years so that the vacancy position which has emerged in the last few years is not perpetuated, if possible. As recorded in the order dated 16.07.2020, the consequence of seats being left vacant is a wastage of resources, to the detriment of both the colleges and prospective students. These are the matters for the parties to consider and take a proper decision, which would enure to the benefit of the stakeholders while avoiding any excessive compromise with academic standards. Such consideration and decision will be taken by the University and the GNCTD as expeditiously as practicable, and if possible, be made applicable from the next academic year.”

16. In light of the afore-noted directions, Petitioner-institutions have already exhausted their remedy *qua* the relief sought in the present proceedings. Petitioner cannot get another bite of the apple. Nonetheless, the Court has delved into the merits. Petitioner-institutions’ challenge to the admission criteria is founded on the plea that it is not commercially viable as they are not able to fill up the vacant seats. The University has considered and deliberated upon the representation of Petitioner-institutions, which was rejected *vide* order dated 17th August, 2020 for reasons recorded therein. The said order has been passed after taking into account facts and circumstances and gives cogent reasons supporting the decision, which include, *inter alia*, the fact that certain institutions are located in remote areas and are given less preference by students and thus, there are vacant seats.

17. One can also not ignore that the demand for courses like the LL.B. is inter-linked with the job market and economy. Besides, as pointed out by the University, all seats are never filled up and vacancies remain for each year not just for LL.B. courses but others as well. This has been explained and depicted in Annexure R-1/12, annexed to the counter-affidavit of the University. Thus, there can be several reasons for vacancy and cannot be pin-pointed to the change in admission criteria. Pertinently, the number of students that finally take admission depends upon a student's own preference of the course and college/institution, which in turn, depends on the demand for the said course in the job market. As noted in the order of University dated 17th August, 2020, against the 2670 sanctioned seats for the academic year 2020-21, about 9308 admission forms were received, on the basis of which it was expected that seats would not go vacant. Therefore, the present situation of vacancies for admission to the LL.B. courses is not on account of decline in number of applications from eligible candidates against the sanctioned strength. It is perhaps because the students are not showing interest in Petitioner-institutions. Accordingly, in the opinion of the Court, no case for seeking an additional or alternative mechanism for filling vacant seats is made out.

18. It also needs no reiteration that Petitioner-institutions are bound to comply by the rules and policies of their affiliating University given that Universities themselves are best placed to formulate the same, and the University has already notified that the admissions to the academic year 2022-23 for the LL.B. courses will be on the basis of CLAT only. Any further step in this direction has to be taken by the University itself. The University is entitled to devise its own admission criteria, in accordance with law.

19. In relation to allowing marks obtained in ‘10+2’ examinations to be considered as a qualification for admission into LL.B. courses, the Delhi Professional Colleges of Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 presently prescribes for admissions through a ‘*common entrance test*’² and not on the basis of marks obtained in ‘10+2’ examination. Stipulating ‘10+2’ examinations marks as the mode and manner for administering admission for filling up vacant seats instead of CLAT may become a turbid and flexible process which may not be desirable. In the opinion of the Court, the uniformity in the admission process must be endeavoured and any dilution of admission criteria could impact adversely the academic standards. Since the relevant statute specifies the admission policy on the basis of an entrance test, the Court finds no merit in the argument of the Petitioner to interfere in such admission criteria.

20. Further, no parallel can be drawn from the admission criteria for MBA and MCA courses. *First*, the number of students registering for counselling for LL.B. courses far exceeds the number of sanctioned seats; whereas applications received for MBA/MCA courses are less than the total number of sanctioned seats. *Second*, the Court finds merit in the submission of Ms. Sahani that the said courses are post-graduation courses, as opposed to the LL.B. courses, which are at the under-graduate level and there are differences in terms of timing of the entrance examinations/ admissions. For MBA and

² Section 13 of the Delhi Professional Colleges Act, 2007.

MCA courses, there are multiple national level examinations for admissions to these courses that are held around November every year. Thus, the University has enough time to hold/consider multiple entrance examinations to fill up the vacant seats, if any, for the relevant academic session. In contrast, CLAT is held in May/June every year and the admissions process is generally completed around July. Resultantly, there is only a short window of time for the University to complete the admission process for LL.B. courses for the academic year and thus, it may not be possible to conduct CET and conclude the admission for the remaining vacant seats before the commencement of the relevant academic year. In light of the above, there exists a rational basis for the University to stipulate CLAT as the sole admission criterion for LL.B. courses at variance with courses like MBA and MCA.

21. Significantly, it must be remembered that each University has its own character, and the admission policy is the roadmap for the University to achieve its objective. It has the freedom to adopt such policies which are viable and best suited for them. In absence of any manifest arbitrariness, there is no compelling reason for the Court to interfere. Commercial loss on account of vacant seats is being linked to admission policy in the present matter, without any convincing basis. The Court cannot compel a University to modify the admission criteria and admit students accordingly, merely because certain seats will be left vacant. Filling up of vacancies cannot be at the cost of compromising academic excellence, particularly when no manifest connection is made out between the adoption of CLAT as the mode of admission and vacancy of seats. As rightly pointed out by Ms. Sahani, the choice of institution is ultimately of the students, who for reasons such as

geographical remoteness of an institution, might not prefer admission therein. The pitched violation of fundamental right under Article 19(1)(g) of the Constitution is a far cry, and completely unfounded.

22. In light of the foregoing, and considering that the Court has already considered the relief sought by Petitioner-institutions in the orders dated 16th July, 2020 and 02nd February, 2021 passed in W.P.(C) 2353/2019, the Court finds no good ground to exercise its jurisdiction under Article 226 of the Constitution to grant the relief sought in the present petition.

23. Accordingly, the present petition is dismissed.

SANJEEV NARULA, J

AUGUST 17, 2022

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(corrected and released on 23rd August, 2022)