

---

Annexure P.13, shows that after its earlier decision the University had decided that "legal opinion from another leading lawyer be obtained." The proceedings indicate that "legal opinion was also taken from the Senior Advocate of the Supreme Court, Shri P.P. Rao..." It is, thus, clear that the University itself was considering the matter till June, 1993. It was obtaining legal opinion. In this situation, it cannot be said that the petitioner had erred in waiting for the decision of the University or that he was resting on his oars.

(25) The petitioner submitted that the legal opinion given by the Senior Advocate of the Supreme Court was, in fact, in his favour. The respondents had been advised that giving higher emoluments to those who have not attained the age of superannuation and lower emoluments to professors who had been re-employed without any explanation was not justified. In view of this advice, the petitioner was hopeful that he would get the requisite relief. The petitioner cannot be blamed for entertaining this hope and waiting for the decision. The petition cannot be dismissed on the ground of delay.

(26) In view of the above, the preliminary objections regarding delay and estoppel are rejected. The writ petition is allowed. It is held that the petitioner shall be entitled to the payment of his salary for the period from 1st August, 1986 to 31st July, 1988, at the rate at which he would have drawn if he had continued in service without retirement. He would also be entitled to interest at the rate of 12 per cent from the date of accrual till the date of payment. The petitioner shall also get his costs which are quantified at Rs. 5000.

---

J.S.T.

*Before K. Sreedharan, C.J., N.K. Sodhi &*

*T.H.B. Chalapathi, JJ*

RAHUL PRABHAKAR,—*Petitioner*

*versus*

PUNJAB TECHNICAL UNIVERSITY, JALANDHAR AND  
OTHERS,—*Respondents*

CWP 5281 of 97

22nd April, 1997

*Indian Post Office Act, 1893—S.3—Constitution of India, 1950—Art. 226—Information Brochure for the Common Entrance Test, 1997—Para 6.5—Admission to Engineering Courses—Prospectus fixing last date of receipt of*

---

*applications—Mode of sending applications not specified—Application received after expiry of time cannot be considered even if the student posted the same sufficiently early—Delay caused by postal authorities in delivering application cannot be made ground for entertainment of belated applications—Such applications should meet summary rejection.*

[Saurabh Aggrawal v. Kurukshetra  
University 1995(1)SLR 80, and,  
Anurag Sharma v. Regional Engineering  
College, Kurukshetra, 1996(1)RSJ 795, over-ruled]

Per K. Sreedharan, C.J. and N.K. Sodhi, J.

*Held* that, it is settled law that the provisions contained in the Information Brochure for the Common Entrance Test, 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the Coordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.

(Para 8)

*Further held*, that clause (b) of Section 3 of Indian Post Office Act, 1893 states that delivery of a postal article to a postman or other person authorised to receive postal articles shall be deemed to be a delivery to a post office. Then clause (c) of Section 3 states that delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent shall be deemed to be delivery to the addressee. From this provision, it is seen that an article when it is entrusted with the post office for being delivered to the addressee till it is delivered to him or his agent. Even if there occurs delay of several months in delivering a postal article to the addressee, the article will continue to be in the course of transmission.

(Para 13)

*Further held*, that in this view of the matter, entrustment of a postal article with the post office for transmission to the addressee does not give rise to a contractual relationship between the sender and the post office.

(Para 13)

*Further held*, that if the provision contained in the Information Brochure is found to be unsustainable, the same can be struck down by this Court in exercise of the powers under Article 226 of the Constitution

---

of India. By striking down the provision in the Brochure, the petitioner will not be getting any benefit. So this Court will have to amend the provision contained in the Brochure in other words re-write the same. This court is not to venture such a course of action. High Court cannot assume the role of rule making authority and re-write the rule nor this Court in exercise of the powers under Article 226 of the Constitution substitute its views to that of the competent authority which framed the Brochure.

(Para 18)

Per T.H.B. Chalapathi, J

*Held*, that the invitation to apply for Common Entrance Test can safely be compared with Tender Notice which is merely an invitation to contractors for making offers.

(Para 35)

*Further held*, that when the date or time has been stipulated in the advertisement and also in the Information Brochure, it must be strictly adhered to as otherwise it leads to uncertainty, unending process, anomaly and deprivation of equality clause and further it widens the competition amongst the candidates seeking admission into professional courses. It is also difficult to determine up to what period the time limit can be extended. If such power is to be exercised, it will lead to arbitrariness.

(Para 40)

Amar Vivek and Yogesh Goyal, Advocates, *for the Petitioner*  
Anupam Gupta, Advocate *for Respondent Nos. 1 and 2*

### JUDGMENT

*K. Sreedharan. CJ*

(1) This writ petition has come up before this Bench on a reference made by a Division Bench. The question referred for decision is as to whether an application received by the University after the expiry of the time fixed for filing the same as provided in the prospectus, is to be taken into consideration, if the student had posted the same sufficiently early and delay was solely caused by the postal authorities. In *Saurabh Aggarwal v. Kurukshetra University* (1), a Bench of this Court took the view that mere fact that an application is received after last date fixed for the purpose when it had been despatched well in time, and the candidate was not to be blamed, application should be considered. The correctness of this view has been doubted and the issue has been referred to the Full Bench.

(2) Short facts necessary for understanding the issue raised in this writ petition are as follows:—

(3) Punjab Government constituted Punjab Technical University,

Jalandhar as the Authority competent to conduct the Common Entrance Test (CET) 1997, as per Notification No. 35/1/97-IET-II/541, dated 30th January, 1997. On the basis of the test to be conducted by the said University, the University has to make admissions to various degree level Engineering and Architecture Courses in the various Institutions and Universities in the State of Punjab. In terms of the said notification, advertisements were made in various dailies, both English and vernacular during the first week of February, 1997. In the advertisements, it was provided that Information Brochures are on sale with effect from 25th February, 1997 at the various Engineering Colleges and University departments in the State, running these courses. It was also made clear in the advertisements that application forms complete in all respects should reach the Coordinator latest by 5.00 p.m. on 21st March, 1997. As provided in the advertisements Information Brochure for the Common Entrance Test 1997, was published by the Punjab Technical University, Jalandhar, Paragraph No. 3 in that brochure related to important dates for CET 1997. The first entry therein is last date for submitting complete application form for CET 1997. It was shown as 21st March, 1997 (5.00 p.m.) "Submission of application" is provided in Paragraph 6.2 of the Brochure. Paragraph 6.2.2 stated "application along with the Bank Draft should be sent to the Coordinator, CET 1997, Punjab Technical University, P.O. REC, Jalandhar-144 011 so as to reach him on or before 21st March, 1997 by 5.00 p.m." The said paragraph went on to state that application delivered by hand in CET Cell of Punjab Technical University, Room No. 67 on or before the due date and time, shall also be accepted. In bold capital letters, it was also provided, "incomplete applications and those received after the prescribed date, shall not be entertained under any circumstances. The Punjab Technical University, Jalandhar does not take any responsibility for any delay or loss in transit." In paragraph 6.5, late receipt of application form has been mentioned as a ground to render the candidate ineligible for CET 1997. Application form for CET is appended to the brochure. At the top of that application form, in box, it is written in bold letters, "last date of receipt of application form: 21st March, 1997". Annexure III contains important instructions for the guidance of the candidates. First instruction incorporated therein in bold capital letters reads:—

"Incomplete forms and those received after the prescribed date will not be entertained under any circumstances. No correspondence/enquiry from such candidates shall be entertained."

So the information brochure specifically provided in unmistakable terms that application forms for CET 1997 should reach the Coordinator on or before 21st March, 1997 by 5.00 p.m.

---

(4) Petitioner in this case sent his application form with all the enclosures on 17th March, 1997. He was informed by the Coordinator, CET *vide* Annexure P1 that his application form was received after the due date and consequently the same cannot be considered. Immediately, on getting that information, he approached the Coordinator and filed a representation on 9th April, 1997 *inter alia* stating that all what was possible for him to do, was done and his application may be accepted as valid application filed within time. No reply to that representation was received by the petitioner. In this writ petition, he prays for the issuance of writ of certiorari quashing Annexure P1 communication and for the issuance of mandamus directing the respondents to accept the application sent by him on 17th March, 1997 which was delivered by the postal Authorities subsequent to 21st March, 1997 and to issue roll number allowing him to take the entrance test to be held on 18th May, 1997.

(5) A detailed written statement has been filed by the Registrar of the Punjab Technical University, Jalandhar. The contentions taken therein are that the last date and time fixed for the receipt of the application in the broucher, cannot be varied and any application received after 5.00 p.m. on 21st March, 1997 has only to be rejected. Photo copy of the register showing the time and date of receipt of applications (annexure R-1) brings out at Serial Nos. 1&2 therein, applications of Ms. Pooja Bansal and Mr. Ashutosh Mahendru received at 5.35 p.m. on 21st March, 1997 they were also rejected. Altogether 126 applications including that of the petitioner are entered in Annexure R-1 as applications received after the expiry of time fixed for the receipt of the same. Postal record Annexure R2 shows that petitioner's cover reached the respondents on 25th March, 1997. Photo copy of the cover in which application was sent by the petitioner proves the correctness of the entry made in Annexure R1. The bar imposed by clause 6.2.2 of the information brochure is mandatory and absolute. It admits of no exception whatsoever. There is no provision in the prospectus for relaxing the said bar. Provisions contained in information brochure have the force of law and these are binding on all concerned. Any relaxation of the provisions contained therein could result injustice to others and work out illegality. The last date for the receipt of the application forms, as fixed in the brochure, is applicable to all. It cannot be relaxed. Date of despatch of the application by the candidate through post, handing over of the cover for despatch or matters similar to that, have no bearing to the express and imperative provisions contained in paragraph 6.2.2 which fixed the time and date for receipt of the application by the Coordinator. Candidate should have strictly complied with the directions.

(6) As stated earlier, the information brochure, the advertisements in the News papers, the application forms for CET Test 1997 attached to

---

the information brochure and instructions for the guidance of the candidate, which is Annexure R-III to the brochure unambiguous and clear terms stated that the application form along with Bank Draft should reach the Coordinator on or before 5.00 p.m. on 21st March, 1997. First question that has to be examined is the binding nature of the provisions contained in the information brochure.

(7) In the Information Brochure, it is provided, "incomplete applications and those received after the prescribed date shall not be entertained under any circumstances". University has adopted negative prohibitory words to bring home imperative nature of the provision. Usage of negative words are indicative of the prohibitory and imperative nature of the provision. Their Lordships of the Supreme Court in *Lachmi Narain etc. v. Union of India* (1-A) observed, "if the provision is couched in prohibitive or negative language, it can rarely be directory, the use of peremptory language in a negative form is per se indicative of the intent that the provision is to be mandatory." The negative prohibitory words used in the Information Brochure go to establish the mandatory nature of that provision. It is settled law that negative prohibitory and exclusive words are clearly indicative of the mandatory nature of the provision. Negative words are ordinarily used to make a provision imperative. Since, the Information Brochure has used words shall not be entertained, we are clear in our mind that the said provision is mandatory and no relaxation can be made. In this regard reference may also be made to a decision of the Supreme Court in *Mannalal Khetan v. Kedar Nath Khetan* (2), While dealing with the provisions contained in Section 108 of the Companies Act which provided, "a company shall not register a transfer of shares——", their Lordships stated, "the words shall not register, are mandatory in character. The mandatory character is strengthened by the negative form of the language". Thus, the negative words used in the brochure clearly indicate that the provision is imperative and is not to be violated.

(8) A Full Bench of this Court in *Amardeep Singh Sahota v. The State of Punjab* (3), had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In *Raj Singh v. Maharshi Dayanand University* (4), another, Full Bench of this Court took the view that a candidate will have to be taken to be bound by the information supplied in the admission form, and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligi-

---

(1-A) A.I.R. 1976 SC 714  
(2) A.I.R. 1977 S.C. 536  
(3) 1993 (4) S.L.R. 673  
(4) 1994 (4) R.S.J. 289

---

bility for admission to a Course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in *Sachin Gaur v. Punjabi University* (5), took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP No. 6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the Court in exercise of powers under Article 226 of the constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the coordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.

(9) In *Saurabh Aggarwal v. Kurukshetra University* (6), a Division Bench took the view that mere fact that an application is received after the last date fixed for the purpose even though it had been despatched well in time and the candidate was not to blame, is no ground for excluding the candidate from consideration. In that case as per the advertisement inviting applications for admission to the various Engineering Colleges from candidates who had qualified Entrance Test, it was provided that application must reach the Principal, Regional Engineering College, Kurukshetra by 5.00 p.m. on 9th July, 1994. Petitioner sent his application form by registered post acknowledgement due. When he did not get the acknowledgement receipt, he visited the office of the College on 12th July, 1994. He came to know that his application form did not reach the College. On the same day, he filed another application. Later, the original application form reached the Authorities on 14th July, 1994. Petitioner requested the authorities to consider his claim for admission as he had sent the application form in time. That request was not accepted. Action of the Authorities in excluding the petitioner from consideration was in issue before the Division Bench. While dealing with the issue, the Bench observed, "it is true that submission of applications for consideration thereof cannot be an endless process. A line has to be drawn somewhere. Only then timely finalisation of admissions and starting of academic work is possible. Otherwise, process

---

(5) 1996 (1) R.S.J.I.

(6) 1995 (1) R.S.J. 801

of admission can get delayed and affect the academic work. However, it cannot be laid down as a rule that whenever the application is received late, the candidate is liable to be excluded from consideration. Such a course of action may lead to avoidable injustice, arbitrariness and unfair results". From the above discussion itself, it is clear that submission of applications or consideration thereof cannot be an endless process. Should not there be a cut off date for receipt of the applications? According to us, the cut off date fixed should be imperative and certain. It cannot be varied according to the whims and fancies of the Authorities. If it is made variable, we are clear in our minds that it will lead to injustice, arbitrariness and unfair results. Applications for admission can be sent by post by courier or delivered by hand. The date with which we are concerned is the date of receipt of the application by the Authorities. The date on which it is sent is not of any consequence. Application sent through registered post before the last date may be delivered after a month or so. There is also possibilities of that application being lost in transit and not delivered even. In such uncertainty where can a cut of lime be drawn? In such a situation, our considered opinion is that time and date for the receipt of the application fixed in the prospectus/information brochure has to be strictly adhered to.

(10) From the judgment in Saurabh Aggarwal's case (supra), it is not seen whether the prospectus or information brochure fixed any time limit for receipt of the applications for admission to the course. Judgment refers only to an advertisement published in 'Times of India'. Therefore, the said decision should be confined to the facts of that case and the law stated therein cannot be of general application. We make this clear. In this case, 126 applications have been rejected on account of their having been delivered after 5.00 p.m. on 21st March, 1997. Petitioner's application was entered at Serial No. 95. If his application is directed to be treated as one filed within time, what would happen to other 125 candidates? As seen from Exhibit R1 last candidate's application was received on 25th April, 1997. Is his application also be treated as valid if it was sent earlier to 21st March, 1997? If the answer is in the affirmative then the provisions contained in the brochure will have to be ignored in toto. Such a step cannot be restored to. Then at what stage or up to what date the applications received can be treated as proper? Decision on that will necessarily lead to arbitrariness and illegality. In such situation, we hold that the view expressed by the Division Bench in Saurabh Aggarwal's case (supra) does not reflect correct legal position.

(11) R1 shows petitioner is at No. 95 among the applications whose application forms reached after 5.00 p.m. on 21st March, 1997. If the petitioner is to be given the benefit of treating the application as on filed in time, what about the others included in the list? Is the petitioner to get the benefit since he moved this Court? Under no circumstances can this Court

---

take the view that candidates who approaches this Court is alone to get the benefit.

(12) Similarly, learned Judge who rendered the judgement in Saurabh Aggarwal's case (supra) repeated the same principle in *Anurag Sharma v. Regional Engineering College, Kurukshetra and others* (7). In paragraph 15 of the judgment, his Lordship observed ;

"It is true that in the prospectus it had been provided that applications which are received late due to postal delays shall not be considered This was, however, a unilateral decision. The candidates were totally helpless in the matter. By merely imposing this condition the respondents cannot avoid their responsibility to act fairly. A candidate who had sent his application form well in advance should not have been excluded from admission only on the ground that it was received a few days after the stipulated date."We are not in a position to agree with the logic in these observations. While preparing the prospectus, candidates who seek admission have no say in the matter, but conditions incorporated therein bind all the candidates. One who is not complying with those conditions has to meet the consequences. No question of arbitrariness or unfairness can be urged by the person who fails to satisfy the requirements mentioned in the prospectus.

(13) Another aspect that has to be considered is whether postal authorities can be considered to be agents of the Co-ordinator. If they are agents of the Co-ordinator, by handing over application to the postal authorities, can it be considered that application form was infact given to the Co-ordinator. Reference has to be made to Section 3 of the Indian Post Office Act, 1893 wherein words "in course of transmission by post" and "delivery" are defined. A postal article, as per that section, shall be deemed to be in course of transmission by post from the time of its being delivered to a post office to the time of its being delivered to the addressee.

Clause (b) of Section 3 states that delivery of a postal article to a postman or other person authorized to receive postal articles shall be deemed to be a delivery to a post office. Then clause (c) of Section 3 states that delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent shall be deemed to be delivery to the addressee. Form this provision, it is seen that an article when it is entrusted with the post office for being delivered to the addressee till it is delivered to him or his agent. Even if there occurs delay of several months in delivering a postal article to the addressee, the article will continue to be in the course of transmission.

It has been judicially recognised that it is common experience that delivery of postal articles is delayed for considerable length of time, may be, through accident or through the negligence of the postal employees, vide,— *Radha Kishan v. State of Uttar Pradesh* (8), and *Institute of Chartered Accountants of India and another v. Inder Chand Jain* (9). In the second case Supreme Court was considering the provisions in sub-regulation (2) of Regulation 87 of the Chartered Accountants Regulations. It *inter alia* provided that nomination of a candidate shall be '(ii) forwarded by registered post to the Secretary by name so as to reach him not later than 5 p.m. on the specified date.' This provision has a proviso stating that a nomination delivered against an acknowledgement before the aforesaid time and date shall be deemed to have been so forwarded and so having reached if the Secretary is satisfied that the nomination has been duly forwarded by registered post at least 48 hours before the aforesaid time and date. The above provision requires that the nomination should be sent by registered post. Taking into account the fact that such nomination may not be received by Secretary even though posted more than 48 hours before the specified time, It was provided that if nomination was delivered by hand before the specified time and against acknowledgement, it would be treated as having been validly received. This can happen only if the Secretary was satisfied that the nomination was forwarded by registered post to him by the candidate 48 hours prior to the specified time and date. What is meant by the said provision is that the nomination must be forwarded by registered post to the Secretary so as to reach him in fact not later than 5 P.M. on the specified date. If the above provision is not strictly complied with, their Lordships took the view that the nomination cannot be taken to be one filed within time. In the circumstances, their Lordships held that since the nomination was not delivered to the Secretary against an acknowledgement before the specified time, the nomination was not proper. Lord Mansfield in *Whitfield v. Le Despencer* (10), observed, "The Post Master has no hire, enters into no contract, carries on no merchandize or commerce. But the post office is a branch of revenue, and a branch of police, created by Act of Parliament. As a branch of revenue, there are great receipts; but there is likewise a great surplus of benefit and advantage to the public, arising from the fund. As a branch of police it puts the whole correspondence of the kingdom (for the exceptions are very trifling) under government, and entrusts the management and direction of it to the crown,

---

(8) A.I.R. 1963 S.C. 882

(9) J.T. 1991 (4) S.C. 39

(10) (1778) 2 Cowp, 754

---

and officers appointed by the crown. There is no analogy therefore between the case of the Post Master and a common carrier." This observation has been quoted by the Supreme Court in *Union of India v. Mohd. Nazim* (11), with approval and took the view that post office is not a common carrier. It is not an agent of the sender of the postal article for reaching it to the addressee. According to their Lordships, postal office is really a branch of the public service providing postal services subject to the provisions of the Indian Post Office Act, 1893 and the rules made thereunder.

In this view of the matter, entrustment of a postal article with the post office for transmission to the addressee does not give rise to a contractual relationship between the sendor and the post office.

(14) In certain commercial transactions where a party to the contract agreed to accept payment by cheque and the cheque was forwarded through post, Supreme Court took the view that post office acted as agent of the addressee. In *Indore Malwa United Mills Ltd. v. Commissioner of Income Tax* (12), their Lordships observed, "If by an agreement, express or implied, between the creditor and the debtor or by a request, express or implied, by the creditor, the debtor is authorised to pay the debt by a cheque and to send the cheque to the creditor by post, the post office is agent of the creditor to receive the cheque and the creditor receives payment as soon as the cheque is posted to him." This shows that in commercial transactions, if there is an agreement between the parties, postal authorities may become agent of the addressee. Except in such cases, postal authorities cannot be considered to be the agent of the addressee.

(15) On the facts of this case, we are not in a position to spell out any contract between the petitioner and the Co-ordinator. The information brochure, as noted earlier, has not prescribed any mode for sending the application to the Co-ordinator. The only condition is that the application must reach the Co-ordinator before 5 P.M. on 21st March, 1997. That specific condition should be complied with by the candidate.

(16) Paragraph 6.5 of the Information Brochure enumerated six conditions which render a candidate ineligible for CET 1997. One amongst them is 'Late receipt of Application Form'. The other five are insufficiency of examination fee or deficiency in furnishing complete information etc. All defects totalling six in number stand on same footing. In the case of five defects excluding late receipt of application form, candidates have been given opportunity to rectify the same. By sending communication like Annexure P-1, the Co-ordinator has condoned the defects and allowed the candidates to rectify the same on or before 19th April, 1997. According to

---

(11) A.I.R. 1980 S.C. 431

(12) A.I.R. 1966 S.C. 1466

---

the learned counsel representing the petitioner, there is no rhyme or reason for condoning the five defects and then to stick on to the defect of late receipt of application form for denying the right to take competitive test. Learned counsel went on to contend that late receipt of application was on account of circumstances beyond the control of the candidate and the other defects occasion on account of fault of the candidate. If failure on the part of the candidate can be condoned, it is argued that late receipt of the application which occasioned on account of circumstances beyond the control of the candidate should also be condoned. Learned counsel went a step further and said that if the candidate was aware that the five defects mentioned in paragraph 6.5 of the Brochure were liable to be condoned, the petitioner would have sent the application long prior to 17th March, 1997 without waiting for getting all the necessary documents. In these circumstances, according to the learned counsel, petitioner has been treated in an arbitrary manner and the action of the respondent is arbitrary.

(17) As per the Information Brochure, application of a candidate should reach the Co-ordinator before 5 P.M. on 21st March, 1997. Any application received thereafter was only to be summarily rejected. An application received after 5 P.M. on 21st March, 1997 was not even to be opened and perused by the Co-ordinator. So applications received after the cut off date are not applications as contemplated by the Information Brochure. Other applications form a separate category. Those are applications filed within the requisite time. Viewed in this right, a candidate, who has not filed the application i.e. whose application has not reached the Co-ordinator before 5 P.M. on 21st March, 1997 stands on a different, ground than those whose applications have been received within time. If classification is made on this basis, candidates who are falling in the category of those whose applications had been received late than the time and date fixed in the Brochure, cannot contend that they are discriminated against the other class. In the case of candidates whose applications reached the Co-ordinator after the cut off date and time, they are not the persons who had applied for the examination. They cannot contend that they should be treated in a manner similar to those who have filed applications in time. Such a person is not entitled to challenge the action of the respondents in sending the letters like the one marked as Annexure P-1 to other candidates. The following observation made by the Judges of the Supreme Court of *United States of America in United States v. Raines* (13), (approved by the Supreme Court in *State of Gujarat and another v. Shri Ambica Mills Ltd., Ahmedabad etc.* (14), applies on all fours to the situation arising in this case; "A person ordinarily is precluded from challenging the constitutionality of governmental action by invoking

---

(13) (1960) 362 U.S. 17

(14) A.I.R. 1974 S.C. 1300

---

the rights of others and it is not sufficient that the statute or administrative regulation is unconstitutional as to other persons or classes of persons; it must affirmatively appear that the person attacking the statute comes within the class of persons affected by it." A candidate who has filed an appropriate application without any defect within the prescribed time limit, will be in a position to challenge the action of the respondent in condoning defects of others who filed the applications before 5 PM on 21st March, 1997. Such a position has not arisen in this case. So we need not detain ourselves with the contentions raised and the arguments advanced on the basis of Annexure P-1. But we make it clear that in the light of the specific provisions contained in the Information Brochure, the respondents were not justified in sending communication like Annexure P-1 on candidates who submitted defective applications.

(18) Validity or otherwise of the Information Brochure and its binding nature has to be examined by the generality of cases it covers and not by the inconvenience or resultant prejudice that may be caused to persons who could not strictly adhere to its terms. In this connection, we consider it appropriate to recall the observations made by Krishna Iyer, J. in *R.S. Joshi v. Ajit Mills* (15). A law has to be adjudged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs." If the argument advanced by the learned counsel is accepted, or if the principles stated by the Division Bench in Saurabh Aggarwal's case (*supra*) are followed then consequence will be to amend the provision contained in the Brochure.

If the provision contained in the Information Brochure is found to be unsustainable, the same can be struck down by this Court in exercise of the powers under Article 226 of the Constitution of India. By striking down the provision in the Brochure, the petitioner will not be getting any benefit. So this Court will have to amend the provision contained in the Brochure or in other words re-write the same. This court is not to venture such a course of action. High Court cannot assume the role of rule making authority and re-write the rule nor can this Court in exercise of the powers under Article 226 of the Constitution substitute its views to that of the competent authority which framed the Brochure.

(19) In view of what has been stated above, we hold that the date and time for the receipt of the application forms by the Co-ordinator, CET 1997, is fixed in the Information Brochure. It is not to be altered by this Court in exercise of the powers under Article 226 of the Constitution of India. We also hold that law settled by a Division Bench in *Saurabh Aggarwal v. Kurukshetra University* (16), and the decision in *Anurag*

---

(15) A.I.R. 1977 S.C. 2279

(16) 1995 (1) S.L.R. 80

---

*Sharma v. Regional Engineering College, Kurukshetra and others* (17), do not lay down the correct law and we over rule the same.

(20) Civil Writ Petition Nos. 6453 of 1997 and 6525 of 1997 which are referred to the Full Bench also raises the same issue. Applications sent by the petitioners in these writ petitions did not reach the Co-ordinator, CET 97, before 5 P.M. on 21st March, 1997. Consequently, in the light of the decision in CWP No. 5281 of 1997, petitioners in these writ petitions are also not entitled to any of the reliefs asked for.

(21) All writ petitions fail. These are accordingly dismissed we make no order as to costs.

(22) I have had the privilege of going through the judgment of My Lord the Hon'ble the Chief Justice. I concur with his Lordship that the writ petitions are liable to be dismissed. However, I propose to express my views as the question involved is likely to affect the students seeking admissions to various professional and academic courses of study and as the matter has been referred to a Full Bench doubting the correctness of the decision of the Division Bench of this Court in *Saurabh Aggarwal v. Kurukshetra University* (18).

(23) Conspectus of the matter is that the petitioner applied for appearing in the Common Entrance Test to be held on 18th May, 1997 to get admission in one of the Engineering Colleges in the State of Punjab in pursuance of an advertisement and the Information Brochure issued by the Punjab Technical University according to which the last date for submission of the applications was 21st March, 1997. The petitioner sent his application on 17th March, 1997 by registered post, but the same was delivered to the Coordinator on 25th March, 1997 by the postal authorities. As the application of the petitioner was received after expiry of the date fixed for receipt of the applications, the same was rejected. Hence the petitioner approached this Court seeking issuance of a writ of *mandamus* to the authorities to admit him to the Entrance Test Contending *inter alia* that he sent his application on 17th March, 1997 by registered post and he cannot be held responsible for the postal delays and he cannot be found fault with for the late receipt of the application by the Coordinator.

(24) There is no dispute of the fact that the advertisement and the information brochure clearly stipulated that "Application Forms complete in all respects should reach the Coordinator latest by 5 P.M. on 21st March, 1997" in bold letters.

(25) The advertisement and the information Brochure are in the nature of an invitation to eligible candidates seeking admission to

---

(17) 1996 (1) R.S.J. 795

(18) 1995 (1) S.L.R. 80

---

Engineering Course in the Engineering Colleges in the State of Punjab and the Regional Engineering Colleges situated outside the State of Punjab. Strict adherence of the conditions stipulated in the Brochure is therefore required as the admissions into the professional colleges cannot be delayed as any such delay will adversely affect large number of students and upset the time frame for admissions into the professional colleges.

(26) The students seeking admission into any course have to abide by the prospectus issued by the University for admission into that course. In *Amardeep Singh Sahota v. State of Haryana* (19), a Full Bench of this Court held that prospectus issued for admission in the medical college have the force of law. The same view has been consistently followed by this Court.

(27) The learned Counsel for the petitioner contended that one of the modes prescribed for sending the applications was by Registered Post and address slip was also provided alongwith the brochure and therefore the post office has been constituted as an agent of the Coordinator CET 1997 and the delivery of the envelope containing the application form to the post office shall be deemed as receipt of the application by the Coordinator. This argument of the learned Counsel for the petitioner cannot be accepted since the prospectus do not specifically provide any particular mode or method to be adopted by the applicants in sending their applications. The choice is left to the applicants themselves, but the completed applications should reach the Coordinator latest by 5 PM on 21st March, 1997. Any delay in receipt of the application will result in rejection of the application.

(28) When no specific or particular mode of sending is prescribed in the prospectus, can it be said that the delivery of the envelope to the post office amounts to receipt of the application by the Coordinator. In my view, the answer is in the negative.

(29) In *Thairlwall v. Great Northern Railway* (20), Lord Coleridge observed :—

“The real question is whether the posting of the warrant was payment of the amount of the dividend. To establish that it was, the defendants must prove a request by the plaintiff or an agreement between the plaintiff and defendants that payment should be made by means of the warrant posted to the plaintiff.”

---

(19) 1993 (4) S.L.R. 673

(20) (1910) 2 King's Bench 509

---

(30) In *Thorappa Devanappa v. Umedmalji and another* (21), it has been observed as follows:—

“In the present case the first and second defendants contend the property in the hundi passed to the third defendant immediately it was indorsed and posted. The first and second defendants must, therefore, show that there was an authority, express or implied, from the third defendant to the plaintiff to send the hundi by post. It is not suggested that there was any express authority. Nor is there any evidence on record of implied authority. There was, therefore, no delivery to the third defendant and the negotiation of the hundi to him was not completed. The property in the hundi never in fact passed out of the plaintiff and it remained his property.”

(31) In *Annanda Prasad v. State of Orissa and others* (22), a Division Bench of the Orissa High Court after referring to the decisions of the Supreme Court, enunciated the principle as under :—

“Where delivery can be made in a mode at the option of the sender, the agency through which delivery is made acts as the agent of the sender whereas if delivery is made by way of despatch in the mode stipulated or prescribed by the addressee, the agency through which the article is despatched acts as the agent of the addressee.”

(32) In *Institute of Chartered Accountants of India v. Inder Chand Jain* (23), the apex Court was dealing with a case of elections to the Council of the Institute of Chartered Accountants of India. According to the regulations governing the election it has been provided that the nominations shall be forwarded by registered post to the Secretary so as to reach him not later than 5 PM on the stipulated date. It is also provided for the delivery of the nomination by hand if the Secretary is satisfied that the nomination was sent by Registered Post at least 48 hours before the aforesaid time and date. The candidate for the election sent the nomination on 17th May, 1991 while the date fixed for receipt of the nomination was 21st May, 1991. The nominations were received by Secretary of the Council on 23rd May, 1991. In these circumstances the Supreme Court held that the nomination of the respondent was liable to be rejected on the ground that it was not received in time.

(33) The conditions stipulated in the brochure are binding on the applicants as well as on the authorities (In this case Coordinator CET

---

(21) A.I.R. 1924 Bumbai 205

(22) A.I.R. 1989 Orissa 130

(23) J.T. 1991 (4) S.C. 39

---

1997) has been amply demonstrated by the Apex Court in *Randhir Singh v. State of Haryana* (24), wherein it has been held as follows :—

“It has been urged by Mr. Navnit Lal that the medical examination could be held only on May 13, 1977 and that the appellant was informed of it within a week of the date of the medical examination. Counsel has invited our attention to paragraph 7 of the Prospectus of the School for 1997-78 in support of his contention. A reading of aforesaid paragraph 7 shows however that the parents of the eligible boys or girls were to be informed “one week before the date of test by Post”. But even the 1st letter which was posted on May 5, 1977 did not give one week’s intimation; for it could not obviously have reached the appellant Ambala the same day. As has been shown, the intimation reached on May 13, 1977 when the medical examination had already been held a day earlier. In these facts and circumstances, it cannot be said that the appellant was to blame for not producing his son Vikash for medical examination on May 12, 1977 and the stand taken by the respondents is quite untenable and unjustified. *If they wanted to adhere strictly to the ‘intimation’ in paragraph 7 of the prospectus that the intimation regarding medical test would be given one week before the date fixed for it, they should have themselves complied with it.*”

(34) In the cases of admissions to Colleges, appointments to public services and calling tenders for construction or for public distribution, time shall be the essence as these should be completed within a specified time frame in public interest. If it is held that it is sufficient if the application is sent by post irrespective of the fact whether it is delivered to the addressee before the last date and time fixed for receipt of the applications, it would upset the entire scheme of the examination and admissions to the educational institutions. As observed by the Supreme Court in *Radha Kishan v. State of U.P.* (25), “it is common experience that delivery of posted articles is now and again delayed for a considerable length of time—may be through accident or through the negligence of postal employees.” There is also possibility of such applications being lost in transit and not delivered. Making the selections for admissions to educational institutions subject to the vagaries of the postal services virtually leads to indefinite and obscure situations where finality at the earliest is desirable in public interest.

(35) The invitation to apply for Common Entrance Test can safely

---

(24) A.I.R. 1977 S.C. 2209

(26) A.I.R. 1963 S.C. 822

---

be compared with Tender notice which is merely an invitation to contractors for making offers.

P—114

(36) In *B. Rajkumar Patra v. Union of India and others* (26), the learned Chief Justice Ranganath Misra (as His Lordship then was) speaking for the Bench held as follows :—

“Whatever may have been the reason, the clear stipulation was that no tender after the appointed time would be received. Since opposite party No. 3 had decided to invite tenders and the procedure usually followed in public offices had been adopted, there was no “Justification for the OSCOM to deviate from the normal method and take upon itself the responsibility of accepting a tender which did not satisfy the clear requirement of the notice. Delayed arrival of the tender could not constitute a justification in the face of the terms of the tender notice to accept the tender furnished beyond time.”

(37) The learned counsel for the petitioner submitted that the stipulation as to the time and date of receipt of the application can be relaxed as the petitioner has sent the application well within the time by putting it in transmission and the delay of the postal authorities in delivering the envelope was not attributable to any laches or lapses on his part. No power to extend the time for receipt of applications or to relax any condition for submitting the applications is provided either in the advertisement or in the brochure. Equality of opportunity will be determined for the purpose of Article 14 of the Constitution by the representation made in the advertisement/brochure inviting applications to appear in the Entrance Test. It is not permissible for the Coordinator to condone or relax any of the conditions including the condition in regard to date and time for receipt of the applications to the detriment of equal opportunity being made available to other candidates whose cases for similar condonation or relaxation could not be considered for want of proper advertisement.

\*P—30

(38) It has been held by the Rajasthan High Court in *Dr. Shri Kant Rao v. State of Rajasthan* (27), that “equality of opportunity will be determined for the purpose of Article 16 of the constitution by the terms of advertisement calling for applications for filing up a post. Where in the advertisement, it was not suggested that the qualifications prescribed were

---

(26) A.I.R. 1981 Orissa 143

(27) 1975 (2) SLR 66

---

relaxable or the applications would be entertained thereafter (on the expiry of the prescribed date) it will not be open to the competent authority to relax the terms of the advertisement.

(39) In *Mrs. Rekha Chaturvedy v. University of Rajasthan and others* (28), the apex Court held that "when the University of its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal."

(40) I am, therefore, of the opinion that when the date or time has been stipulated in the advertisement and also in the Information Brochure, it must be strictly adhered to as otherwise it leads to uncertainty, unending process, anomaly and deprivation of equality clause and further it widens the competition amongst the candidates seeking admission into professional courses. It is also difficult to determine upto what period the time limit can be extended. If such power is to be exercised, it will lead to arbitrariness.

(41) The condition in the advertisement and the information brochure enabling the candidates to have their applications delivered either in person or by registered post is to ensure safe delivery within the stipulated time and the stipulation of time and date operates as a condition precedent for entertaining and considering the application of the candidate. It is for the applicant concerned to ensure that delivery of the application within the stipulated time to the concerned authority, whatever may be the mode of such delivery which he himself chooses to adopt or avail out of the alternatives available to him. If he is unable to send the application so as to reach the Coordinator, he forfeits his right to have his application considered. More personal hardship or general notions of justice or abstract considerations of sympathies cannot be taken into consideration to exonerate an applicant from his obligation to ensure delivery of this application to the coordinator within the stipulated time. The fact that the applicant expected his application to reach the Coordinator in time in the ordinary course or the lapse on the part of the postal authorities resulting in the belated delivery of the envelopes containing the application is no ground to compel the Coordinator to consider the application of the candidate even though it reached him after the stipulated time, the Coordinator is not obliged and has no duty in law to entertain such a belated application and consider the claims of such a candidate alongwith claims of others whose applications were delivered within time.

(42) The learned Counsel for the petitioner further contended that in case of other candidates whose applications were incomplete in certain

---

aspects like failure to furnish copies of the documents required, the

Coordinator had given them time to supply the deficiency till 19th April, 1997. According to the learned Counsel when there is a failure on the part of these candidates in submitting complete forms, they have been given extended time to submit the documents so as to make up the deficiency but in his case, his application was complete in all respects and he sent his application on 17th March, 1997 but he was denied the benefit extended to others. The learned Counsel for the respondent submitted that the applications in those cases have been received by the Coordinator within the stipulated time and their cases stand on a different footing and the distinguishing feature is that the applications in those cases have been received before the stipulated date whereas the application of the petitioner was received after the expiry of the time and therefore the Coordinator was not bound to open the envelope received after the stipulated time as they could not be treated as applications in the eye of law. But the fact remains that the Information Brochure and the advertisement make it clear that "incomplete forms and those received after the prescribed date will not be entertained under any circumstances." Thus the incomplete forms and those delivered after the prescribed date are to be treated on par. Therefore, the action of the Coordinator in granting time to those applicants who submitted the incomplete forms is contrary to the conditions stipulated and the action is, therefore, illegal. The learned counsel for the petitioner further submitted that the petitioner took time to collect the necessary documents in order to send a complete application in all respects. This exercise in collection the documents took time. Had the petitioner known that the incomplete forms delivered within the stipulated time would be accepted and the authorities would given an opportunity and further time to make the application complete, he would have sent an incomplete form well within time and make good the deficiency during the extended time. Thus, according to him, he was discriminated. The submission of the learned Counsel in this regard is no doubt appealing. But the action of the respondents in giving time to those applicants to supply the documents in order to make the applications complete in all respects cannot be sustained under law.

(43) In *Chandigarh Administration v. Jagjit Singh* (29), the Apex Court held that "if the order is favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order.

(44) Further the persons who have been given time to make up the deficiency in the application forms are not before us. It is fundamental that not order adversely affecting such persons can be passed without affording an opportunity of hearing them. At the same time no relief can be given to the petitioners on the basis of illegal orders showing leniency to some others by granting time to make their applications complete.

(45) In view of my foregoing discussions, the decision of the Division Bench in *Saurabh Aggarwal v. Kurukshetra University* (30), and the decision in *Anurag Sharma v. Regional Engineering College, Kurukshetra* (31), do not lay down the correct law and they are, accordingly, overruled.

(46) The result is, the writ petitions fail and are, accordingly, dismissed. No costs.

---

R.N.R.

*Before K. Sreedharan, C.J., N.K. Sodhi and T.H.B. Chalapathi, JJ*

A.S. RANDHAWA,—Petitioner

*versus*

STATE OF PUNJAB AND OTHERS,—Respondents

CWP 2883 of 97

16th May, 1997

*Constitution of India, 1950 Art. 226-Pensionary benefits-Delayed payment-Interest not paid-Writ petition for payment of interest only-Maintainability of the writ petition.*

Constitution of India, 1950-Art.226-Retiral benefits-Valuable rights of an employee.

*(State of Punjab vs. Jarnail Singh, LPA 1511 of 89 decided on 20th November, 1989 and Daulat Ram Tirlok Nath vs. State of Punjab and others, 1976 PLR 708 distinguished.)*

*Held that, right to pension is a right to property and not a bounty to be paid on the sweet will and pleasure of the Government. It may or may not be a fundamental right but, it is definitely a constitutional right being a right to property and also a statutory right governed by the Pension Rules. This being so, a retired government employee has, beyond doubt, a right to approach this court for the issuance of a writ of mandamus or for any other order or direction to enforce his legal right to claim pension or*

---

(30) 1995 (1) S.L.R. 80

(31) 1996 (1) R.S.J. 795