

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

+ **W.P.(C) 4585/2008**

% **Date of Decision: 22.07.2008**

DEEP GUPTA Petitioner
Through: Mr. S. K. Rungta, Advocate
versus

GURU GOBIND SINGH INDRAPASTHA
UNIVERSITY Respondent
Through: Mr. G.D.Goel with Mr. S.C.Pant,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

VIPIN SANGHI, J. (Oral)

1. The petitioner seeks a writ of certiorari quashing the condition laid down by the respondent Guru Gobind Singh Indraprastha University (GGSIP University for short) in its Admission Brochure-1 for professional programmes for the academic session 2008-09, whereby it is stipulated that the compartment cases of the year 2008 i.e. the current year whose results are not declared by the time the counselling takes place will not be considered for admission for the academic session 2008-09.

2. The respondent university has filed its counter affidavit.

The writ petition has been heard finally with the consent of the parties.

3. The respondent, GGSIP University invited applications from students for admission to Bachelor of Journalism (Mass Communication) Course for the academic session 2008-09 and the petitioner also applied for the same. The petitioner participated in the Common Entrance Test-2008 conducted by the respondent University for the said course and secured the rank 590. He is a defence personnel which is one of the reserved category. The respondent University conducted the first round of counseling for the said course between 25.6.2008 to 30.6.2008. Candidates in the general category upto the rank 1200 were called. Candidates falling in defence category were also called for counseling on 25.6.2008. However, the petitioner did not receive a call letter on account of the impugned stipulation. The petitioner has accordingly filed this petition challenging the condition by virtue of which the respondent denied him the right to appear for counseling and to join the course provisionally.

4. The petitioner appeared in the Class 12 Senior Secondary Examination 2008 conducted by the CBSE. The result of the petitioner of the Senior Secondary Examination was declared in May 2008. The marks obtained by him in the said examination are as follows:

SUB CODE	SUBJECT	MARKS OBTAINED				POSITIONAL GRADE
		TH	PR	TOTAL	TOTAL IN WORDS	
301	ENGLISH CORE	066	XXX	066	SIXTY SIX	B2
030	ECONOMICS	036	XXX	036	THIRTY SIX	D2
039	SOCIOLOGY	036	XXX	036	THIRTY SIX	D1
041	MATHEMATICS	025	XXX	025	TWENTY FIVE	E
083	COMPUTER SCIENCE	034	028	062	SIXTY TWO	C2

5. From the aforesaid, it is seen that in the Mathematics subject, the petitioner obtained only 25 marks i.e below the minimum pass marks of 33. His result was declared as “compartment”.

6. The terms and conditions for the professional programmes offered by the respondent University, which includes the aforesaid course are contained in the brochure as aforesaid. For the course **“Bachelor of Journalism (Mass Communication)”**, the eligibility condition prescribed is **“Pass in 12th Class of 10+2 of CBSE or equivalent with a minimum of 50% marks in aggregate and must also have passed English (core or elective or functional) as a subject”**.

7. For persons belonging to the reserved category, the respondent has provided a 5% relaxation of marks in the minimum eligibility requirement. Consequently, the minimum marks that the reserved category candidate should secure to qualify is 45% marks in the aggregate in the Class 12 (10+2) CBSE or equivalent exam, as opposed to 50% marks prescribed for the General Category candidates.

8. The stand of the respondent University is that the petitioner had got a “compartment” in mathematics in his qualifying class XII Senior Secondary Examination, and as the result of the re-examination taken by the petitioner in Mathematics subject/paper had not been declared by the time the first round of counseling took place,

he was not called for counseling. The second round of counselling for the unfilled seats would be held only after the 5th of August 2008, after the respondent displays the schedule for the same. In case the result of the compartment examination of the petitioner is not declared by the CBSE by the time the petitioner's turn for second counselling arrives, even if he clears the said examination subsequently, the respondent would not consider his candidature, though purely on the basis of his rank in CET, he may be entitled for grant of a seat in the said course.

9. Notes 1 to 3, contained in the brochure, insofar as they are relevant, read as follows:-

“Notes 1. Compartment case(s) of 2008 i.e current year will not be considered for admission for the academic session 2008-09. It is further clarified that:

- (a) Compartment cases of 2008, who have appeared for supplementary examination and the result of the same is not declared by the time of counselling/admission, such candidates will not be considered for admission for the academic session 2008-09.
- (b) In case the result of the supplementary examinations is declared by the time of admission/counseling and the candidate fulfills the eligibility conditions as mentioned above, then such candidates would be eligible for the admission for the academic session 2008-09.

2. The Candidates appearing in the qualifying examination are also eligible to apply provided:

- (a) That they are able to produce the proof of having acquired minimum prescribed qualifications at the time of counselling/admission.

OR

(b) If the total result of qualifying examination is not declared by the concerned Board/University till the date of counselling/admission, his/her admission in that case will be provisional subject to the following conditions:

(i)

(ii) The candidate will have to submit the result of qualifying examination proving his/her eligibility on or before **31.10.2008 in the Academic Branch, Room No.108, Administrative Block, Guru Gobind Singh Indraprastha University, Kashmere Gate, Delhi-110403** with a copy to concerned Dean/Principal/Director where the admission has been granted;

(iii) In case the candidate fails to submit his/her final result of qualifying examination in the manner as prescribed under (ii) above to prove his/her eligibility on or before **31.10.2008**, whatsoever the reason may be, his/her admission will be treated as null and void and the entire fee will be forfeited and under no circumstances he/she will be allowed to appear in the End Term Exam.

(c) It is further clarified that provisional admission will be considered only in such cases where the result of the qualifying examination has not been declared by the concerned Board/University in its totality. In case the result has been declared by the concerned Board/University but it has not been declared in a specific case, for any reason, such cases will NOT be considered under provisional admission category.

(d) Provisionally admitted candidates will have a suffix (P) to the enrollment number printed on their admission slip. Provisionally admitted candidates are advised to check it on receipt of Admission Slip in addition to the other details.

3. Aggregate of 50% marks in the 12th class for the purpose of eligibility will be taken as the aggregate of best four subjects including one language and compulsory subject(s)."

10. From the aforesaid, it is seen that candidates whose result of the qualifying examination are not declared by the time their turn for counseling arrives are provided the facility of being granted provisional admission and are granted time upto 31.10.2008 to submit their result of the qualifying examination.

11. The submission of learned counsel for the petitioner, Mr. S. K. Rungta is that the stipulation contained in Note 1 (a) as extracted above is discriminatory, inasmuch as, all candidates whose results of the qualifying examination are not declared by the time the counseling takes place constitute one class, and there is no rational basis to further classify them by treating those candidates who have appeared for compartment examination and are awaiting their result as one class, and those whose results of the qualifying examination are not declared by the time their turn for counseling comes, as a different class. He submits that candidates whose results of the qualifying examination have not been declared have been allowed to participate in the counseling process and to seek provisional admission upon fulfillment of certain formalities and they have been granted time upto 31.10.2008 to submit their result. However, the same treatment is not being meted out to candidates who are awaiting their result for the compartment examination. This, he submits is discriminatory. The petitioner submits that under the scheme of examination of the CBSE, he was entitled to and has taken the compartment examination for mathematics paper/subject on 18.7.2008, the result whereof has not yet been declared, and may not be declared by the time the second

round of counseling is held by the respondent. He submits that the petitioner could not have been left out and should have been called for counselling in the first round held for wards of defence personnel.

12. The question which arises for consideration is whether candidates who are awaiting their result of the compartment examination fall in a different class when compared to those candidates whose total result of the qualifying examination has not been declared, for the purpose of grant of provisional admission by the respondent University in the professional programmes run by it.

13. The respondent University does not discriminate between candidates who clear the qualifying examination in the first attempt and those who clear the same with a compartment. For the purpose of determining the eligibility of a candidate, his result in the qualifying examination is to be seen, irrespective of whether the said result is the original/first attempt result of the candidate or is a result compiled after taking the compartment examination. So long as a candidate has obtained 50% marks in aggregate in the qualifying examination (45% in the aggregate for a candidate belonging to one of the reserved categories) with pass marks in English (Core or Elective or Functional) as a subject, the respondent considers the candidate as eligible to undertake Bachelor of Journalism (Mass Communication) Course.

14. That being the position, in my view, there is merit in the submission of the petitioner that the respondent cannot create a further sub-classification within the class of those candidates whose

total result has not been declared till the time when their turn for counseling arrives, by treating candidates who are awaiting the total result of the qualifying examination after appearing in compartment examination as one class, and candidates whose total result is awaited as another class.

15. Since a compartment is not considered as a taboo and candidates with a compartment are also eligible to apply and be considered for the Course, inter alia, of Bachelor of Journalism (Mass Communication), there can be no justification to treat such candidates any less considerately when compared to those whose result of the qualifying examination is not at all declared. Pertinently, a candidate with a compartment who passes the compartment examination with the requisite percentage is not excluded from consideration if his result is declared by the time his turn for counseling arrives. Whether it is a candidate who is awaiting result of his compartment examination, or a candidate who is awaiting the result of his qualifying examination, they all stand on the same footing. The object of the rule, which allows candidates whose results of the qualifying examination are not declared by the time their turn for counseling arrives to furnish their result of the qualifying examination by 31.10.2008, is to save them from being deprived of admission to the concerned course for reasons beyond their control, as it is the concerned Board, examining body who has to declare the results of the qualifying examination. The purpose is also to grant admission to the more meritorious students as found on the basis of the entrance test result, and not allow those lower in merit

to steal a march over them merely because the more meritorious ones do not have the result of the qualifying examination in their hands when they are called for counseling. The further classification sought to be created by the respondents between those who are awaiting the compartment examination results of the qualifying examination and those whose qualifying examination results are not declared has no rational nexus with the object sought to be achieved as aforesaid. When, therefore, the respondent University permits students, who are awaiting their result for the qualifying examination to take provisional admission by fulfilling certain requirements, it does not stand to reason that candidates who are also awaiting their result of the qualifying examination on account of having secured a compartment result, should be treated differently.

16. In respect of a candidate who has got a compartment result in the qualifying examination at least one thing is clear. That he has failed to secure the minimum marks in only one particular subject/paper and that in the other subjects constituting the qualifying examination, he has got pass marks. The percentage of the marks secured by him in the various subjects is also known. However, in respect of a candidate whose total result of the qualifying examination is not at all declared when he is called for counseling, it is not even known whether he would be declared pass with the requisite percentage of marks, or he would get a compartment or would be declared fail. No doubt such a candidate would lose his admission in case he does not get the minimum qualifying percentage or if he fails

altogether since his admission would only be provisional. However, it would lead to an absurd situation that a candidate who eventually passes the qualifying examination with the requisite percentage of marks after the declaration of his compartment result is not granted provisional admission despite his securing a meritorious position in the competitive examination conducted by the University, while another candidate whose total result is not declared in respect of qualifying examination, and who eventually is found to have failed in the said qualifying examination is granted the right to seek provisional admission merely because his total result was not declared at the time when his turn for his counseling arrived. It is also possible that a candidate who is granted provisional admission may get a compartment result, and after appearing in the compartment examination he passes the qualifying examination with the requisite percentage and is able to produce his result for the qualifying examination before 31.10.2008. Such a candidate would then be considered by the respondent as validly admitted, while another candidate whose compartment result is known before his turn for counseling arrives, but whose result in the compartment examination is awaited, would be deprived of admission by the respondent by application of the impugned condition contained in Note 1(a) as aforesaid.

17. Pertinently, the petitioner has not been declared "fail". The scheme of examination of CBSE itself provides for improvement by a candidate who has been awarded compartment by reappearing in

the compartment examination for the particular subject in which he has failed to get the pass marks. Therefore, it cannot be said that the total result of the said candidate has been declared since it is only after the declaration of the result in the compartment paper that his final result would be compiled. After the declaration of the result of a student who has obtained compartment, it is the final result which is relevant for the purpose of determining whether the candidate has qualified in the 10+2 CBSE examination and has met the eligibility criteria set out by the respondent for the aforesaid course.

18. For the aforesaid reasons, this petition is allowed. Note 1(a) as contained in the Admission/Brochure-I Professional Programme for the academic session 2008-09 is quashed.

19. The petitioner ought to have been called for counseling in the first round held between 25th and 30th June, 2008. His percentage in the qualifying examination even with his present marks is well over 45%, which is the requisite percentage. This Court had passed an order on 25.6.2008 directing that in the meanwhile, the counseling, if any, conducted by the respondent University without considering the petitioner shall be subject to the final outcome of the writ petition. Since the petition has now been allowed, I direct that in case in the first round of counselling, any candidate with rank below 590 has already been granted admission, then the petitioner shall be granted admission forthwith without waiting for the second round of counselling. However, in case the rank of the last person to be granted admission to the aforesaid course in the first round of counselling is

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higher than that of the petitioner, the case of the petitioner would be considered in the second round of counseling, according to his rank. In case the petitioner's result in the compartment examination is not declared by the time his turn for second round of counseling matures, the petitioner would be granted provisional admission on the basis of his rank in CET 2008 upon his fulfilling the other conditions/formalities as prescribed in the Brochure, and the petitioner would be entitled to submit his compartmental result on or before 31st October 2008. In case the petitioner passes the compartment examination, the petitioner's admission would be confirmed. However in case the petitioner again fails in the compartment examination, the respondent would be free to cancel the provisional admission granted to the petitioner.

Petition stands disposed of.

Dasti under signature of Court Master.

VIPIN SANGHI,J

JULY 22, 2008
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