

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

Date of decision: 17th August, 2010.

+ W.P.(C) No.5015/2010

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MISS HARLEEN K. BAINS

..... Petitioner

Through: Mr. Maninder Singh, Sr. Advocate,
Mr. Yoginder Handoo, Mr. Ravi
Bhardwaj & Mr. J.P. Karunakaran,
Advocates.

Versus

THE UNIVERSITY OF DELHI & ANR.

..... Respondents

Through: Ms. Manisha with Mr. Amit Bansal,
Advocates for R-1.
Mr. Navin Chawla & Mr. Vinoba
Bhoopathy, Advocates for R-2

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner had applied to the respondent no.1 University of Delhi for centralized admission in undergraduate courses offered in the various colleges affiliated to the respondent no.1 University, in the category of 5% seats reserved for Armed Forces. The petitioner is the daughter of an officer of the Border Security Force who was disabled on duty and thus eligible for

admission in the said category. The respondent no.1 University on 3rd July, 2010 published the list of candidates for admission in the said category. The name of the petitioner was shown at serial No.64 in the said list and the petitioner was recommended for admission for B.A.(Hons.) Economics course in the respondent no.2 Lady Shri Ram College, New Delhi. The petitioner along with the provisional admission slip issued by the respondent no.1 University approached the respondent no.2 College on 5th July, 2010 for admission but was refused admission. The petitioner complained to the respondent no.1 University which issued a detailed letter dated 6th July, 2010 to the respondent no.2 College advising it to admit the petitioner. Upon refusal of the respondent no.2 College to still admit the petitioner, the present writ petition was filed.

2. The writ petition came up before this Court first on 28th July, 2010 when while issuing notice thereof the respondent no.2 College was restrained from admitting any other student in B.A.(Hons.) Economics course. Subsequently on 5th August, 2010, the respondent no.2 College was permitted to make admissions only in the OBC category; else the interim order was continued. The respondent no.1 University as well as the respondent no.2 College have filed counter affidavits. The respondent no.1 University has supported the case of the petitioner. The petitioner has filed rejoinder to the counter affidavit of the respondent no.2 College. The counsels for the parties have been heard.

3. The respondent no.2 College has opposed the petition by contending—
- (i). that against the 5% reservation for Armed Forces category, only three seats were available in the B.A.(Hons.) Economics course in the College. However the respondent no.1 University recommended four candidates including the petitioner to the respondent no.2 College for admission in the said course in the said category. The marks of the other three candidates being higher than those of the petitioner, they were admitted in the said category. It is shown that the marks of the last i.e. third candidate admitted in the said category are 338 out of 400 whereas the petitioner has only 280 out of 400 marks. It is thus contended that the respondent no.2 College was justified in admitting the top three candidates in the said category.
 - (ii). that the Bulletin of Information for admission to Undergraduate Courses in the current academic year published by the respondent no.1 University of Delhi provides for reservation of 5% of the seats in the Armed Forces category and further for relaxation to the extent of 5% “in the minimum marks in the aggregate or in the subject, as the case may be” to the candidates in the said category while determining their eligibility. It is contended that the cut-off of the last General

category student admitted in B.A.(Hons.) Economics course is 94.75% and for an OBC candidate is 84.75%. Reliance is placed on the judgment of the Supreme Court in *Ashoka Kumar Thakur Vs. Union of India* (2008) 6 SCC 1 and on *P.V. Indiresan Vs. Union of India* (2009) 7 SCC 300 to contend that when the maximum cut-off marks for OBC have to be 10% below the cut-off marks for the General candidates, on the same premise, for Armed Forces category candidates also the eligibility for admission has to be 5% below the cut-off in the General category. On the basis of cut-off in the General category being 94.75% it is contended that for petitioner to be eligible to be admitted in the said category, she ought to have secured 89.75% while she has secured only 70%. It is thus contended that the petitioner is not entitled to admission in the said category.

- (iii). It is further contended that the petitioner was offered admission to other courses in the respondent no.2 College in the same category but has refused admission. At the time of hearing also the said offer was made.

4. As far as the last of the aforesaid contention is concerned, the senior counsel for the petitioner under instructions informed that the petitioner is

not willing for admission offered in other courses in as much as according to the petitioner she is entitled as of right to admission in B.A.(Hons.) Economics course.

5. The relevant part of the provision in the Bulletin of Information published by the respondent no.1 University in this regard is as under:-

“4.2 Reservation for Armed Forces

5% of the total number of seats in each of the course has been reserved for the Children/Widows/Wives of the Officers and Men of the Armed Forces including Para-Military Personnel, killed/disabled in action or those who died/or disabled on duty and the wards of ex-service men personnel and serving personnel who are in receipt of gallantry award and are seeking admission will be required to get their names registered for Science Courses at the Faculty of Science, North Campus, University of Delhi and other than Science Courses at Room No.220, New Administrative Block, North Campus, University of Delhi (between May 28, 2010 to June 11, 2010 from 10.00 A.M. to 1.00 P.M. excluding Sundays).

Relaxation to the extent of 5% in the minimum marks in the aggregate or in the subject, as the case may be, will be given to the candidates of the below mentioned categories while determining their eligibility to the course concerned.

- Widows/Wards of Defence personnel killed in action;
- Wards of serving personnel and Ex-servicemen disabled in action;
- Widows/Wards of Defence personnel who died in peace time with death attributable to military service;

- Wards of Defence personnel disabled in peace time with disability attributable to military service;
- Wards of Ex-servicemen personnel and serving personnel including police personnel who are in receipt of Gallantry Awards;

(Above categories are also applicable for Para Military personnel);”

6. The respondent no.1 University in its counter affidavit has stated that the admissions in the aforesaid categories are required to be made in order of preference, with the candidate in a higher category having a preference over that in the lower category i.e. the highest preference being to widows/wards of Defence personnel killed in action and the lowest preference being of wards of ex-servicemen personnel and serving personnel in receipt of Gallantry Awards. It is stated that of the three students aforesaid admitted by the respondent no.2 College, one is of a category lower than that to which the petitioner belongs; while the father of the petitioner was disabled in peace time with disability attributable to Armed Forces, the father of the student wrongly admitted by the respondent no.2 College was in receipt of Gallantry Award. It is contended that the wards of Defence personnel disabled in peace time with disability attributable to military service are in a higher category than the wards of ex-servicemen personnel and serving personnel who are in receipt of Gallantry Awards. It is thus stated that the petitioner inspite of her lower marks was entitled to be given preference over the student admitted by the respondent no.2 College.

7. The respondent no.1 University in this regard relies on the Minutes of the Resolution dated 23rd May, 2007 of the Academic Council resolving to admit students in the Armed Forces category, as per priority aforesaid and on the instructions for admission issued by the respondent no.1 University of Delhi to various colleges as to the procedure to be followed for admission. In the same also, it is stated that admission in the category reserved for Armed Forces shall be “in order of preference” of the categories aforesaid.

8. The counsel for the respondent no.2 College besides contending that the mistake is of the respondent no.1 University in recommending four candidates in the category of Armed Forces, when only three seats were available therefor, has also contended that the plea now of the respondent no.1 University of category wise priority was not mentioned neither in the Bulletin of Information for admission (supra) published by the respondent no.1 University nor in the list published of the said category; that the respondent no.2 College was not aware of the same and thus admitted three out of the four students recommended, as per their merit. It is contended that the version now in the counter affidavit of the respondent no.1 University is an afterthought and all the seats available in the category having been filled up, the respondent no.2 College cannot be directed to admit the petitioner in the said course.

9. The senior counsel for the petitioner and the counsel for the respondent no.1 University have countered the argument aforesaid of the counsel for the respondent no.2 College by contending that it was so expressly provided in the instructions for admissions (supra) issued by the respondent no.1 University to the colleges and was also explained in the letter dated 6th July, 2010 (supra) of the respondent no.1 University to the respondent no.2 College and thus the respondent no.2 College was aware of the category-wise priority and if has wrongly filled up the seats, cannot deprive the petitioner of her entitlement. The senior counsel for the petitioner has also referred to the provisional admission slip issued by the respondent no.1 University to the petitioner and presented by the petitioner to the respondent no.2 College and on which also the category is mentioned.

10. The senior counsel for the petitioner has countered the second contention of College of the candidates in Armed forces category being required to have marks within 5% of last candidate admitted in general category by relying upon paras 58 to 60 in ***Dr. Preeti Srivastava Vs. State of M.P.*** (1999) 7 SCC 120 and has contended that the reference to cut-off is with respect to the eligibility and not the marks secured by the last candidate admitted in the General category. Even otherwise it is contended that neither the Bulletin of Information of the University of Delhi nor the Resolution of the Academic Council of the University of Delhi with respect to reservation in Armed Forces provides in this regard.

11. The counsel for the respondent no.1 University has also opposed the interpretation aforesaid of the respondent no.2 College.

12. The senior counsel for the petitioner has also contended that the respondent no.2 College has no independent say in the matter and is to admit students in the category of Armed Forces, as recommended by the respondent no.1 University and is bound by the interpretation thereof by the respondent no.1 University and the present litigation cannot be allowed to be utilized by the respondent no.2 College for resolving its lis if any in this regard with the respondent no.1 University. It is contended that the respondent no.2 College is bound by the version of the respondent no.1 University and once the respondent no.1 University which makes admission centrally in the said category has held that the petitioner is entitled to be admitted in the said category, the respondent no.2 College is bound by the same.

13. I have considered the rival submissions and my conclusions are as under:-

- i. Since the admission in the category of Armed Forces is centralized and at the instance of the respondent no.1 University, the respondent no.2 College as an affiliate of the respondent no.1 University is bound by the recommendation of

the respondent no.1 University. The respondent no.1 University having found the petitioner eligible for admission in the said category, the respondent no.2 College is bound by the same and cannot deny admission to the petitioner on its own interpretation of the clause providing for reservation in the said category. If the respondent no.2 College has a view different from that of the respondent no.1 University in this regard, the respondent no.2 College is to take up the said issue separately with the respondent no.1 University and the same cannot be agitated in the present proceedings.

- ii. I am satisfied that from the instructions issued by the respondent no.1 University to the colleges for admissions and the letter dated 6th July, 2010 issued by the respondent no.1 University to the respondent no.2 College specifically with reference to the petitioner, the respondent no.2 College was aware of the petitioner being in a higher category in the reservation provided for Armed Forces and notwithstanding her lower marks being entitled to admission before the other student admitted by the respondent no.2 College in the said category.

iii. I do not deem it appropriate to decide the contention on the basis of the judgments in *Ashoka Kumar Thakur* and *P.V. Indiresan* (supra) on the one hand and *Dr. Preeti Srivastava* (supra) on the other hand. I am, in any case, seized of the said subject in another matter on which judgment is reserved. Independently of the same, I am convinced that in the said category only 5% relaxation in marks to determine their “eligibility” was to be given and the same had nothing to do with the “cut-off” in the General category. Thus if the eligibility for candidates in General category for admission in B.A.(Hons.) Economics was say 50%, the eligibility for candidates applying in the category reserved for Armed Forces would be 45%. There is no provision for the candidate in the said category having marks within the range of 5% below the marks of the candidate last admitted in the General category. In view of the express provision in the admission documents, the respondent no.2 College is not entitled to contend otherwise.

14. Though the respondent no.2 College in its counter affidavit has also given reference to another case where prioritization of category was alleged to have been not followed but the senior counsel for the petitioner and the counsel for the respondent no.1 University have explained that the priority

of categorization was followed in that case also. Thus the said argument does not survive.

15. I therefore conclude that the petitioner was entitled to admission in the respondent no.2 College in B.A. (Hons.) Economics course in the Armed Forces category and has wrongly been denied the said admission.

16. That brings me to the question of the relief to be granted, in as much as it is not in dispute that there are only three seats in the B.A. (Hons.) Economics course in the respondent no.2 College in the Armed Forces category and all three of which have already been filled up. Realizing the same, in the order dated 5th August, 2010, option was given to the petitioner to implead the candidate who according to the petitioner have been wrongly admitted in her place in as much as it was felt that without hearing the said candidate no order could be made for admission of the petitioner in her place. The petitioner has not taken any steps for impleading the said candidate. The counsel for the respondent no.2 College has contended that since all the seats in the B.A. (Hons.) Economics course have been filled up, the petitioner cannot be admitted; that if more students than as provided are admitted it leads to problems of infrastructure; the College is not equipped to impart education to even one more student than that for which provision has been made.

17. The senior counsel for the petitioner has in this regard relied on:-

- a. ***Chandigarh Administration Vs. Manpreet Singh*** (1992) 1 SCC 380;
- b. ***Nitasha Paul Vs. Maharishi Dayanand University, Rohtak*** (1996) 2 SCC 103;
- c. ***Dr. Rekha Saxena Vs. State of M.P.*** MANU/MP/0041/1985;
- d. ***Vineeta Srivastava Vs. Jamia Millia Islamia*** 1998 (44) DRJ 149;
- e. ***Vikas Vs. State of Punjab*** MANU/PH/0396/2001;
- f. ***G. Panneer Pandi Vs. The VC, Anna University, Chennai*** MANU/TN/0738/2002;
- g. ***Ms. Reena Maan Vs. The State (NCT of Delhi)*** 136(2007) DLT 548 &
- h. ***Sudeep Panigrahi Vs. Chairman, Joint Entrance Examination*** MANU/OR/0365/2009

to contend that the courts in appropriate cases have directed admission by creation of an additional seat and over and above the prescribed number of seats.

18. In the present case, the petitioner having been found entitled to admission, cannot be denied admission. At the same time, the admission procedure having now nearly come to an end, the student who has been wrongly admitted by the respondent no.2 College instead of the petitioner also cannot be displaced in as much as it would now not be possible for her to seek admission elsewhere or in a comparable college or course. The respondent no.2 College having filled up its seats in contravention of the direction of the respondent no.1 University is itself to blame and cannot now oppose the admission of the petitioner on the ground that all the seats are filled up.

19. The petition is therefore allowed. The respondent no.2 College is directed to admit the petitioner into 1st Year B.A.(Hons.) Economics course for the Academic Year 2010-2011. Even if all the seats in the said course have been filled up, the respondent no.2 college is directed to create an additional seat for the petitioner in the said course and the petitioner shall be entitled to all benefits and privileges as available to any other student admitted in the said course. The petitioner to approach the respondent no.2 College immediately for compliance of all formalities in this regard.

The petition is disposed of. I refrain from awarding costs to the petitioner against the respondent no.2 College.

**RAJIV SAHAI ENDLAW
(JUDGE)**

17th August, 2010
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