

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

Date of decision: 28th October, 2010.

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W.P.(C) No.5205/2010

MS. AKANKSHA DOKANIA

..... PETITIONER

Through: Mr. F.K. Jha, Advocate

Versus

**NETAJI SUBHAS INSTITUTE OF
TECHNOLOGY & ORS.**

..... RESPONDENTS

Through: Ms. Avnish Ahlawat & Mr. Nitesh
Kumar Singh, Advocate for R-1.
Mr. Mohinder J.S. Rupal & Ms.
Sonam Gupta, Advocates for R-2.

AND

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W.P.(C) No.5434/2010

MANISH KUMAR

..... PETITIONER

Through: Mr. Nitin Kumar, Advocate for Mr.
Naushad Alam, Advocate

Versus

**NETAJI SUBHAS INSTITUTE OF
TECHNOLOGY & ANR.**

..... RESPONDENTS

Through: Ms. Avnish Ahlawat & Mr. Nitesh
Kumar Singh, Advocate for R-1.
Mr. Mohinder J.S. Rupal & Ms.
Sonam Gupta, 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? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. Both petitions concern admission in the OBC category to engineering colleges in Delhi (of which respondent No.1, is one), made by the respondent No.2 University of Delhi by holding the All India Engineering / Architecture Entrance Examination (AIEEE). Both petitioners sought admission to the engineering courses in the respondent No.1 Institute. The respondent No.1 is an autonomous Institution of the Government of NCT of Delhi. 85% of the total seats in the respondent No.1 Institute have been allocated for the Delhi region and 15% seats for outside Delhi region. The students passing from recognized Schools / Colleges / Institutions located within the National Capital Territory of Delhi are eligible to apply for admission in the Delhi region seats and students passing from Schools / Colleges / Institutions located outside the National Capital Territory of Delhi are entitled to apply for the outside Delhi region category. Both petitioners passed their qualifying exam from recognized schools in Delhi and thus applied for admission to the Delhi region seats, as aforesaid in the OBC category.

2. Admission was denied to both the petitioners on their failure to produce OBC Certificates issued by the authorities in Delhi. Both petitioners produced OBC Certificate issued by authorities outside Delhi. The present petition was filed averring that the respondent No.1 being

affiliated to the Delhi University, a Central University, was required to accept OBC Certificate issued by authorities outside Delhi also and it was so provided even in the prospectus issued for admission.

3. The counsel for the respondents appearing on advance notice had argued that the procedure followed was in accordance with the judgment in ***Subhash Chandra Vs. Delhi Subordinate Services Selection Board*** (2009) 15 SCC 458. However, finding that the prospectus issued permitted OBC Certificate issued by any authority and not only issued by the authorities in Delhi, notice of the petition was issued.

4. The respondent No.1 has filed a counter affidavit relying on the judgment aforesaid. The counsels for the parties have been heard.

5. The counsel for the petitioner in WP(C) No.5205/2010 has argued that the petitioner has been admitted in another course in the Institutes of the Delhi Government in the OBC category on the basis of the OBC Certificate issued by authorities outside Delhi and thus the stand of the respondent of the petitioner being required to produce OBC Certificate issued by an authority in Delhi is erroneous. The counsel for the respondents has met the said arguments by relying on ***Union of India Vs. M.K. Sarkar*** (2010) 2 SCC 59 where in para 25 it has been held that if someone has been wrongly extended a benefit, that cannot be cited as a precedent for claiming similar

benefit by others and guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also, on the reasoning that they have been denied the benefits which have been illegally extended to others.

6. Else the counsels for the respondents have drawn attention to paragraphs 45 and 64 to 79 of the judgment in *Subhash Chandra* (supra) to contend that the respondent No.1 Institute is established by the Government of NCT of Delhi; the admission to OBC category is to be on the basis of production of OBC Certificate by an authority in Delhi and not by authorities outside Delhi. In response to the argument of the counsels for the petitioners that the petitioners fall in the OBC category in Delhi, it is contended that no OBC Certificate issued by any authority in Delhi has been produced till date.

7. The counsel for the petitioner in WP(C) No.5205/2010 on the basis of judgment in *Union of India Vs. Pritilata Nanda* JT 2010 (7) SC 360 argued that once the respondents had admitted the candidature of the petitioner and allowed the petitioner to participate in the process of selection, it is not open to them to turn around and question her entitlement to be considered for

admission. However, the facts in the present case are different. The petitioners were required to produce the OBC Certificate at the stage of counselling and which they failed to produce. Thus no benefit can be taken of the said judgment.

8. The counsel for the petitioner in WP(C) No.5205/2010 has also referred to *Nair Service Society Vs. Dr. T. Beermasthan* JT 2009 (4) SC 614 (paragraph 25) contending that a common rank list as per merit of all the successful candidates having been prepared, the petitioners should not be excluded. However, the said judgment is also not found apposite. The petitioners having sought admission in the OBC category and having not produced the OBC Certificate are not entitled to contend that they should have been given preference, even without production of OBC Certificate, over those having ranks below them but who had produced the OBC Certificate. The counsel lastly relied on *U.P. Public Service Commission Vs. Satya Narayan Sheohare* JT 2009 (6) SC 584 which is a judgment on the aspect of declaration of OBC status after the commencement of the recruitment process and which is not found applicable to the present case.

9. As far as language in the prospectus on the basis whereof notice was issued is concerned, on closer examination, it is found that the language is for admission for the 85% seats of the Delhi region as well as 15% seats for outside Delhi region. The said language cannot derogate the principle of

law that those seeking admission in the Delhi region seats are required to produce the OBC Certificate from authorities in Delhi region only.

10. There is no merit in the petitions. The same are dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th October, 2010
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