

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

Date of decision: 8th October, 2010.

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W.P.(C) No.5682/2010

SH. SUKHANSHU SINGH

..... PETITIONER

Through: Dr. Vijendra Mahndiyan, Advocate

Versus

DELHI TECHNOLOGICAL UNIVERSITY & ORS... RESPONDENTS

Through: Ms. Zubeda Begum, Advocate for R-1 & R-2.

Mr. Sachin Dutta & Ms. Gayatri Verma, Advocates for R-3/UOI.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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. The petitioner by this writ petition impugns the action of the respondent No.1 in, while providing for reservation for admissions for widows / wards of Defence personnel, not including therein the widows / wards of ex-servicemen and serving personnel.

2. The petitioner claims to be the son of a retired personnel of Indian Air Force who retired in 1994 after serving for 15 years. The petitioner applied for admission to B.Tech programme 2010-11 under the category reserved for

wards of Defence personnel. The petitioner, in the written examination achieved the rank of 2010. The counselling for admission was scheduled from 20th July, 2010 to 31st August, 2010. The petitioner was however not called for counselling. The petitioner on enquiry learnt that the respondent No.1 was not treating the wards of retired and serving Defence personnel in the reserved category and accordingly filed the instant petition.

3. This petition came up before this Court first on 20th August, 2010. The contention of the counsel for the petitioner *inter alia* was that other Institutions providing reservation for widows / wards of Defence personnel were including not only:

- (i) Widows / wards of Defence personnel killed in action.
- (ii) Wards of serving personnel and ex-servicemen disabled in action.
- (iii) Widows / Wards of Defence personnel who died in peace time with death attributable to military service.
- (iv) Wards of Defence personnel disabled in peace time with disability attributable to military service.
- (v) Wards of ex-servicemen and serving personnel who are in receipt of Gallantry Awards.

as the respondent no.1 also is, but also

- (vi) Wards of ex-servicemen.
- (vii) Wards of serving personnel.

which the respondent No.1 was not including under the said category.

4. Notice of the petition was issued and this Court being of the view that the Union of India should also be impleaded as a party, impleaded UOI through the Ministry of Defence as a respondent to the petition.

5. The counsel for the Defence Ministry of the Government of India on 9th September, 2010 informed that the Defence Ministry had from time to time issued merely recommendations to the Central Universities for reservation for Armed Forces and the said recommendations are vis-à-vis all the seven categories aforesaid i.e. they include the wards of ex-servicemen and wards of serving personnel also who as aforesaid have been excluded by the respondent No.1. An affidavit of Lieutenant Colonel A.N. Sen on behalf of Kendriya Sainik Board, Ministry of Defence has also been filed stating that the Kendriya Sainik Board functions under the Department of Welfare of Ex-servicemen, Ministry of Defence and is responsible for formulation of policies for welfare of ex-servicemen and widows; similarly there are Rajya & Zila Sainik Boards at the State & District level respectively which function under their respective Government / Union Territory administration; the Kendriya Sainik Board with the assistance of Rajya

Sainik Board implements most of the welfare / policy recommendations. It is further stated that a High Level Committee constituted by the Ministry of Defence had in the year 1995 recommended a provision for reservation for the wards of ex-servicemen and widows in professional and other Institutions within the States and Union Territories within which they may lie; that the said recommendations are not binding on the State Government and the State Governments are free to choose or desist from implementing them. The recommendation made in the year 2000 by the then Defence Minister to the Ministry of Human Resource Development was for reservation for all the seven categories aforesaid, with the first category i.e. widows/wards of Defence Personnel killed in action having highest priority and the seventh category i.e. wards of serving personnel having lowest priority. With respect to the prospectus of the respondent No.1 University providing for reservation for the first five categories only and not for the remaining two categories, it is stated that the matter needs to be resolved by the State Government in consultation with the respondent No.1 University.

6. The respondent No.1 University in its counter affidavit has stated that the erstwhile Delhi College of Engineering affiliated to the Delhi University has now been upgraded to the respondent No.1 University; that the Delhi College of Engineering was following all the norms, procedures, eligibility for reservation, Rules prescribed by the Delhi University; that the respondent No.1 University is governed by its Act, Statutes and Ordinances

approved by the competent bodies of the University and the Academic Council of the respondent No.1 University exercises general supervision over the academic policies. It is further stated that the decision to lay down reservation for five categories only under the Defence category and not for the remaining two categories has been taken keeping in mind the “hardship” factor. It is yet further pleaded that all the Central Universities / Institutions have not included the wards of ex-servicemen in the Defence category. It is yet further pleaded that the petitioner applied for admission with the full knowledge that he was not eligible for reservation and is now estopped from challenging the same. Reference in this regard is made to *Madan Lal Vs. State of Jammu and Kashmir* (1995) 3 SCC 486.

7. The respondent No.1 University has filed an additional affidavit in which it is stated that it has laid down five categories only under the Defence category “to maintain high academic standard like the IITs. The University of Delhi in its technical courses is also following only five categories.” It is further stated that non inclusion of the sixth and seventh category aforesaid is for the reason of maintaining high standards and that if the sixth and seventh category aforesaid is also included, merit in the respondent No.1 University may suffer.

8. I have enquired from the counsel for the respondent No.1 University as to why the respondent No.1 University while opting to follow the

recommendation of the Kendriya Sainik Board has chosen to dissect the said recommendation and to provide reservation for five categories only of the seven categories recommended. Reason therefor is not evident from the documents filed by the respondent No.1 University. On the contrary, in the counter affidavit dated 23rd August, 2010 of the respondent No.1 University it is stated:

“In case priority VI (wards of ex-servicemen) and VII (wards of serving personnel) have to be included under CW category for admission in the current admission session the necessary approval from the competent authority may be sought.”

From the aforesaid, it appears that none in the respondent no.1 University has applied mind to the aforesaid aspect.

9. Insofar as the argument of the counsel for the respondent No.1 University that the other Central Institutions like the IITs providing reservation for five categories only instead of all the seven categories under the Defence Category reservation is concerned, no document in that regard has been placed before this Court. Similarly, though it is pleaded that the same is the position with respect to the technical courses in the Delhi University, again no document has been placed.

10. On the contrary, the counsel for the petitioner has contended that the respondent No.1 University is a State University and thus cannot follow the

central Universities, the provisions for reservation wherein are different. He also states that the other State University namely the Guru Gobind Singh Indraprastha University is providing for reservation for all the seven categories. He has also placed before this Court the order dated 10th February, 2004 of the Department of Training & Technical Education of the Government of Delhi issued in pursuance to the judgment dated 14th August, 2003 of the Supreme Court in CW(P) No.350/1993 titled *Islamic Academy of Education Vs. State of Karnataka* laying down policy guidelines on admissions and reservation of seats covering the AICTE approved courses / Institutions affiliated to the GGSIP University. In the said order, while providing for reservation for Defence category, reservation is for all the seven categories. Though the counsel for the petitioner has also referred to *Dileep Damodaran Vs. Secretary to Govt. Education Department*, AIR 1991 Andhra Pradesh 194 but the same was in relation to the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fees) Act, 1983 and is not found apposite to the controversy over here.

11. Insofar as the respondent No.1 University in its affidavit has sought to justify the reservation for five categories only, in the absence of any decision of the Academic Council or other appropriate authority of the respondent No.1 University for making out such distinction between the first five and the sixth and seventh categories, no justification thereof is permissible as

laid down by the Supreme Court in *Mohinder Singh Gil Vs. Chief Election Commissioner* (1978) 1 SCC 405. The respondent cannot seek to justify a decision for reasons which did not form the basis thereof.

12. Else also, I am unable to hold that there is any rationale for the respondent No.1 University to make such distinction. The Kendriya Sainik Board, constituted with the specific object of looking into the said matter in its wisdom has deemed it appropriate to provide for reservation for all the seven categories i.e. for wards of children of serving and retired personnel also. The said Board is an expert body to go into the said question and is deemed to have considered all the factors in making the seven categories aforesaid and in giving priority thereto. The respondent No.1 University cannot be said to be best equipped to distinguish between the first five and the remaining two categories. The classification made by the respondent No.1 University is not shown to have any nexus to the object of reservation. The Supreme Court also, recently in *Union of India Vs. C.S. Sidhu* (2010) 4 SCC 563 has commented with regret on the shabby manner in which the army men in our country are being treated. It was commented that they bravely defend the country even at the cost of their lives and deserve a better and humane treatment. The same in my view applies to the present case also. Once the Body constituted to look into the welfare measures relating to personnel of the Defence forces has in its wisdom chosen to recommend reservation for ex-servicemen and serving personnel also, though lowest in

terms of priority, I see no reason to deprive the wards of ex-servicemen from the said benefit. Once the respondent No.1 University has accepted the recommendation of reservation for Defence Category, it cannot be permitted to twist it to its own liking and is bound to provide reservation for all seven categories in terms of priority.

13. The petitioner has approached this Court even before the counselling ended and this cannot be said to be estopped. The petitioner has also demonstrated that those with lower rank than him have been admitted and thus the question of his admission interfering with merit does not arise.

14. The next question which arises is of the relief to be granted. The counsel for the respondent No.1 University has argued that the session has begun. Though the Courts would ordinarily not interfere after the session has begun and I have also been following the said principle with respect to the petitions preferred thereafter but the petitioner in the present case approached this Court well before the last date of counselling. In spite of best efforts of this Court, the case could not be decided earlier. In my view the petitioner having been found entitled ought not to be deprived of the relief. The Division Bench of this Court also in judgment dated 10th December, 2009 in LPA No.622/2009 titled ***Dr. Manish Patnecha Vs. Chairperson, Counselling Committee, AIIMS*** has held that remedy must follow the right.

15. I, therefore direct the respondent No.1 University to admit the petitioner to a seat under the Defence category within one week of today. I refrain from imposing any costs on the respondent No.1 University.

**RAJIV SAHAI ENDLAW
(JUDGE)**

8th October, 2010
'gsr'