

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

Date of decision: 18th October, 2010.

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W.P.(C) No.6641/2010

DHRUV SINGHAL

..... Petitioner

Through: Mr. Ravi Gupta, Sr. Advocate with
Mr. Deepak Vohra & Mr. Gaurav
Gupta, Advocates

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR.**

..... Respondents

Through: Mr. Mukul Talwar, Advocate for R-1.
Mr. Laliet Kumar, Advocate for R-2.

AND

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W.P.(C) No.6896/2010

SRISHTI CHANDOK

..... Petitioner

Through: Mr. Sachin Mishra, Advocate

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ANR.**

..... Respondents

Through: Mr. Mukul Talwar, Advocate for R-1.
Mr. Laliet Kumar, Advocate 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. WP(C) No.6641/2010 has been preferred averring that the petitioner appeared in the Common Entrance Test (CET) conducted by the respondent no.1 University on 5th June, 2010 for admission to Engineering & B.Tech programmes in the Institutes / Colleges of the respondent No.1 University itself as well as its affiliates; that in the result declared by the respondent No.1 University, the petitioner had secured the rank of 15070 in the merit list; that though as per the Admission Brochure published by the respondent No.1 University, the admission process was required to be completed by 30th September, 2010 but the second round of counselling for admission in respondent No.2 Maharaja Agrasen Institute of Technology (MAIT), an Institute / College affiliated to the University was started only on 13th September, 2010 and was stated to be continuing at the time of filing of the petition on 28th September, 2010; that the petitioner even otherwise learnt from news items that there were still vacant seats in various other Institutes / Colleges affiliated to the University and which had applied to the University for filling up the said seats even after the conclusion of the second counselling by 30th September, 2010; that the petitioner approached MAIT and was informed that there were still 11 vacant seats either on account of students who had not joined inspite of taking admission or on account of seats not filled up by the University; that the University was however not admitting the petitioner to MAIT. The petitioner thus sought a writ directing

the University to permit the petitioner to be admitted to the B.Tech course in MAIT in the academic year 2010-11.

2. The petition came up before this Court first on 29th September, 2010. The counsel for MAIT appearing on advance notice confirmed that there were eleven vacant seats and of which six were stated to be of the Scheduled Tribe (ST) Category for which no admissions had been made and the balance five were of the students who inspite of being required to join within one day of the last date of admission (i.e. 19th September, 2010) but had not reported / joined till then. The counsel for the University appearing on that date had submitted that the said six seats of the ST category were not put to counselling till then. He confirmed that as per the Rules if the said seats remained vacant, they were to be offered next to the Scheduled Castes (SC) category candidates and if still remained vacant were to be offered to the General Category candidates. The counsel for the University on that date further stated that even if they were to be offered to the General Category candidates, the petitioner with the rank of 15070 was unlikely to be admitted thereto. However, since it was informed that the University was considering counselling for ST/SC category on 30th September, 2010, being the last date for admissions as per the prospectus of the University, the matter was adjourned with a direction to the University to put the said six seats for counselling to ST/SC category on 30th September, 2010.

3. On the next date i.e. on 1st October, 2010, the counsel for the University stated that out of the aforesaid six seats, two were for the ST category and four for the Physically Handicapped category (PH); it was further informed that pursuant to counselling on 30th September, 2010, no ST category candidate turned up and the two ST category seats thus devolved upon the SC category and of which only one could be filled up; it was yet further informed that none of the four seats in the PH category also, though put for counselling, were filled up. It was informed that the vacant seats in the PH category also under the Rules devolved upon the General Category. The position which thus emerged was that one out of two seats in the ST/SC category and four seats of the PH category and which had all devolved upon the General Category had remained vacant without ever being put for counselling for the General Category. However, the counsel for the University contended that the seats could not be filled up after 30th September, 2010 in view of the judgment in *Mridul Dhar Vs. Union of India* (2005) 2 SCC 65. The counsel for MAIT also on 1st October, 2010 informed that of the other five vacant seats, to which admission had been done but students had not turned up, three had turned up. It was further informed that MAIT would wait for the remaining two students also. Thus, the question which survives is only of the SC/ST & PH category seats which had devolved upon the General Category and which had never been put to counselling.

4. Since then counter affidavit has been filed by the University and to which rejoinder has been filed by the petitioner. The stand of the University in the counter affidavit is that the ST & PH category seats could not be put to counselling earlier as per the time schedule prescribed in the Admission Brochure owing to the recognition of the MAIT having been earlier revoked by the All India Council for Teacher Education (AICTE) and MAIT having joined in the counselling late and by which time the counselling for the ST & PH category was already over. Reliance is also placed on the opinion dated 31st October, 2007 of the Additional Solicitor General (ASG) to the effect that no admissions could be made after 30th September, 2010. It is yet further pleaded that the petitioner if keen for admission in MAIT could have obtained admission under the Management Quota.

5. The petitioner in the rejoinder, with respect to the opinion dated 31st October, 2007 of the ASG has stated that the same was on the basis of the judgment in *Supreet Batra Vs. Union of India* (2003) 3 SCC 370 relating to admission to medical courses and has further pleaded that as far as MAIT is concerned, subsequent to 30th September, 2010, no studies have taken place owing to the Commonwealth Games and the delay in admission would thus not interfere with the schedule of studies. It is also pleaded that owing to the Commonwealth Games, the University itself has delayed the examination of the first semester. It is further stated that the opinion of the ASG was on the basis of the Admission Brochure of 2007 which was materially different

from the Admission Brochure for the current academic year and thus does not apply. It is yet further pleaded that though the University in accordance with the procedure prescribed in the Admission Brochure for admission for the present year of Open House Counselling after the second round of counselling held such counselling for other courses but not for B.Tech course on the false premise of no seats being available, when the seats as aforesaid were available.

6. The senior counsel for the petitioner has invited attention to the Admission Brochure for the current academic year prescribing the dates of 7th July, 2010 for commencement of first counselling, of 13th August, 2010 for display of second counselling schedule and of 18th August, 2010 for commencement of second counselling. It is argued that the second counselling in fact commenced on 28th August, 2010 and the counselling with respect to MAIT commenced only on 13th September, 2010. Attention is also invited to Clause 6(viii) in Chapter 10 of the Admission Brochure providing for Open House Counselling in the event of any of the seats remaining vacant and to Clause 6 (xi) providing that if any vacancies arise after second counselling, the same shall be filled up as per the directions of the Courts / decision of the University. The said Admission Brochure does of course provide that the last date for all kind of admissions is 30th September, 2010. He has further relied on the notice dated 21st September, 2010 of the University to the effect that since all the seats in B.Tech course

had been filled up, there will be no Open House Counselling and on the notice dated 25th September, 2010 also of the University with respect to open house counselling in other courses offered by the University. On enquiry, it is informed that the academic session commenced on 2nd August, 2010.

7. It thus appears that the University has made admissions at least insofar as MAIT is concerned, even after the commencement of the academic session, at least till 13th September, 2010 as contended by the University and till 19th September, 2010 as contended by the petitioner. It is thus argued that the commencement of the academic session is not relevant for admissions. It is further argued that the delay being on the part of the University itself, admission to the petitioner in the vacant seats cannot be denied on the plea of such delay.

8. The senior counsel for the petitioner during the hearing has also handed over the Admission Brochure for the academic year 2007-08 which does not provide for open house counselling and which rather expressly provides that after the second counselling, there will be no third counselling and no admission shall be made thereafter. He has also contended that the judgments in *Sharwan Kumar Vs. Director General of Health Services* 1993 Supp (1) SCC 632 as well as in *Mridul Dhar* (supra) were relating to medical courses which were governed by the Statutes governing the medical education and which have no application to admissions to the B.Tech course.

9. The counsel for the University, while admitting the delays beyond the stipulated dates in the Admission Brochure, has stated that the same are attributable to the delay by AICTE in granting approval. It is stated that the University acted in right earnest and immediately upon receipt of approval letter dated 17th August, 2010 from AICTE held an emergent meeting of Board of Affiliation on 18th August, 2010. It is argued that open house counselling is to be held only when all the students have once been given the option for all the seats. It is stated that if the five seats of ST/PH category which have devolved to the General Category as aforesaid are to be put to counselling, since the said seats were never put to counselling earlier, the counselling therefor cannot be following the open house procedure but can only be as per the procedure prescribed for the first & second round of counselling and in which case all the students admitted to B.Tech course in various Institutes / Colleges will have an option and which will disturb the entire admission procedure and have a cascading effect. He has also sought to argue that the petition suffers from laches. It is orally also contended that the present petition has been got filed by MAIT only. It is again orally stated that MAIT inspite of late recognition approval by the AICTE was allowed to join in counselling on the oral assurance of its Chairman that whatever seats remain vacant shall be surrendered.

10. The counsel for MAIT has contended that before seats are allowed to be left vacant, regard has to be had to the dynamics of a self financing

institution. It was urged that it is the obligation of the University to fill up the seats. On enquiry as to how the minimum requirement of attendance shall be fulfilled for the students if directed to be admitted now, it is stated that session insofar as MAIT is concerned has started only on 20th September, 2010 and whereafter MAIT was closed on account of Commonwealth Games and thus such issues are unlikely to arise.

11. I have during the hearing brought it to the notice of the counsel for the University that the five ST/PH Category vacant seats aforesaid in MAIT are not on account of students dropping out or not joining but for the reason of having not been put to counselling at all, and whether on account of the said factor alone, are not to be considered differently. I have recently in judgment dated 4th October, 2010 in WP(C) No.6303/2010 titled ***Aditya Institute of Technology Vs. GNCTD***, referring to the various judgments of the Apex Court and this Court in this regard held that merely because the seats remain vacant is no ground for the admission procedure to continue. However, that case as well as all the cases referred to therein are the cases where seats remained vacant on account of the students admitted thereto dropping out or not joining. None of the cases are of the category as the present case i.e. where no admissions have been made to the seats remaining vacant.

12. We are a country where seats to engineering colleges are at a premium with the practice of capitation fee being paid therefor being rampant. The seats available in the Colleges are far below the number of applicants therefor. The Supreme Court in *Charles K. Skaria Vs. Dr. C. Mathew* (1980) 2 SCC 752 has held that the Courts must see that no costly seat for advanced studies in which the community as a whole has stake, is wasted; the Court should not give up the search for alternatives. In such circumstances, it was felt that all attempts should be made to fill up the seats, of course if the same does not interfere with the academic calendar and merit. However, before that it has to be considered whether in view of the last date of 30th September, 2010 for admissions, prescribed in the Admission Brochure and in view of the judgments aforesaid particularly in *Mridul Dhar* the same can be considered.

13. As far as the provision in the Admission Brochure is concerned, the petitioner had approached this Court before the last date of 30th September, 2010. If it is found that the petitioner is entitled to relief, merely because the matter could not be decided on the first date would not be a ground to deny the relief to the petitioner.

14. Insofar as the judgments aforesaid laying down the counselling schedule are concerned, I find that the said judgments were in the context of the filling up of the 15% All India Quota Seats in the Medical Colleges. The

Court found considerable delay on the part of the various State Governments / Colleges not forwarding the requested information to the Centre and which led to the delays in the said admission. It was in the said light that the time schedule came to be laid down. I do not find anything in the said judgments which would be a precedent for all kinds of educational programmes / disciplines or prevent this Court even when it finds that no prejudice to the academic calendar or to merit is being caused as in the present case, from allowing admissions after 30th September. In the present case as aforesaid, there has hardly been about 10 days of studies in MAIT owing to the various intervening events and the petitioners even if admitted to MAIT would not suffer any such prejudice which cannot be made up by extra classes etc. and for which both the petitioners and MAIT have shown willingness. I also find that the Supreme Court in *Dr. Smitha Nath Vs. UOI* (2009) 13 SCC 255 even in case of medical college allowed counselling beyond the stipulated date for seats which had remained to be put for counselling.

15. The University when had allowed MAIT to join the counselling on 13th September, 2010 and when held counselling for admission thereto on 13th September, 2010, ought to have held the counselling for the two ST category & four PH category seats also. The University, before this Court on 29th September, 2010 admitted that it was itself even then considering counselling for the said seats. Thus, the delay between 13th September, 2010 and 29th September, 2010 in holding counselling for the said seats is

attributable squarely to the University. Had the University held the counselling for the said seats on 13th September, 2010 itself as it ultimately did on 30th September, 2010, upon the said seats remaining vacant, the same would have devolved to the General Category well before the prescribed last date of 30th September, 2010. However, there is no explanation whatsoever in this regard.

16. With respect to the argument of the University, of admissions if to be now allowed to the five seats having cascading effect, the Admission Brochure, though provides that candidates who got admission during the first counselling are eligible to join in second counselling if they wish to change the Programme / Institute on the basis of their merit against the available vacant seats, also provides that the students who have taken admission in the second counselling would not be allowed to change the Programme / Institute in the subsequent days of the second counselling. However, I am unable to accept the said contention of the senior counsel for the petitioner. The said provision is applicable only qua the seats which have already been put to counselling. The seats with which we are concerned in the present petition are those which have not been put to counselling as yet. Thus the procedure to be followed therefor is as of the first and second counselling and not of open house counselling. A similar situation had arisen in *Arvind Kumar Kankane Vs. State of U.P.* (2001) 8 SCC 355 also. The Supreme Court approved the judgments of this Court holding that if by

mistake a seat is not included in the initial counseling then the effect is that nobody opts for the same and has to be offered to all the candidates for counseling including those who had taken part in the earlier rounds of counselling. However, finding that the same would upset the counselling which had already taken place, it was held that the said seats have to be offered to the waitlisted candidates even if the said procedure was somewhat unfair to the candidates who took part in the earlier counselling.

17. However, it is only the petitioners in these two petitions who have approached the Court. A Division Bench of this Court has in judgment dated 10th December, 2009 in LPA No.622/2009 titled ***Dr. Manish Patnecha Vs. Chairperson, Counselling Committee, AIIMS***, when finding the applicant entitled to admission and admission being not possible in the year for which the applicant had applied for admission gone to the extent of reserving a seat for the petitioner in the next academic session. In the spirit of the said judgment, I do not see any difficulty in requiring the University to grant admission to the petitioners only to MAIT without going through the entire procedure of admission.

18. WP(C) No.6896/2010 had come before this Court first on 8th October, 2010 and was being taken up along with WP(C) No.6641/2010. Though the petitioner in the said case approached the Court after 30th September, 2010

but in the aforesaid circumstances it is deemed expedient to grant relief to the said petitioner also as to the other petitioner.

19. That would still leave the question of three remaining vacant seats in MAIT. I am of the view that the seats should not be allowed to go waste. I am also impressed with the argument of the MAIT that such vacant seats can play havoc with the balance sheet of the self financing educational Institutes and which would ultimately affect the students studying therein. It is therefore deemed appropriate to make a provision for the said three seats also.

20. The respondent No.1 University is directed to make appropriate provision for admission to the said three remaining seats also within one week of today.

21. Before parting with the case, I may clarify that the view aforesaid has been taken owing to the seats having not been put to counselling / admission at all and would not apply to cases of vacancies occurring after the admissions have been made.

22. The petitions are therefore disposed of by directing the respondent No.1 University to admit the two petitioners to the B.Tech course in the

respondent No.2 Institute and to as aforesaid also make admissions in the similar fashion to the remaining three vacant seats. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

18th October, 2010
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