

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

Date of decision: 3rd March, 2011

+ **W.P.(C) 147/2011 & CM No.277/2011 (for stay) & CM No.2148/2011 (of the petitioner for urging additional grounds)**

GAYATRI & ORS.

..... Petitioners

Through: Mr. R.K. Varshneya, Mr. N.M. Popli & Ms. Sudha Varshney, Advocates.

Versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Amit Bansal, Adv. for R-1 & 2. Mr. Harshit Tripathi, Adv. for Mr. Deepak Anand, Adv. for R-4.

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. The writ petition concerns admission in the respondent University in the course of M. Phil. in African Studies for the academic year 2010. The

genesis of this writ petition lies infact in W.P.(C) No.6731/2010 titled ***Deepak Kumar Vs. University of Delhi*** preferred earlier by the respondent no.4 herein averring irregularities in the admission process. Notice of that writ petition was issued. The respondent University in pursuance to the said notice made enquiries and formed a *prima facie* view that there were irregularities in the admission process; accordingly an Enquiry Committee was constituted and which found irregularities in admission and suggested cancellation of the admissions already made and holding of fresh interviews for admissions. The report of the Enquiry Committee was accepted by the respondent University.

2. The six petitioners herein claim to have been admitted to the said course in pursuance to the procedure which was held by the Enquiry Committee to be irregular. Accordingly, their admissions were cancelled. Aggrieved therefrom the present writ petition has been filed for setting aside the enquiry report and the order of cancellation of their admission and for a direction to the respondent University to continue with the petitioners as students of the said course.

3. It is not in dispute that there were six seats in the said course, of which three belonged to the Unreserved Category and one each to the Other Backward Classes (OBC), Scheduled Castes (SC) and Scheduled Tribes (ST) categories. Of the six petitioners, petitioner no.1 belongs to SC category, petitioner no.2 belongs to OBC category, petitioner no.4 belongs to ST category and other petitioners belong to the Unreserved Category.

4. It is also not in dispute that the method for admission is through a written examination and interview with 50% weightage to be given to the marks of the written entrance examination, 25% weightage to the marks in the interview and remaining 25% weightage to academic record and clearance of JRF/NET.

5. The petitioners herein have impleaded the Head of the Department of African Studies also as the respondent no.3. This writ petition came up first before this Court on 11th January, 2011 when Dr. Suresh Kumar, Head of the Department of African Studies appeared on his own and supported the petitioners rather than the decision of the University of cancellation of admissions owing to irregularity found therein. The counsel for the

respondent University stated that she had no instructions from the said Dr. Suresh Kumar. Notice of the writ petition was issued and the respondent University directed to produce the enquiry report.

6. The matter came up next before this Court on 14th January, 2011 when the enquiry report was produced. As per the enquiry report, the Head of the Department had single handedly made the admissions of the petitioners without involving the other members of the Admission Committee. Upon perusal of the report, it was enquired as to whether the said Dr. Suresh Kumar was present in the Court. Though the said Dr. Suresh Kumar was not present but one gentleman disclosing his name to be Mr. Ramesh Kumar and who had been briefing the counsel for the petitioners, got up and stated that the said Dr. Suresh Kumar was on his way to this Court. This Court found the factum of the petitioners knowing about the movement of Dr. Suresh Kumar to be highly suspect and *prima facie* disclosing collusion between the petitioners and the said Dr. Suresh Kumar. Mr. Ramesh Kumar, who was briefing the counsel on behalf of the petitioners upon being asked his locus, merely stated that he is a friend of the father of the petitioner no.1. In the circumstances, interim relief

sought of stay of fresh selection process initiated was declined and direction was also issued to the respondent University to not involve Dr. Suresh Kumar in the fresh selection process.

7. It was also informed subsequently that the respondent University has instituted an enquiry into the conduct of the said Dr. Suresh Kumar.

8. Dr. Suresh Kumar since then has chosen not to appear. The respondent University has filed a counter affidavit to which rejoinder has been filed by the petitioners. The counsels for the petitioners and the counsel for the respondent University have been heard.

9. The status of the fresh admissions has at the outset been enquired from the counsel for the respondent University. He informs that fresh interviews were held but during the said interviews a doubt was also cast as to the evaluation of the answer sheets of the written examination held earlier and the said answer sheets are now being evaluated by two independent examiners and on the basis thereof, the marks of the written examination and the interviews etc. shall be computed and a fresh admission list shall be brought out.

10. The Enquiry Committee has found that though the written entrance

examination was held on 6th August, 2010 but the date of declaration of result thereof or of the interview was not prescribed. The counsel for the petitioners has contended that the result was put up on the Notice Board of the Department on 17th September, 2010 and which also informed those found eligible, that the interviews were to be held on 22nd September, 2010. The Enquiry Committee found that the notice period given to the candidates to appear in the interview was not sufficient especially for outstation candidates to prepare and appear for the interview. It was further found that the candidates were informed over telephone for appearing in the interviews scheduled for 22nd September, 2010 and four candidates who could not be contacted over the telephone were dispatched notices through courier on 20th September, 2010, for the interview scheduled on 22nd September, 2010.

11. It is further the admitted position that neither could the respondent no.4 be intimated telephonically of the interview nor was he served with the notice dispatched on 20th September, 2010. The counsel for the petitioners has however argued that the respondent no.4 remained to be so served with the notice of the interview for his own fault for the reason of

having not given his correct address. Inconsistency is also pointed out in the address furnished by the respondent no.4.

12. I have enquired from the counsel for the petitioners as to how the students were to come to know as to when the result of the written entrance examination was to be declared. The counsel replies that the students were supposed to visit the Department every day to find out whether the result had been declared or not.

13. I find the said explanation to be unacceptable. In the present day and time when students from all over the country seek admission in the respondent University, being a Central University and when travelling within the National Capital Territory itself is time consuming and costly, it is not possible to expect the students to visit the University everyday to find out as to whether the result has been declared that day or not. Neither in the Bulletin for information nor on the website of the respondent University, intimation of declaration of result, was admittedly given. The report of the Enquiry Committee thus cannot be faulted on this ground alone.

14. The counsel for the petitioners has challenged the enquiry report

also by taking fresh grounds. He has on the basis thereof sought to argue that the findings of the Enquiry Committee are not borne out from the statements recorded by the Committee. It is further contended that the Enquiry Committee selectively recorded the statements and did not record the statements of all concerned. It is also urged that the petitioners who had already been admitted and had started attending classes were not given any opportunity of being heard before their admissions were cancelled.

15. The counsel for the respondent University in opposition has cited ***Chairman, All India Railway Recruitment Board Vs. K. Shyam Kumar*** (2010) 6 SCC 614 and ***B. Ramanjini Vs. State of A.P.*** (2002) 5 SCC 533 holding that there is no right of such hearing. The counsel for the petitioners has sought to distinguish the said judgments by contending that the said judgments relate to a case of mass copying and would not apply to the present case.

16. The ratio of the aforesaid judgments is that when the entire examination/selection process is cancelled/set aside for the reason of irregularity therein, there is no right of hearing. The said ratio would squarely apply to the present case also where the respondent University,

did not intimate to all concerned or give to all concerned the opportunity to participate in the interview.

17. The Supreme Court in ***Bihar School Examination Board Vs. Subhas Chandra Sinha*** (1970) 1 SCC 648 held that if it is not a question of charging anyone individually with unfair means but to condemn the examination as ineffective for the purpose it was held, it is not necessary to give an opportunity to the candidates if the examination as a whole is being cancelled. It was held that where no particular candidate is charged with use of unfair means, it would be wrong to insist that a detailed inquiry should be held or opportunity given to the candidates who had appeared in examination. It was further held that an examination body is entitled to cancel its own examination when it is satisfied that the examination was not properly conducted. It was yet further held that an inquiry with a right to representation is not required to precede every decision and the universities are responsible for their standards and the conduct of examination.

18. The Supreme Court in ***Madhyamic Shiksha Mandal, M.P. Vs. Abhilash Shiksha Prasara Samiti*** (1998) 9 SCC 236 deprecated the order

of High Court interfering with the decision taken by admission Body to treat examination as cancelled; to the same effect is the judgment in ***Dr. Ambedkar Institute of Hotel Management, Nutrition & Catering Technology, Chandigarh Vs. Vaibhav Singh Chauhan*** (2009) 1 SCC 59. In fact recently in ***All India Railway Recruitment Board Vs. K. Shyam Kumar*** (2010) 6 SCC 614 Wednesbury principles were applied while reviewing the decision for conducting the re-test.

19. Once the petitioners are shown to be the beneficiaries of the result declared without giving sufficient opportunity to all concerned to participate in the interview, even in the absence of any direct involvement of the petitioners in the same, the admissions obtained by them are liable to be cancelled and the University was fully justified in cancelling the admission. It is the primary duty of the Body that conducts the examination to maintain the purity and strict standards of the examination. It is also expected to devise every method to put an end to malpractices and to prevent one or the other of the examinees obtaining an unfair advantage over the other. When once admission is obtained by practicing fraud or is granted under a mistake, such admission can be withdrawn as the power to

admit includes the power to withdraw the admission. The only condition to be specified is that it should be shown that such admission is obtained either under fraud or misrepresentation.

20. I also do not find any merit in the challenge to the report/findings of the Enquiry Committee. This Court is not to sit in appeal over the said findings/report. The procedure pursuant to which the petitioners were admitted has been found defective by me also as hereinabove.

21. The only other argument raised by the counsel for the petitioners is that since only the respondent no.4 had complained about the admission process and he belongs to the SC category, the admission to the three seats in General Category and to the two seats in OBC and ST categories ought not to have been set aside. Reliance in this regard is placed on ***Kumari Anamica Mishra Vs. U.P. Public Service Commission, Allahabad*** AIR 1990 SC 461.

22. As far as the aforesaid contention is concerned, the Supreme Court in ***Indra Sawhney v. UOI*** 1992 Supp. (3) SCC 217 and in ***R.K. Sabharwal v. State of Punjab*** (1995) 2 SCC 745 has held that a candidate

belonging to a reserved category has a right to seek admission in the non-reserved category also. It thus cannot be said that since the challenge to the admission was only by the respondent no.4, the admissions made to the unreserved category, ought not to have been disturbed and the admission only to the one seat for SC category should have been set aside.

23. Moreover, I am of the view that once the facts show that the petitioners have been wrongfully shown a preference by the Head of the Department, the petitioners on such ground alone are not entitled to any discretionary relief. The students who are prepared to start their academic career by indulging in trickery and deceitful means can expect no sympathy from this Court. Such students would destroy the fabric of the society. Moreover once the University has itself found irregularity in the process by which the petitioners were admitted, to create confidence in the student community as a whole it is necessary that this Court does not interfere with the said process. Allowing an advantage gained by wrongful means to be retained will jeopardize the purity of selection process itself and engender cynical disrespect towards the judicial process and embolden errant authorities and candidates into a sense of complacency and impunity

that gains achieved by such wrongs could be retained.

24. The writ petition is therefore dismissed. I refrain from imposing costs on the petitioners.

**RAJIV SAHAI ENDLAW
(JUDGE)**

MARCH 3rd, 2011
Bs/pp