

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 02.09.2011

W.P.(C) No.4834/2011 and C.M.No.9808/2011

Rajat Goel

.....Petitioner

Through: Ms.Shobha, Ms.Bijoylashmi and
Ms.Hema Shekhawat, Advocates

Vs.

Ministry of Human Resource & Development
(Govt. of India) & Anr.

.....Respondents

Through: Mr.Ankur Chhibber, Advocate for
the respondent No.1.
Mr.Nandish Chudgar and
Mr.Shamik Sanjanwala, Advocates
for the respondent No.2.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may Yes
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported Yes
in the Digest?

KAILASH GAMBHIR, J.Oral :

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks to direct the respondents to fill the vacant seats for the batch 2011-2013 and call upon the petitioner for admission in IIM Shillong.

2. The petitioner before this court is a student aspiring to seek admission in Post Graduate Programme in Management Course 2011-2013 Batch in IIM Shillong i.e. the respondent no. 2 herein, after having qualified the common entrance test (CAT 2011-2013) with 94.16 percentile. The case of the petitioner is that he had applied to seek admission in respondent no.2 institute and was shortlisted for personal interview and group discussion which was held on 22.3.2011. It is further the case of the petitioner that his name was shortlisted for admission in the said course and his rank was 54 in the augmented waiting list of general category. The

petitioner has further averred that he continued to check his status from the website of the respondent no.2 and on 13.6.2011, his rank was shown at serial no.4 in the said waiting list as per the list placed by the respondent on their website. On telephonically enquiring, the petitioner also got to know that there were still 14 vacancies to be filled up by the respondent no.2 and being at rank no.4 in the augmented waiting list, the petitioner had a legitimate expectation to get admission in the said course in respondent No. 2 institute. It is also the case of the petitioner that on 5.7.2011, the petitioner got two mails from the web based on-line system of the respondent no.2, one with the information that the admissions are closed and the other one stating that the petitioner is still at the position no.4 in the waiting list. After having learnt the said status, the petitioner vide email dated 6.7.2011 made a request to the respondent no.2 to consider his candidature for the grant of admission in view of the availability of the seats but because of no response from the side of the respondent no.2, the petitioner vide his

application dated 7.7.2011, moved by him under the Right to Information Act sought information from the respondent no.1 regarding the funds invested by the Central Government in IIMs, especially the respondent no.2 and in reply thereto, the respondent no.1 supplied the relevant information which shows that the Government is incurring an expenditure of Rs. 120.67 crores (non-recurring over a period of 5 years) and Rs.45.08 crores (recurring over a period of six years) for the IIM Shillong, and the grant for IIM Shillong for the year 2010-2011 was Rs.2519 lacs. The petitioner has also averred that the annual fee charged by the respondent no.2 per student is Rs.5 lacs and if 14 seats remain vacant then the same will result in a total loss of Rs.140 lacs. It is also the case of the petitioner that it is not for the first time that the respondent no.2 is very casually leaving the seats unfilled as last year respondent no.2 gave admission to only 94 students and thereby wasted 26 seats and caused a loss of approximately 2.5 crores and still the respondent no.1 is not taking any action against the respondent no.2 which is acting

in such an arbitrary manner against the larger public interest at the cost of public money. In the background of the aforesaid facts, the petitioner has preferred the present petition.

3. Strenuously arguing for the petitioner, Ms. Shobha, learned counsel for the petitioner submits that there were in all 315 candidates belonging to reserved category who were shortlisted and called for GD/interview and out of those only 183 candidates appeared in group discussion/personal interview and therefrom only 149 candidates were found suitable by the respondent no.2 to be offered admission in the said course and were placed in different rank lists. The contention of the counsel for the petitioner is that out of the said 149 candidates, only 9 candidates accepted the admission while 140 candidates did not come forward to seek admission in the said course and this fact would show that none of the candidates belonging to the reserved category are any more interested to seek admission in the said course. Comparing this position with

the candidates belonging to the general category, counsel submits that out of 341 candidates of general category only 97 candidates had accepted the admission thus leaving 244 general category candidates in its kitty who satisfy the laid down criteria to seek admission in the said course. Counsel thus urges that only formality which is required to be done by the respondent no.2 is to send letters to all the candidates belonging to the general category to fill the said 22 vacant seats while no such offer can be extended to the candidates belonging to the reserved category as already they have not come forward to take admission despite offer made to them by the respondent no.2. Counsel for the petitioner also took a strong exception to the plea raised by the respondent that it would not be appropriate to give midstream admission with the argument that the petitioner had timely approached this court by filing the present petition on 11.7.2011, and therefore the right of the petitioner cannot be defeated on such a flimsy stand that the course has now reached midstream, when clearly the action of the respondent no.2 in

not filling the vacant seats is illegal and arbitrary on the very face of it. Counsel further argued that it should be rather the endeavour of the respondent no.2 to fill the said seats as the wastage of the seats would not only be detrimental to the interest of the aspiring candidates but the same is also a waste of public funds. In support of her arguments, counsel for the petitioner has placed reliance on the following judgments.

- (1) Dr.Jeevak Almast Vs. UOI (1988) 4 SCC 27
- (2) Miss Asha Kumari Vs. The Rajendra Agricultural (Patna High Court) AIR 1997 Pat 102
- (3) Dr.A.V.Gopalkrishnan & Ors. Vs. Byju N. & Ors. (Kerala High Court) AIR 1999 Ker 10
- (4) Directorate of Medical Education Vs. Dr. K.Janaki (Madras High Court)

4. Opposing the present petition, Mr. Nandish Chudgar, learned counsel for the respondent no.2 submits that the respondent no.2 has already filled all the general category seats and in fact had accommodated 97students, more than the 90 seats allocated for the general category. Counsel further took a stand that respondent no.2 completed

the entire process of admission in the general category as well as in the reserved category so as to start the session for the academic year 2011-2013 from 2.7.2011. Counsel further submits that so far the reserved category candidates are concerned, a total number of 315 candidates were shortlisted and were called for group discussion and personal interview and out of the said number, offer of admission was made to 149 candidates as per their rank in the merit list and the waiting list. Counsel has also pointed out that in all there were 31 reserved seats which comprised of 4 seats in the category of differently abled candidates, 9 seats for scheduled tribes and 18 seats for scheduled castes. Counsel further pointed out that in the reserved category, 93 candidates who were in the prime list were first offered admission on 25.4.2011 against the 31 seats and thereafter all 149 candidates were offered the seats and this process continued till 9.6.2011 when the last offer to reserved category candidates was made by the respondent no.2. The contention of the counsel for the respondent no.2 is that 140 reserved

category candidates who were shortlisted by the respondent no.2 did not come forward to seek admission and the entire process to fill the said reserved category seats came to an end on 9.6.2011, and the admissions to the said course were declared closed by the respondent no.2 on 22.6.2011 to start the academic session of the said course from 2.7.2011.

5. Counsel for the respondent further submits that the academic session of the said course has started on 4.7.2011 and as of now the foundation course is already complete for the 2011-2013 batch and the other regular courses are almost half completed. It is also the plea of the respondent that the kind of studies which the students are required to undertake at IIM, Shillong are that on an average a student is expected to contribute at least 13 hours of regular learning and if at this stage the direction is given by this court to fill the said 22 vacant seats then it will take about a month for the students to undergo the foundation course and thereafter the student would attend regular classes with the other students and such a situation would be

practically impossible as the students would not be able to undertake such a strenuous exercise and it will also set a wrong precedent to allow admission at the midstream stage. Counsel also submits that in any case the petitioner cannot claim his right to take a seat as he belongs to the general category as the 22 seats which remained unfilled belong to reserved category. Counsel thus submits that keeping in view the strict time schedule of this academic session this process cannot be undertaken at this stage and it would be humanly impossible for the respondent no.2 to grant midstream admissions when already the other students have completed their foundation courses. Based on these submissions, counsel for the respondent contends that the present petition filed by the petitioner belonging to the general category deserves dismissal. In support of his arguments, the counsel has placed reliance on the following judgments:

1. State of Uttar Pradesh vs. Anupama Gupta (1993)Supp 1 SCC 594
2. Subodh Nautiyal vs. State of Uttar Pradesh (1993)Supp1SCC 593
3. Medical Council of India vs. Madhu Singh 200297)SCC 258

4. Krishna Priya Ganguly vs. University of Lucknow 1984(1) SCC 307

5. Union of India vs. R.Rajeshwaran 2003(9) SCC 294

6. Vijay L.Deshmukh vs. The Dean, Medical College, Nagpur AIR 1987
Bombay 56

6. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.

7. The petitioner before this Court is an IIM aspirant seeking admission in the course of Post Graduate Programme in Management with the IIM, Shillong, respondent No.2 herein. It is not in dispute between the parties that the petitioner had duly qualified the highly competitive entrance test, CAT, having secured 94.16 percentile. Indisputably, the success in said Common Entrance Test (CAT) only entitles a candidate to seek admission in various IIMs, imparting education in the field of management and certainly the best student gets admission in an IIM according to his merit and the students higher in rank in the CAT results get a chance to get admission in the higher placed IIMs and in any case no

student after doing well in the CAT examination would leave any stone unturned to secure his admission in any of the IIMs. It is also not in dispute that every IIM has further laid down its own stage wise selection criteria to give admission to the candidates qualifying the said CAT exam and it is only after these candidates satisfy the laid down requirements of those IIMs where they give option in order of priority, that they are able to finally get admission. At a given time, any candidate may try his luck not confining to one or two such institutes, but may be more, so as to ensure his admission in one of the IIMs. The petitioner herein had opted to seek his admission in IIM, Shillong and he was shortlisted for personal interview and group discussion which was held on 22.03.2011. The petitioner was also declared successful in the said test conducted by the respondent No.2 and was shown at Sl.No.54 in the augmented waiting list in the general category. As per the petitioner, he continuously checked the website of the respondent No.2 and his rank from the period from 25.04.2011 to 12.06.2011 remained at the same position i.e.

rank No.54. It is also the case of the petitioner that on 13.06.2011, his position improved to rank No.4 in the general category and this status of the petitioner at Sl.No.4 in the waiting list continued till the closing of the admissions by the respondent No.2. The petitioner was shocked when he came to know that the respondent No.2 was yet to fill 14 seats and even with the availability of these seats, the petitioner was not accommodated, although he was at Sl.No.4 in the waiting list of the general category. As per the petitioner, he took up the matter with the respondent No.2 vide his email dated 06.07.2011 with a request to grant him admission in view of the availability of the seats, but there was no response from the side of the respondent No.2. The petitioner has also raised a grievance that on one hand, the Central Government has been investing several crores of rupees to create more opportunities for the aspiring management students and on the other hand the respondent No.2 has closed the admissions without filling all the vacant seats, causing immense national waste. The petitioner has also submitted

that the grant-in-aid released by the Central Government in favour of the respondent No.2-institute for the year 2010-11 is Rs.2519 lacs and non-filling of the vacant seats by the respondent No.2-institute is against the larger public interest at the cost of wasting public money. The petitioner has also submitted that out of 2,40,000 candidates who had appeared in the CAT exam, only about 1800 candidates were declared successful and even this small percentage of successful candidates are not able to secure admission in IIMs, as the vacancy position in IIMs nowhere matches the candidates who qualify the CAT examination and this wastage of seats by all the IIMs further deprives the successful candidates. The petitioner has also taken a stand that he cannot be denied admission even at this stage on the plea of the respondent that the said admission being at the midstream stage when the students have already completed their foundation course and the petitioner will not be able to catch up in studies with other students. The contention raised by counsel for the petitioner is that the petitioner cannot be made to suffer for

the fault of the respondent No.2, as it was incumbent upon the respondent No.2 to have ensured filling up the entire seats before the start of the academic session.

8. From the gamut of facts as stated herein above, the question that arises for consideration before this court is whether the petitioner is entitled for admission in the said course and the respondent no.2 has arbitrarily and illegally denied him admission. The petitioner admittedly belongs to the general category and the vacancies in the respondent no.2 institute are of the reserved category, the sum total of differently abled, scheduled tribes and scheduled castes. Undoubtedly, the unfilled seats from the reserved category could not be filled as out of 149 candidates who were offered seats, only 9 candidates had taken admission. The process which was followed by the respondent No.2 to fill the said reserved seats was that 149 candidates belonging to the reserved category (SC+ST) and differently abled category were shortlisted and out of the same 93 in the order of merit were offered seats on 25.04.2011, 24 candidates from the

wait list No.1 were offered seats on 5.5.2011, 18 candidates from wait list No.2 were offered seats on 13.05.2011, 7 candidates were offered seats from wait list No.3 on 21.05.2011, 5 candidates were offered from wait list No.4 on 31.05.2011 and the remaining 2 candidates from the wait list No.5 were offered the seats on 09.06.2011. As per the respondent No.2, the entire process of admissions after following several stages of scrutiny came to be completed on 22.06.2011 and the said process could not have continued further to start academic session of the said course from 02.07.2011. To fill the reserved category seats, it is only when the candidates belonging to the reserved category who are selected after having qualified CAT exam do not come forward to take admission, the reserved category seats can be converted into the general category seats. In the facts of the present case, the respondent No.2 had shortlisted 315 candidates belonging to reserved category i.e. 43 differently abled category, 88 Scheduled Tribes and 184 Scheduled Castes. Out of the said 315 candidates, the respondent No.2

shortlisted 149 candidates on the basis of GD/personal interview who were found deserving in the order of merit and they were then placed in the prime list and the waiting list as per their rank.

9. It is settled legal position that the reserved category seats must be exhausted from the reserved category alone and it is only when the candidates belonging to the reserved category are not available then only the reserved category seats can be converted into general category seats. In the recent decision of the Apex Court in the case of ***P.V.Indiresan Vs. Union of India and Ors.*** C.A.7084/2011 decided on 18.08.2011, the Apex Court, while dealing with the issue of as to what should be the extent of cut off marks for admission of OBC students in the Central Educational Institutions, whether the same should be 10% below the cut off marks of general category candidates or 10% below the minimum eligibility criteria/qualifying marks, held as under:-

"41. We therefore, dispose of this appeal, affirming the decision dated 7.9.2010 of the learned Single Judge of the High Court,

subject to the clarifications/observations above, and subject to the following conditions:

(i) In regard to the admissions for 2011-2012, if any Central Educational Institution has already determined the 'cut-off marks' for OBCs with reference to the marks secured by the last candidate in the general category, and has converted the unfilled OBC seats to general category seats and allotted the seats to general category candidates, such admissions shall not be disturbed. But where the process of conversion and allotment is not completed, the OBC seats shall be filled by OBC candidates.

(ii) If in any Central Educational Institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students.

Only if OBC candidates possessing the minimum eligibility/qualifying marks are not available in the OBC merit list, the OBC seats shall be converted into general category seats.

(iii) If the last date for admissions has expired, the last date for admissions shall be extended till 31.8.2011 as a special case, to enable admissions to the vacant OBC seats."

Thus the above decision of the Supreme Court, though is in regard to the OBC, which category does not exist in the case of admissions to the respondent No.2 in the present case, shows the essence of the reservation of seats and that they cannot be converted to general category till the time the pool of reserved category candidates is not exhausted.

10. So now in the facts of the case at hand, if the respondent no.2 undertakes the process to fill in the 22 vacant seats, it has to do it from the reserved category by

calling in the candidates from the said list further below from 149 rank, to whom admission was never offered, send them offer letters, shortlist again and put them in three merit lists and fill those 22 vacant seats. In the event of any of the 22 seats not getting filled from the said category, then the same shall be converted to general category and then offered to the waiting list candidates. In the first case, if all the reserved seats are filled in by the reserved category candidates, the petitioner does not stand any chance of getting admitted and in the event of the latter, if the seats, if not filled wholly by the reserved category candidates, are offered to the general waiting list, he is still at the fourth rank and there is no cent percent chance of him getting admitted. Therefore, in both the cases, the petitioner does not have a clear right and chance of getting admitted and the conducting the entire admission process at this stage at the cost of the time and money of the respondent no.2 just to try the luck of the petitioner is nothing but a gamble. The petitioner speculated, and positively so, that had the seats been filled in toto he

would have got the admission which led him to file the present petition. However, with all empathy to the hopes of the petitioner, he has not been able to establish his incontrovertible claim to the admission in the said course and thus there still looms a shadow of doubt over his luck as to whether he would have got the admission or not. This court thus however cannot pass any direction in favour of the petitioner based on surmises and conjectures.

11. As far as the argument of the respondent is concerned that no midstream admission can be granted as has also been reiterated by the Supreme Court in a number of decisions cited by the respondent, it can be but unequivocally stated that the petitioner approached this court at the earliest opportune time on 11.7.2011 after having to know that the admissions have been closed by the respondent no.2 on 5.7.2011 and if the time has been taken by the process of the court or otherwise, the petitioner cannot be made to bear the brunt of the same. The stage of the midstream where the

foundation course has already been finished and other course finished half way could have been avoided by the respondent had it taken care to fill the said 22 seats as per due process at the stage of admissions itself and now the respondent cannot turn around and blame the petitioner for its own Frankenstein. Hence, the argument of the respondent No.2 that to give midstream admission to the petitioner would set a wrong precedent cannot be accepted. The judgments cited by the respondent hence would not be applicable in the light of the foregoing.

12. The Indian Institute of Management or IIMs, as they are called, are India's elite business schools and are a brand to reckon with, both in India and abroad. The IIM graduates form not only the cream of India's business bigwigs but are wooed by the foreign companies alike. The tag of being an IIM graduate is for a lifetime and it is a dream of many a lot to be part of this prestigious alumni. IIM Shillong is the younger lot of the IIMs, established to give the IIM experience to more hopefuls. Such a premier institute is

expected to act fairly and transparently and justify the money and funds that are allocated for them by the Government. The approach of the respondent no.2 of not filling all the 120 seats for the said course of PGP is whimsical and capricious to say the least. It is not expected of such a highly reputed educational institute to act in an arbitrary manner and had this petitioner not been before the court, the practice of leaving the seats vacant unreasonably by the respondent no.2 would not have come to light. It is the bounden duty of every educational institute to justify the funds being diverted for them. In the time of cut throat competition today, every seat can make or mar the life of a student and the amount of time and effort that goes to prepare and finally qualify such a competitive examination like CAT goes down the drain due to the high handedness of the institutes in wasting the seats, despite having world class infrastructure and top notch faculty at their disposal. This court severely condemns the unsavoury and unpalatable practice of not filling the 22 vacant seats of the respondent no.2 with the admonition that

in future its conduct in this regard should not be dubitable. There can be no dispute with regard to the judgments of the Madras High Court, Kerala High Court and Patna High Court cited by the petitioner holding that the seats should not go waste in educational institutes and therefore for wasting the seats and now the time having passed to undertake the entire admission process again, this court deems it appropriate to impose a cost of Rs. 1 lakh on the respondent no.2 to be paid to the Prime Minister's National Relief Fund (PMNRF) within a period of 4 weeks from the date of this order.

13. Hence, be that as it may, this Court cannot give relief to the petitioner on the ground of misplaced sympathy because of there being no clear legal right of the petitioner to admission in the said course. The case of the petitioner is a shot in the dark and the court cannot direct the respondent to undertake the whole process just to find out the fate of the petitioner.

14. In the light of the above discussion, there is no merit in the present petition and the same is hereby dismissed.

KAILASH GAMBHIR, J

September 2, 2011