

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

Judgment Reserved on: 19th November, 2010

% Judgment Pronounced on: 7th January, 2011

+ LPA No.820/2010

**GGSIP UNIVERSITY
THROUGH ITS REGISTRAR**

..... Petitioner

Through: Mr. Mukul Talwar with
 Mr. Sradhananda Mohapatra, Advs.

versus

DHRUV SINGHAL & ANR.

..... Respondents

Through Mr. Ravi Gupta, Sr. Advocate with
 Mr. Swastik Singh, Sr. Advocate with
 Mr. Swastik Singh, Advocate for
 Respondent No.1.
 Mr. Lalit Kumar, Advocate for
 Respondent No.2.

LPA No.822/2010

**GGSIP UNIVERSITY
THROUGH ITS REGISTRAR**

..... Petitioner

Through: Mr. Mukul Talwar with
 Mr. Sradhananda Mohapatra, Advs.

versus

SHRISHTI CHANDOK & ANR.

..... Respondents

Through Mr. Ravi Gupta, Sr. Advocate with
 Mr. Swastik Singh, Sr. Advocate with
 Mr. Swastik Singh, Advocate for
 Respondent No.1.
 Mr. Lalit Kumar, Advocate for
 Respondent No.2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers 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

DIPAK MISRA, CJ

In these intra-Court appeals preferred under Clause 10 of the Letters Patent, the challenge is to the composite order dated 18th October, 2010 passed by the learned Single Judge in WP(C) No.6641/2010 and WP(C) No.6896/2010 and the common order dated 15th November, 2010 passed in R.P. No.459/2010 and R.P. No.457/2010. Regard being had to the similitude of the controversy involved, the facts in WP(C) No.6641/2010 are exposited herein.

2. The respondent No.1 to the present appeal invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India stating, inter alia, that he had appeared in the Common Entrance Test (CET) conducted by the appellant – University on 5th June, 2010 for admission to Engineering & B.Tech programmes in the Institutes / Colleges of the appellant - University as well as its affiliates. The respondent No.1 secured the rank of 15070 in the merit list. As per the admission brochure published by the appellant – University, the admission process was required to be completed by 30th September, 2010 but the second round of counselling for admission in the Respondent No.2, i.e., Maharaja Agrasen Institute of Technology (MAIT), an Institute / College affiliated to the University, commenced only on 13th September, 2010 and was stated to be continuing at the time of filing of the petition on 28th September, 2010. It was contended

that certain colleges applied to the University for filling up the vacant seats even after the conclusion of the second counselling by 30th September, 2010. The respondent No.1 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. Despite the same, the University did not admit the respondent No.1 to the MAIT. In that backdrop, the writ petition was filed to issue an appropriate writ to the University to admit him to the B.Tech in MAIT in the academic year 2010-2011. When the matter was taken up on 29th September, 2010 by the learned Single Judge, a stand was put forth by the college that seats were vacant and a stance was set forth by the University that six seats of the Scheduled Tribe (ST) category were not put to counselling till then. It was also stated 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 some seats remained vacant, they were to be offered to the General category candidates. It was urged that in the General category candidates, the respondent No.1 was placed in the rank of 15070 and, hence, was unlikely to be admitted in that category. It was brought to the notice of the learned Single Judge 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 and, accordingly, 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. As revealed, out of the six seats, two for the ST category and four for the Physically Handicapped (PH) category were put for counselling but no ST category candidate turned up and the two ST category seats thus devolved upon the SC category out of which only one could be filled up. None of the four seats for the PH category could be filled up and, accordingly, the said seats devolved upon the General category. It was contended by the University that the seats could not be filled up after 30th September, 2010 in view of the decision in *Mridul Dhar v. Union of India*, (2005) 2 SCC 65. In the counter affidavit, the University put the stand that the ST and 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 by which time the counselling for the ST and PH category was already over.

4. A rejoinder affidavit was filed urging, inter alia, that the delay in admission would not interfere with the schedule of studies and the admission brochure did not affect the B.Tech course.

5. The learned Single Judge appreciating the pleadings brought on

record and the submissions canvassed at the Bar came to hold as follows:

“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.”

6. After so stating, the learned Single Judge repelled the submission of the University that if it is to allow admission to the five seats, it would have cascading effect. The learned Single Judge referred to the decision in ***Dr. Manish Patnecha v. Chairperson, Counselling Committee, AIIMS*** decided on 10th December, 2009 in LPA No.622/2009 wherein it was held that the appellant therein was entitled to admission in the next academic year as he was entitled to admission in the current session and, accordingly, directed that the relief of admission be extended to him.

7. Be it noted, the learned Single Judge in WP(C) No.6896/2010 has observed that though the writ petitioner had approached the court after 30th September, 2010, yet it was expedient to extend the relief to him. After so

holding, he further came to hold that the seats should not go waste and the University shall make appropriate provision for admission to all the seats within one week from the date of receipt of the order. The learned Single Judge further gave a justification that he has taken the said view regard being had to the factum that the seats had not been put to counselling / admission at all and would not apply to the cases of vacancies occurring after the admission had been made.

8. Be it noted, the applications for review filed before the writ court faced rejection by order dated 15th November, 2010.

9. We have heard Mr. Mukul Talwar, learned counsel for the appellant, Mr. Ravi Gupta, learned senior counsel for the respondent No.1 and Mr. Lalit Kumar, learned counsel for the respondent No.2.

10. It is submitted by Mr. Talwar that on 30th September, 2010, the University had attempted to conduct a counselling session for the six seats but no counselling for the said seats could be held as out of the two ST seats, one was in the State quota and the other was for the All India category and no candidate turned up for counselling in this category even though a notice had been posted on the website of the University on 29th September, 2010 itself and, hence, the seats were converted to SC seats but even then only one seat could be filled up. It is urged by him that the University had

received 15 number of applications from various candidates who had qualified in the CET of the B.Tech course but had been unable to get admission in the respondent No.2 Institute and from the said applications it is clearly vivid that at least 9 of these students had better rank in the CET as compared to the writ petitioner. It is his submission that if the direction of the learned Single Judge is complied with, it would tantamount to ignoring the merit of the candidates and the students who are lower in the rank would only get the benefit which is not permissible.

11. The learned counsel for the respondent No.1 submitted that the order passed by the learned Single Judge cannot be found fault with inasmuch as counselling should have been held for the General category and the University had not offered any explanation for the same. It is urged by them that the candidates who are not vigilant cannot get the benefit whereas the respondent immediately approached the court and, therefore, were entitled to get the admission. To bolster his submission, he has placed reliance upon the decisions rendered in *U.P. Jal Nigam and another v. Jaswant Singh and another*, (2006) 11 SCC 464, *Vikram Dhillon v. State of Haryana and others*, (2007) 9 SCC 408 and the decision rendered in *Surender Singh and another v. DSSSB and others* in LPA No.65/2008 decided on 3rd November, 2008.

12. To appreciate the rival submissions raised at the bar, we have

carefully perused the material brought on record and the findings recorded by the learned Single Judge. It is worth noting that the factual position is not disputed. The question that emanates for consideration is whether the respondents could have been extended the benefit of admission solely because they approached the Court despite the fact that the persons who were more meritorious were not called for counselling and not extended the benefit of admission. The learned Single Judge is correct in his finding that had the University held the counselling for the seats on 13th September, 2010 which it did on 30th September, 2010, then the same would have devolved to the General category well before the prescribed last date, i.e., 30th September, 2010. It is also perceptible that he has taken note of the fact that certain candidates in the General category were much higher in rank than the writ petitioners. In *U.P. Jal Nigam* (supra), a two-Judge Bench of the Apex Court had held that when the respondents therein had acquiesced in accepting the retirement and did not challenge the same in time, the court cannot come to the rescue of such persons when they themselves are guilty of laches. In the said case, the Apex Court restricted the relief to the persons who had filed the writ petitions when they were in service or who have obtained interim order for their retirement. Their Lordships applied the doctrine of delay and laches. Be it noted, in the said case, the employees who retired attaining the age of 58 years long back approached the High Court on the basis of a decision rendered in *Harwindra Kumar v. Chief*

Engineer, Karmik, (2005) 13 SCC 300 and the High Court granted relief to them for continuing in service upto the age of 60 years. The Apex Court took note of the plea canvassed by the Nigam about the financial burden to the tune of Rs.17,80,43,108/- which would completely ruin the financial condition of the Nigam. Taking these aspects into consideration, relief was not granted. In our considered opinion, the case related to service benefits of the employees who had gone into slumber and only woke up after a judgment was delivered in favour of some other employees. The present one is a case where the claim was for devolving of particular seats to the General category. In this compartment, we are disposed to think that the concept of a vigilant litigant or a non-vigilant litigant would not come into play as merit would be the sole criteria. Thus, the decision in *U.P. Jal Nigam* (supra) is distinguishable.

13. In the case of *Vikram Dhillon* (supra), the petitioner prayed for issue of a mandamus commanding the State of Haryana and other state authorities to grant admission to the petitioner in Bachelor of Dental Surgery (“BDS”, for short) in open category in Government Dental College, Rohtak for the academic year 2004-2005. Taking note of various facts, their Lordships have held thus:

“25. So far as the factum of attendance at “second” and “third” counselling is concerned, the fact has not been denied. On the contrary, it is admitted by Respondent 9

in his affidavit. But, the petitioner has not expressly and unequivocally stated that he was present on 30.9.2004 when Respondent 6 Anusha Singh was granted admission. According to Respondent 9, the petitioner was not present. Up to 29.9.2004, no vacant seat was available at Government Dental College, Rohtak. It was only on 30.9.2004 that because of default in payment of fee by three candidates, three vacancies were to be filled in at Rohtak. According to Respondent 9, the seats were filled by the candidates who were present on that day and admission was granted to those students who were eligible. Respondent 6, though she was at Sl. No. 442, got admission as she was present.

26. In our opinion, there is intrinsic evidence also which goes to show that probably the petitioner was not present on 30.9.2004. Admittedly, Respondent 6 Anusha Singh was granted admission on 30.9.2006. It is the case of the petitioner from the beginning that on or about 17.10.2004, the petitioner came to know that admission was illegally granted to Respondent 6 though her rank was 442 and rank of petitioner was 423. He, therefore, submitted a representation on 19.10.2004. Had the petitioner been present on 30.9.2004, he would have objected to the admission of Respondent 6. Again he would have immediately come to know about her admission. In that case, he would have instantly approached the authorities putting forward his claim, but it was not done. In fact, a representation was made for the first time after about 18 days stating therein that he came to know on 17.10.2004 that admission was given to Respondent 6 ignoring his legitimate claim. In the circumstances, in our opinion, grant of admission to Respondent 6 on 30.9.2004 cannot be cancelled at this stage.

41. Before closing the matter, we may observe one thing more. As already noted earlier, as early as on 16.11.2005, when the matter was heard by this Court, a grievance was made by the petitioner that though he was higher in rank, admission was illegally given to Respondent 6 who was lower in rank. It was a back-door admission, sacrificing merit and was granted by Dr. (Major General) Virendra Singh, Director of Pt. B.D.

Sharma Postgraduate Institute of Medical Sciences, Rohtak. The learned Counsel appearing for Respondents 1, 2 and 8 did not “seriously dispute the allegation about the back-door admission having been granted to Respondent 6 as alleged by the petitioner”. The Court further observed:

"Learned Counsel further states that, in fact, the said Director had granted other similar admissions as well and some enquiries are pending against him."

After so stating, their Lordships proceeded to observe as follows:

“42. ... It is the duty of the State Government to see not only that the officers act in consonance with law, but also to ensure that no injustice has been done to meritorious students.”

14. In view of the facts in the said case, it is luminescent that the legitimate claim of the meritorious candidate was ignored and someone below the rank was given admission. The present case frescoes the reverse position inasmuch as a less meritorious candidate seeks to march out the more meritorious candidate. Thus, the ratio laid down therein is of no assistance to the respondents.

15. A Division Bench of this Court in ***LPA No.657/2010*** vide order dated 28.9.2010 distinguished the decision in ***Ashok Kumar Thakur v. Union of India***, (2008) 6 SCC 1 and expressed the view thus:

“Relying on the said judgment, an edifice is built that when an individual comes to a Court of law, it is

obligatory on the part of the Court to grant him relief and not to the others even if they belong to the OBC category as a class.

On a careful perusal of the aforesaid paragraph, we are unable to appreciate the submission of Mr. Khan as the Apex Court has not so stated.

What the learned Single Judge has stated that the writ petitioner does not have indefeasible right to get admitted in the OBC category but all are entitled to be considered in the OBC category next in queue. The counseling has taken place because of the enhancement of seats. In our considered opinion, the direction given by the learned Single Judge in this regard cannot be faulted with when an individual comes and claims there should be reservation under the Act in respect of the OBC category and the Court accepts the submission, the benefit has to flow in favour of the class. The students who had participated in the examination and got higher ranks could not get the benefit as the reservation was not fixed by the University. When the reservation has been directed to be fixed by the University in respect of a particular college or an institution, there has to be counseling in respect of all the candidates who were left out and not only the appellant solely because he had come to fight a common cause.

True it is, the said principle may not be applicable when someone comes to fight for his seniority or promotion or any other legal right but in a case of present nature, the direction given by the learned Single Judge, in our considered opinion, cannot be faulted with.”

16. In view of the aforesaid enunciation of law, we have no shadow of doubt that the learned Single Judge is not justified in directing giving admission to the respondents in both the writ petitions solely on the ground that the seats should not go waste and they should be given admission.

17. Consequently, the appeals are allowed and the order passed by the learned Single Judge is set aside. However, we direct that the University shall follow the concept of reservation and the fall out of non-availability of the reserved category candidates in a scrupulous manner from the next academic year so that the seats shall not go waste. There shall be no order as to costs.

CHIEF JUSTICE

MANMOHAN, J

JANUARY 7, 2011
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