

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

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Date of decision: 20th December, 2011

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LPA NO.1069/2011

RAJAT GOEL

..... Appellant

Through: Ms. Bijoylashmi Das and Mr. Raghav
Pandey, Advocates

Versus

**MINISTRY OF HUMAN RESOURCE AND
DEVELOPMENT (GOVT OF INDIA) & ANR.**

.... Respondents

Through: Mr. Satya Saharawat for Mr. Ankur
Chhibber, Advocate R-1.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The challenge in this appeal is to the judgment dated 2nd September, 2011 of the learned Single Judge in WP(C) No. 4834/2011 preferred by the

appellant and though finding merit in the case of the appellant, holding that no relief could be granted to him.

2. The appellant had appeared in the Common Admission Test held on 23rd November, 2010 for admission in Indian Institutes of Management (IIMs) in the Academic Session 2011-2013. The result of the said test was declared on 12th January, 2011. The appellant had obtained 94.16 percentile in the said test.

3. The appellant claims, that he met the selection criteria of respondent no.2 Rajiv Gandhi Indian Institute of Management, Shillong and applied for admission thereto and was shortlisted for personal interview and group discussion held on 22nd March, 2011; that he was declared successful and shown at rank 54 in the general category in the Augmented Wait List; that by 13th June, 2011 he was ranked at No.4 in the waiting list for the general category; that he was however not admitted and the admissions closed on 5th July, 2011.

4. The appellant contends that he was denied admission inspite of the fact that seats were still available. Pleading that seats ought not to be

allowed to be wasted, he on 11th July, 2011 filed the writ petition from which this appeal arises, seeking mandamus for his admission.

5. Notice of the petition was issued. The respondent no.2 IIM Shillong in its counter affidavit before the learned Single Judge pleaded, that there were total of 120 seats for admission in the academic session 2011-2013 and of which 90 seats were for the general category inclusive of OBC, 18 for scheduled caste category, 9 for scheduled tribe category and 4 for differently abled category; that a total of 106 seats had been filled up for 2011-2013 batch of PGDM Course; that due to overlapping of students/candidates in the admission process, it was required to issue offer letters to more students /candidates than the quota of 90 seats for open category; that 97 students had accepted the said offer of admission; that all the available seats in the general/open category had been filled up and there was no vacancy therein; that 22 seats which were left vacant were however for reserved category and which could not be offered to the appellant belonging to the general/open category.

6. The aforesaid position is not in dispute.

7. The learned Single Judge has in the order impugned in this appeal held that the respondent no.2 IIM, Shillong was required to convert the 22 unfilled seats belonging to the reserved category to the general category and has condemned the action of the IIM, Shillong of not filling up the 22 vacant seats and imposed cost of ₹ 1 lacs on it, payable to the Prime Minister's National Relief Fund. However, notwithstanding so, the learned Single Judge has held that the appellant did not have a clear legal right for admission even if the seats had been so converted and the respondent no.2 IIM, Shillong could not be directed to undertake the entire process of admission again to find out whether the appellant would qualify for admission. The learned Single Judge in support of the principle of conversion of reserved category seats to general category relied on ***P.V. Indiresan v. Union of India*** (2011) 8 SCC 441

8. The counsel for the appellant before us, has contended that the appellant being at no.4 in the waiting list ought to have been admitted, after holding that the respondent no.2 IIM, Shillong was in the wrong in not converting the reserved category seats to the general category.

9. However, finding the academic session to have begun on 5th July, 2011 we have enquired from the counsel for the appellant as to how, even if the appellant were to be so entitled, a direction for admission could be issued now when six months of the academic session are already over.

10. The counsel for the appellant also, though contends that the appellant had approached the Court at the earliest and the delay is owing to the time taken in disposal of the petition and while not disputing that admission now is not feasible contends that the appellant, after succeeding in the writ petition ought not to be left reliefless. She has suggested that a seat be reserved for the appellant in the next academic session.

11. We may record that though the order of the learned Single Judge is of 2nd September, 2011 but the present appeal has been filed and/or got listed after more than 2 months therefrom. The appellant in the facts and circumstances of the case and when he is seeking admission to the academic session which had begun in July, 2011 has not shown right earnestness in preferring the appeal after more than 2 months.

12. Be that as it may, we are unable to agree with the contention of the counsel for the appellant that owing to the appellant having succeeded in the appeal, the appellant is entitled to admission in the next academic session(next year) on the basis of the admission test of the previous year. Granting admission to the appellant in the next academic session in such a manner will necessarily be at the cost of the aspirants for admission in the next academic session. The seats available to them for admission would thus stand reduced. This Court cannot issue such an order, prejudicial to persons who are not even before this Court. The admissions for the next academic session are to be on the basis of the academic test to be held therefor and the appellant cannot be made successful in that admission test without appearing and competing in the same. Allowing so would tantamount to the appellant winning a race without participating in the same and which is against all canons of justice, equity and good conscience. We find the Supreme Court to have in ***Rajiv Kapoor v. State of Haryana*** (2000) 9 SCC 115 held that, to utilize the seats meant for next academic year, by accommodating candidates of earlier year would amount to deprivation of legitimate rights of those who would be in the fray of contest for selection on the basis of their *inter se* merit for the next session.

13. We may also notice that a Division Bench of this Court in ***M.I. Hussain v. N. Singh*** 125(2005) DLT 223 to have held that seats remaining vacant is no reason to fill them up by admitting non-meritorious students. Another Division Bench in ***Maharaja Agrasen Institute of Technology v. Guru Gobind Singh Indraprastha University*** 116(2005) DLT 290 held that once the dramatic performance starts, no one is allowed to enter – similarly counselling of seats must stop once the course of study commences. Again in ***Sunint Kaur v GGSIP University*** ILR (2005)1 Delhi 215 this Court held that even if seats are unfilled that cannot be a ground for making mid-session admissions. The Supreme Court also in ***Arvind Kumar Kankane v. State of UP*** AIR 2001 SC 2800 held that if counselling goes on continuously for a long period, it will upset the course of study, more so when no defect in procedure of admission followed is made out. Similarly in ***Neelu Arora v. UOI*** (2003) 3 SCC 366 it was held that when a detailed scheme has been framed and the manner in which it has to be worked out is indicated therein, merely because a certain number of seats are not filled up is not a reason enough for adopting one more round of counselling if there is no scope therefor under the scheme. It was held to be not advisable to go on altering the scheme as and when seats are found vacant.

14. We may notice that it is not the case of the appellant that the scheme of admission in response where to he had applied, so provided for conversion of unfilled reserved category seats into unreserved category. Such a claim appears to have been made for the first time during the pendency of the Writ Petition. It is thus not as if there is any fault on the part of the respondent no.2 IIM, Shillong in implementing the scheme of admission.

15. We therefore find ourselves unable to grant any relief to the appellant and dismiss this appeal. However, while doing so we may record that the dismissal of the appeal is not to be construed as confirmation of the findings of the learned Single Judge particularly as to the respondent no.2 IIM, Shillong being required to convert the reserved category seats into general category seats. The judgment in ***P.V. Indiresan*** (supra) relied upon by the learned Single Judge in this regard relates to conversion of OBC seats and with respect where to there is a statutory provision in The Central Educational Institutions (Reservation in Admission) Act, 2006. Whether the said principle would apply to reserved category i.e. seats for SC, ST, disabled category also, we entertain doubt. However, since no appeal has been preferred by the respondent no.2 IIM, Shillong and no arguments as

such have been addressed before us on this aspect, we leave the said question open.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

DECEMBER 20, 2011
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