

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

% Judgment delivered on 25.06.2012

+ **LPA No. 461/2012 and CM Nos. 10821-10823/2012**

Sri Guru Tej Bahadur Khalsa College ... Appellant

Versus

University of Delhi & Ors. ... Respondents

And

+ **LPA No. 462/2012 and CM No. 10824-10826/2012**

Sri Guru Gobind Singh College of Commerce ... Appellant

Versus

University of Delhi & Ors. ... Respondents

And

+ **LPA No. 463/2012 and CM No. 10827-10829/2012**

Mata Sundari College for Women ... Appellant

Versus

University of Delhi & Ors.

...Respondents

And

+ LPA No. 464/2012 and CM No. 10830-10832/2012

Sri Guru Nanak Dev Khalsa College

... Appellant

Versus

University of Delhi & Ors.

...Respondents

Advocates who appeared in this case:

For the Appellants : Mr K.T.S. Tulsi with Mr Raj Kamal

For the Respondent : Ms Pinky Anand, with Mr Amit Bansal for R-1

Mr Ravikant for Mr Amitesh Kumar for Respondent (UGC)

Mr Anil Nauriya and Ms Rachna Bahadur for Respondents 3&4.

CORAM:

HON'BLE MR. JUSTICE V.K. JAIN

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

V.K. JAIN, J. (ORAL)

CAVEAT Nos. 626/2012, 628/2012, 629/2012, 627/2012

Since the caveator has put in appearance, caveats stand discharged.

LPA Nos. 461/2012, 462/2012, 463/2012, 464/2012

1. The appellants before us claim to be minority educational institutions set up and being managed by Sikh community. All the four institutions are stated to be

under the management of Delhi Sikh Gurdwara Management Committee constituted under the Sikh Gurdwara Act, 1971. The appellant institutions also claim that they were set up by Sikh Community for the purpose of imparting education to the members of the said community as also to others.

2. Vide letter dated 18.06.2008, these institutions were informed by the University of Delhi that since they are subject to the statutes and ordinances of the University as also the guidelines issued by it, they were expected to follow the provisions regarding OBC reservations in admissions and recruitments. WP(C) No. 4584/2008 was then filed by these institutions, claiming that being minority educational institutions, they were not bound to make admissions within the framework of the policy laid down by the University and, therefore, were not required to provide reservation in admissions. Vide order dated 25.07.2008, a learned Single Judge of this Court took the view that these institutions were bound to implement the respective policy of Government of India in respect of other backward classes (OBC) by providing 27% reservation while admitting students to the courses run by them. The order dated 25.07.2008 was challenged by way of LPA No. 472/2008. In that LPA, an interim order was passed on 19.08.2008, directing the University not to take any coercive action against the institutions. The LPA was disposed of vide order dated 01.12.2008. While disposing of the LPA, a Division Bench of this Court observed that in view of the decision of

Supreme Court in *Manager, St. Thomas U.P. School, Kerala and Anr. v. Commissioner and Secretary to General Education Department* (2002) 2 SCC 497, the National Commission for Minority Educational Institutions (NCMEI) was the competent forum to determine in terms of Section 11(f) of the National Commission for Minority Educational Institutions Act, 2004. NCMEI was accordingly directed to decide the applications, which these institutions had already filed by that time seeking declaration of minority status. It was further directed that the interim relief granted on 19.08.2008 would continue during the pendency of the writ petition. The parties were given liberty to apply for vacation/modification of the interim relief before the learned Single Judge after the decision of NCMEI.

3. Vide order dated 19.07.2011, NCMEI held that these institutions had been established by the Sikh Community and were being administered by Delhi Sikh Gurdwara Management Committee. Accordingly, these institutions were declared as ‘minority educational institutions’ within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004.

4. WP(C) No. 8293/2011, 8297/2011, 8302/2011 and 8310/2011 were then filed by the University of Delhi, challenging the minority status accorded to these institutions by NCMEI. When these writ petitions came for hearing on 25.11.2011 before a learned Single Judge of this Court, the learned senior counsel representing these institutions made a statement that purely as an interim measure, no

appointment/admission in pursuance to Annexure A-2 to the application for stay, would be made till the next date of hearing.

5. Vide letter dated 24.05.2012, the University, referring to the letters received from these institutions stating therein that being minority educational institutions, they were exempted from reservations from SC/ST and OBCs, informed them that the matter regarding minority status to them being *sub judice* they were requested to following the reservation policy relating to SCs/STs and OBCs as per the previous practice followed in the University till the outcome of the said litigation.

6. CM Nos. 6660/2012, 6655/2012, 6658/2012 and 6662/2012 were then filed by these institutions in the aforesaid WP(C) No. 8293/2011, 8297/2011, 8302/2011 and 8310/2011 respectively seeking directions. Vide impugned order dated 29.05.2012, a learned Single Judge of this Court, *inter alia*, directed as under:-

“Learned Senior Advocate appearing for the respondent No.1/colleges states at the outset that after the present applications were filed, the colleges have received a letter dated 24.5.2012 from the petitioner/University of Delhi on the subject of centralized admission to SC/ST categories, wherein the colleges have been requested to follow the reservation policies relating to the SC, ST and OBC as per the previous practice followed in the University, till the outcome of the pending litigation between the parties. A copy of the letter dated 24.05.2012 is handed over and taken on record. Mr. Tulsi states that respondent No.1/Colleges are willing to abide by the said letter without prejudice to the rights and contentions of the colleges, as raised by them in the present proceedings.

In view of the above submission made on behalf of the respondent No.1/Colleges, it is directed that the colleges shall abide by the aforesaid directions issued by the petitioner/University and admit students belonging to the SC, ST and OBC categories for the academic year 2012-13 without prejudice to their rights and contentions as raised in the affidavits filed in the present writ petitions.

The applications are disposed of.”

7. The contention of the learned senior counsel appearing for the University is that the appellants having agreed to abide by the letter dated 24.05.2012 and the learned Single Judge having accordingly passed an order directing them to admit status belonging to the SC/ST and OBC categories for the academic year 2012-2012, without prejudice to their rights and contentions in the writ petitions, the appeals challenging the consent order are not maintainable. The learned senior counsel representing the appellants on the other hand submits that when he stated before the learned Single Judge that they were willing to abide by the letter, he had only agreed to follow the same practice which the University, qua these institutions, was following with respect to reservations at the time of making admissions in the colleges. In other words, according to him, the letter dated 24.05.2012 was understood by him to mean that the appellant institutions have to follow the same practice with respect to reservation for SC/ST and OBC as they were following in the University of Delhi at the time they received this letter.

8. It is an admitted position before us that till the academic year 2011-2012, the appellant institutions were extending benefit of reservation to SC/ST categories, but were not extending that benefit to OBC categories. It is also an admitted position that at the time interim order was passed by a Division Bench of this Court on 19.08.2008 which was later confirmed vide subsequent order dated 01.12.2008, the appellant institutions had not been declared as minority educational institutions, despite their claim to this effect. The only development which has taken place after the order passed by the Division Bench on 01.12.2008, disposing of the said LPA, has been the order passed by NCMEI, declaring the appellant institutions as 'minority educational institutions'. We are of the view that the appellants cannot be compelled to act contrary to the practice which these institutions had been following till the academic year 2011-2012, in the matter of according reservation, particularly when these institutions have since been declared to be 'minority educational institutions' by NCMEI. It is quite plausible to say that the letter dated 24.05.2012, issued by the University had referred to the practice followed by the University and not the practice followed by the appellant institutions in the matter of reservation and, therefore, vide this letter the University had called upon these institutions to follow the practice prevalent 'in the University', by giving reservations to SC/ST as well as OBCs. But, if the learned senior counsel for the appellants, while making statement on behalf of these institutions on 29.05.2012

had understood the letter to mean that these educational institutions were to follow the same practice which they were following at that time, in the matter of reservations, it would be fair to compel these institutions to give reservations to OBCs, particularly when they have already been declared as ‘minority educational institutions’, by NCMEI which is the competent authority to decide with respect to the status of an institution, claiming to be a ‘minority educational institution’. The order passed by NCMEI, being in favour of the appellants, they cannot be placed in a situation, worse than the position, in which they were placed before the said order was passed. So long as the order passed by NCMEI is in force, it would not be fair and reasonable to direct the appellants to provide reservation strictly in terms of the reservation policy of the University, when, admittedly, ‘minority educational institutions’, are under no obligation to provide such reservations. Also, any direction, to accord reservation, would run counter to the order passed by the Division Bench on 19.08.2008, which was extended on 01.12.2008, and continues to remain in force.

9. The learned senior counsel appearing for the appellants states, on instructions, that the appellants will continue to give reservation to SC and ST applicants as per the practice followed by them till the year 2011-2012. This shall be without prejudice to the rights and contentions of the appellants in these appeals as well as in the pending writ petitions. We, therefore, modify the order dated

29.05.2012 to the extent that though the appellants shall give reservations in admissions for the year 2012-2012 to SC/ST categories, as per the norms of the University of Delhi, they will not be obliged to provide any reservation for OBC categories.

These LPAs stand disposed of. The observations made in this order shall not affect the decision of the pending writ petitions.

All the pending applications also stand disposed of.

Dasti under the signature of Court Master.

V.K.JAIN
(VACATION JUDGE)

PRATIBHA RANI
(VACATION JUDGE)

JUNE 25, 2012

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