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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3987/2012

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Judgment dated 27.09.2012

MISS KRITIKA GULATI

..... Petitioner

Through : Mr.Rajesh Yadav and Ms.Ruchira, Advs.

versus

UNIVERSITY OF DELHI AND ANR

..... Respondent

Through : Ms.Maninder Acharya, Adv. for
respondent no.1.

Mr.S.S. Ahluwalia, Adv. for respondent
no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India seeking the following prayers:

- “(a) A writ of certiorari or any other appropriate writ order or direction in the nature thereof thereby quashing the letters dated 14/18.11.2011 and 29.05.2012 issued by the Respondent No.1, annulling/cancelling the admission of petitioner in the course of B.Com (Prog) 1st year, in Respondent no.2 college for the academic session 2011-2012;
- (b) a writ of mandamus or any other appropriate writ order or direction in the nature thereof thereby directing the respondents to condone the delay and regularize/confirm the provisional admission of the petitioner and permit her to continue with the course of B.Com (Prog.) without any interruption as a regular student;

- (c) a writ of mandamus or any other appropriate writ, order or direction in the nature thereof thereby directing the respondents to disclose the result of the 2nd Semester examination of the Petitioner;
- (d) ...
- (e) Award cost of the proceedings to the petitioner.”

2. Rule. With the consent of counsel for the parties present writ petition is set down for final hearing and disposal.
3. The petitioner is aggrieved by the illegal and arbitrary actions of respondent no.1 in annulling/cancelling her admission and not condoning the delay in her admission to the aforesaid course.
4. The necessary facts, to be noticed for disposal of the present writ petition, are that vide notice dated 25.7.2011 respondent no.2 college had notified that a few seats are lying vacant in B.A. (Prog), B.Com (Prog), Sanskrit (H) and Philosophy (Hons) against the withdrawal cases in General Category of the current session 2011-2012. Students were informed that those who wish to seek admission in the abovesaid courses may come to the college for admission till the stipulated date. A copy of this notice, duly signed by the Principal of respondent no.2 college, has been placed on record. The petitioner is a student, who was provisionally admitted to the course of B.Com (Prog.) first year in respondent no.2 college for the academic session 2011-2012. The petitioner passed Class XII examination and secured 74.5% (one language and three elected subjects). Pursuant to the notice dated 25.7.2011 issued by respondent no.2 college, the petitioner, vide application form dated 9.8.2011, applied for admission in respondent no.2 college in B.Com (Prog.) in General Category, which is evident from the perusal of the application form, a copy of which has been

placed on record. Along with the said application form, the petitioner submitted all the relevant documents including Mark Sheet, Migration Certificate issued by CBSE, Provisional-cum-Character Certificate, etc., to respondent no.2 college. Consequently the petitioner was granted provisional admission by respondent no.2 college on 9.8.2011, subject to condonation of delay by the Vice-Chancellor, University of Delhi. The petitioner filled up her admission form on 9.8.2012. As per the petition, the petitioner did not seek admission in the category of Defence Personnel as has been erroneously understood and made out by respondent no.1 University. The petitioner obtained admission in the general category. Vide communication dated 10.8.2011 respondent no.2 college requested the Vice-Chancellor of respondent no.1 University for condonation of delay in admission against the withdrawal cases for the academic session 2011-2012 in respect of four students including the petitioner herein. By the communication dated 23.8.2011 respondent no.1 University asked respondent no.2 college to submit a fresh proposal along with relevant documents in the enclosed proforma and the cut off notified by the college in the courses to which the four students were admitted, for due consideration. It was further mentioned in the said communication that with regard to the admission of the petitioner, the necessary documents be provided in support of the petitioner being ward of ex-serviceman, mentioning the category under which she had been offered admission. Along with the covering letter dated 12.9.2011, which was sent to respondent no.1, respondent no.2 enclosed the duly filled proforma and also prayed for condonation of delay. Vide letter dated 19.10.2011 respondent no.2 college again sent a duly completed proforma along with the relevant documents to respondent no.1 University for necessary action including a copy of the ex-serviceman identity card of the father of the

petitioner, who was a Commandant in the Indian Navy. Request for condonation of delay in admission was again sought. It is the case of the petitioner that although the petitioner did not apply in the category of 'Defence Personnel', however, since respondent no 2 College demanded a copy of the identity card petitioner supplied the same. By the impugned letter dated 14/18.11.2011 respondent no.1 University conveyed to respondent no.2 College that the matter of condonation of delay of four candidates was considered at the appropriate level of the University and so far as the provisional admission of the petitioner is concerned the petitioner was admitted to the B.Com (Prog.) as a ward of ex-serviceman, which is irregular and had been annulled. Admission of one more student was also annulled. College was requested to cancel the provisional admission under intimation to the University. Respondent no.2 college vide communication dated 25/26.4.2012 conveyed to the University that the petitioner was admitted against the withdrawal case due to her debating ability and other activities. It was categorically stated that petitioner was not admitted against the Ex-serviceman Quota though there was a soft corner for her on account of this defence background of her father. Condonation of delay was again sought. Vide communication dated 29.5.2012, respondent no.1 University conveyed to respondent no.2 college that the admission of the petitioner had already been annulled by the competent authority.

5. It is the case of the petitioner that the petitioner was not aware of any correspondence exchanged between respondent no.1 University and respondent no.2 college, and she was at no point of time informed that her admission had been annulled, however, the petitioner was asked to furnish an undertaking before handing over her the admit card for the first semester examination, which was held from 25.11.2011 to 2.12.2011.

Although the petitioner submitted her undertaking to respondent no.2 college, which was duly accepted by the college on 25.11.2011. The petitioner being unaware of the fact that her admission stood cancelled, was allowed to appear in the first semester examination, which she successfully cleared and obtained 62.75% marks. At the time of handing over of the admit card for the second semester examination the petitioner was again asked to furnish an undertaking to respondent no.2 college. Still unaware about the correspondence between the University and the college the petitioner was given an impression that signing or furnishing such an undertaking was a routine formality. The petitioner again furnished an undertaking to respondent no.2 college and appeared for the second semester examinations, which were held between 9.5.2012 to 16.5.2012. On. 5.7.2012 result of the second semester examinations was declared. The petitioner was surprised to learn that her result had not been declared. It is only thereafter petitioner made an inquiry from the college when it was disclosed that respondent no.2 college had been in correspondence with respondent no.1 University for a long period of time and her admission had been annulled. Thereafter the father of the petitioner requested respondent no.2 college to provide him copies of all the documents including correspondence exchanged between respondent no.1 University and respondent no.2 College. The father of the petitioner took up the matter with the University Authorities and even personally met with Mr.Dutt, D.R. (Academics) and requested for sympathetic consideration of the matter. Appointment sought to meet the Vice-Chancellor of University of Delhi was not successful which has led to the filing of the present writ petition.

6. Learned counsel for the petitioner has strongly urged before this Court that it was only after the respondent no.2 college notified on the Notice

Board on 25.7.2011 that seats are lying vacant in B.Com (Prog.) against the withdrawal cases in General Category of the current session 2011-2012, did the petitioner approach respondent no.2 college for admission in B.Com (Prog.) The petitioner thereafter fulfilled all the formalities and admission was granted to her. It has further been strongly urged before this Court that the petitioner, at no point of time, sought admission on the basis of defence quota. In support of this plea, reliance is placed by counsel for the petitioner on the application form duly filled by the petitioner. Counsel has further relied upon the application form to show that in the application form it was nowhere mentioned that she was the ward of an ex-serviceman. It is, thus, contended that respondent no.2 College has incorrectly placed reliance on the communication dated 3.8.2011, which reads as under:

“Ref.No.:MSC/ADMN/30/2011/329 Dated 03/08/11

The Vice Chancellor,
University of Delhi,
Delhi-11007.

Subject:- Approval for condonation of delay in admission for
the academic session 2011-2012.

Dear Sir,

The college notified few vacant seats against withdrawal cases in B.Com (Prog.) & B.Com (Hons) for the academic session 2011-2012.

The following students are contacting to the college regarding admission in B.Com (Prog.) and B.Com (Hons.) for the academic session 2011-2012:-

S.No	Name of the Candidate	Course	Percentage of Candidates
1.	Kriti Gulati	B.Com (P)	74.5% (Ward of Ex

			Defence.Navy CDR Deepak Gulati)
2.	Shilpa Kapoor	B.Com (P)	81.7%
3.	Sonali Srivastava	B.Com (P)	77.7%

7. Learned counsel for the petitioner submits that on 3.8.2011 petitioner had not made any formal application for admission but being anxious of obtaining admission she had been approaching the college. Counsel further submits that in case the respondent no.2 college had given an impression to respondent no.1 University that the petitioner had sought admission based on the reserved quota for ex-serviceman the petitioner cannot be faulted for the same. Even otherwise, it is submitted that the endorsement made in the communication dated 3.8.2011 does not, in any way, show that the petitioner would have derived any benefit from the reserved quota as the endorsement simply states “ward of Ex-Defence Navy CDR Deepak Gulati”, which was also added subsequently and in hand.
8. Learned counsel for the petitioner submits that both - respondent no.1 University and respondent no.2 college – were well aware, that with a view to derive benefit under the Defence Quota the following conditions would be necessary, which the petitioner does not fulfil and in case the petitioner was to take benefit of the defence quota, she would have applied under the defence quota at the very 1st instance:

“4.2 Reservation for Armed Forces

5% of the seats in each course have to be offered to the Children/Widows/Wives of Officers and Men of the Armed Forces including Para-Military Personnel, in the following order of preference:

- i. Widows/Wards of Defence personnel killed in action;
- ii. Wards of serving personnel and ex-servicemen disabled in action;
- iii. Widows/Wards of Defence personnel who died in peace time with death attributable to military service;
- iv. Wards of Defence personnel disabled in peace time with disability attributable to military service;
- v. Wards of Ex-servicemen personnel and serving personnel including police personnel who are in receipt of Gallantry Awards

(Above categories are also applicable to Para military personnel);

9. Learned counsel for the petitioner contends that in case the petitioner was to derive any benefit reliance was to be placed by the University, the endorsement in the letter dated 03.08.2011, to say the least, would have indicated the precise cause under which the petitioner was seeking admission – under the defence quota. Counsel further contends that since the petitioner did not seek admission under the defence quota, the impugned communications are liable to be set aside and quashed as they are without any application of mind, without any material placed on record and without the petitioner seeking admission under the defence quota. Mr.Yadav, also submits that petitioner has already cleared two semesters and if at this late stage, her admission is annulled she will lose two academic sessions.
10. Mr.S.S. Ahluwalia, learned counsel for respondent no.2, has supported the case of the petitioner and submitted that the petitioner was admitted in respondent no.2 college on the basis of merit and availability of seats. Mr.Ahluwalia further submits that a due publicity was given by respondent no.2 college with respect to vacant seats in B.A. (Prog.),

B.Com (Prog.), Sanskrit (H) and Philosophy (H) against the withdrawal cases in General Category of the current session 2011-2012 by pasting the Notice dated 25.7.2011 on the Notice Board of the college. In support of this submission, Mr.Ahluwalia has drawn the attention of the Court to the Notice dated 25.7.2011, a copy of which has been filed on record. The Notice dated 25.7.2011 reads as under:

“

NOTICE

It is Notified that in our college few seats are lying vacant in B.A(Prog.), B.Com (Prog.), Sanskrit(H), and Philosophy (Hons) against the withdrawal cases in General Category of the current session 2011-2012. The eligible students who want to take the admission in these courses may come to college for admission till stipulated date.”

11. Mr.Ahluwalia, learned counsel for respondent no.2 college, submits that the above notice was duly signed by the Principal of the college. The anxiety of the college was that vacant seats should not go a waste and those students who are interested should derive benefit of the vacant seats.
12. Counsel further submits that respondent no.2 college had nothing to gain, however, when respondent no.1 University sought a clarification, the college had clearly stated that the petitioner was not admitted under the Defence Quota but on the basis of her debating abilities and extra-curricular activities, but the college did have a soft corner for the petitioner, as she is a daughter of ex-serviceman. In support of his submission counsel has relied upon the communication dated 25/26.4.2012. The relevant portion of the communication dated 25/26.4.2012 reads as under:

“(II) Ms.Kritika Gulati, daughter of Ex-Indian Navy Commander (ward of Ex-Serviceman) was admitted in B.Com (Prog.) on 09/08/2011. The college admitted her against withdrawal cases due

to her debating ability and other activities. She was not admitted against Ex-Serviceman Quota, though there was soft corner due to defence background of her father. The college will never admit such case without prior permission of your good office.”

13. Mr.Ahluwalia further contends that there is no irregularity, the college has not committed any breach and has not shown any arbitrariness or favouritism to the petitioner for granting her admission.
14. Ms.Maninder Acharya, learned counsel for respondent no.1 University, has vehemently opposed the present petition. Ms.Acharya submits that there is no vested right in favour of the petitioner, as admittedly, the petitioner was only granted provisional admission to B.Com (Prog.) first year subject to the condonation of delay by the Vice-Chancellor, University of Delhi. Ms.Acharya further submits that on the application being scrutinized the admission of the petitioner as a ward of ex-serviceman was found to be irregular and the same was decided to be annulled. Ms.Acharya also submits that although a proposal was received by the University from the officiating Principal of respondent no.2 college on 3.8.2011 and 10.8.2011 for condonation of delay in admission in respect of the petitioner and three other candidates but against the name of the petitioner it was noted in hand “ward of Ex Defence Navy CDR Deepak Gulati”. The respondent no.1 University directed respondent no.2 college vide communication dated 23.08.2011 to submit information along with relevant documents in the prescribed proforma and cut off notified by the College in the courses to which these four students were admitted for consideration of the University. It was further directed that with regard to the petitioner necessary documents be provided in support of her being a ward of ex-serviceman. Since a copy of the Ex-Serviceman identity card of the father of the petitioner was submitted with the respondent no.1 University it would be evident that the petitioner had

taken the provisional admission in the respondent no.2 college as a ward of ex-serviceman. Ms.Acharya submits that in the counter affidavit filed it has been categorically stated that the cut off for the B.Com (Prog.) course in respondent no.2 college was 80% whereas petitioner has secured only 74.5%. Hence on this account also the petitioner could not have been eligible for admission to the B.Com(Prog).

15. Ms.Maninder Acharya, learned counsel for respondent no.1 University, has strenuously argued that the delay in granting admission to the petitioner cannot be condoned as it seems that the petitioner was granted admission as a backdoor entry. Ms.Maninder further submits that the students, who were higher in merit, were ignored by respondent no.2 college and the petitioner was granted admission. It is further submitted that in case the petitioner had sought admission in General Category and wanted to derive benefit of her debating abilities, she should have submitted a certificate to the respondent no.1 University.
16. I have heard learned counsel for the parties, considered their rival contentions and also perused the material placed on record including the Bulletin of Information for Undergraduate Courses. The aforementioned facts as detailed are not in dispute, except that it is the case of the petitioner that she applied in the general category, whereas, as per the university she was granted provisional admission being ward of an ex-serviceman. Before dealing with the rival contentions of counsel for the parties it would be useful to reproduce the impugned communication dated 14/18.11.2011 passed by the University, by which the admission of the petitioner was annulled. The communication dated 14/18.11.2011 reads as under:

“

OUT TODAY/BY HAND
No.Acad.I/2011/MSD/CD/UG/288/55074
Delhi, the 14th /18th November, 2011

The Principal,
Mata Sundri College for Women,
Mata Sundri Lane,
New Delhi-110001.

Subject: Condonation of Delay in Admission for the
academic year 2011-2012.

Dear Madam,

Please refer to your letter No.MSC/ADMN/30/2011/1147 dated 19.10.2011 forwarding therewith a list of 4 candidates (Leena Kundra and others) for Condonation of delay in admission for the academic year 2011-2012.

The matter has been considered at the appropriate level of the University and the following decision taken by the University are being conveyed to you for necessary compliance:

1. The provisional admissions of Ms.Leena Kundra to the B.A.(H) English course on the basis of her 60.5% marks in Class XII as against 81% of marks at which the last student was admitted in the course and that of Kritika Gulati admitted to B.Com course as a ward of Ex-Serviceman, are irregular and the same have been annulled. You are requested to cancel the provisional admissions of these two students immediately under intimation to this office.
2. With regard to cases of Radhika Magoo and Shilpa Kapoor who have been provisionally admitted to B.A. and B.Com Programmes respectively, kindly provide copies of the notifications as well as the reasons for allowing admissions at such a late stage.
3. Responsibility has to be fixed up for the irregular admissions of Ms.Leena Kundra and Ms.Kritika Gulati and the action taken by the college be communicated to the University. You are requested to kindly take necessary action accordingly at the earliest.

Thanking you,

Yours faithfully,

Ram Dutt
Deputy Registrar (Academic)”

17. A careful reading of this communication would show that the provisional admission of the petitioner was annulled on the ground that the petitioner, Kritika Gulati, was admitted to as a ward of ex-serviceman, which is irregular”, thus the submission made by Ms.Acharya, that the cut-off in the case of the petitioner was 80% while the petitioner had secured 74.5%, cannot be accepted, as the order of rejection does not notice the same.
18. The short question which arises for consideration before this court is that whether the petitioner applied for admission to respondent no.2 college in the reserved quota of being a ward of ex-serviceman? A copy of the application form, which has been placed on record, shows that the petitioner did not apply in any of the reserved categories. Nothing has been placed on record to show that at the time of seeking admission the petitioner wrote to the college that she is seeking admission under the reserved category. In fact the petitioner sought admission based on the notice dated 25.7.2011, which has been reproduced above, pasted by the college on the notice board of the college, which would show that the college had informed the public at large that few seats were lying vacant in B.A (Prog.), B.Com (Prog.), Sanskrit (H) and Philosophy (Hons.) against the withdrawal cases in the General Category for the current session 2011-2012. The notice on the Notice Board would also show that neither the college had invited applications in any of the reserved category nor the petitioner applied for the admission in the reserved category.
19. There is no force in the submission of learned counsel for respondent no.1

University, that the college considered admission of petitioner in the reserved category, based on the communication dated 3.8.2011 issued by respondent no.2 college to the University, wherein against the name of the petitioner it has been added in hand “ward of Ex Defence Navy CDR Deepak Gulati”.

20. A perusal of Clause 4.2 of the prospectus clearly show that 5% of the seats in each course have to be offered to the Children/Widows/Wives of Officers and Men of the Armed Forces including Para-Military Personnel in the order reproduced above. In case the college had granted admission to the petitioner based on the reservation, the college would surely have mentioned under which category the petitioner has to be considered. Even otherwise, the letter dated 3.08.2011 sought to be relied upon by the university was prior to a date when the petitioner applied for a seat. The petitioner applied for admission pursuant to the notice, which informed students that seats was available in the general category.
21. Learned counsel for the University has also submitted that the Court must not permit such admissions as this will give a free handle to the college to make backdoor entries and grant admission while overlooking the merit. In the case of the petitioner the petitioner did not apply under the defence category, which is also evident from the communication dated 10.8.2011 addressed by respondent no.2 college to the Vice-Chancellor, Delhi University. In this communication it has been pointed out that the following students had been admitted against the withdrawal seats for the academic session 2011-2012:

S.No	Name of the Candidate	Course	Percentage of Candidates
1.	Kriti Gulati	B.Com (P)	74.5%
2.	Shilpa Kapoor	B.Com (P)	81.5%
3.	Leena	English (H)	60.5%

	Kundra		
4.	Radhika Magoo	B.Com (Prog.)	64.0%

22. Nowhere in this communication it was mentioned that the petitioner had been admitted in the defence category. Subsequently respondent no.1 University by a communication dated 23.8.2011 called upon respondent no.2 college to supply documents in support of the petitioner being a ward of ex-serviceman, although, the college provided the necessary details but the same was silent on the aspect that the petitioner had been admitted under the Defence Category. Vide communication dated 25-26.4.2012 the college again informed the University that the petitioner was not admitted against Ex-Serviceman Quota but was admitted on account of her debating abilities and other activities, although the college had admitted that they have a soft corner for the petitioner due to defence background of her father. The relevant portion of the communication dated 25-26.4.2012 reads as under:

“(II) Ms.Kritika Gulati, daughter of Ex-Indian Navy Commander (ward of Ex-Serviceman) was admitted in B.Com (Prog.) on 09/08/2011. The college admitted her against withdrawal cases due to her debating ability and other activities. She was not admitted against Ex-Serviceman Quota, though there was soft corner due to defence background of her father. The college will never admit such case without prior permission of your good office.”

23. There is nothing on record to show that the petitioner ever approached respondent no.2 college and sought admission on the basis of her being a daughter of defence personnel, except the communication dated 3.8.2011 addressed by respondent no.2 college to respondent no.1 University where an endorsement had been made in hand that the petitioner is a ward of Ex-Defence Navy CDR Deepak Gulati), a letter prior in time. There is also

nothing to suggest that even the college had informed the University that the admission was granted to the petitioner being the ward of ex-serviceman. The notice placed at the notice board of the college also shows that the seats were available only in General Category and, *prima facie*, due publicity was given by placing the same on the notice board. Even the application form did not mention that petitioner applied in the reserved category. Since the petitioner did not apply in the Defence Category she cannot be penalized by respondent no.1 University and her provisional admission to B.Com course cannot be termed as irregular. The grounds, sought to be urged during the course of hearing and in the counter affidavit filed by respondent no.1 University that there was vast gap between the petitioner and the last student admitted (petitioner being 74.5% and the last student being 80%) and thus the admission of the petitioner is irregular, cannot be accepted as no such ground was taken by respondent no.1 University in the case of the petitioner. Nor the ground that admission of the petitioner was irregular, due to any favouritism was stated in the order. This Court can also not loose track of the fact that the petitioner was permitted to appear for the first year examination, she succeeded and obtained 62.75% marks. The petitioner was again permitted to sit for the second semester examination although her result has been withheld. In case the provisional admission of the petitioner was to be rejected an appropriate order should have been passed by the University at the earliest.

24. In this case the University has informed respondent no.2 college about the annulment of the provisional admission only in the month of November, 2011, vide communication dated 14/18.11.2011. In my view the seat, which has been allotted to the petitioner, would go a waste in case the admission of the petitioner is annulled, as none would be able to derive

any benefit of the said seat, which would result in a national loss.

25. Accordingly, having regard to the facts and circumstances of the present case, present writ petition is allowed. The impugned letters dated 14/18.11.2011 and 29.5.2012, issued by respondent no.1 University, annulling the admission of the petitioner in B.Com (Prog) 1st year in respondent no.2 college for the academic session 2011-2012, are quashed. Respondents are directed to condone the delay and regularize/confirm the provisional admission of the petitioner and permit her to continue with the course of B.Com (Prog). Respondents are also directed to disclose the result of the petitioner for the second semester examination. The respondents shall also permit the petitioner to attend her classes and her attendance will be marked from 28.9.2012 onwards for the purposes of examination. Needless to say in case respondent no.1 University has any material to suggest that the admission was granted to the petitioner as a backdoor entry and for any other reason, it would be open for the University to initiate appropriate action against respondent no.2 college in accordance with law with a view to curb the menace of admission through backdoor entry against the merit.
26. Petition stands disposed of in view of above.

G.S.SISTANI, J

SEPTEMBER 27, 2012

msr