

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

% Date of Decision: 25.09.2013

+ W.P.(C) 2606/2013 & CM Nos.11798/2013 & 13454/2013

DIVYA BHALLA Petitioner

Through: Mr. R.K. Saini, Adv.

versus

UNIVERSITY OF DELHI & ANR Respondents

Through: Mr. M.J.S. Rupal, Adv. for
University of Delhi

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner before this Court, after her graduation from Dayal Singh College appeared in entrance examination of Delhi University for admission to its M.A. (English) course in Non-Collegiate Women's Education Board – Respondent no.2. The petitioner belongs to OBC category since she is a *sumar* and the said community was declared an OBC in Delhi vide Government of Delhi notification dated 20.1.1995. The learned counsel for the petitioner, however, submits that the said community was also recognized as OBC by the Government of India and this fact can be verified by the university.

2. Column number 6 of the application form for admission to the M.A. (English) Course required the candidates to disclose whether they belonged to SC/ST categories. While responding to the said column, the petitioner simply put a (-) against the said column. Later, while

scrutinizing the application form, the officials of the university added the word 'general' against the said column. This, the learned counsel for the University states under instructions of Dr. Aarti Saxena, Director of Non-Collegiate Women's Education Board, was done considering that in the registration slip-cum-admit card, the petitioner had ticked against the category 'General'. The petitioner, who is present in the Court, admits that in fact she had ticked against the general category, while submitting her form.

3. The petitioner took admission under general category, though she had obtained only 44% marks in her qualifying examination and the minimum percentage required for the general category candidates were 45%. The Non-Collegiate Women's Education Board granted admission to the petitioner under general category, despite her being not eligible for admission under the said category. Later, realizing its mistake in granting admission without the petitioner having the minimum qualifying marks in the graduate examination, the respondents cancelled the admission in February-2013 on the ground that she did not fulfilling the minimum eligibility requirement. Being aggrieved from cancellation of her admission, the petitioner is before this Court by way of this writ petition seeking the following reliefs:

- (a) A writ of certiorari calling for records of the case for perusal;
- (b) A writ of certiorari quashing the action of respondents in cancelling the admission of the petitioner (an OBC candidate) after the result of 1st Semester of M.A. (English) and acceptance of fee for 2nd Semester i.e. after a gap of 8 months of admission and studies, on the alleged ground of not fulfilling the minimum

eligibility requirements for admission to M.A. (English), without any show cause notice and/or hearing, being illegal, arbitrary, unjust, unwarranted, irrational, without jurisdiction and in violation of the Rules and Regulations and the principles of equity, natural justice and good conscience and estoppel / promissory and consequently the letter dated 5.3.2013.

(c) A writ of mandamus commanding respondents to forthwith restore the admission of the petitioner in M.A. (English) 1st year for the academic session 2012-2013 and further allow her to continue her studies and complete the course without any let or hindrance;

(d) A writ of mandamus commanding the respondents to suitably compensate/ pay appropriate damages to the petitioner for causing trauma, anxiety and mental agony and harassment to her and her family members by cancelling her admission in Non-Collegiate Women's Education Board, in M.A. 1st year for the academic year 2012-2013 after about 8 months and after having completed 1st semester and being promoted to the 2nd semester.

4. The case set up in the counter affidavit is that the petitioner applied for admission as a general category candidate and since she was not eligible for admission as a general category candidate, her admission was rightly cancelled. As regards the admission as an OBC candidate, the case of the respondents is that having applied under general category, the petitioner cannot claim admission under OBC category even if she is an OBC and had the marks required for admission as an OBC candidate.

5. As per the documents filed by the petitioner, she belongs to *sumar* which is a notified OBC in Delhi as well as in the Central List. This is not disputed by the Director of Non-Collegiate Women's Education Board, who is present in the Court. The petitioner had nothing to gain by claiming to be a general category candidate despite her in fact belonging to an OBC category. A person belonging to a general category may take some advantage when he or she claims to be an OBC candidate, but no such advantage can be obtained by a person who actually belongs to an OBC category. It is thus quite clear that the petitioner had no malafide intention in the matter when she ticked against the general category, in the admission card for the entrance examination. As far as the application form is concerned, she made no misrepresentation or concealment, since she did not claim to be a candidate of SC/ST and the said form did not require the candidate belonging to OBC category to disclose his/her category. This is somewhat strange that though the Delhi University gives concession to candidates belonging to OBC category, the application form did not require the candidates to disclose so, in case they belong to OBC category.

6. In my view, if the petitioner actually belongs to a notified OBC category in the Central List which the Delhi University has adopted for admission to various courses, it would be highly inequitable to cancel her admission when as an OBC candidate she was otherwise eligible to such admission. This is more so when she had studied for almost one year before her admission came to be cancelled. The university, in the facts and circumstances of the case, ought to have taken a fair and equitable approach instead of adopting a technical approach that since the petitioner applied as a general category candidate, she cannot be

considered under the category of OBC candidate. This is important considering that it is not as if *sumar* came to be notified as OBC after the petitioner had already applied for admission as a general category candidate. This particular class was notified as OBC much before she filled up the application form and ticked the admission card against the general category.

7. For the reasons stated hereinabove and in view of the facts and circumstances of the case, the letter dated 5.3.2013 is hereby quashed and the respondents are directed to permit the petitioner to continue her course subject to verifying the genuineness of the OBC certificate submitted by her. The result of the second semester in which the petitioner had appeared pursuant to interim order passed by this court shall be declared within two weeks from today and the necessary consequences shall thereafter follow.

The writ petition stands disposed of in terms of this order. There shall be no orders as to costs.

V.K. JAIN, J

SEPTEMBER 25, 2013/*rd*