

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

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Date of decision: 29th October, 2014

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LPA No.602/2014

SPECIAL ART SCHOOL

..... Appellant

Through: Mr. Sanjay Sharawat & Mr. Ratish
Kumar, Advs.

Versus

**GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY & ORS.**

..... Respondents

Through: Mr. Mukul Talwar with Mr.
Sradhananda Mohapatra & Mr. Vipin
Singh, Advs. for GGSIPU.
Ms. Nikhita Khetrapal, Adv. for R-2.
Mr. Arun Birbal with Mr. Sanjay
Singh, Advs. for DDA.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This appeal came up before us first on 16th September, 2014 when the following order was passed:

“2. This intra-court appeal impugns the order dated 8th September, 2014 of the learned Single Judge of this Court of allowing Review Petition No.409/2014 (in W.P.(C) No.5461/2014 filed by the appellant) filed by the respondent no.1 University, thereby reviewing the order dated 29th August, 2014.

3. The counsel for the respondent no.1 University, the counsel for the respondent no.2 GNCTD, the counsel for the respondent no.3

Rehabilitation Council of India (RCI) and the counsel for the respondent no.4 DDA appear on advance notice.

4. The appellant, in the Academic Year 2013-14, was granted provisional affiliation by the respondent no.1 University for imparting education in B.Ed. Special Education (Mental Retardation) and B.Ed. Special Education (Hearing Impairment) with an intake capacity of 25 students in each course / programme. The respondent no.1 University however vide letter dated 7th August, 2014, for the Academic Year 2014-15, refused permission to the appellant to admit students in the said courses / programmes, on the grounds that (i) the respondent no.4 DDA had informed that the land on which the premises of the appellant was situated was allotted only for construction of a school and cannot be utilized for running / operating an Institute of Higher Education; and, (ii) as per the Policy Guidelines of the respondent no.2 GNCTD, to establish an Institute of Higher Education, minimum area required for affiliation was 1.5 acres; premises of the appellant were having an area of less than 1000 mtr. i.e. less than even as per the Guidelines of the respondent no.3 RCI. Though the respondent no.4 DDA vide letter dated 22nd August, 2014 granted the requisite NOC to the appellant, but the respondent no.1 University had failed to reconsider.

5. Impugning the aforesaid letter dated 7th August, 2014 of the respondent no.1 University and its refusal to reconsider inspite of respondent no.4 DDA having changed its stand, the writ petition from which this appeal arises was filed, seeking a direction to the respondent no.1 University to grant provisional affiliation to the appellant for the aforesaid programmes / courses with an intake of 30 students in each for the Academic Session 2014-15.

6. The learned Single Judge, vide order dated 26th August, 2014 set aside the said letter dated 7th August, 2014 and remanded the matter to the respondent no.1 University for consideration afresh.

7. In the meanwhile, the respondent no.1 University also permitted a special round of counselling for admission to the Academic year 2014-15 including for the courses / programmes for which the appellant was seeking permission.

8. On 29th August, 2014 the appellant filed an application for review of the order dated 26th August, 2014 disposing of the petition. The said application was taken up for hearing by the learned Single Judge on 29th August, 2014 itself when the counsel for the respondent no.1 University appeared and stated that the Competent Authority of the respondent no.1 University had granted provisional affiliation to the appellant with an intake capacity of 30 students in each of the two programmes / courses for Academic Session 2014-15 and that the appellant Institute would be

included in the counselling scheduled to commence from 1st September, 2014. Recording the said statement the said application was disposed of.

9. The respondent no.1 University on 6th September, 2014 filed Review Petition No.409/2014 supra seeking review of the order dated 29th August, 2014. In the said review petition it was stated that the respondent no.1 University had in compliance of the order dated 26th August, 2014 of this Court, taken a decision on 29th August, 2014 itself and it had been inadvertently communicated to the Court on 29th August, 2014 that intake capacity of 30 students in each course / programme had been permitted to the appellant for the Academic Year 2014-15 when in fact the decision was for permitting intake capacity of 25 students in each course / programme. The learned Single Judge vide the impugned order, allowed the said review application and reviewed the order dated 29th August, 2014; resultantly granting provisional affiliation to the appellant for admission of 25 students in each of the two courses / programmes in the Academic Year 2014-15.

10. Aggrieved therefrom this appeal has been preferred.

11. We have heard the counsel for the appellant and the counsel for the respondent no.1 University at length. The contention of the counsel for the appellant is that the respondent no.1 University had earlier sanctioned the intake capacity of 25 students in each course / programme owing to the respondent no.3 RCI, which is the Regulatory Body for the programme / course in which the appellant is imparting education, having itself sanctioned the said intake capacity for the appellant. However the respondent no.3 RCI has for the Academic Year 2014-15 increased the intake capacity for all institutes imparting education in the said courses / programmes to 30 students. It is further his argument that even in the inspection got carried out jointly by the respondent no.2 GNCTD and the respondent no.1 University, the institute of the appellant was found to fulfil all the requisite conditions and was given the high score of 80.55% and which also entitles the appellant to enhancement in the intake capacity from 25 students in each course / programme to 30 students.

12. Per contra, the counsel for the respondent no.1 University has contended that the respondent no.1 University has inspected the institute of the appellant for intake capacity of 25 students only and not for the intake capacity of 30 students. It is further contended that the respondent no.1 University has merely renewed the intake capacity as sanctioned for the previous years.

13. We may record that there is a huge shortage of Special Educators i.e. qualified people in the courses / programmes education wherein the appellant is imparting. In fact this Court in a Public Interest Litigation in this regard has issued a direction to the Directorate of Education to

ensure that the vacancies of such Special Educators in all the schools in Delhi are immediately filled up. The Directorate of Education had however expressed inability to comply with the said direction for the reason of the requisite number of Special Educators being not available. It is perhaps in this spirit only that the respondent no.2 GNCTD / respondent no.4 DDA relaxed their guidelines on the basis whereof the appellant on 7th August, 2014 was denied affiliation and the respondent no.1 University also immediately on 29th August, 2014 reversed its decision.

14. Considering the matter in this light, we are of the view that if the appellant is found to have the requisite infrastructure for imparting education in each course to 30 students, the appellant should not be restricted to the intake capacity of 25 students.

15. We have perused the report of the joint inspection got carried out by the respondent no.2 GNCTD and the respondent no.1 University of the appellant's institute. We are unable to gauge therefrom whether the infrastructure available at the appellant's institute was inspected for the intake capacity of 30 students in each course or not. The Inspection Committee though has recommended the intake capacity of 25 students in each course, perhaps on the basis of the previous year's intake capacity but has nevertheless appended a note thereto to the effect that since the respondent no.3 RCI has recommended intake capacity of 30 students in each course, the respondent no.1 University also consider the same. There is nothing to show that the respondent no.1 University considered the intake capacity of 30 students or the reason for which it was denied. What appears is that there was a general policy of the respondent no.1 University to renew the affiliation for the same capacity as for the previous Academic Year 2013-14.

16. We are however of the view that considering the aforesaid facts as well as the provisions of The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the appellant is not to be treated at par with other institutes seeking affiliation to the respondent no.1 University and imparting education in other courses. Unless the Special Educators are available, not only the provisions of the Disabilities Act as well as Right to Education Act, 2009 will be defeated but the directions issued by this Court and other Courts in various Public Interest Litigations would also remain unimplemented.

17. We have thus enquired from the counsel for the respondent no.1 University to have the institute of the appellant inspected to assess the same for verifying whether the infrastructure available is sufficient for imparting education to 30 students in each course / programme.

18. The counsel for the respondent no.1 University states that inspection is carried out by independent inspectors most of whom are from outside Delhi and it would now not be possible to constitute an inspection team.

19. We however find the report of the inspection earlier carried out to be quite detailed and listing all the infrastructure available. Similarly the respondent no.3 RCI is also found to have inspected the institute of the appellant and recommended intake capacity of 30 students in each course / programme. We are of the view that the concerned authority of the respondent no.1 University, which considers the recommendations of the inspection teams on the basis of the said material would be able to assess whether the infrastructure available at the appellant's institute is sufficient to impart education to 30 students instead of 25 students in each course / programme. We may in this regard note that even though the appellant's institute did not fulfil the space criteria but an exception has already been made therefor by the respondent no.2 GNCTD / respondent no.4 DDA and it will matter not if instead of 25 students 30 students, subject to the infrastructure permitting, receive education therein.

20. We accordingly direct the respondent no.1 University to, in the light of our aforesaid observations, assess whether the intake capacity in each of the two courses can be increased to 30 students and report on 22nd September, 2014.

21. List on 22nd September, 2014.”

2. The counsel for the respondent no.1 University on 25th September, 2014 stated that from the report of the inspection earlier carried out, the respondent no.1 University was unable to assess whether the intake capacity of each of the two courses for which provisional affiliation for the year 2014-15 had been accorded to the appellant can be increased from 25 to 30 students. It was further informed that the last date for admission was 30th September, 2014. On enquiry by us, it was informed that the courses / programmes for which provisional affiliation aforesaid had been accorded to

the appellant do not require prior approval of the All India Council for Technical Education (AICTE). We, accordingly, directed that an inspection of the School / Institution of the appellant be carried out at the earliest to assess whether the existing infrastructure permitted the intake capacity in each of the two courses to be increased from 25 to 30 students inasmuch as we were / are of the opinion that public interest demanded that if the intake capacity could be so increased, the same be increased to enable ten additional trained qualified Special Educators of which there is a huge dearth / paucity, can be made available. On 30th September, 2014, we were informed that the inspection as directed had been carried out and inspection report dated 27th September, 2014 (which appeared to suggest that the infrastructure available was sufficient for 30 students in each course) placed before us. However on request of the counsel for the respondent no.1 University, the matter was adjourned to 14th October, 2014, 16th October, 2014 and thereafter to 17th October, 2014. On 17th October, 2014, the counsel for the respondent no.1 University stated that the recommendations of the Joint Assessment Committee as per its report dated 27th September, 2014 had been accepted by the Vice Chancellor of the respondent No.1 University by invoking his emergent powers.

3. Though the last date prescribed as aforesaid for admission was 30th September, 2014 but there were certain other developments. The respondent no.1 University after the last round of counselling as per the original schedule, vide notice dated 27th & 28th August, 2014, as aforesaid, announced a special round of online counselling including for the aforesaid two courses. However, the said notice dated 27th & 28th August, 2014 was challenged before the Supreme Court and vide interim order in which proceeding, the same was stayed. The respondent no.1 University subsequently withdrew the notice dated 27th & 28th August, 2014 and in light whereof the challenge made thereto before the Supreme Court became infructuous. Petitions again came to be filed before this Court impugning the withdrawal by the respondent no.1 University of the notice dated 27th & 28th August, 2014. However, the withdrawal having been effected during the pendency of a challenge thereto before the Supreme Court, this Court refused to intervene. The Supreme Court was again approached and which has resulted in judgment dated 16th October, 2014 in W.P.(C) No.853/2014 titled *Varun Saini Vs. Guru Gobind Singh Indraprastha University*. Vide the said judgment, the time for carrying out the online counselling was extended till 21st October, 2014.

4. When this appeal was listed before us on 17th October, 2014, it was the contention of the counsel for the respondent no.1 University that the judgment in *Varun Saini* (supra) did not apply to the subject courses. However, being *prima facie* of the opinion that there appeared to be no bar to extend the date of counselling for the said courses also, we, vide interim order of the said date permitted the counselling in respect of the said courses also upto 21st October, 2014 making it clear that the same would be without creating any equities in favour of the candidates or the appellant and that the same was only by way of interim measure and subject to further orders.

5. On 27th October, 2014 we were informed that in the counselling conducted pursuant to interim order aforesaid, all the 30 seats in each of the subject two courses in the Institution / School of the appellant have been filled up. We, on 27th October, 2014, further heard the counsel for the respondent no.1 University and reserved judgment.

6. The counsel for the respondent no.1 University has contended that; i) the Special Round of Counselling announced vide notice dated 27th & 28th August, 2014 was with respect to ten programmes / courses conducted by the respondent no.1 University; ii) that of the said ten courses, four were covered by the AICTE Regulations and five were directly governed by the

University Statutes and Regulations and the tenth was “B.Ed. CET Code-122” course and which included the subject two courses; iii) that the Supreme Court vide judgment (supra) in *Varun Saini* extended till 21st October, 2014 the time for counselling with respect to the four courses covered by AICTE Regulations as well as five courses governed by the University Statutes and Regulations; iv) however with respect to B.Ed. CET Code-122, it was observed that the same is covered under the National Council for Teacher Education (NCTE) Act, 1993 and Regulations framed thereunder and the Supreme Court in the controversy before it was not dealing with the cases under the NCTE Act, 1993; v) that though the subject two courses were included in B.Ed. CET Code-122 but are not covered by the NCTE Act and are covered by the Rehabilitation Council of India (RCI) Act, 1992 and which remained to be noticed by the Supreme Court; vi) that though not recorded in the judgment but the reason which prevailed with the Supreme Court in extending the time of counselling for the other nine courses and not doing so with respect to B.Ed. CET Code-122 course was that while all other courses were / are of three to five years duration, the B.Ed. CET Code-122 course(s) is of ten months duration; vii) that the subject two courses also are of ten months duration; viii) that the Supreme

Court during the hearing leading to the judgment supra had observed that date for counselling could not be extended for a course / programme of only ten months duration; ix) that the respondent no.1 University though in light of the observation contained in our order dated 16th September, 2014 has no in-principle objection to the appellant being so allowed to in the current academic year admit all the 30 students and to run the courses but had placed the correct facts before the Court so as not to be deemed to be in any manner overreaching the judgment in *Varun Saini* (supra).

7. On enquiry, it is informed that neither the RCI Act nor any other provision / judgment bars extension of the date for commencement of the academic session.

8. The counsel for the appellant also informs that the course duration prescribed in the RCI Act is of 220 days.

9. We have considered the aforesaid contentions of the counsel for the respondent no.1 University. The Supreme Court in the judgment in *Varun Saini* (supra) has as aforesaid merely observed that it was in that case not dealing with the controversy pertaining to B.Ed. CET Code 122 course / programme. The Supreme Court has not held that the time for counselling, as extended for the AICTE and the University regulated courses, could not

be so extended for B.Ed. CET Code-122 course(s) admissions as well. Even if it were to be accepted that during the hearing before the Supreme Court, it was observed that time should not be extended for courses / programmes of say a year's duration, the same having not formed part of the judgment, cannot be a reason for us to not so extend the time for admission for the subject courses also, of course ensuring that due to the delay if any in commencement of the academic session, the students admitted do not suffer.

10. We accordingly allow this appeal by directing:

- (i) that the students provisionally admitted (pursuant to interim order in this appeal) to the subject courses in the counselling held under our interim order dated 17th October, 2014, be now formally admitted forthwith to the subject courses in the School / Institution of the appellant;
- (ii) the appellant shall ensure that the said courses are conducted and teachings therein imparted strictly in accordance with the law, rules and regulations applicable thereto including as to the duration of the courses, either by extending the date for completion of the course or by making up for the lost days on

Saturdays/ Sundays / other holidays or by holding remedial extra classes on regular days;

(iii) that the prescribed attendance criteria is to be strictly followed.

(iv) the respondent no.1 University to ensure compliance of the above.

11. Before parting, we would like to express our appreciation for the cooperation extended by the respondent no.1 University in the matter and which hopefully will result in the much needed Special Educators being available to the pupils in need thereof.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

OCTOBER 29, 2014

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