

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

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Date of decision: 29th July, 2015

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W.P.(C) 6329/2015 & CM No.1517/2015 (for directions)

SANDEEP KUMAR

..... Petitioner

Through: Mr. Manish Kumar, Adv.

Versus

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

..... Respondents

Through: Mr. Mukul Talwar, Sr. Adv. with Mr.
Sradhananda Mohapatra & Mr. Vipin
Singh, Advs. for R-1/GGSIPU.
Mr. Harshit Jain, Adv. for R-2&3.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 6th July, 2015 when this petition came up first before this Court,
the following order was passed:

“1. The question for consideration is as to which of the OBC candidates are eligible for admission to the postgraduate courses in Medicine in the respondent no.1 University.

2. The petitioner claims to be an OBC from Bihar, in the Central as well as the State List of Bihar. He challenges the admission given to the respondents no.2&3 namely Dr. Sunil Kumar Choudhary and Dr. Vivek Singh who according to him are OBCs in the State List from Rajasthan and Uttar Pradesh and not OBCs in the Central List from Rajasthan and Uttar Pradesh. According to him, they are not eligible for admission in the Guru Gobind Singh Indraprastha (GGSIP) University quota of admissions to postgraduate courses in Medicine, though may be eligible in All India quota.

3. Reliance in this regard is made on the statement of the counsel for the GGSIP University recorded in the order dated 5th July, 2013 in W.P.(C)

No.4168/2013 titled ***Naveen Suhag Vs. National Board of Examinations*** and in other connected petitions.

4. It is further argued that though earlier the respondents no.2&3 were OBCs in the Central List also from their respective States but their community (Jat) has been struck down by the Supreme Court vide judgment dated 17th March, 2015 in W.P.(C) No.274/2014 titled ***Ram Singh Vs. Union of India*** (2015) 4 SCC 697.

5. The senior counsel for the respondent no.1 University appearing on advance notice on instructions states that the respondents no.2&3 have been provisionally admitted on the basis of OBC certificates issued to them post the aforesaid judgment of the Supreme Court. However on enquiry it is informed that the said OBC certificates are with respect to the State List of the States of Rajasthan and Uttar Pradesh.

6. The counsels to show the Rule in this regard i.e. whether the State List of other States of OBC is to be followed or not.

7. Issue notice.

8. Notice is accepted by the counsel for the respondent no.1 University.

9. Notice to the respondents no.2&3.

10. The respondent no.1 University to inform the respondents no.2&3 of today's order and ask them to appear before this Court and file their replies on the next date of hearing.

11. On further enquiry it is informed that though the last date for admission is over but the admission given to the respondents no.2&3 is provisional and subject to the undertaking obtained from them.

12. Till the next date, *status quo* with respect to the said admissions be maintained.

13. List on 16th July, 2015.

2. Thereafter on 16th July, 2015, the following order was passed:

“1. Though the counsels have been heard but the question which remains for adjudication is, whether the respondent Guru Gobind Singh Indraprastha University (GGSIPU), while making admissions to 50% seats in postgraduate courses under its Institutional Quota and carving out reservation therein for Other Backward Classes (OBCs), is to follow only the Central List of OBCs or also the OBC List of Delhi.

2. The candidates whose admissions are challenged have been admitted on the basis of being in the OBCs List of Delhi as well as their Home State.
3. The ancillary question which arises is, whether the persons who have done their graduation from the respondent GGSIPU, though from another State at the time admission to undergraduate course, can now be treated as OBCs in the List of Delhi, for the purposes of admission to Post Graduation course.
4. A counter affidavit is deemed necessary. The same be filed on or before 23rd July, 2015.
5. List on 23rd July, 2015.”

3. The respondent No.1 Guru Gobind Singh Indraprastha University (GGSIPU) in its counter affidavit, with respect to the aforesaid controversy stated:

- i) The respondent No.1 GGSIPU offer MBBS course in:
 - a) VMMC and Safdarjang Hospital;
 - b) Army College of Medical Sciences; and,
 - c) NDMC Medical College, Bara Hindurao Hospital affiliated to it.
- ii) VMMC is owned and funded by the Central Government but it is not a Central Educational Institution as defined by the Central Educational Institutions (Reservation in Admission) Act, 2006 (2006 Act) since it is affiliated to a GGSIPU constituted under a State Act; however it has a certain quota of

MBBS seats that are filled up on All India basis and of which seats, a portion is reserved for OBCs from any State;

- iii) In Army College of Medical Sciences, there is no OBC reservation;
- iv) In NDMC Medical College, only those OBC candidates who belong to Delhi and whose caste forms part of the State List of OBC for the GNCTD are considered eligible.
- v) Post Graduate Medical Programmes are offered in:
 - a) VMMC and Safdarjang Hospital;
 - b) PGIMER and Ram Manohar Lohia Hospital; and,
 - c) ESI-PGIMSIR,all affiliated to GGSIPU and all of which are controlled and administered by the Government of India.
- vi) In the Post Graduate Medical Courses in the aforesaid institutions, 50% of the seats are reserved under the Institutional Quota, for MBBS students of the respondent No.1 GGSIPU and remaining 50% of the seats are filled up on All India basis.

- vii) Since the institutional quota is reserved for MBBS graduates of respondent No.1 GGSIPU and the admission is done in Central Government administered institutions, all candidates who hold a valid OBC certificate from the place of their residence in any State in the country and have done MBBS from respondent No.1 GGSIPU are eligible for applying in the OBC quota.
- viii) Both, respondents No.2&3 are 'Jats' which caste is included in the list of OBCs for the GNCTD and both have been issued OBC Caste certificate from the State of their residence.

4. The senior counsel for the respondent No.1 GGSIPU however states, that in the light of the orders aforesaid passed in this petition, respondent No.1 GGSIPU has taken a decision to re-look into the matter of criteria for reservation for OBCs in the institutional quota and that a decision in this respect shall be taken.

5. The senior counsel for the respondent No.1 GGSIPU has also argued, that the petitioner is not entitled to any relief in this petition for the following reasons:

- a) The petitioner was admittedly aware of the criteria to be followed by GGSIPU for admission under the OBC category as

is evident from the petitioner having made a representation dated 25th March, 2015 thereagainst.

- b) As per the petitioner himself, GGSIPU, arbitrarily and illegally, in the first round of counselling held on 30th March, 2015 granted provisional admission to other State OBCs / Jat candidates who were not covered under the OBC list notified by GNCTD or the list published by the Central Government.
- c) The second round of counselling was held on 2nd May, 2015 and the third round of counselling held on 31st May, 2015.
- d) That this petition was however brought before this Court for the first time on 6th July, 2015, long after the admissions concluded on 2nd June, 2015 – being the last date fixed by the Supreme Court therefor.
- e) That the petitioner is guilty of laches, acquiescence and waiver and cannot be allowed to re-open the entire admission process at this late a stage particularly when the last date prescribed by the Supreme court for admissions has gone by.
- f) That it is also not the case of the petitioner that he, in the merit list of OBC candidates, is immediately next to the respondents

No.2&3 for it to be said that upon their admission being cancelled, the petitioner would *ipso facto* be entitled to admission; what the petitioner is wanting is to re-open the entire admission process and which ought not to be allowed.

6. The only thing which the counsel for the petitioner is able to contend in response to the contentions of the senior counsel for the respondent No.1 GGSIPU recorded in paras above is, that the respondents No.2 and 3 were admitted on 2nd June, 2015. However on enquiry as to why the petitioner thereafter also waited till 30th June, 2015 to first file this writ petition, that too defective, and thereafter repeatedly re-file the petition and get it listed only on 6th July, 2015, the only reply forthcoming is that the petitioner contacted the advocate late, owing to the summer vacation.

7. I am of the view that the petitioner is not entitled to any relief on the ground of laches, acquiescence and waiver alone. The petitioner, in the petition has clearly admitted that he was aware of the criteria for determination of OBCs (and impugning which this petition has been filed) being adopted by the GGSIPU much prior to 25th March, 2015 when he protested thereagainst. The petitioner however participated in the admission process and filed this petition nearly one month after the date of close of

admission. The petitioner, in the petition has pleaded that even in the first round of counselling held on 30th March, 2015, OBCs who were not entitled to were wrongly admitted. The nature of the cause of action and the relief claimed in the petition is such, which required the petitioner, if aggrieved from the criteria / procedure announced by GGSIPU and followed, to immediately approach the Court. It cannot be lost sight of that owing to the petitioner not impugning the said criteria / procedure at the earliest, others whose admissions are now sought to be challenged, got admissions and on the basis of the said admissions must have forgone the other opportunities which they may have had. The petitioner cannot at this stage be permitted to upset their admissions.

8. The senior counsel for the respondent No.1 GGSIPU is also correct in his contention that what the petitioner is seeking is not merely cancellation of admissions of respondents No.2 and 3 but of re-opening of the entire admissions made under the OBC category. The same also cannot be permitted.

9. In view of the aforesaid as well as the statement that the respondent No.1 GGSIPU itself has decided to have a re-look into the OBC criteria, it is

not deemed proper to record the arguments otherwise made by the counsels thereon, the judgments cited or to render any decision thereon.

10. The petition is thus dismissed, however binding the respondent No.1 GGSIPU to its statement aforesaid to have a re-look into the matter and directing it to take a decision in this regard well before the commencement of the admissions for the next academic session and to prominently announce the same so that anyone aggrieved therefrom can avail of legal remedies if any available.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 29, 2015

‘gsr’

(corrected and released on 22nd August, 2015)