

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

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Date of decision: 6th July, 2015

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W.P.(C) No.6398/2015

Ms. PALLAVI SHARMA

..... Petitioner

Through: Mr. R.K. Saini & Mr. Ayush Arora,
Advs.

versus

COLLEGE OF VOCATIONAL STUDIES & ANR. Respondents

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

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.11661/2015 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

W.P.(C) No.6398/2015 & CM No.11660/2015 (for stay).

3. This petition has been received post lunch on listing on urgent mentioning and has been taken up past 1630 hours.
4. In view of the urgency expressed, of the admissions closing tomorrow i.e. 7th July, 2015 by 1300 hours, the counsel for the petitioner has been heard.

5. The petition is filed impugning the action of the respondent no.1 College of Vocational Studies and the respondent no.2 University of Delhi of refusing to give admission to the petitioner “against the vacant seats of B.A. (Vocational Courses)” despite the petitioner being eligible for admission thereto and having more marks than the cut off marks (above 88%) for taking admission in the said course as per the third cut off list declared by the respondent no.1 College of Vocational Studies.
6. The counsel for the respondent no.2 University of Delhi appears on advance notice.
7. The petitioner has been denied admission to the B.A. (Vocational Courses) for the reason of the petitioner, in the Central Registration Form known as ‘OMR’ filled by her having sought admissions only in, (i) B.A. (Hons.) Economics, (ii) B.A. (Hons.) English, (iii) B.Com and (iv) B.Com (Hons.) courses and having not sought admission in B.A. (Vocational Courses).
8. It is the case of the petitioner that she has scored 89% marks in the Commerce stream in Class-XIIth examination but has not been able to secure admission in any of the courses aforesaid for which she has applied.

However on coming to know of the cut off percentage declared in the third list declared, of 88% for admission to B.A. (Vocational Courses), she wants admission thereto.

9. The counsel for the petitioner has argued, that the fact that the petitioner while filling up the OMR Form and mentioning the subjects in which she was seeking admission, did not fill up B.A. (Vocational Courses), is a mere technicality and which technicality should not be allowed to come in the way of admission of the petitioner, who till date does not have admission in any course, getting admission to the said courses. It is further argued that the non-filling of the B.A. (Vocational Courses) by the petitioner in the OMR Form is an error and for which the petitioner cannot be penalized. Strong reliance is placed on the judgment dated 22nd July, 2010 of the undersigned in W.P.(C) No.4782/2010 titled ***Saurabh Vs. GNCT of Delhi.***

10. The counsel for the respondent no.2 University of Delhi of course, opposes the petition.

11. I am unable to find the petitioner to have made out any case whatsoever. The procedure for admission prescribed by the respondent no.2

University of Delhi having provided for the admission seekers to fill up their choice of college and choice of courses in which they want to pursue graduation, admission of a candidate who has not applied for admission to a particular college or to a particular course cannot be directed. If the same is done, it will throw the entire admission process out of gear and create a chaos. As aforesaid, it is not as if the choice of subjects was left to be exercised by the students after the cut off lists are successively declared. It is for this reason only that the applicants, in the OMR Form were required to fill the subject / courses to which they sought admission. The counsel for the respondent no.2 University of Delhi has rightly contended that it is not as if the petitioner could not have filled up the course of B.A. (Vocational Courses) in which she now claims admission. The petitioner however did not and cannot now be directed to be admitted to the said course merely because she fulfils the criteria for admission thereto.

12. Though there is undoubtedly the principle of merit being not disregarded but the *inter se* merit has to be seen only of those who are in the race and merit, howsoever higher of a person who has chosen not to partake in the race cannot be made a ground for declaring a non-participant a winner.

13. Supreme Court, in ***Union of India Vs. Dalbir Singh*** AIR 2009 SC 2438 held that a candidate having opted to have his case considered only under the OBC category, cannot thereafter claim that his case requires to be considered in the general merit, only because he has secured better percentage of marks than the last candidate selected in the general list. The direction for considering the claim under the general category was set aside. Similarly, a Division Bench of this Court in ***Anand Lal Yadav Vs. NCT of Delhi*** MANU/DE/1758/2002 held that candidates cannot be permitted to change the category under which they originally applied, after the last date fixed for receipt of applications. Reference may also be made to ***Maharshi Dayanand University Vs. Surjit Kaur*** JT (2010) 7 SC 179 laying down that no mandamus directing educational institutions to act contrary to their rules can be issued in exercise of jurisdiction under Article 226 of the Constitution of India. The Division Bench of this Court in judgment dated 3rd March, 2011 in LPA No.599/2010 titled ***Varun Kumar Agarwal Vs. Union of India*** also held the prospectus to be binding. All the said cases as well as a host of other case law have been discussed by the undersigned in ***Jyoti Yadav Vs. Government of NCT of Delhi*** MANU/DE/2728/2010 and in ***Sagar Sethia Vs. Delhi Technological University*** MANU/DE/1417/2011.

14. As far as the reliance on *Saurabh* supra is concerned, the same also in my view is misconceived. *Saurabh* was a case of a candidate who had been invited for counselling being denied admission for the reason of being unable to reach the venue of counselling for reasons beyond his control. The observations made while allowing such a candidate to partake in the counselling cannot be stretched out of context and be applied to unrelated facts.

15. The counsel for the petitioner has also argued that the admission, if granted to the petitioner, would not be to the prejudice of anyone.

16. The aforesaid argument also is erroneous. The seats available in the respondent no.1 College of Vocational Studies even in the B.A. (Vocational Courses) are limited. Even if it were to be held that there are no candidates left for admission after the announcement of third cut off list, as far as I recollect there is a provision for subsequent cut off list also and in which the students, though having lesser marks than the petitioner but who had applied for admission to the said course, would be admitted. Grant of admission to the petitioner who has not even applied for admission to the course would therefore be detrimental to the said students. Moreover, there is no case of a 'vacant seat' as has been made out by the petitioner.

There is no merit in the petition which is dismissed.

No costs.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

JULY 06, 2015

Pp/gsr..