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

+ W.P.(C) No. 7505/2015 & CM No.14323/2015 (for directions)

GARIMA YADAV Petitioner

Through: Ms. Suman Kapoor, Adv.

Versus

DEAN, SOCIAL SCIENCES FACULTY, DELHI UNIVERSITY
& ORS Respondents

Through: Mr. Mohinder J.S. Rupal and Mr.
Abhijeet Singh, Advs. for DU with
Dr. Ratnabali, Deputy Dean (Law) &
Prof. Aditya Bhattacharyajee, HoD
Economics.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **31.08.2015**

1. The question arising for consideration in the present petition as culled out in the order dated 12th August, 2015 is as under:

“3. The controversy appears to be as under:

(i) The petitioner is an aspirant for admission to the Master of Art (MA) (Economics) Programme of the respondents No.3 to 5 University of Delhi in the academic year 2015-16.

(ii) The admission to the said programme is by two modes. The admission to the 50% of the seats is through direct mode, open to only those candidates who have done their graduation from Delhi University and the admissions to the remaining 50% of the seats is by holding an admission test and as per the order of merit in the result of the said admission test.

(iii) The petitioner is a graduate from Delhi University and sought admission under both the modes, as admittedly was open to her.

(iv) *Of the total number of seats, 27% of the seats i.e. 62 seats are reserved for Other Backward Classes (OBC) category. The said 62 seats are also divided 50 : 50 between the two modes of admission, with 31 seats reserved for OBC under each mode of admission.*

(v) *The petitioner admittedly failed to get the eligibility needed for admission under the admission test mode of admission.*

(vi) *However of the 31 seats reserved for OBC category in the admission test mode, some seats are stated to be vacant.*

(vii) *The petitioner, as per the marks in her graduation, has not been admitted under the direct mode of admission also.*

(viii) *Now, the question is whether the vacant seats out of the 31 seats reserved for OBC category in the admission test mode of admission are to be transferred to the general category in the admission test mode, as contended by the respondent University, or to the OBC category under the direct mode of admission, as contended by the petitioner.*

(ix) *It is the case of the petitioner that if the said seats are transferred to OBC category under the direct mode, she will have a chance of admission.*

4. *The counsel for the respondent University has contended that as per the judgment of the Supreme Court in **Ashok Kumar Thakur Vs. Union of India** (2008) 6 SCC 1 the unfilled OBC seats are to be transferred to the general category.*

5. *Undoubtedly so; however once 27% reservation for OBCs has been provided, in my prima facie opinion, the attempt first should be to fill up the said 27% seats from the OBC candidates only and not from general category candidates. The division of the seats by the respondent University into two modes of admission is an internal matter of the respondent University and cannot be allowed to come in*

the way of the constitutional mandate of total 27% reservation for the OBCs.”

2. The counsel for the respondent University of Delhi has today in Court handed over a counter affidavit which is taken on record.
3. The counsels have been heard further.
4. The counsel for the respondent University has argued:
 - (i) that the admission process for Post-Graduate courses of the respondent University is closing today i.e. 31st August, 2015;
 - (ii) that there is no merit in the contention of the petitioner, of the procedure followed for admission to Master of Arts (M.A.) (Economics) being any different from the procedure followed for admission to M.A. (Sociology); a letter dated 27th August, 2015 of the Department of Sociology to the effect that it has not transferred any vacancies from Direct to Entrance mode or vice-versa and that all admissions have been done in accordance with the Guidelines, is handed over in the Court and taken on record;
 - (iii) that there is no rule / provision under which the Other Backward Classes (OBC) seats of the admission test mode can be added to the OBC seats of the direct admission mode;
 - (iv) that the petitioner participated in the admission process with full knowledge that the vacant seats of the OBC category in the admission test mode are not to be transferred to the OBC seats of the

direct admission mode and after being unsuccessful in getting admission, cannot now challenge the procedure adopted by the respondent University;

(v) that the said procedure has been formulated by the Academic Council of the respondent University which is one of the Authorities of the University under Section 17 of the Delhi University Act, 1922;

(vi) that the Academic Council of the respondent University, under Sections 23 and 32 of the said Act has made / formulated the scheme aforesaid of admission;

(vii) that the said scheme thus has a statutory flavour / character;

(viii) that the petitioner in this petition has not even challenged the said scheme / procedure of admission and without challenging the same and the said challenge being upheld, cannot get admission;

(ix) that notwithstanding the aforesaid, the respondent University in the light of the order dated 12th August, 2015 *supra*, has decided to re-consider the said aspect and if any change is required to implement the same, will be done with effect from the admissions to the next academic year.

5. Though the counsel for the petitioner faintly made an effort to show from the Bulletin of Information of the respondent University that the scheme / procedure followed for admission in M.A. (Sociology) is different

from that in M.A. (Economics) but without any success. In any case, the Department of Sociology having issued the Certificate aforesaid, no credence can be given to the said contention.

6. The respondent University having taken a decision to re-consider the issue highlighted in the order dated 12th August, 2015 supra, need is not felt for adjudication of the issue at present. Suffice it is to direct that the said decision be taken on or before 31st January, 2016, so that the change, if any can be duly incorporated in the Bulletin of Information for the next academic year.

7. However, having *prima facie* found that the procedure prescribed / followed by the University, of transfer of unfilled OBC category seats of one mode of admission to the general category of the same mode of admission to be in negation of the statutory reservation to the extent of 27% for OBC, the question still remains, whether the petitioner is to be entitled to the relief.

8. It is not as if this Bench as per the Roster is not entitled to deal with the validity of the procedure prescribed / followed for admission. The Chief Justice vide Administrative Note dated 31st January, 2013 has clarified that the writ petitions challenge wherein is to a Policy / Scheme or Guidelines etc., are to be treated as not constituting a challenge to the vires of the Act, Rules or Regulations. Thus, the fact that the subject Procedure / Policy / Rule / Regulation has been enacted by the Academic Council of the respondent University, which is a statutory body of the University or that it has done so in exercise of statutory powers, would not mean that the

challenge to the said Procedure / Policy / Rule / Regulation is to be treated as a challenge to any Act, Rule or Regulation to be listed before the Division Bench of this Court.

9. Again, though there is considerable merit in the contentions of the counsel for the respondent University, of the petitioner having neither made such a challenge in the writ petition nor having challenged the said Procedure before the commencement of the admission process, now come to the Court to contend that the unfilled OBC seats of the admission test mode should be transferred to the OBC seats of the direct admission mode, however, in my view, the same would not come in the way of the enforcement / implementation of the constitutional mandate of reservation of 27% of the seats for OBCs. The admissions admittedly are open till today. It is thus felt that the petitioner should not be deprived of admission specially when the unfilled seats in the OBC category of the admission test mode are still available.

10. I may in this regard notice:

- (i) that there are 25 unfilled seats in the OBC category in the admission test mode;
- (ii) the last candidate admitted in the OBC category in admission test mode had scored 36% marks in the admission test;
- (iii) the petitioner in B.A. (Honours) (Economics) had 71.24% marks;

(iv) the last candidate admitted in OBC category in direct admission mode had 73.17% marks in B.A.(Honours) (Economics);

(v) there are approximately 15 candidates between the petitioner and last candidate admitted in OBC category in direct admission mode; however owing to unfilled seats in OBC category in admission test mode being 25, it is not as if the petitioner, as per her merit would not have been admitted if the said unfilled 25 seats of OBC Category in admission test mode are to be added to OBC category seats in direct admission mode.

I am in the aforesaid facts even otherwise satisfied that this Court, by so directing the respondent University to admit the petitioner, would not be sacrificing merit. It is a matter of chance, that owing to other OBC candidates applying in the direct admission mode in this year having marks higher than petitioner in the B.A. (Honours) (Economics) result, the petitioner with 71.24% marks could not get admission in first round. It is possible that in any other year, the petitioner with the same marks may have got admission in the first round.

11. The counsel for the respondent University has expressed an apprehension that the approximately 15 candidates aforesaid, ahead of the petitioner, may also rush to the Court. It is further stated that similar situation may arise in the other Departments of the University also.

12. The said apprehension is misplaced. Today being the last day of admission, none else can hereafter approach the Court.

13. Accordingly, this petition is disposed of, (i) directing the respondent University to take a decision as aforesaid; and, (ii) by directing the respondent University to admit the petitioner to M.A. (Economics) Programme in the academic year 2015-2016 in the OBC category in the direct admission mode, subject of course to the petitioner complying with the other requirements. The petitioner to visit the respondent University today itself for compliance of all the formalities for admission.

14. It is however clarified that this order having been made in the facts and circumstances aforesaid, shall not open a window for others applying hereafter i.e. after the last date of admission is over, for availing the benefit hereof.

No costs.

Copy of this order be given *dasti* under the signatures of the Court Master.

RAJIV SAHAI ENDLAW, J.

AUGUST 31, 2015

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