

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

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Date of decision: 14th, October, 2015

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W.P.(C) 7725/2015 & CM No.15146/2015 (for stay)

AARJU AALAM

..... Petitioner

Through: Dr. K.S. Chauhan, Mr. Murari Lal,
Mr. Ajit Kumar Ekka and Mr. Ravi
Prakash, Advs.

Versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Saurabh Banerjee and Mr. Sumit
Nagpal, Advs. for R-1 to 3/DU.
Mrs. Bharathi Raju, Adv. for R-
4/UOI.
Mr. V. Sudeer and Ms. Vandana
Bakshi, Advs. for R-5/UGC.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The petition (i) seeks quashing of the admissions of the General Category against the earmarked OBC quota seats in the M.A. (East Asian Studies) Programme of the respondents no.1 to 3 University of Delhi (respondent University); (ii) impugns the requirement of minimum eligibility of marks in the written test and interview in the case of earmarked OBC quota seats; and, (iii) axiomatically, seeks a direction for admission of the petitioner against the OBC quota seats of the said Programme of the respondent University.

2. The petition was entertained. Counter affidavit has been filed by the respondent University. Though the counsels for the respondent no.4 Union of India (UOI) and the respondent no.5 University Grants Commissioner (UGC) appeared but have not filed any counter affidavit. A rejoinder to the counter affidavit of the respondent University has been filed by the petitioner. The counsels for the parties were heard from time to time, last on 3rd September, 2015 when judgment was reserved.

3. It is the case of the petitioner that:-

- (i) he belongs to the Other Backward Classes (OBC);
- (ii) he did his B.A. (Hons.) in Hindi Journalism & Mass Communication from the respondent University in the Academic Year 2011-2014 and secured first division with 61.9% marks;
- (iii) he applied for admission to M.A. in East Asian Studies Programme of the respondent University;
- (iv) as per the Circular dated 22nd May, 2014 of the respondent University for admission to various undergraduate and postgraduate courses, OBC candidates are to be given

relaxation in the minimum eligibility in the qualifying examination and in the minimum eligibility if any in the admission entrance test to the extent of 10% of the minimum eligibility marks prescribed for the General Category candidates and 27% of the total seats in every programme are to be reserved for OBCs;

- (v) as per the Bulletin of Information for admission to Postgraduate / Masters Courses of the Year 2015-2016 of the respondent University also, the OBCs are to be given a relaxation in the minimum eligibility in the qualifying examination and in the minimum eligibility if any in the admission entrance test to the extent of 10% of the minimum eligibility marks prescribed for the General Category candidates;
- (vi) the Department of East Asian Studies, Faculty of Social Sciences of the respondent University also issued Information Bulletin prescribing eligibility for admission to M.A. in East Asian Studies Programme of 50% marks in the aggregate from any recognized University in India;

- (vii) the selection process to the said Programme consisted of a written test (85 marks) and an interview (15 marks);
- (viii) the petitioner appeared in the written test held on 30th June, 2015 as well as in the interview held on 2nd July, 2015;
- (ix) the merit list of the candidates selected for admission to the said Programme published on 15th July, 2015 notified 40 candidates including only one OBC candidate;
- (x) the OBC candidates selected for the remaining 10 seats were however not announced;
- (xi) the petitioner, on enquiry was informed that only one OBC candidate qualified; and,
- (xii) the action of the respondent University of not admitting the petitioner to the OBC seats in the said Programme is bad.

4. Neither any of the circulars of the respondent University filed along with the writ petition nor the Bulletin of Information of the East Asian Studies prescribed any pass marks or the minimum eligibility marks in the entrance test. However the respondent University in its reply dated 22nd July, 2015 to the representation of the petitioner preceding the petition stated that

the cut-off marks for the General Category were 54 and were successively lowered for the OBC Category till 50 and since only one OBC candidate qualified, the balance seats reserved for the OBC Category were transferred to the General Category and admissions thereto had already been made.

5. The petition came up first on 13th August, 2015 when it was enquired from the counsel for the respondent University, under which Rule, without prescribing any minimum eligibility marks in the entrance test, could the respondent University on the basis of the cut-off marks of the last student admitted in the General Category determine the minimum eligibility in the entrance test for the OBC candidates.

6. The counsel for the respondent University in this regard on 18th August, 2015 handed over in Court the minutes of the meeting of the Admission Committee which took place on 13th July, 2015 to decide the cut-off marks for the entrance test for admission *inter alia* to M.A. (East Asian Studies) and prescribing the cut-off marks of 50%. On further enquiry from the counsel for the respondent University, why the cut-off marks in the entrance test were not prescribed in the Prospectus, the counsel stated that the cut-off marks are decided depending upon result of the entrance test and stated that since the cut-off marks prescribed in the meeting held on 13th

July, 2015 were 50%, the cut-off marks applicable to OBCs would be 45%. The said stand of the respondent University was clearly contradictory to the stand in the letter dated 22nd July, 2015 supra where it was stated that the cut-off marks for the General Category were 54% and to enable the OBC candidates to qualify, the cut-off marks were lowered successively to 53, 52 and then finally to 50. It was in these circumstances that the counter affidavit of the respondent University was called for.

7. The respondent University in its counter affidavit has stated that:-
 - A. the petitioner secured only 34 marks in the entrance test;
 - B. Ordinance II of the respondent University prescribes a separate Admission Committee for each course and which is the supreme body to take all decisions with respect to raising the minimum qualifications for eligibility for admission or a prescribed percentage of marks in the qualifying examination;
 - C. the decisions of the Admission Committee are subject only to review by the Standing Committee of the Academic Council;

- D. this year the entrance test for admission to M.A. (East Asian Studies) 2015-2016 was conducted on 30th June, 2015 and its result was declared on 13th July, 2015;
- E. as per Ordinance II and as an age-old practice and a matter of procedure followed by the respondent University in all courses like M.A. (East Asian Studies) to which admission is granted through an entrance test, the minimum qualifying marks for the General Category are determined after considering, (i) a number of candidates appearing in the entrance examination; and, (ii) the overall result of the candidates who appeared in the entrance examination; both these factors are then coupled with the usual intake of candidates in the particular course to determine and come out with the required minimum qualifying marks in a particular course;
- F. the minimum qualification marks cannot be declared beforehand as the same is dependent on and can be done only upon taking into consideration all the aforesaid factors;

G. that after declaration of the results of the entrance test for admission to M.A. (East Asian Studies), the Admission Committee met on 13th July, 2015 and after considering that the usual intake in the Department was / is 19 and after exercising the discretion vested in it determined the minimum cut-off marks in the entrance test at 54 and gave 10% relaxation to OBCs; however since none of the OBC candidates qualified for admission, the qualifying marks in the entrance test were repeatedly lowered from 54 to 53, then to 52 , then to 51 and then finally to 50 which was then taken as the minimum cut-off marks for the General Category; accordingly the minimum qualifying marks in the entrance test for the OBC candidates was fixed at 45 and only one OBC candidate qualified for admission and was admitted; and,

H. the petitioner with 34 marks in the entrance examination did not qualify for admission.

8. Though the petitioner has filed a rejoinder to the aforesaid counter affidavit but need is not felt to advert thereto.

9. I am sad to note that inspite of this Court in *Apurva Vs. Union of India* 172(2010) DLT 326 having deprecated the practice as followed by the respondent University in the matter of admission to M.A. (East Asian Studies) Programme (and possibly in other programmes as well) in the Year 2015-2016 the University continues to follow the same. In *Apurva* the challenge was to the practice prevalent in Jawaharlal Nehru University (JNU) of admitting only those OBC candidates who had secured marks within the 10% bandwidth of the last candidate admitted in the General (Unreserved) Category. It was the contention of JNU in that case that the expression ‘cut off marks’ used in *Ashoka Kumar Thakur Vs. Union of India* (2008) 6 SCC 1 is not equivalent to ‘eligibility’; the expression ‘cut-off marks’ refers to marks secured by the last candidate admitted in the General (Unreserved) category and only such candidates in the OBC category would be entitled to admission who secure marks maximum 10% below the cut-off in the General (Unreserved) category. Negating the said challenging, it was held:-

“A. *Reservation by its very nature implies a separate quota which is reserved for a special category of persons – within that category admissions to the reserved seats may be made in the order of merit. The category for whose benefit reservation is*

*provided is not required to compete with the open category. Their selection to reserved seats is independently, on their inter se merit and not as compared with the merit of candidates in the General (Unreserved) category. The very purpose of reservation is to protect the weak category against competition from the open category candidates. (See **Govt. of Andhra Pradesh v. P.B. Vijaykumar** (1995) 4 SCC 520).*

- B. *The Supreme Court in **Indra Sawhney Vs. Union of India** 1992 Supp (3) SCC 217 also held in para 836 that the very idea of reservation implies selection of a less meritorious person. It was held that this much cost has to be paid if the Constitutional promise of social justice is to be redeemed. It is the lack of opportunity which has led to social backwardness and reservation is one of the Constitutionally recognized methods of overcoming this type of backwardness.*
- C. *The Constitution Bench of the Supreme Court in **Dr. Preeti Srivastava Vs. State of M.P.** (1999) 7 SCC 120 while dealing with the reservation for Post Graduate courses in Medicine, overruled the earlier judgment in **Post Graduate Institute of Medical Education & Research Vs. K.L. Narasimhan** (1997) 6 SCC 283 and in para 115 (per Majmudar J., partly dissenting) reiterated:*

“It is axiomatic that the reserved category candidates competing for being selected to the seats reserved for them..... have to compete inter se with their own colleagues from the same categories and not necessarily have to compete with general category candidates who form an entirely different class. Once such classification is countenanced, as a necessary

concomitant, separate provision for the reserved category of candidates forming a separate class for which reservation of seats is permitted cannot be faulted and hence the dilution of minimum qualifying marks for the reserved category of candidates cannot by itself be treated to be unauthorised or illegal from any view point. Otherwise the very purpose of reserving seats for such class of candidates..... would be denuded of its real content and the purpose of reservation would fail. The seats reserved for such category of persons would go unfilled and will swell the admission of the general category of candidates for whom these seats are not at all meant to be made available, once the scheme of reservation of seats under Article 15(4) is held applicable.”

- D. The question/issue formulated by the Constitution Bench in **Dr. Preeti Srivastava** (supra) also was relating to prescribing “different minimum qualifying marks” and not “cut-off marks”. The Supreme Court in para 39 of the judgment explains that “eligibility” connotes the “minimum criteria for selection that may be laid down by the University Act or any Central statute”. The Constitution Bench directly concerned with the issue and while holding that there cannot be a wide disparity and dilution of standards, approved only the difference in minimum qualifying marks and not cut-off marks. Infact in “cut-off” there can be no “minimum”.*
- E. Requiring the OBC candidates to secure marks within 10% bandwidth of the last candidate admitted in the*

General (Unreserved) category amounts to requiring the OBC candidates to compete with the General (Unreserved) category candidates and which is contrary to the concept of reservation.

- F. It tantamounts to saying that the difference in opportunity is not more than 10%, and the same has no basis.*
- G. It is common knowledge that even where the eligibility for admission for General (Unreserved) category candidates is 50%, at least in the city of Delhi (and I presume in other metropolitan cities also), the last candidate admitted in the General (Unreserved) category in the premium courses have a percentage of over 85%. To say that an OBC candidate to be entitled to avail of the reservation ought to in such cases secure over 75% marks is to make the reservation illusory. Though instances in the recent past of some of the reserved category candidates securing marks better than the last candidate admitted in the General (Unreserved) category are not unknown and which has led to the Courts holding that such reserved candidates who have got admitted on their own merits in the General (Unreserved) category would not block or be counted in a reserved seat but such Reserved category candidates are a class apart and in creamy layer (in terms of marks) of their own. When the seats in Educational Institutions secured by the Reserved category students have not been held to deplete the seats reserved for that category, the same also implies that the reservation is meant for those who are unable to so compete with the General (Unreserved) category candidates.*
- H. If the aforesaid were to be accepted, the General (Unreserved) category students who as aforesaid had protested against the reservation, can defeat in toto*

the reservation; by securing very high marks they can ensure that the seats added in the Educational Institutions under Section 5(1) of the Act fall to the General (Unreserved) category students and not to the benefit of OBCs.

- I. The aforesaid in my view would defeat the very purpose of the Constitutional amendment and the Act.*
- J. I have recently had the occasion (in **Ashhar Musharib Firdausi Vs. University of Delhi** W.P.(C) No.4378/2010 decided on 11th August, 2010) to consider the effect of the failure of the Institutions to increase the seats under Section 5(1) of the Act. It was the contention of the Institutions in that case that till the seats are so increased, the reservation is not to come into effect. The said contention was negated. While doing so reference was made to the speech of Martin Luther King Jr., which was applied to the matter in controversy therein and which can be applied with benefit in the present situation also. The cheque of reservation of 27% issued by the legislature to the OBCs in accordance with the Constitution of the country cannot be made to bounce; when the architects of our Republic wrote the magnificent words of the Constitution, they were signing a promissory note to which every Indian was to fall heir. This note was a promise for advancement of socially and educationally backward classes of citizens. India cannot be made to default on this promissory note in so far as its socially and educationally backward citizens are concerned. The sacred obligation of advancement of such classes cannot be allowed to be dishonoured. The cheque of reservation given to these classes by enacting the CEI Act cannot be permitted to be called a bad cheque, a cheque which has come back marked “insufficient funds” or “no admission because you have failed to secure marks 10% lower than the last candidate*

admitted in the General category”. The socially and educationally backward classes in need of advancement who come to encash the cheque of reservation cannot be returned empty handed – they cannot be told that the great vaults of opportunity of this nation are bankrupt – that they are not entitled to reservation because they are not close to 10% as good as the General (Unreserved) category.

K. The CEI Act does not lay down any such criteria of the reservation being subject to the candidate in the Reserved category falling within the 10% bandwidth. The legislative intent has to be given full impact and cannot be whittled down by Executive decisions. The policy adopted by the respondents UOI & JNU amounts to the Executive taking away what the legislature has given to the OBCs. The same cannot be permitted to happen. The Act cannot be permitted to be used as a mode of making more seats available to the General (Unreserved) category than before; that was not the intent of the Act. The Act was to provide for reservation in admission for the students belonging inter alia to Other Backward Classes in certain Educational Institutions set up/established, maintained or aided by the Central Government and not to indirectly add the seats in such Institutions for the General (Unreserved) category students.

L. The concept of reservation as understood in this country has never been understood in the manner now sought to be applied to OBCs. The SC/ST candidates for whom reservation has been in existence since before were never required, to avail of reservation, to secure marks within 10% bandwidth of the last category admitted to the General (Unreserved) category. The said criteria even now is not being applied vis-à-vis reservation for SC/ST and is sought to be applied vis-à-vis reservation for OBCs only. Had the legislature intended reservation for

OBCs to be subject to their securing marks within the 10% bandwidth as contended, the Legislature would have provided for the same. The same has not been done. The Executive and the Universities cannot impose any such conditions on reservation.

M. When the Act does not make any difference in Section 3 thereof between reservation for SC/ST and that for OBCs, in implementation thereof, no such distinction can be made.

*N. With all humility at my command, I am unable to read the judgment in **Ashoka Kumar Thakur** also as contended. As aforesaid, the Constitution Bench was not faced with the question directly and was only meeting the challenge to reservation on the ground of reservations resulting in lowering the standards of excellence. The expression “cut-off marks” has been used interchangeably with the expression “eligibility condition”. In the absence of any clarity in this regard (also not in **P.V. Indiresan Vs. Union of India** (2009) 7 SCC 300), I am unable to hold that Constitution Bench even while making the recommendation was contemplating a situation different from as prevalent in the past i.e. difference in minimum eligibility criteria only. The senior counsel for the petitioners in this regard has referred to para 32 of **A.P. Public Service Commission Vs. Balaji Badhavath** (2009) 5 SCC 1 to contend that the differential for the disadvantaged (Reserved category) has always been in the basic minimum criteria laid down and not in comparison to the last candidate admitted / appointed in the General category. Moreover, the Bench in **Ashoka Kumar Thakur** has not indicated that they were differing in any manner from the earlier judgment in **Dr. Preeti Srivastava** which as aforesaid is clearly with respect to minimum eligibility marks and not with respect to cut-off of the*

last candidate admitted in the General (Unreserved) category.

13. *Procedure followed by the respondent no.2 JNU and the stand of the respondent no.1 UOI regarding reservation for OBCs is thus declared to be bad. It is declared that the respondent no.1 UOI / Universities are entitled to only fix minimum eligibility criteria for admission in the reserved category at maximum 10% below the minimum eligibility criteria fixed for the General (Unreserved) category. The OBC candidates to avail of reservation provided for them in the CEI Act are not required to, in admission test or in the eligibility exam secure marks within the bandwidth of 10% below the cut-off marks of the last candidate admitted in the General (Unreserved) category.”*

10. The respondent University, by following the practice of determining the minimum cut-off marks in the entrance test after the declaration of the result of the entrance test and by taking into consideration ‘the overall result (of) all the candidates who appeared in the entrance examination’ and the average number of marks secured by the overall candidates, as pleaded by it in its counter affidavit, is clearly making the OBC candidates compete with the General Category candidates and which as held above is not permissible. I repeat that the selection to the reserved seats is independent and not to be dependent upon the merit of the candidates in the General (Unreserved) Category.

11. My judgment in **Apurva** supra was considered by the Supreme Court in **P.V. Indiresan Vs. Union of India** (2011) 8 SCC 441 generally referred as **P.V. Indiresan (2)**. The following paragraphs thereof are relevant:-

“15. The grievance of OBC candidates was not in regard to the determination of minimum eligibility / qualifying marks. For example, as noticed above, if the minimum eligibility marks for general category is fixed as 60 for English or 70 for Journalism, they have no grievance in the minimum eligibility marks being fixed at 54 marks for English and 63 for Journalism in regard to OBC candidates. The OBC candidates have also no grievance if they are required to pass an entrance examination and are required to secure the minimum qualifying marks in the entrance examination. Their grievance is with reference to determining the minimum eligibility / qualifying marks for admission of OBC students with reference to the marks secured by the last candidate admitted under the general category. Their grievance is to linking of their admissions to an uncertain and fluctuating benchmark which would depend upon the quality of the last student admitted under the general category. According to the respondents by adopting the method of determining the “cut-off” marks for OBCs with reference to “cut-off” marks of last general category candidate defeats the purpose of reservation of 27% seats for OBC candidates and denies the just and legitimate entitlement of OBCs for admission. It is pointed out that the adoption of such a procedure in 2008-2009 and 2009-2010 had resulted in large number of seats meant for OBCs being transferred to general category candidates.

42. It should be noted that neither **Preeti Srivastava**, nor **Ashoka Kumar Thakur** nor any other decision of this

*Court required that the reserved category candidates should possess marks which are within a narrow bandwidth below the cut-off marks for the last student admitted in the general category. All the decisions spoke of difference / disparity in regard to eligibility marks and qualifying marks. Therefore, the context in which Bhandari, J. concluded that “cut-off marks for OBCs should be set not lower than 10% marks below general category” (vide paras 535 and 629) of **Ashoka Kumar Thakur**, he meant that eligibility / qualifying marks for OBCs should be set not lower than 10% below the eligibility / qualifying marks of general category. Similar is the position regarding the observation of Pasayat, J. in para 358 of **Ashoka Kumar Thakur**. Pasayat, J. observed that the cut-off marks for OBCs should be fixed by extending 5 grace marks, that is, 5 marks below the minimum eligibility marks fixed for general categories of students. We fail to understand how the words “minimum eligibility marks fixed for general categories of students” used by Pasayat, J. can be read as “cut-off marks” of general category, that is, marks secured by the last candidate admitted under general category. We, therefore, hold that the words “maximum cut-off marks for OBCs be 10% below the cut-off marks of general category candidates” in the order dated 14-10-2008 of the Constitution Bench meant that if the minimum eligibility / qualifying marks prescribed for general category candidates was 50%, the minimum eligibility / qualifying marks for OBCs should be 45%.*

43. The appellant canvasses the continuance of the procedure adopted by JNU during 2008-2009 and 2009-2010. What in effect was that procedure? During those years, JNU would fix the minimum eligibility marks as say 40% when the admission programme is announced. JNU would apply it only to general category candidates. It would not say what was the minimum eligibility marks for OBC candidates, but would decide the same only

after all the general category seats were filled, by fixing a band of marks up to 10% below the marks secured by the last candidate admitted under the general category. If a OBC candidate secured the marks within that band, he would be given admission. Otherwise even if he had secured 70%, as against the minimum of 40% he would not get a seat, if the band of marks was higher. Such a procedure, was arbitrary and discriminatory, apart from being unknown in regard to admissions to educational institutions.

44. The minimum eligibility marks for admission to a course of study is always declared before the admission programme for an academic year is commenced. An institution may say that for admissions to its course, say Bachelor's degree course in Science, the candidate should have successfully completed a particular course of study, say 10+2, with certain special subjects. Or it can say that the candidate should have secured certain prescribed minimum marks in the aid qualifying examination, which may be more than the percentage required for passing such examination. For example, if a candidate may pass a 10+2 examination by securing 35% marks, an institution can say at its discretion that to be eligible for being admitted to its course of study, the candidate should have passed with at least a minimum of 40% or 50% or 60%. Whatever be the marks so prescribed, it should be uniform to all applicants and a prospective applicant should know, before he makes an application, whether he is eligible for admission or not. But the "cut-off" procedure followed by JNU during those days had the effect of rewriting the eligibility criteria, after the applications were received from eligible candidates. If the minimum eligibility prescribed for an admission in an institution was 50% and a candidate had secured 50%, he could not be denied admission, if a seat was available, based on a criterion

ascertained after the last date for submission of applications.

45. No candidate who fulfills the prescribed eligibility criteria and whose rank in the merit list is within the number of seats available for admission, can be turned down, by saying that he should have secured some higher marks based on the marks secured by some other category of students. A factor which is neither known nor ascertained at the time of declaring the admission programme cannot be used to disentitle a candidate to admission, who is otherwise entitled for admission. If the total number of seats in a course is 154 and the number of seats reserved for OBCs is 42, all the seats should be filled by OBC students in the order of merit from the merit list of OBC candidates possessing the minimum eligibility marks prescribed for admission (subject to any requirement for entrance examination). When an eligible OBC candidate is available, converting an OBC reservation seat to general category is not permissible.

52. The words, “cut-off marks” have been used thrice in the second paragraph of the order dated 14-10-2008 containing the operative direction. They are used in the first sentence of the paragraph while posing the question for decision, that is, “what should be the extent of cut-off marks for admission of students of OBCs in CEIs”. They are used in the second sentence of the paragraph while giving the answer to the question posed, that is, “we make it clear that the maximum cut-off marks for OBCs be 10% below the cut-off marks of general category candidates”. The words “cut-off marks” occurring in three places in the second paragraph of the order dated 14-10-2008 have three distinct and different meanings:

- (i) The use of the words, “extent of cut-off marks” in the first sentence refers to the “minimum eligibility marks”(or to the “minimum*

qualifying marks” if there is entrance examination), for admission of OBC candidates.

(ii) The use of the words, “maximum cut-off marks for OBCs” in the first part of the second sentence refers to the percentage of marks by which the eligibility / qualifying marks could be lowered from the minimum eligibility / qualifying marks prescribed for general category students. In other words, it refers to the difference between the minimum eligibility / qualifying marks for general category and minimum eligibility / qualifying marks for OBCs and directs that such difference should not be more than 10% of the minimum eligibility / qualifying marks prescribed for general category candidates.

(iii) The use of the words, “cut-off marks of general category candidates” in the latter part of the second sentence, refers to the minimum eligibility marks (or to the minimum qualifying marks if there is an entrance examination) prescribed for general category candidates.

The use of the words “cut-off marks” in none of the three places in para 2 of the order dated 14-10-2008, refers to the marks secured by the last candidate to be admitted in general category or in any particular category, or to the minimum marks to be possessed by OBC candidates, determined with reference to the marks secured by the last candidate to be admitted under general category.”

12. It is for this reason that I have expressed sadness at the conduct of the University of Delhi of notwithstanding the pronouncements aforesaid of the Courts, continuing to act in violation thereof. In fact the attention of the

respondent University also was drawn to the said aspect by a Division Bench of this Court of which the undersigned was a member in **Salma Khan Vs. University of Delhi** MANU/DE/4276/2011, para 4 whereof is as under:-

*“4. There is a background to the respondent University, in the counselling held on 13th July, 2011 not filling up all the OBC category seats and also not holding the second counselling scheduled for 20th July, 2011. The respondent University had been interpreting the judgments of the Apex Court in **Ashoka Kumar Thakur Vs. Union of India** (2008) 6 SCC 1 and in **P.V. Indiresan Vs. Union of India** (2009) 7 SCC 300 as limiting the admission to OBC seats of only those OBC candidates who had secured marks within 10% below the marks of the last student admitted in the General Category. Though this Court had vide judgment dated 7th September, 2010 in **Apurva Vs. Union of India** 172 (2010) DLT 326 held that admission to the OBC category seats could not be so limited/restricted but the said judgment had till then not been accepted by the respondent University. Moreover, an SLP converted into Civil Appeal No. 7084/2011 was also pending before the Supreme Court in this regard titled **P.V. Indiresan Vs. UOI**. The Supreme Court vide judgment dated 18th August, 2011 reported as 2011 (9) SCALE 33 concurred with the judgment of this Court in **Apurva** (supra) and held that the admission to 27% OBC seats in accordance with the Central Educational Institutions (Reservation in Admission) Act, 2006 could not be so restricted but it appears that the respondent University in anticipation of the said judgment, on 12th August, 2011 itself notified the counselling for the remaining OBC seats which were so available.”*

Notwithstanding same, the respondent University has not taken corrective measures.

13. I call upon the respondent University of Delhi to introspect in the matter and to devise procedures to ensure that in future it does not continue with the practices / procedures which have been held by the Courts to be bad and particularly in matters to which the respondent University is a party.

14. Though I thus hold the procedure of admission followed by the respondent University in relation to admission to OBC seats in MA (East Asian Studies) to be bad but that would still not entitle the petitioner who secured only 34 % marks in the entrance test to admission. There is no merit in the plea of the petitioner that all OBC seats have to be filled up with OBC candidates irrespective of the minimum eligibility prescribed and the marks secured by them. Only such of the OBC seats have to be filled up which are secured by the OBC candidates meeting the requisite eligibility marks and the balance have to be transferred to the General Category.

14. With the aforesaid directions, the petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 14, 2015/‘pp’..