

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

% Date of decision: 14th December, 2016

+ W.P.(C) 8232/2016, CM Nos. 34120/2016 & 44144/2016

MEDHAVI KRISHNA

..... Petitioner

Through: Mr. Adarsh Kumar Tiwari, Adv.

versus

UNIVERSITY OF DELHI AND ORS

..... Respondents

Through: Mr. Mohinder J.S. Rupal and
Ms. Simran Jeet, Advs.

CORAM:-

HON'BLE MR JUSTICE V. KAMESWAR RAO

JUDGMENT

V. KAMESWAR RAO, J. (ORAL)

1. The present petition has been filed by the petitioner with the following prayers:-

- a) *to issue appropriate writ of mandamus/certiorari or any other writ/order directing the respondents to grant admission to the petitioner under PWD category in the Ph.D programme of Department of Buddhist Studies University of Delhi; and/or*
- b) *to pass any other appropriate order(s) or direction(s) in favour of the petitioners which this Hon'ble Court may deem just and proper in the facts and circumstances of the case, in the interest of justice."*

2. It is contended by the learned counsel for the petitioner that the petitioner is a physically challenged person and the disability has been assessed at 77% in both his lower limbs. On May 13, 2016 the respondents have started online registration for the admission to the M.Phil/Ph.D programmes for various departments and last date was May 31, 2016. The petitioner having fulfilled the minimum eligibility criteria for admission got himself successfully registered during the said period for pursuing Ph.D programme in Department of Buddhist Studies, Faculty of Arts.

3. It is his case that the total number of seats available for the Ph.D programme in this Department are 14. On June 23, 2016, he appeared in a written examination conducted by the University. He secured 61 marks in terms of the result published by the respondents on July 12, 2016. It is averred that 47 candidates were declared qualified in the result out of which 17 candidates belonged to General category, 9 candidates belonged to OBC category, 16 candidates belonged to SC category, 4 candidates belonged to ST category. It is his case, that he was the only candidate who qualified the written examination in the PWD category. As he was successful in the written examination, which was qualifying in nature, he was called for interview on July 27, 2016. The respondents declared the

final merit list of successful candidates on August 30, 2016. A total of 20 candidates, 12 under Category-I and 8 under Category-II were declared successful under various categories of reservation. However, no admission was granted under PWD category, for which the petitioner was the only contender. Being aggrieved by his non-inclusion under the PWD category, he, on August 30, 2016 preferred representations to the Vice-Chancellor, OSD Admissions and Research Council, University of Delhi. He made representations to the Dean, Faculty of Arts and Head of Department of (Buddhist Studies) on August 31, 2016 and September 1, 2016 respectively. Finding, no response, he preferred a representation to the Chief Commissioner of Persons with Disabilities on September 5, 2016. However, till the filing of the petition, no relief was granted to him.

4. It is the submission of the learned counsel for the petitioner that the selection having been effected through the process of written examination, presentation and interview, for which no cut off marks were fixed/prescribed in the bulletin of information, the stand of the respondents that minimum 70 marks were required to be secured is unsustainable and the Rules of the selection could not have been changed, once the selection process has started. He would rely upon the judgment

of the Supreme Court in the case of *K. Manjusree vs. State of A.P* 2008 3 *SCC* 512.

5. It is also his submission that the respondents could not have frustrated the provisions of Section 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Act of 1995') by advancing the plea that cut off marks have been fixed by the Department Research Committee (for short 'Selection Committee'). He would rely upon the judgment of the Supreme Court in the case of *E.P.Royappa v. State of Tamilnadu and Anr* 1972 *SCR* (2) 348. He also states, that the selection should have been, on the basis of the merit to be prepared on overall marks in each category of reservation. He also states, the petitioner being the lone PWD candidate, should have been granted admission.

6. Learned counsel for the petitioner would also submit that the stand of the respondents that the petitioner did not have the aptitude and temperament for research based on the marks given for presentation and for interview is untenable, as one candidate under the ST category namely Tashi Tundup, who also got similar marks i.e one mark for presentation and one mark for interview, was selected under that category. He pleads discrimination. He also rely on the case of Deepika Deshwal, who got 63

marks in the written examination, was granted admission in the General Category.

7. On the other hand, Mr. Rupal, learned counsel appearing for the respondents would concede to the fact that the total number of seats were 14. 47 candidates were declared qualified for interview. The interview was held on July 27, 2016 and the candidates were assessed by the Selection Committee. For Category-I, under which the petitioner appeared, 100 marks were kept for the entrance test, while for the interview, there were 50 marks. For interview, the candidates were assessed on the following parameters:-

- (i) Topic presentation - 25 marks
- (ii) Interview - 25 marks.

8. It is his submission that the Selection Committee laid down the criteria that candidates, who have scored minimum 95 marks under the General Category, 88 marks under the OBC Category, 86 marks under SC category, 85 marks under ST category and 70 marks under PWD category will be granted admission. He states that the petitioner secured 61 marks in the entrance examination but in the interview, the petitioner could secure only 2 marks in total i.e 1 mark for topic presentation and 1 mark for personal interview. As, the petitioner in aggregate secured 63 marks,

he could not be granted admission in the Ph.D programme. He states that the Committee resolved that there was no suitable candidate for admission under PWD category. He has drawn my attention to the minutes of the Selection Committee dated July 27, 2016, so also the assessment sheet for admission in the Ph.D course under Category-I. It is also his submission that the Ph.D programme is entirely a research based programme. The candidates are therefore assessed at the time of interview as to whether they possessed research aptitude and temperament, which is on the basis of their topic presentation and personal interview. He states, that the petitioner was the sole candidate under the PWD category, who applied for admission to Ph.D programme. Though, the petitioner has succeeded to clear the entrance test but the petitioner was required to cross the benchmark of 70 marks, for securing admission.

9. Mr. Rupal states, the comparison drawn by the learned counsel for the petitioner between him and Tashi Tundup is totally unsustainable, inasmuch as the petitioner, who otherwise belong to unreserved category had got 61 marks while the ST candidate, who got admission had 87 marks. He states that the petitioner has not challenged the selection criteria at all. He also states that the judgment of *K. Manjusree (supra)*,

as relied upon by the learned counsel for the petitioner is not applicable to the facts of this case, moreover, the matter has been referred to a larger Bench. In the last, he states that the petitioner shall be at liberty to apply afresh as there are further vacancies in the Ph.D programme. He, when the matter was listed on December 9, 2016, had stated that, on the basis of marks, secured by the petitioner, he has been called for interview, against the seats available and a communication in that regard has been sent to the petitioner. The petitioner, who was present in the Court, has denied receiving any communication.

10. Having heard the learned counsel for the parties, there is no dispute that in terms of the bulletin of information it has been stated supernumerary seats shall be available for persons with disability. There is also no dispute that the case of the petitioner was considered for Ph.D programme under the PWD category. The question, which arises for consideration is whether the cut off marks of 70 prescribed, by the Selection Committee, is justified.

11. I have perused the minutes of the Selection Committee at running pages 168-169. From the perusal of the same, it appears that the cut off marks were prescribed not before the commencement of the interview but after the interviews were held. This I say so for the reason that the cut off

marks decided were the cumulative of the marks in entrance examination and interview marks. Assuming the power exist with the Selection Committee; in the case in hand the fixing of 70 marks as cut off for candidate with PWD is without any basis/logic, when there are no cut off marks prescribed for written examination (as it is qualifying) and also for presentation and interview, more so, when the petitioner is the only PWD candidate in the fray and a candidate Tashi Tundup also secured similar marks, in presentation and interview. The contention of Mr.Rupal, that Tashi Tundup had secured 87 marks whereas, petitioner only 61 marks, is also not appealing, for the following reasons:-

- (i) The written examination was qualifying, which the petitioner qualified.
- (ii) Candidates with 63 marks in written examination in General Category were given admission i.e Deepika Deshwal and Prerna Bhardwaj.
- (iii) The marks less than 70 in written examination and one mark each in presentation and interview are not a disqualification for admission.

Hence, the plea of the respondents that the petitioner had not met the cut off marks of 70, is unsustainable.

12. That apart, the said plea in the facts of this case, cannot be raised to frustrate the very scheme of the Act (which is a beneficial legislation),

more specifically Section 33/39 of the Act of 1995. Even though, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in the case of *K. Manjusree (supra)*, the same may not be applicable in view of my conclusion above.

13. Mr. Rupal has relied upon the judgments in the cases reported as *(1980) 4 SCC 480 Jawaharlal Nehru University v. B.S. Narwal*; *(1992) 2 SCC 220 Bhushan Uttam Khare v. Dean, B.J. Medical College and others*; *(2005) 5 SCC 420 Prof. Yashpal and another v. State of Chhattisgarh and others*; *1992 Supp (2) SCC 481 National Institute of Mental Health and Neuro Sciences v. Dr. K. Kalyana Raman and others*, to contend that the Courts should not interfere with the decisions taken by the educational authorities, which need to maintain high standards of scholarly achievements; when selection is made by experts of high status and eminence the Courts would not normally interfere with its decision. There is no dispute on the propositions for which Mr. Rupal has relied on the aforesaid judgments. My above conclusion is based on the facts, which arose for consideration in the present case, which according to me requires interference by this Court as the action of the respondents is arbitrary.

14. Now the question would arise, what relief the petitioner is entitled

to. It is the case of the respondents that seats are still available in the University for pursuing the Ph.D course, and admission/selection process is still on. If that be so, the petitioner is entitled to the relief as prayed for. The respondents are directed to grant admission to the petitioner under the PWD category in the Ph.D. programme of Department of Buddhist Studies, University of Delhi. In the given facts, the petitioner is entitled to cost, which is quantified at Rs.10,000/- to be paid by the respondents to the petitioner.

CM Nos. 34120/2016 & 44144/2016

Dismissed as infructuous.

DECEMBER 14, 2016/AK

V. KAMESWAR RAO, J