

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2017

CORAM

**THE HON'BLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HON'BLE MR.JUSTICE M.DHANDAPANI**

**W.A. No.772 of 2017
and
CMP.Nos.10777, 12272 and 12273 of 2017**

1.National Institute of Fashion Technology
rep. by its Director General
NIFT Campus, Hauz Khas,
Near Gulmohar Park
New Delhi – 110 016.

2.The Additional Director General,
National Institute of Fashion Technology,
NIFT Campus, Hauz Khas,
Near Gulmohar Park
New Delhi – 110 016.

.. Appellants

/vs/

V.S.Jayya Vishrant

.. Respondent

Prayer: This writ appeal has been filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge of this Court dated 21.06.2017 in W.P.No.11183 of 2017.

For Appellants : Mr.K.Sridhar

For Respondent : Mr.U.Karunakaran

JUDGMENT

(Order of the Court was made by Nooty. Ramamohana Rao, J.)

This Writ Appeal is preferred by the National Institute of Fashion Technology (NIFT) calling in question the correctness of the order rendered in W.P.No.11183 of 2017 on 21.06.2017.

2. The learned Single Judge, by the aforesaid order, has disposed of the writ petition and issued a direction to the appellants herein to treat the claim of the writ petitioner as per his communal status ignoring the mistake committed by him, while filling up the online application form at the time of applying for the entrance examination conducted by the appellants.

3. The facts lie in a very narrow compass. The writ petitioner, pursuant to the notification issued by the NIFT, has sought for admission to the degree of Bachelor of Design in the course of Fashion Communication. While submitting the application form through online, he claimed to belong to the General category community and accordingly, he appeared for the test conducted on 12.02.2017 and secured 41.90 marks. Since he has secured lesser marks than the cut off marks for the General category community, he was "not short listed" and he was not subjected to the further process of selection

leading to admission to the said course. At that stage, the writ petitioner realised that the cut off marks prescribed for the OBC candidates was only 41.80, whereas, he has secured 41.90 marks and his father has also brought to his notice that the community to which they belong to, falls under the OBC category. The writ petitioner then approached the appellants and stated that inadvertently, he did not indicate that he is a candidate belonging to the OBC category and requested for admission in one of the seats reserved for the OBC candidates.

4. By virtue of the interlocutory order passed by this Court, the writ petitioner was however, permitted to participate in the "situation test", which was forming part of the selection process of the candidates for admission and the result of the writ petitioner was confined to a sealed cover. However, at our instance, the learned Standing Counsel for the appellants has got opened the sealed cover containing the marks secured by the writ petitioner in the situation test and also produced before us. In all fairness, the learned Standing counsel has submitted that the performance of the writ petitioner in the situation test was very good and it had fetched him more than 60% of the marks and the overall performance of the candidates, who have secured 60% or more marks in the situation test, had fetched

them the admission. In view of the extraordinary circumstances, coupled with the bright performance on the part of the writ petitioner, we have considered it necessary to examine the issue raised in this Writ Appeal a little more closely.

5. The settled legal principle is that the students belonging to any reserved community, are entitled to stake a claim for admission against the seat reserved for that particular category. Since the writ petitioner claimed as open category, he is entitled to compete along with other open category candidates. However, the candidates, who claim that they belong to the open category community, cannot compete against the seats reserved for socially reserved segments. In other words, while a candidate belonging to Scheduled Caste, Scheduled Tribe, Backward Classes or statutorily reserved segments, such as, differently-abled or non-statutory segments, such as, meritorious sports candidates, NCC Cadets etc., can stake a claim for admission against the open category seats, whereas, an open category candidate cannot stake a claim against the vacancy meant for SC, ST, OBC category. He can only make a claim for admission against the other statutory and non-statutory reservations, as they are treated as horizontal reservations cutting across all the social sector segments if he possesses necessary elements relevant for such

segments, while SC, ST, OBC and OC segments are treated as vertical columns. In such view of the matter, the stand taken by the appellants / NIFT that the writ petitioner cannot claim a seat against one of the seats reserved for OBC, cannot be faulted. The learned Standing Counsel for the appellants has also justified his stand by placing reliance upon the decision of the Hon'ble Supreme Court, reported in **(2005) 12 SCC 498 (J&K Public Service Commission v. Israr Ahmad and others)**.

6. However, we do not lose sight of the fact that the students, who are in the age group of 17 or 18, are more prone to make errors or mistakes and those errors or mistakes could be unintentional. They would have committed all the errors or mistakes either due to lack of experience or due to subdued tension induced by the occasion. In such circumstances, a liberal approach is required to be adopted. Take for instance, a claim for reservation is a substantive right. That can be based only upon the right credential which is possessed right at the time of submitting the application. However, the production of proof of possessing such a qualification is purely procedural. The lapse in producing the proof may not be a substantive error, but a purely procedural one. In respect of the procedural errors, some indulgence can always be shown. The necessary inspiration flows from the

decision of the three-Judge Bench of the Apex Court reported in **(2005) 9 SCC 779 (Dolly Chhanda v. Chairman, Jee and others)**, wherein, in para 7, it has been held as follows:

"7.The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e., in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or mark sheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidatures."

7. One other excellent provision made by the NIFT was to allow

the students or parents to correct the errors in the on-line application form already submitted. The time in respect of the same has been kept open till the last date for submission of the application form, subject to the payment of fine expires. This provision helps or at any rate provides an opportunity to verify the application form and then seek necessary corrections wherever is found necessary. We are informed that in as many as 70+ occasions, NIFT has permitted the students to correct their on-line application forms and the mistakes committed have been permitted to be rectified this year. This provision of allowing correction of mistakes in the 'on-line' application form is a very salient one. We only hope that such facilities are made available by all the institutions of higher learning in the country, so that there will be an occasion/opportunity for rectifying the accidental errors or mistakes committed by the students, who may have filled up the on-line application form in a hurry or without due care. We may also take note of the fact that the students hailing from rural areas, may not have gained much or adequate experience in filling up the on-line application form and hence, providing an opportunity to correct any error or mistake unintentionally committed, would go a long way in remedying adverse circumstances. We request the Chief Secretary to the Government of Tamil Nadu as well as the Ministry of Human Resources Development, Government of India to take a

serious note of the advantage in providing such an opportunity to correct such inadvertent errors or mistakes committed by the students and make a similar provision wherever it is necessary. They may be justified in levying a token penalty for rectifying any such mistakes in the on-line application form. Correctional facility of unintentional mistakes committed would go a long way in helping the students to get over the disappointment or trauma later on.

8. In view of the error committed by the writ petitioner in not marking his category as OBC, he nearly missed the opportunity of getting admission in the professional course of Fashion Communication in the prestigious institutions run by the appellants. He missed the bus by a very narrow margin. As the writ petitioner is genuinely belonging to OBC category, by granting an admission to him, no injustice would be caused to any other candidate belonging to OBC. Even then, we waited for the normal counselling process to be completed. Once the normal counselling process is completed and when we realised that one vacancy is available for OBC category candidates, we directed the appellants to consider the case of the writ petitioner.

9. Accordingly, against one vacancy which is available for OBC category candidates in the institution at Srinagar, the writ petitioner has been granted admission by the appellants, of course, subject to the result of the writ appeal.

10. Though the legal principle enunciated by the Hon'ble Supreme Court in the decision reported in **(2005) 12 SCC 498** (cited supra), squarely applies, however, in the peculiar facts and circumstances of the case and also in view of the fact that the writ petitioner has shown that he was really talented by securing very high percentage of more than 60% marks in the situation test, we consider it appropriate to confirm the view taken by the learned Single Judge. Accordingly, the relief sought for in the writ appeal stands rejected only due to the peculiar facts and circumstances prevailing on record. However, the contention canvassed on the legal front by the learned Standing Counsel for the appellants, is accepted.

11. At this stage, the learned counsel for the writ petitioner would submit that in view of the situation prevailing in Srinagar, if any vacancy is available in any other institute run by the appellants, the writ petitioner may be considered for a shift.

12. We only hope that the appellants would show proper compassion and consideration while dealing with any such application, which the writ petitioner might submit on joining NIFT, Srinagar for shift to any other institute in the country, where a seat in Fashion Communication course is lying vacant and unfilled and appropriate orders may be passed on such an application as expeditiously as is possible within a period of thirty days from that date, of course, subject to observing all the conditions relevant for such admission at the later institute, including payment of fees to the later institute.

13. With these observations, the writ appeal is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

(N.R.R.,J.) (M.D.I.,J.)

08.08.2017

Index: Yes
rk

सत्यमेव जयते

WEB COPY

NOOTY. RAMAMOHANA RAO,J.
and

M.DHANDAPANI,J.

rk



W.A.No.772 of 2017

WEB COPY

08.08.2017