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

+ **LPA No.269/2017 & CM Nos.14019/2017 & 14021/2017**

+ Date of Decision: 18th July, 2017

UNIVERSITY OF DELHI & ANR Appellants
Through: Mr.Mohinder J.S. Rupal & Mr.Rakesh
Tanwar, Adv.

versus

GOVIND KR VERMA & ANR Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J (ORAL)

CM Nos.14021/2017 (for condonation of delay)

1. This application has been filed by the appellants seeking condonation of 78 days delay in filing the present appeal. For the reasons stated, the same is allowed. Delay in filing the appeal is, hereby, condoned.

This application is disposed of.

LPA No.269/2017 & CM No.14019/2017

2. The present Letters Patent Appeal has been filed by the appellants to assail the judgment dated 15th December, 2016 rendered by the learned Single Judge in WP(C) No.10166/2016. The learned Single Judge has disposed of the said writ petition with a direction to the appellants herein to reserve one extra seat for OBC candidates belonging to the PWD (Persons with Disabilities) category over and above the vacancies to be sanctioned in the next academic year i.e. 2017-2018, with a further direction to grant admission to one of the petitioners who have been found to be high in merit in the examination held for admission in the previous academic year i.e. 2016-2017.

3. The respondents have been put to notice and they have also appeared through counsel. However, when the case is called out for hearing today, none has appeared on behalf of the respondents.

4. We have heard learned counsel for the appellants and proceed to judgment.

5. The respondents herein had preferred the aforesaid writ petition. They are both physically challenged and were aggrieved by the fact that they were not called for counselling for admission to MD/MS Unani Medicines Course for the academic years 2016-19.

6. The grievance of the respondents arose in the following background. The appellants issued a brochure on 20th July, 2016 disclosing that 66 seats were advertised in respect of the aforesaid course. We may at this stage itself observe that though the brochure speaks about 66 seats, as a matter of fact, 62 seats were sanctioned by the Department of AYUSH, Government of India for the said course. The learned Single Judge has proceeded on the basis of sanction and existence of 62 seats, and we also proceed on the same basis. As per Clause VII (B) of the brochure, three per cent seats were compartmentally reserved, on horizontal basis, for candidates belonging to PWD category, from within all the categories viz. General, SC, ST & OBC. The entrance examination was held and the results were announced. However, the said result was

withdrawn by the appellants. The final result was, thereafter, published on 17th October, 2016. The list of selected candidates did not include any candidate who belonged to the PWD category. The respondents represented to the Chief Commissioner of Persons with Disabilities and to the Vice-Chancellor of the Delhi University. The Chief Commissioner of Persons with Disabilities passed an order advising the appellants to provide their comments within twenty days and also to confirm whether two seats for persons with disabilities had been kept in abeyance. Since the respondents were still aggrieved, they preferred the writ.

7. The appellants filed a short counter affidavit before the learned Single Judge disclosing that 62 seats were sanctioned by the Department of Ayush, Government of India for the said course. As per the norms, 50% i.e. 31 seats were meant from Delhi University quota, and the remaining 50% i.e. 31 seats were meant for All India quota. The respondents were concerned with admission under the 50% All India quota. According to the appellants, in the All India Quota, out of 31

seats, 8 seats were reserved for OBC category (for complying with reservation of 27%). The appellants stated that in the current academic session (i.e. 2016) 3% seats in any of the category i.e. General, SC, ST & OBC could not be carved out compartmentally, and on horizontal basis for the PWD category.

8. The learned Single Judge rejected the submission of the appellants, by holding that 3% of 31 seats comes to 0.93 seats which, upon rounding off, translates to one seat. The learned Single Judge, therefore, held that one seat ought to have been reserved for the PWD category candidates. He also placed reliance on the decision of the Supreme Court in the *State of U.P. & Anr. Vs. Pawan Kumar Tiwari & Ors.* passed in Civil Writ No.4079/2005 decided on 4th January, 2005, wherein the Supreme Court relied on the rule of rounding off, based on logic and common sense. The learned Single Judge then proceeded to hold that out of eight seats reserved for the OBC category, one seat ought to have been reserved for persons with disabilities. Since the last cut-off date for admission i.e. 30th

November, 2016 was already past when the judgment was rendered on 15th December, 2016, the learned Single Judge moulded the relief as taken note of hereinabove.

9. The submission of Mr. Rupal, learned counsel for the appellants is that since the reservation for PWD category is only 3%, at least 33 seats should have been available for reserving one seat in the said category. He submits that only 31 seats were available in the All India quota. Mr. Rupal submits that the rounding off principle applied by the learned Single Judge was not correct, since there is no rule permitting the same. In this regard, he placed reliance on the decision of the Supreme Court in ***The West Bengal Joint Entrance Examination Board & Ors. Vs. Sarit Chakraborty & Ors.***, Civil Appeal No.8498 of 2014 decided on 1st September, 2014. This was a case where the marks obtained in the Board Examination were rounded off. The Supreme Court relied on Rule 24 to hold that the rounding off was not permissible in view of the fact that the candidate had to score a minimum of 33% marks in each of the papers, and not less than 45% marks in the aggregate in all the written

papers in the main examination. The rounding off, which was under challenge, was done from 44.6% to 45%. It was in this background that the Supreme Court held that the principle of rounding off could not be invoked in the facts of the case.

10. The further submission of Mr.Rupal is that the appellants apply the 200 point Roster. The same is so stated in the bulletin of information published by the appellants. Mr.Rupal has also drawn our attention to the Office memorandum dated 29th December, 2005 issued by the Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions on the issue of reservation for persons with disabilities.

11. Before we proceed to state as to how the appellants have provided for reservation for persons with disabilities in its Roster, we may take note of the Government decision contained in Office Memorandum. The said office memorandum in Clause 15 sets out the manner in which reservation is to be effected in Rosters and to be maintained. In so far as it is relevant, Clause 15 is set out hereinbelow:-

**“15. EFFECTING RESERVATION –
MAINTENANCE OF ROSTERS:**

(a) All establishments shall maintain separate 100 point reservation roster registers in the format given in **Annexure II** for determining/effecting reservation for the disabled – one each for Group ‘A’ posts filled by direct recruitment, Group ‘B’ posts filled by direct recruitment, Group ‘C’ posts filled by direct recruitment, Group ‘C’ posts filled by promotion, Group ‘D’ posts filled by direct recruitment and Group ‘D’ posts filled by promotion.

(b) Each register shall have cycles of 100 points and each cycle of 100 points shall be divided into three blocks, comprising the following points:

1st Block - point No.1 to point No.33

2nd Block – point No.34 to point No.66

3rd Block – point No.67 to point No.100.

(c) Points 1, 34 and 67 of the roster shall be earmarked reserved for persons with disabilities – one point for each of the three categories of disabilities. The head of the establishment shall decide the categories

of disability for which the points 1, 34 and 67 will be reserved keeping in view all relevant facts.

(d) All the vacancies in Group C posts falling in direct recruitment quota arising in the establishment shall be entered in the relevant roster register. **If the post falling at point no.1 is not identified for the disabled or the head of the establishment considers it desirable not to fill it up by a disabled person or it is not possible to fill up that post by the disabled for any other reason, one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled and filled as such. Likewise a vacancy falling at any of the points from 34 to 66 or from 67 to 100 shall be filled by the disabled. The purpose of keeping points 1, 34 and 67 as reserved is to fill up the first available suitable vacancy from 1 to 33, first available suitable vacancy from 34 to 66 and first available suitable vacancy from 67 to 100 by persons with disabilities.**

(e) There is a possibility that none of the vacancies from 1 to 33 is suitable for any category of the disabled. In that case two vacancies from 34 to 66 shall be filled as reserved for persons with disabilities. If the vacancies from 34 to 66 are also not suitable for any category, three vacancies shall be filled as reserved from the third block

containing points from 67 to 100. This means that if no vacancy can be reserved in a particular block, it shall be carried into the next block.”

(Emphasis supplied)

12. Mr.Rupal submits that in the 100 point Roster maintained by the appellants, the vacancies falling at Sl.Nos. 33, 67 and 99 in each of the categories namely General, OBC, SC & ST are reserved for persons with disabilities. According to Mr.Rupal, the aforesaid mechanism of granting reservation meets the requirement of granting 3% reservation to the PWD category candidates.

13. To us, it appears that the aforesaid method of providing for reservation for PWD is patently contrary to aforesaid Office Memorandum dated 29th December, 2005. The said OM clearly provides that each reservation roster register shall have cycles of 100 points, and each cycle of 100 points shall be divided into three blocks comprising of points 1 to 33; 34 to 66, & 67 to 100. Clause 15 (c) provides that points 1, 34 and 67 of the

roster shall be earmarked as reserved for persons with disabilities - one point for each of three categories of disabilities. The purpose and objection of providing the 1st, 34th & 64th slots as reserved for the persons with disabilities, was clearly to ensure that such candidates are not deprived of reservation in actual practice, merely on account of the fact that the percentage of reservation provided to such candidates is barely 3%. Thus, the intent was to first accommodate persons with disabilities, and thereafter the other candidates. Pertinently, the reservation for the PWD category applies compartmentally and horizontally. Thus, the right of a candidate who belongs to the PWD category to get selected, is not defeated on account of the seats being reserved for the SC/ST or OBC categories. Reliance placed by the appellants on sub-clause (d) of Clause 15, to justify reserving the 33rd, 67th & 99th slots in the 100 point Roster for the persons with disabilities, is completely misplaced. The said clause 15(c) provides

that if the post at point no.1 is not identified/earmarked for persons with disabilities, or the head of the department considers it desirable not to fill it up by a disabled person candidate, or if it is not possible to fill up that post by a disabled candidate for any other reason, one of the vacancies falling at any of the points from 2 to 33 shall be treated as reserved for the disabled, and filled as such. The same would be the position in relation to the second and third blocks i.e. from 34 to 66, and 67 to 100. This only means that if one of the eventualities taken note of above arises, the very next vacancy/slot, shall be reserved for the persons with disabilities. It cannot mean that the concerned authority can push down the slot meant for the persons with disabilities to the last position in block, as has been done by the appellants. By doing so, the appellants have clearly violated the letter and spirit of Sections 33 & 39 of the Persons with Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995. In the present case, the

appellants have not disclosed as to why the first position in 100 point Roster could not be reserved for the persons with disabilities. Even if there was a valid reason for the same, the reservation for the PWD category could be pushed down by one point to serial no.2, and so on. Certainly, sub-section (d) of Clause 15 could not have been exploited to push the PWD category out of the arena, by reserving the 33rd slot in the Roster for the PWD category candidates when only 31 vacancies had to be filled up.

14. In so far as the submission of Mr.Rupal with regard to rounding off is concerned, we have already taken note of the facts and circumstances in which the decision in ***The West Bengal Joint Entrance Examination Board & Ors. Vs. Sarit Chakraborty & Ors*** was rendered. They were entirely different and cannot be compared to the facts of the present case. That was a case of rounding off of the marks, and that too in respect of the qualifying marks. That was not a case concerned with computations

of the number of reserved seats like the present. Mr.Rupal has not been able to bring to our notice the rule which prescribes application of rounding off principle for computation of vacancies for different classes and categories.

15. There is yet another way to look at the situation. The total number of vacancies sanctioned were 62. On application of 3% reservation, the same would come to 2. Thus, one seat in the Delhi University quota and in the all India quota ought to have been necessarily reserved for PWD candidate.

16. To the aforesaid extent, we are of the view that the decision of the learned Single Judge is unassailable and does not call for interference. However, we find that the learned Single Judge has proceeded to reserve one seat in the OBC category for candidate belonging to PWD category. We do not find any basis for the same. In our view, as to in which category the PWD seats should be reserved, would have to be determined by reference to the

Roster and availability of PWD candidates. In our view, since the reservation for the PWD candidates has to operate horizontally, it would be for the appellants to determine as to in which category, namely, General, SC, ST or OBC, reservation for the PWD category candidate should be granted in the admission process for 2017-18, depending upon the merit of the candidates in Session 2017-2018. Since one PWD category candidate has been deprived admission in the year 2016, we maintain the direction issued by the learned Single Judge for granting one extra seat for the PWD category in the next academic session i.e. 2017-18, while making it clear that the same need not necessarily be from the OBC category, and the reservation of one additional seat for a candidate with PWD shall be granted without disturbing the overall number of seats sanctioned. At the same time, we are of the view that the respondents could not have been granted the relief that one of them should be granted admission in the next academic session i.e. 2017-18 against the extra

PWD category seat, since the available seats would have to be filled on merit, after considering the merit position of all other competing candidates. However, the candidature of the respondents shall also be considered on the basis of their performance in the examination undertaken by them.

17. The appeal stands disposed of accordingly.

CM No.14019/2017

18. In view of the appeal having been disposed of, this application does not survive for adjudication and is dismissed as such.

Dasti.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

JULY 18, 2017/aa