

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: February 20, 2017

Judgment delivered on: February 23, 2017

+ W.P.(C) 9669/2016, CM No. 38706/2016

VIJAY KUMAR THALOR

..... Petitioner

Through: Mr. L.R. Khatana and Mr. Vijay Kasana,
Advts.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Amit Bansal and Ms. Seema Dolo, Advts.

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

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

"It is therefore, most respectfully, prayed that this Hon'ble Court may kindly be pleased to:

a) *Issue a Writ in the nature of **MANDAMUS** and/or any other appropriate Writ/Order/Direction of like nature directing the respondents 1 and 2 to grant admission to the petitioner in the 1st year of M. Phil (Geography) in the 2016-2017 session*

b) *Issue a Writ in the nature of **MANDAMUS** and/or any other appropriate Writ/Order/Direction of like nature thereby declaring the admission of respondent*

No.3 in the 1st year of M. Phil (Geography) in the 2016-2017 session to be null and void being in violation of law of the country and rules governing the admission of the candidates and set aside the same.

c) Pass any other order(s) as this Hon'ble Court may deem fit, in the facts and circumstances of the case, in the interest of justice."

2. It is the case of the petitioner and also contended by Mr. L.R. Khatana that as per the Bulletin/Prospectus inviting applications for admissions in different branches of Ph.D. and M. Phil Courses, the petitioner had applied for M. Phil (Geography). There were total 14 seats in the M. Phil (Geography) out of which 7 were for Unreserved Category, 4 for OBC Category, 2 for SC Category and remaining 1 for ST Category. The petitioner had appeared in the written examination and had obtained 49.50 marks and had succeeded in obtaining 16th position in combined ranking and 7th position under OBC Category. According to him, against 7 seats in the Unreserved Category, 2 OBC candidates got admission in the said Category and therefore candidates at 3rd to 6th position in OBC category were offered admission against 4 reserved seats under OBC category. He states that the petitioner who had secured 7th rank in the OBC Category missed his chance of admission by one rank. He would contend that the petitioner's chance of getting admission in the course were upturned after one candidate namely Leiyaton C who secured combined merit of 6 with 53.80 marks and who got admission in Unreserved Category, did not take admission. He would also state, as per Rule 4.4 contained in the admission Bulletin/Prospectus, the admission in the Unreserved Category shall be made in the order of merit and the candidate who was next

best rank in the combined category rank i.e 8th rank in the present case shall be offered the seat vacated by Leiyaton C and the said candidate being, Sashi Sagolsem No.1 candidate in OBC category. According to him, this would have entailed the candidate below Sashi Sagolsem in the OBC category to move one place up and occupy the first vacancy of OBC category resulting in a vacancy at the 4th place, to be filled by the petitioner being at 7th position in the OBC category.

3. It is his case, that was not done. Rather, in terms of letter dated August 17, 2016, the seat has been offered to one Sonam Bhadouria who is at combined rank No. 11 and belongs to General Category. He has drawn my attention to clause 2.3.1 to contend that the Bulletin/Prospectus clearly stipulates that reservation of Scheduled Castes, Scheduled Tribes and Other Backward Classes to the prescribed extent was to apply in compliance with the Rules notified by the University. He has also drawn my attention to the representation of the petitioner dated August 17, 2016 and the letter dated September 23, 2016 written by the Deputy Registrar (Academics) to the Head of Department of Geography, University of Delhi wherein it has been stated that as per the guidelines in Bulletin of Information, the single vacancy arising under the unreserved category should have been filled by the next person in the merit list i.e. 8th rank in the merit list who is otherwise an OBC Category candidate. He would rely on the judgment of the Supreme Court reported as *(1996) 3 SCC 253 Ritesh R. Sah v. Dr. Y.L. Yamul and others* in support of his contention.

4. On the other hand, Mr. Amit Bansal, learned counsel appearing for the respondents 1 and 2 would reiterate the stand taken by the respondents in their short affidavit justifying, the filling up of the vacancy arisen, by offering the same to Sonam Bhadouria-respondent No.3 as the seat vacated was of General Category and Sonam Bhadouria belongs to General Category and high in the merit than the petitioner herein. He also states that the petitioner can have no claim for the said seat, being lower in the combined merit, as compared to Sonam Bhadouria. He would justify the action and would rely upon the judgment of the Supreme Court reported as *(1998) 2 SCC 402 Rajiv Mittal v. Maharshi Dayanand University and Ors.*

5. Having heard the learned counsel for the parties, the only issue arises for consideration is whether the seat vacated by Leiyaton C need to be filled by a General Category candidate, on the basis of the combined merit or by a candidate who was next in the merit Sashi Sagolsem, even though in the category of OBC. To answer the said issue, it is necessary for the petitioner to contend that Sashi Sagolsem has not sought the benefit as an OBC candidate during the admission process. Mr. Khatana concedes, no such averments have been made in the writ petition. Such averments would be relevant. If Sashi Sagolsem has taken the benefit as an OBC category candidate during the admission process, she cannot be given admission in General Category. This I say so, in view of the Bulletin/Prospectus under the heading "Procedure for Admission" stipulates at page 107 vide clause 4 the eligibility criteria for admission is minimum 55% marks in Master's

Degree/M. Phil/ M. Tech./ LL.M./M.D./M.S Degree in the same or allied subject from a recognized University with 5% relaxation for OBC/SC/ST and Persons with Disability. It is not known whether she became eligible on the strength of securing minimum 55 marks or by getting relaxation of 5% as an OBC Category candidate.

6. No doubt, during the arguments Mr. Khatana has, on instructions from the petitioner, stated that Sashi Sagolsem has not availed the benefit as an OBC Category candidate during the admission process, this aspect could not be confirmed by Mr. Amit Bansal, learned counsel for the respondent. In any case, I agree with the submission made by Mr. Bansal that Sashi Sagolsem has not represented to the respondents 1 and 2 to allot her a seat in the General Category, instead of OBC Category on Leiyaton C vacating her seat. This aspect would be relevant, inasmuch as if Sashi Sagolsem continues to hold the seat against the OBC category, she may prefer to continue to hold the seat as an OBC Category candidate to enjoy the benefits, if any available to an OBC Category candidate. In this regard, I may refer to the judgment relied upon by Mr. Bansal in **Rajiv Mittal case (supra)**, wherein the Supreme Court has set aside the judgment of the High Court by holding that one Sunil Yadav having failed to secure admission to a seat in the open category in the first counselling but had secured admission to the reserved seat in the same counselling, the question of his being shifted or being regarded as a candidate to the open category seat which had become available only after he had secured admission did not and could not arise and, consequently, the appellant Rajiv Mittal was rightly granted admission to the general

category, is appealing as the said case also pertains to admission. The judgment relied upon by Mr. Khatana would not help the case of the petitioner as there is no dispute on the ratio laid down by the Court in the said case, inasmuch as, that a student who is entitled to be admitted on the basis of merit, though belonging to a Reserved Category cannot be considered to be admitted against seats reserved for Reserved Category. In fact, I note the respondents 1 and 2 have given effect to the settled law by the Supreme Court in that regard as they have given admission to Reserved Category candidates i.e. belonging to OBC, SC and ST against General Category vacancies on the basis of their merit.

7. That apart, the plea of Mr. Bansal that the course is for two years and an examination has already been held in M. Phil Course and this Court would not like to give a direction, which would unsettle the settled position is also a factor, which need to be considered. I find the submission appealing.

8. Taking into account, the totality of the facts, this Court is of the view that the prayers as made by the petitioner, cannot be granted. The writ petition is dismissed. No costs.

CM No. 38706/2016

Dismissed as infructuous.

V. KAMESWAR RAO, J

FEBRUARY 23, 2017

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