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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7864/2017

VIKAS KAKKAR

..... Petitioner

Through Mr.Ashok Aggarwal, Advocate.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through Mr.Amit Bansal and Mr.Seema Dolo,
Advocates for R-1 and R-3.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

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22.09.2017

Petitioner has submitted his online application for admission in the MBA (International Business) as also MBA (Human Resource Development) course offered by the Department of Commerce, Delhi School of Economics, Delhi University (respondent no.3). He had applied under the OBC category. Petitioner had scored 72.57 % in the Common Admission Test (CAT) conducted by the Indian Institute of Management. On the basis of his percentile he was shortlisted for group discussion and personal interview by respondent no.3 for the purpose of admission.

On 03.5.2017 respondent no.3 published category-wise merit list of the candidates who had been shortlisted for group discussion and personal interview on his website. The name of the petitioner appeared at serial no.95 in the list of OBC category. The first

counselling session for admission to the MBA (IB/HRD) was scheduled for 05.5.2017. In the OBC category the first counselling was conducted on 01.06.2017. The second round of counselling was conducted by respondent no.3 for the remaining vacant seats on 15.07.2017. This was also for the OBC category. On 16.08.2017 the third counselling was held; it was notified on 09.08.2017 which counselling also included counselling for the OBC category.

Petitioner has participated in all the three rounds of counselling conducted by respondent no.3. He was unable to obtain a seat in the OBC category. The last allotted seat in the OBC category was at rank no.93; rank 94 had not participated in the third round of counselling.

On 29.8.2017, fourth round of counselling for vacant seats for the aforementioned course was notified by notice dated 25.8.2017. On the same date on enquiry petitioner's father learnt that one seat in the OBC category had become vacant. The father of the petitioner rushed to respondent no.3 informing them that since the petitioner is next in line after rank 93 (rank 94 had not participated in the third round of counselling) he was entitled to this seat; he was not heard on 29.08.2017; he had given a written representation to respondent no.3 on 30.08.2017 (on record); he was again not heard. He was constrained to file this writ petition; thus petition was filed on 04.09.2017.

On advance notice, learned counsel for respondents has put in appearance. On 11.9.2017 learned counsel for respondents had taken time to take instruction and if need be to file a short reply. Reply has not been filed. Learned counsel for respondent however submits that

the notice dated 25.8.2017 (Annexure P8) clearly states that fourth round of counselling for the aofrenoted course would be held on Tuesday, 29th August, 2017. It is pointed out that on 29.8.2017 itself the petitioner learnt that one seat in the OBC category had fallen vacant. This is the case of the petitioner himself. The notice of 29.8.2017 was duly displayed. The petitioner knowing this did not approach the respondent University on 29.8.2017. This seat which had admittedly fallen vacant (OBC category) has now lapsed. Date of 29.8.2017 which was the last date for counselling being sacrosanct admission of the petitioner could not be considered thereafter. To support this arguments, learned counsel for respondent has placed reliance upon a judgment of a Division Bench of this Court reported as 116(2005) DLT 290 Maharaja Agrasen Institute of Technology Vs. Guru Govind Singh Indraprastha University

Arguments have been countered.

Record shows that on 25.8.2017 a notice (Annexure P-8) had been published by respondent no.3 reflecting that fourth round of counselling for vacant seats for MBA (IB/HRD) would be held on 29.8.2017. Schedule of counselling was detailed in the said notice. For the MBA (IB) and MBA (HRD) no vacant seat was noted in the OBC category as is the case of the respondents that there were no vacant seats on 25.8.2017 for the said course in the OBC category. However, one seat fell vacant thereafter as one OBC candidate failed to join the course. This was reflected in notice dated 29.08.2017. This notice has been placed on record. This shows that there was a vacant seat in the MBA course for the record/in the OBC category.

The fact this notice was known to the petitioner and he was aware on 29.8.2017 that this seat had fallen vacant in this category (OBC) for the MBA (HRD) is an admitted position. This is the averment of the petitioner himself. On this count the petitioner has stated that the father of the petitioner had approached the University asking them to allow his son to fill in this seat. He was not heard. On 30.8.2017 a written representation was given by the petitioner to respondent no.3. This written representation appears is Annexure P-9 (at page 62 of the paper book). This document has been duly received by the Department. It bears the stamp of the Department. This application informed the Vice Chancellor to fill in the seat with the petitioner as the rank of the petitioner was 95 and the last admitted candidate was up to 93 rank (94 ranked candidate had not appeared in the last round of counselling).

The fact that after rank 93 the petitioner would be next in line is an admitted position. The fact that one seat in the OBC category was also available on the date when this representation was made i.e. on 30.8.2017 is also admitted. The date of this representation shows that it bears a receipt of 31.8.2017 meaning thereby that this representation had probably been received by respondent no.3 on 31.8.2017.

The submission of the respondent that the date of 29.8.2017 which was the date of fourth round of counselling was a closing date of the admission is not borne out from the circular/notice dated 25.8.2017. This circular/notice (annexure P-8) only states that fourth round of counselling for MBA(IB)/MBA(HRD) would be held on

29.8.2017. On that date there was seat available in the OBC category. Averment of the petitioner that he was aware of this vacant seat on 29.8.2017 is noted. The letter sent by the petitioner on 30.8.2017 is also noted. Learned counsel for the respondents has been asked to inform this Court as to what action has been taken on this letter dated 30.8.23017; he has no answer. His submission that the admission closed on 29.8.2017 is not evident from the notice dated 29.8.2017. The notice dated 29.08.2017 had only depicted the status of the vacant seats for the MBA(IB)(HRD) programme; there was no circular that all admissions would be closed after 29.08.2017. The last date of admission was closed on 31.8.2017. The Information Bulletin of respondent no.1 has not been placed on record; the court had sought information on this count but it was not forthcoming.

This Court is of the view that the petitioner having taken all steps to get himself admitted in the OBC category vacant seat by making representation forthwith i.e. on 30.8.2017 to respondent no.3, respondent no.3 not responding to the same without any cogent reason and the petitioner admittedly being next in the merit rank (after rank 93 & rank 94 had not participated in the last round of counselling), petitioner is entitled to the relief as prayed for.

Reliance by learned counsel for the respondents on the judgement (supra) is misplaced. This was a case where admission to the B.Tech course was in issue; the Court had noted that the circular informing the students that the last round of counselling for the vacancies (which was the second round of counselling) was sacrosanct; they were prohibited from making any further admissions

after the second round of counselling. The procedure for second counselling for the said course clearly stipulated that a candidate who failed to exercise his option during second counselling shall forfeit his/her right for a vacant seat even if he or she had higher rank, for which the University will not be responsible. This had been clearly stated in the Notice. This is not the instant case.

At the cost of repetition the facts of this case are different; the question in that case was the entitlement of private unaided educational institutions to fill up drop seats after the second round of counselling. This judgement does not apply to the facts of the present case.

Petition is allowed. Petitioner be granted admission in the OBC category in the vacant OBC seat in the MBA (HRD) course forthwith.

This order shall be implemented by respondent no.3 in consultation with respondent no.1.

Petition disposed of in the above terms.

Order dasti under signatures of the Court Master.

INDERMEET KAUR, J

SEPTEMBER 22, 2017
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