

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1695 of 2019**

Rajiv Pratap Singh S/o Shri Shrikant Singh Aged About 24 Years R/o Shivpur Road, Singhria, Kunraghat, District Gorakhpur Uttar Pradesh Pincode 273008.,

--- **Petitioner**

Versus

1. Guru Ghasidas Vishwavidyalaya through Vice Chancellor, Koni, Bilaspur, District Bilaspur Chhattisgarh. 495009.
2. Registrar Guru Ghasidas Vishwavidyalaya, Koni, Bilaspur, District Bilaspur Chhattisgarh. 495009.
3. Dr. Gopa Bagchi W/o Dr. Shahid Ali, Associate Professor, Head of Department, Journalism and Mass Communication, Koni, District Bilaspur, Chhattisgarh. 495009.
4. Rajkumar Das S/o Shri Prakash Das, R/o Village - Bartiyabhata, Post - Bhawarpur, Tahsil - Basna, District Mahasamund Pin Code - 493558., District : Mahasamund, Chhattisgarh

For the petitioner	:	Mr. Sangharsh pandey, Advocate.
For Respondent No.1 & 2	:	Mr. Neeraj Sharma, Advocate
For Respondent No. & 3	:	Mr. Rajeev Bharat, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

17.05.2019

1. The instant petition concerns with the selection to the Ph.D., programme in Journalism and Mass Communication, School of Arts Group, Guru Ghasidas Vishwa Vidyalaya Bilaspur.
2. The facts of the case are that an advertisement of an information bulletin dated 11.01.2019 was issued by the University, respondents 1 & 2 inviting applications for admission to Ph.D., programme through

Vishwa Vidyalaya Research Entrance Test (for short “VRET”) and VRET Exempted category. . According to said bulletin, for admission to Ph.D., programme through VRET, the candidate/applicant should have possessed the qualification of Masters Degree or Professional Decree declared equivalent to Master's degree by the corresponding statutory regulatory body, with at-least 55% marks in aggregate or its equivalent Grade 'B' in UGC 7 point scale (or an equivalent grade in a point scale wherever grading system is followed). The petitioner pleaded that he is possessing the requisite admission eligibility as he has secured more than 55% of marks in Master's of Journalism. The petitioner contended that after passing out the examination of VRET category, he was allowed to appear in the interview for admission to Ph.D. programme in Journalism and Mass Communication for the academic session 2018-2019. Total 7 seats were shown to be available for VRET category, out of which 5 seats were allotted for Unreserved, 1 reserved for OBC and 1 for SC. Likewise, total 2 seats were available for the category of VRET exempted, out of which 1 seat was allotted for Unreserved and 1 seat was reserved for OBC.

3. After the interview, the petitioner was placed at Serial No.3 out of the selected candidates of 5 and two were in waiting list candidates, out of which respondent No.4 Raj Kumar Das was in waiting list at at Sr.No.1. The further the pleading of petitioner is that the admission was uploaded in the website of the University on 30th April, 2019 in the afternoon and candidates were instructed to pay the prescribed fee of Rs.1145/- for admission to Ph.D., Course f on or before 30th April, 2019 as the classes were to commence on 1st May, 2019. The petitioner

further contended that when the petitioner wanted to deposit the fee, he was not allowed to do so and was asked to get permission from respondent No.3 Dr. Gopa Bachi who is Associate Professor, Head of Department, Journalism and Mass Communication. It is stated that within few hours of publication of final merit list in the website, the admission process was closed.

4. The petitioner contended that on 29.04.2019, the petitioner came to know through his friend that he has been shortlisted but thereafter when he met the HoD, respondent no.3, he was informed that he has not submitted the M.Phil submission letter and stated that until the M.Phil submission letter is furnished, he would not be allowed to pay the fee. It is further pleaded that the petitioner was asked to bring his M.Phil.submission letter, Certificate from Wardha Maharashtra and was assured that if such M.Phil submission letter is filed, the petitioner would be allowed to pay the fee. The petitioner further stated that he explained the position that within a short time of the day it would not be possible for him to physically present to get M.Phil submission letter from Wardha (Maharashtra) but he was assured by respondent no.3 that he would be granted admission on the basis of E-Mail of the said document. Therefore, the petitioner on 29.04.2019 rushed to Wardha on the instruction of respondent No.3. It is pleaded that the M.Phil submission letter was obtained on 30.04.2019 from Mass Communication Department of Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Wardha, Maharashtra and on the same day itself, the said document was e-mailed to respondent no.3. Thereafter, when the petitioner when came back on 01.05.2019 he came to know that

admission has been given to some other candidate from waiting list in place of petitioner, therefore, respondent no.3 has deliberately misled the petitioner which resulted in wrongful denial of admission and accommodated some other candidate in place of petitioner. It is further contended that the request was made to admit the petitioner to the Ph.D., programme, for which, he was in merit list but the same was not given to him. Therefore, the petitioner has prayed for cancellation of admission given to respondent no.4 Raj Kumar Das who was a waiting list candidate and admit the petitioner to the course of Ph.D.

5. Return has been filed on behalf of respondents 1 & 2 wherein it would show that it is a common case that the petitioner participated in VRET for admission to Ph.D.,programme for the academic year 2018-2019. The respondent further stated that it is not disputed that the petitioner is pursuing M.Phil course from Mahatma Gandhi International Vishwavidyalay, Wardha and was enrolled for the academic years 2017-2018 and 2018-2019. The respondent have stated that M.Phil and Ph.D., both courses are governed by the University Grants Commission (Minimum Standards and Procedure for Award of M.phil./Ph.D. Degrees) Regulations, 2016 It is stated that no provision permits under the Regulation to pursue both the courses simultaneously. Respondents 1 & 2 further contended that as per the Ordinance 6 of the University, the students cannot be allowed to undertake two regular degree courses at the same time and stated that the general conditions of the same examination ordinance is applicable to all the candidates. Therefore, there is a clause of

prohibition in the ordinance and further pleaded that certain mandatory condition is there to produce the transfer certificate before taking the admission so that the University authority ensure the compliance of prohibition clause of examination ordinance.

6. It is further contended that two regular degree courses cannot be simultaneously pursued at the same time which is also notified by the UGC through the public notice dated 15.01.2016. The University further pleaded that clear option was available to the petitioner either to quit the M.Phil course or to take admission in Ph.D., for the academic session 2018-2019 before the last date of admission or he was free to pursue M.Phil., course. The University further stated that if the petitioner has chosen the option to pursue the M.Phil by submitting thesis, therefore, he being the student of M.Phil for the academic year 2018-2019 and he could not be admitted to the Ph.D., course. The University further stated that the last date for admission in Ph.D., programme for the academic session 2018-2019 was fixed to be 30.04.2019 as the classes were to commence on 01.05.2019. The University/respondents 2 & 3 further contended that before the Interview on 27.04.2019 the documents of petitioner were verified by the department and he was directed to submit the transfer certificate or produce the relieving certificates of the M.Phil., course but on the request made by the petitioner that he would furnish requisite certificates before the last date of admission, his case was forwarded to the interview committee. It is further stated that the interview result was affixed on the notice Board of Department in the morning of 29.04.2019. It is stated that since the petitioner has failed to submit

the requisite documents, as such, he was not allowed to take admission in the Ph.D., programme for the academic session of 2018-2019 as both the courses of M.Phil., and Ph.D., could not be conducted simultaneously.

7. Respondent No.3 Dr. Gopa Bagchi has filed reply/return wherein she contended that the information bulletin for the Ph.D., course of academic session was published on 11.01.2019 and the University was bound to follow the same. She has stated that general instructions were specifically issued that the interested candidates were allowed to apply for VRET examination subject to final verification of the marks sheet and other certificates which would be done at the time of admission. It is stated that the petitioner is pursuing the M.Phil from Mahatma Gandhi Antarrashtriya Hindi Vishwavidyalaya, Wardha. However, it is not disputed by respondent no.3 that the petitioner appeared in the written examination of VRET on 16.03.2019 and the result thereof was declared on 26.3.2019 and the name of petitioner finds place at Serial No.14 of the Provisional List. Thereafter the notification for the interview of candidates for Ph.D., course in Journalism & Mass Communication was issued on 22.04.2019 and it was uploaded in website on 24.4.2019. It is submitted that in the said notification, a list of documents which were required to be submitted by the candidates for admission was given wherein they were asked to submit the Transfer Certificate, Migration Certificate and Gap Certificate. It is stated that since the documents were not submitted by the petitioner, as such, the payment of fee by the petitioner was not accepted.

8. It is further stated that the petitioner knowing fully well that the documents are not complete, at the fag end, left for Wardha on 29.04.2019 to obtain the same and respondent No.3 did not have authority to extend the time for submission of documents. It is stated that if the petitioner was claiming admission on the basis of degree of Master of Journalism, he was required to submit his transfer certificate, migration certificate and gap certificate and if he was claiming admission on the basis of M.Phil Degree, he was also required to submit the relieving certificate of M.Phil course from MGAHV, Wardha. Since the certificates were not submitted by the petitioner , the petitioner's right could not be considered. It is stated that the petitioner has submitted his M.Phil thesis of University, Wardha, on 30.04.2019 as such, he was not eligible for prosecuting Ph. D course without submitting relevant documents. Therefore, the petition is liable to be dismissed. It is further submitted that respondent No.3 was not authorized to receive any documents from the candidates on her personal e-mail Id and the alleged e-mail was sent by the petitioner at about 7.00 p.m., in the evening after closing of the admission process and the office of respondent. Therefore, the right of the petitioner cannot be considered.
9. Respondent No.4 though was earlier represented by Shri S.N.Nande, Advocate on 14.05.2019 but on subsequent date on 15.05.2019 an application was filed for withdrawal of power which was allowed. Therefore, respondent no.4 chose not to be represented before the Court.

10. Perused the documents. The case of the petitioner is that the merit was given go-bye though he was placed at Serial No.3 in the merit list. The document Annexure P-8 dated 29.04.2019 shows that the petitioner was selected and placed at Serial No.3 of merit list of VRET Category whereas respondent no.4 was shown at UR-Waiting list at Sl. No.1. The Supreme Court in the matter of **(2012) 7 SCC 389 Asha versus Pt. B.D. Sharma University of Health Sciences** has laid down the strict criteria in respect of admissions. It is observed that it was not necessary to plead and prove the malafides, misconduct of favoritism and nepotism on the part of the parties concerned but at the end, there cannot be any reason to disregard the candidate who is higher in merit. The court further held that criteria for selection has to be merit alone and in fact, merit, fairness and transparency are the ethos of the process for admission to the such courses. to the admission. It is further held that it will be travesty of the scheme formulated by this Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy by improper methods of admission and there cannot be any circumstances where the rule of merit can be compromised. For the sake of ready reference, extracts of paras 21 & 24 are reproduced here-in-below:

21. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be a travesty of the Scheme formulated by this court and duly notified by the States, if the Rule of Merit is defeated by

inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstances where the rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a causality. It will be useful to refer to the view consistently taken by this court that merit alone the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of law. (Ref.: Priya Gupta v. State of Chhattisgarh (2012) 7 SCC 433; Harshali v. State of Maharashtra (2005) 13 SCC 464; Pradeep Jain v. Union of India (1984) 3 SCC 654 and Sharwan Kumar v. DG of Health Services 1993 Supp (1) SCC 632.

24 Higher the competition, greater is the duty on the part of the authorities concerned to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that *per se* cannot be a ground for compromising merit. The authorities concerned are expected to perform certain functions, which must be performed in a fair and proper manner i.e., strictly in consonance with the relevant rules and regulations.”

11. With respect to the cut off date, the court further held that where no fault is attributable to a candidate and he/she is denied admission for arbitrary reasons, should the cut off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of the a meritorious candidate is the question we have to answer. Paras 31 is also relevant which reads as under:

“31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.”

Further the Court at para 38 answered that the rule of merit for preference of courses would be the principle guideline. It further held that wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Supreme Court and violative of rules, regulations and conditions of the prospectus, causing prejudice to the rights of students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials.

12. Likewise in case of ***Priya Gupta versus State of Chhattisgarh (2012) 7 SCC 433*** the Supreme Court held that the admission based on favoritism amounts to breach of rule of merit. The Court further stressed upon the issue that if the methodology adopted in ratio in respect of admissions is not fair or transparent, then it would defeat the entire merit.

13. In view of the aforesaid principles when the facts of this case are translated against the arguments advanced by the University, it would show that the criteria was fixed for admission to Ph.D. Programme that the candidate/applicant must possess the qualification of Masters Degree or Professional Decree declared equivalent to Master's degree by the corresponding statutory regulatory body, with at-least 55% marks in aggregate or its equivalent Grade 'B' in UGC 7 point scale. Here in the instant case, if the petitioner was holding the Master's Degree in Journalism in the year 2017, primarily it would show that he was possessing such qualification. He was holding such qualification to appear in the examination which was conducted for the Ph.D., course. The University/respondents 1 & 2 in their return have stated that the date of admission in Ph.D., programme for the session 2018-2019 was fixed as 30.04.2019 and stated that before the interview held on 27.4.2019, the concerned teacher clearly instructed them that either he should submit transfer certificate or produce the relieving certificate of the M.Phil., course.
14. Respondent no.3 who is the Head of department of Journalism and Mass communication in her return has projected the demand of more documents. She has stated that the petitioner should have furnished the documents i.e., Transfer Certificate, Migration Certificate and Gap Certificate. Against respondent no.3 allegations of personal bias have been made to hold the brief of respondent no.4 who was selected. Admittedly, respondent no.3 was not part of admission committee. So there is serious diversion between the averments of University and the

HoD of Journalism and Mass Communications about the requirement of the documents. At this juncture, if we travel to the pleadings of the petitioner he stated that he met respondent No.3 Associate Professor, HoD, J&MC wherein the M.Phil submission letter was asked for. A perusal of the document Annexure P-2 which is an application form filed by the petitioner shows that this fact was disclosed by the petitioner that he was pursuing M.Phil in MGAHV at Wardha, therefore, no suppression was made. When the pleadings are examined, the document Annexure P-9 shows that it is a railway ticket purchased by the petitioner to travel to Wardha on 29.4.2019. Further the certificate dated 30.04.2019 (issued by the MGAHV, Wardha) which was produced by the petitioner shows that the petitioner had deposited the Thesis with MGAHV at Wardha on 30th April, 2019 and thereby he no longer remained as student of MGAHV. The Certificate of MGAHV also speaks that his fellowship will be awarded upto 29th April, 2019, meaning thereby the petitioner would be considered to be the student of that University at Wardha only upto 29th April, 2019. Therefore, if the pleading and documents of the petitioner are considered, they show the chronological order of compliance and hold the sway in favour of the petitioner. The events would show that on 29.4.2019 the petitioner went to Wardha and on 30th April, 2019, thesis work was submitted which qualified him to be that he was no longer the student at Wardha University.

15. The interview letter Annexure P-7 dated 22.4.2019 shows that the interview was fixed on 27.04.2019. In Annexure P-7, the list of documents which are required to be enclosed has been furnished

which includes the Transfer Certificate, Character Certificate, Migration certificate, Gap Certificate etc. The instructions of Annexure P-7 says that the candidates should bring the document in two sets for admission. Again when we revert back to the reply of University/ Respondents 1 & 2, it do not speak about the requirement of the aforesaid document which was a condition precedent to appear for interview. Respondent no.3 however averred the requirement of additional documents. The return filed by respondents 1 & 2 is that the petitioner was told that if he is claiming admission to the Ph.D., on the basis of M.Phil., degree, he was required to submit the relieving certificate of M.Phil. Course from MGAHV, Wardha before the last date of admission or otherwise he may pursue the M.Phil course. The records filed by the respondents show that on 27.04.2019, the documents of the petitioner were verified by the admission committee. The return also says that when the petitioner made a request to furnish the requisite certificates before the last date of admission, the Verifying Committee forwarded the case of petitioner to the interview Committee.

16. Along-with the return, the verification form has been filed by respondents 1 & 2 vide Annexure R-1 wherein at the column of recommendation of the interview, the same is left blank but the fact remains that the petitioner was interviewed. Thereafter, the petitioner was interviewed and he stood in merit at Serial No.3 out of the seats for which he was entitled. As per the averments of the petitioner, he formally came to know about the result on 29.4.2019 that he was selected but he was not allowed to deposit fee and was asked to get

the certificate from Wardha University. It is supported by the reply of the University. Though respondent No.3 the HoD has adopted the different stand and had added that the petitioner should have 3 more documents i.e., transfer certificate, gap certificate, character certificate etc, but she was not a part of Admission Committee. The conduct of this respondent is not in conformity with the University and it shows bias. The petitioner though had filed few of photographs and it is alleged in photographs that the husband of respondent no.3 was in close proximity with the selected candidate respondent no.4 but at this juncture, this court do not want to deliberate on that issue and enquire the same.

17. The submission of petitioner that he was asked to submit the M.Phil. submission letter of Wardha University on 29.04.2019. As per Annexure P-11, the selected list of students of Ph.D., programme was uploaded by the university on the website on 30.04.2019. The note appended to the last page of document Annexure P-8 says that the candidates were instructed to pay the prescribed fee on or before 30th April, 2019. Therefore, the inference can be drawn that on 30.04.2019, naturally after the office hours it was uploaded and few hours were given to the selected candidates to pay the fee. The said instruction Annexure P-11 was signed by respondent No.3 as HoD of Journalism and Mass Communication. Even for the sake of brevity, if it is assumed that the list was published on 29.04.2019 even then a day was given to pay the fee and submit documents. The petitioner contends that he was not allowed to pay the fee for the reason that he was asked to get a certificate from the University of Wardha which is corroborated by

the University/ Respondents 1 & 2 in their reply. Therefore, the question which arises for consideration is as to whether the reasonable time was granted to the candidate to take admission ?

18. The Supreme Court in case *Priya Gupta Vs. State of Chhattisgarh (supra)* has observed that when the breach of rule of merit has been made, the Court can prevent the abuse of process of arbitrariness and discrimination. The methodology which is adopted in the instant case would show that few hours were given to the student to get admission. More so, after the list was uploaded on 30th April, 2019 after the office hours, few hours were given to fulfil the requirement. At this stage, the nature of reply which has been given by respondent No.3 who has authored the outer limit of 30th April, 2019 would show that it contradicts the return of the University. Consequently the inference of bias cannot be ruled out. Apart from the requisite document of M.Phil., submission letter, even if other documents like Transfer Certificate, Migration Certificate, Gap Certificate etc., were required when a person has been selected, he should have been given a reasonable opportunity to produce the same. It is not a case that before the interview the petitioner was stopped to appear but all the facts orchestrated after the petitioner found his name in the merit over and above respondent No.4 who was in the waiting list was accommodated. The admission committee having recommended the petitioner for admission, respondent no.3 cannot short-circuit the entire issue which suits to their convenience to to favour a particular student who was a waiting list candidate and was much below in merit.

19. The Supreme Court in case of *Asha v. Pt. B.D. Sharma University of Health Sciences and others (supra)* has held that if the rule of merit is defeated by inefficiency, inaccuracy or improper method of admission, then it can be interfered and otherwise it would be a causality. The Court further held that the merit alone is criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of process of law. In the instant case, If the facts are examined in the chronological order, the fault cannot be attributed to the petitioner as it is case of the petitioner that after his name was found in the merit list according to the advice of the University he went to Wardha to furnish letter of M.Phil, and the documents on record also show that M.Phil submission letter was submitted by email on 30.04.2019 itself. The University and respondent no.3 say that by the time, the process of admission was closed. The window of admission was closed in such a short span, therefore, it was completely unreasonable and arbitrary and was a defective procedure and was a man made obstruction to shelve the merit. There cannot be any circumstances where the rule of merit can be compromised which is the consistent view of the Courts and as has been held by the Supreme Court in case of ***Saurabh Chaudhary v. Union of India (2013) 11 SCC 146*** the right of meritorious students to get admissions in postgraduate courses is fundamental and human right which is required to be protected and such a valuable right cannot be whittled down at the instance of less meritorious students.

20. Further more, in a case law reported in LAWS(DLH)-2012-8-194 *Isha Karwasra Vs. Army Hospital* wherein the Court relied on the order passed by the Supreme Court in I.A.No.16/2012 in Civil Appeal No.1944/1993 (Anand S. Biji v. State of Kerala) on 23.03.2012 wherein at para 9 the Apex Court held "Each candidate shall be given 10 days time to join the allotted college and course from the date of allotment of seat, thereby the ratio is that the candidate must be given a reasonable time to join the course, therefore, if the select list was uploaded on 30th April, 2019 after the office hours and within few hours the admission stands closed, it would amount to arbitrariness and the said act cannot stand the test of the fairness and reasonableness.

21. In the result, the petition is allowed. The admission of respondent No.4 to the course of Ph.D., in Journalism and Mass Communication is hereby cancelled. The petitioner is given 10 days' time from today to join the course subject to submission of requisite papers and fee as asked by the University. If he fails to do so, the University would be at liberty to proceed according to the list of merit of the remaining students. It is further directed that University/respondents 1& 2 shall pay an amount of Rs.15,000/- to the petitioner as litigation cost.

Sd/-
GOUTAM BHADURI
JUDGE