

\$~52 to 55

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

+ **LPA 37/2019 & CM APPL. 2191/2019 (for stay)**

UNIVERSITY OF DELHI & ORS Appellants

Through: Mr. Mohinder J S Rupal, Advocate
for University of Delhi.

versus

AADITYA WADHWA Respondent

Through: Mr. Shivendra Singh, Advocate.
Ms. Deepali Gupta, Advocate.

+ **LPA 152/2019 & CM APPL. 10057/2019 (for stay)**

UNIVERSITY OF DELHI & ANR Appellants

Through: Mr. Mohinder J S Rupal, Advocate
for University of Delhi.

versus

SURBHI GUPTA Respondent

Through:

+ **LPA 153/2019 & CM APPL. 10059/2019 (for stay)**

UNIVERSITY OF DELHI & ORS Appellants

Through: Mr. Mohinder J S Rupal, Advocate
for University of Delhi.

versus

SAUMYA CHOPRA Respondent

Through:

+ **LPA 154/2019 & CM APPL. 10063/2019 (for stay)**

UNIVERSTIY OF DELHI & ANR Appellants

Through: Mr. Mohinder J S Rupal, Advocate
for University of Delhi.

3

versus

ADITYA AWASTHI

..... Respondent

Through:

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

%

02.04.2019

CM APPL. 2190/2019 (for exemption) in LPA 37/2019

1. Allowed, subject to all just exceptions.

CM APPL. 10058/2019 (for delay) in LPA 152/2019, CM APPL. 10060/2019 (for delay) in LPA 153/2019 & CM APPL. 10064/2019 (for delay) in LPA 154/2019

2. For the reasons stated in the application, the delay in filing the appeal is condoned and the applications are disposed of.

LPA 37/2019, LPA 152/2019, LPA 153/2019 & LPA 154/2019

3. These appeals by the Delhi University are directed against the impugned judgement dated 18th December 2018 passed by the learned Single Judge in a batch of Writ Petitions of which the lead petition was W.P.(C) 12929/2018 (*Ms. Saumya Chopra v. University of Delhi & Ors.*).

4. The impugned judgment sets out the relevant facts in sufficient detail and, therefore, they need not be set out again here. The central issue before the learned Single Judge concerned the validity of the action of University of Delhi in including in the Fourth Admission List for the 3 years LL.B.

Course, students who were in the category of 'no show' as far as the dates for counselling in terms of the first three Admission Lists were concerned. The Respondents herein (Petitioners before the learned Single Judge) are all General Category (GC) candidates. Their marks were admittedly just below the cut off marks of the last admitted GC candidate. The grievance was that the 'no show' candidates ought not to have been included in the Fourth Admission List, and that this was in violation of Clause (iii) of the Admission Bulletin.

5. The defence of the University was two-fold. One was that the Petitioners had approached the Court late. Secondly, they had no vested right to be included in an admission list.

6. As far as the first plea is concerned the learned Single Judge, while rejecting it, held as under:

"Addressing, now, the plea of Mr. Rupal, that the petitioners deserved to be non-suited on the ground of delay and laches, learned counsel for the petitioners has rejoined correctly, that the mere issuance of the Notice, inviting the "no show" candidates of the first three Admission Lists, to apply again, may not have prompted them to rush to the court, as they were unaware how many such candidates were there and, whether, even if such candidates were to re-apply, their turn would come, or not. The cause of action, insofar as the petitioners were concerned would, indeed, have arisen only when, after the admission process was over, they found that they had not managed to secure admission. When, at that stage, they came to know that "no show" candidates, of the first three Admission Lists, had occupied the entire fourth Admission List, as well as 8 seats in the fifth Admission List, the petitioners, in my view, certainly had a right to agitate their claim before this Court. They cannot, in such

5

circumstances, be non-suited, either on the ground of delay and laches, or even for the reason that classes have already commenced and continued for two months. Learned counsel for the petitioners has also correctly contended, in this regard, that, though classes commenced in the first week of August 2018, the admission process continued till 31st August, 2018 (admittedly the cut-off date) and that, therefore, there could be no question of the petitioners approaching the Court before 31st August, 2018, when the admission process came to a close, and they found themselves left in the lurch. They have approached this Court within a reasonable period of the said date, i.e. within less than a month and cannot, therefore, be thrown out, without addressing their grievance on merits. Even otherwise, applying the principle or *lis pendens*, the fact that classes may have commenced, and continued for two months cannot afford a ground to deny relief to the petitioners.”

7. As far as the second plea is concerned, the learned Single Judge noted that in the case in hand the University did not exercise the discretionary power it had to modify the condition in the admission bulletin but ‘instead acted on violation thereof’. The reasoning of the learned Single judge was as follows:

“Resultantly, the act of the University is inviting, for its fourth and fifth counselling, candidates, who had (not) shown up, despite their names having figured in the first three Admission Lists, has to be held as illegal and arbitrary, and starkly violative of Clause (iii) of its own Admission Bulletin. The University would necessarily have, therefore, revisit the said decision. At the same time, it would not be in the interests of anyone - far less, in the interests of justice - to direct the entire exercise of fourth and fifth counselling to be held afresh. Neither would it be in the interests of justice to interfere with the admissions of the students who had not shown up consequent to the first three Admission Lists, despite their names having figured therein, and who obtained admission pursuant to the fourth or the fifth Admission Lists. These students cannot be faulted for having responded to the Notice put up by the University, even if the Notice were, *ex*

6

facie, contrary to the Admission Bulletin. As sufficient vacancies, apparently, still remain unfilled, both in the General as well as the OBC categories, to accommodate the petitioners before this Court, creation of any supernumerary seats, for the said purpose, may not be necessary.”

8. Having heard Mr. Rupal, learned counsel for the Appellant Delhi University, the Court finds that the impugned order of the learned Single Judge balances the equities essentially on the basis that the Delhi University had acted arbitrarily in departing from the conditions stipulated in the bulletin including the ‘no show’ candidates in the fourth admission list depriving the Respondents herein (Petitioners before the learned Single Judge) of a valuable chance of being included in such list.

9. The leaned Single Judge has also noted that with there being sufficient vacancies available both in the General as well as OBC categories, there would be no need to create supernumerary seats to accommodate the Petitioners i.e. the Respondents herein.

10. Mr. Rupal, in the course of his submissions pointed out that the University has taken a decision in principle to implement the judgment of the learned Single Judge. However, in respect of some of the Respondents herein, he states that they will not get the benefit even in terms of the impugned order of the learned Single Judge.

11. It is for the University to explain in the contempt proceedings, which Mr. Rupal States that have been instituted by some of the aggrieved writ petitioners. The Court expresses no opinion on this submission. It will be for

7

the learned Judge dealing with the contempt petition to examine such plea on its merits.

12. The Court finds no ground to interfere with the impugned judgment passed by the learned Single Judge.

13. The appeals are dismissed. The pending applications are also dismissed.

14. As prayed, copy of this order be given *dasti* under the signatures of Court Master.



S.MURALIDHAR, J.



I.S.MEHTA, J.

APRIL 02, 2019

nd