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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 24.09.2019

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Judgement pronounced on 14.11.2019

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WRIT PETITION (CIVIL) NO. 8623/2019

SAHIL AND ORS.

..... Petitioners

Through: Mr. Lalit Kumar, Advocate.

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondents

Through: Mr. Mohinder JS Rupal with Mr. Prang Newmai, Ms. Aditi Shastri, and Mr. Kousik Ghosh, Advocates for respondent no. 1.

Mr. Amit Bansal with Ms. Seema Dolo and Ms. Vipasha Mishara, Advocates for respondent no. 2.

CONT.CAS(C) NO. 796/2019

SAHIL & ORS

..... Petitioners

Through: Mr. Lalit Kumar, Advocate.

versus

UNIVERSITY OF DELHI & ANR

..... Respondents

Through: Mr. Mohinder JS Rupal with Mr. Prang Newmai, Ms. Aditi Shastri and Mr. Kousik Ghosh, Advocates for respondent no. 1.

Mr. Amit Bansal with Ms. Seema Dolo and Ms. Vipasha Mishara, Advocates for respondent no. 2.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface: -

1. Shorn of verbiage, the challenge by the three petitioners concerns the press release dated 26.07.2019 (in short 'impugned press release') issued by respondent No.1 i.e. the University of Delhi (hereafter referred to as "University") and the follow-up "special drive" 6th admission list dated 31.07.2019 issued by respondent No.2 i.e. Shri Ram College of Commerce (hereafter referred to as "SRCC").

1.1. Insofar as the University and SRCC are concerned, wherever the context so requires, they would be collectively referred to as the respondents.

Background: -

2. The petitioners fall in the Other Backward Classes-Non-Creamy Layer (in short 'OBC-NCL') category, though, admitted to different colleges (the details of which have not been provided), aspired to be admitted to B.Com. (Hons.) course offered by SRCC.

2.1. The petitioners, admittedly, in the best-four subjects in their grade-XII exam have secured 95% marks. Given the percentage of marks that the petitioners secured, they concededly could not obtain admission in the first five (5) admission lists issued by SRCC *qua* the B.Com. (Hons.) course as the cut-off percentage was higher than the marks that the petitioners had secured, which, as noticed above was 95%.

2.2. The petitioners' grievance stems from the fact that the University queered the pitch for the petitioners and other candidates who were similarly circumstanced by issuing the impugned press release.

2.3. According to the petitioners, although the impugned press release exhorted the colleges running under its aegis to issue the 6th admission list, it was termed as a "special drive", with conditions incorporated therein,

which excluded, unfairly, the petitioners and those who were similarly placed.

2.4. *Inter alia*, via the impugned press release, applicants who belonged to reserved categories/quota such as SC/ST/OBC/EWS/PWD/KM/CW/Minority (Sikh) could request for a change if they had inadvertently failed to apply in their respective categories.

2.5. Besides this, the impugned press release also gave leeway to eligible applicants to seek admission in the event they had not secured admission up until then or had cancelled their admission obtained in any of the colleges/departments of the University.

2.6. Given this directive of the University, SRCC took out the impugned special drive 6th admission list dated 31.07.2019 (hereafter referred to as ‘special drive 6th admission list’) where under *qua* OBC-NCL category, for B.Com. (Hons.) course, the cut-off marks were pegged at 95%.

2.7. As alluded to above, the petitioners’ grievance emanated from the fact that the University instead of taking out a 6th cut-off admission list, as had been done in the past, *albeit*, without the exclusionary conditions, resorted to a device which obstructed the petitioners from seeking admission in SRCC.

2.8. The obstruction or impediment occurred on account of the fact that though in their application forms they had declared that they fell in the OBC-NCL category (and therefore made no mistake in that regard) they had already sought admission in colleges run under the aegis of the University, which remained intact on the date of issuance of the impugned press release.

2.9. The impugned press release and the special drive 6th admission list implicitly forbade the petitioners and those similarly circumstanced to seek cancellation of their admissions and re-apply for admission with SRCC after the issuance of the impugned press release.

3. According to the petitioners what compounded the injury is that 7th and 8th admission lists were also taken out (which even though not categorized as special drive admission lists) had cut-off marks pegged at 95.125 %.

3.1. The argument was that insofar as the 7th and 8th admission lists were concerned, SRCC should have followed the sliding scale principle which was adopted for the first five admission lists and not increase the cut-off marks to a level higher than the special drive 6th admission list.

3.2. The same argument was extended *vis-à-vis* the 7th and 8th admission list. In other words, the 7th and 8th admission list could not have cut-off marks pegged at the same percentage.

4. Notice in this petition was issued on 07.08.2019, which was accepted on behalf of the University by Mr. Mohinder JS Rupal, Advocate, while on behalf of SRCC, notice was accepted by Mr. Amit Bansal, Advocate. On that date, time was sought on behalf of the University and SRCC to file their respective counter-affidavits.

4.1. On the next date i.e. 09.08.2019, the court noted that the counter-affidavits had not been filed by the respondents. A perusal of the order sheet shows that submissions were heard briefly in the matter and the argument advanced on behalf of the petitioners that the impugned press release had not been ratified and approved by the Academic Council of the University was noted. Furthermore, on that date, Mr. Rupal sought time to obtain instructions *qua* the matter.

4.2. The matter was re-notified for 24.09.2019. On 24.09.2019, Mr. Bansal indicated to the Court that counter-affidavit had been filed on the previous date i.e. 23.09.2019. Since the counter-affidavit was not on record, Mr. Bansal handed over a copy of the counter-affidavit, to me, in Court.

4.3. Mr. Rupal, who had not filed a counter-affidavit on behalf of the University, took the stand that he would adopt the stance taken by SRCC.

Based on these submissions, arguments in the matter were heard and judgement was reserved.

Submissions of Counsel: -

5. The arguments on behalf of the petitioner were advanced by Mr. Lalit Kumar, Advocate while those on behalf of the University, arguments were made by Mr. Rupal, Advocate. Mr. Bansal argued on behalf of SRCC.

6. Insofar as Mr. Lalit Kumar was concerned his arguments were in line with the assertions made in the writ petition.

6.1. According to him, instead of respondents issuing a 6th admission list in the usual and normal course took recourse to the device of a special drive 6th admission list and incorporated therein, conditions, which neither had the approval nor were they ratified by the Academic Council of the University.

6.2. The conditions incorporated therein, in particular, the condition that those who had already obtained admission to colleges/departments of the University could not seek admission under the special drive 6th admission list was illegal and had thus marred the chances of the petitioners who were desirous of seeking admission with SRCC.

7. On the other hand, Mr. Bansal submitted that SRCC was bound by the directives contained in the impugned press release issued by the University. It was submitted by Mr. Bansal that the special drive 6th admission list issued by SRCC only complied with the directives issued by the University.

7.1. Mr. Bansal went on to say that because of the conditions incorporated in the impugned press release, the petitioners, even if they had applied, could not have been considered for admission to SRCC. According to Mr. Bansal, since the petitioners had already secured admission, they were not entitled to be considered for admission to SRCC under the special drive 6th admission list.

7.2. It was further contended by Mr. Bansal that if this Court were to be persuaded to strike down the impugned press release and the special drive 6th admission list, it would not only result in complication and affect the interest of those who have already been admitted, but would also not enure to the benefit of the petitioners as the 7th and 8th admission list had pegged the cut-off marks at 95.125%, which was higher than the marks obtained by the petitioners.

7.3. *Qua* the aspect raised by the petitioners that the 7th and 8th cut-off list had, instead of following the sliding-scale principle, fixed the cut-off marks at a percentage higher than the special drive 6th admission list, Mr. Bansal relied upon a directive dated 04.08.2019 received from the University.

7.4. In this context, my attention was drawn to the email dated 04.08.2019 which is marked as Annexure R-2 and is appended at internal page 10 of the counter-affidavit of SRCC. Based on this document, Mr. Bansal emphasized the fact that the 7th and 8th cut-off list were not, unlike the 6th admission list, a “special drive”, and that the colleges have been directed by the University to fix the cut-off marks higher than the previous list to avoid over-admissions under any category.

7.5. Mr. Bansal concluded by informing the Court that on the date of closure of admissions i.e. 31.08.2019, in the B.Com. (Hons.) course, under the OBC-NCL category, SRCC had admitted 150 students against the sanctioned strength of 149. Thus, according to Mr. Bansal, there were no vacant seats available in the B.Com. (Hons.) course under the OBC-NCL category.

Analysis and Reasons: -

8. Given this backdrop, in my opinion, two issues need to be ruled upon:
 - i. First, as to whether the exclusionary conditions contained in the impugned press release which forbade those who had already obtained admission and not sought its cancellation was legally sustainable?

- ii. Second, as to whether the cut-off marks in the 7th and 8th admission list had to be necessarily lower than the previous lists?

Issue No. I: -

9. In order to adjudicate on this issue, the relevant portion of the impugned press release needs to be extracted hereafter.

“PRESS RELEASE

The Undergraduate Merit Based Admission for the academic year 2019-20 based on five cut-off have been successfully completed, as per schedule specified in the BOI. The Admission Committee recommends that a special drive be announced from 29th to 30th July, 2019 specifically to address the following:

- *The applicants belonging to reserved categories/quota, viz SC/ST/OBC/EWS/PWD/KM/ CW/Minority(Sikh), who inadvertently missed to apply in respective categories, can now do so by requesting change, if any, in their categories,*
- *All such applicants who will now become eligible after rectification in their respective categories shall also be considered for admission in that category in the entrance based UG courses in the subsequent Admission Lists to be announced as per schedule. Such candidates shall not be allowed to claim admissions in the already announced Admission Lists.*
- *The registered women applicants who are residents of NCT Delhi, but couldn't apply admission in NCWEB shall automatically be considered for admission to NCWEB. Such applicants v'll be admitted to NCWEB if they meet any of the preceding cut-offs provided the availability of seats. Further, the NCWEB applicants whose admissions were approved, but could not pay fee during the stipulated time shall also be given another chance to submit the fee.*
- *Further, all such eligible applicants who could not seek admission or had cancelled their admission in any of the Colleges/Department of the University during any of the preceding cut-offs for any reason till 5th Cut-Off and are, therefore, not admitted but meet any of the preceding cut-*

offs, shall also be considered for admission under 6th Cut-Off, provided seats are available.”

9.1. A perusal of the aforementioned extract would show that the main grievance of the petitioners stems from the 4th bullet point. The condition encapsulated in the 4th bullet point excluded from consideration, candidates, who had obtained admission and not had their admission cancelled before the issuance of the impugned press release.

9.2. In other words, the gateway was opened, *via* the impugned press release, to carry out a special drive to allow those eligible applicants to apply who either could not seek admission up until that stage or having sought admission (in any of the colleges/departments under the aegis of the University), had it cancelled and therefore fell in the category of “not admitted” candidates but otherwise met the cut-off percentage fixed in any of the preceding admission lists.

9.3. The question is: Could the petitioners be treated differently from those candidates, who, for whatever reasons, could not seek admission against the first five (5) admission lists and those who sought admission based on the first five (5) admission lists and had them cancelled?

9.4. The failure to define the circumstances *qua* candidates who fell in the category of candidates “who could not seek admission” had the potentiality of allowing even those candidates who sat by the wayside and did not seek admission against the first five (5) admission lists. The petitioners who had been proactive and had sought admission could not have been put in a worse condition as against those who had for whatever reasons not sought admission.

9.5. The email dated 29.07.2019 which is marked as Annexure-R1 and appended at internal pages 7-8 of the counter-affidavit filed by SRCC is suggestive of the fact that an attempt was made to give an opportunity to all candidates who fell under the unreserved (UR) category *via* this route.

9.6. Likewise, in my opinion, the petitioners could not have been placed, once again, in a worse position as compared to those who had sought admissions and thereafter, to improve their chances, had them cancelled. The uncertainty and the apprehension which bedevils candidates, especially those who come from modest backgrounds, does not allow them to give up what they already have in hand and try and grasp something which they may nor may not obtain.

9.7. The petitioners could not have known prior to the issuance of the special drive 6th admission list by SRCC that the cut-off percentage would drop from 95.125% to 95%.

10. To put the petitioners and the candidates which fell in the categories defined in the 4th bullet point of the impugned press release in different classes without an *intelligible differentia* between the classes would be unfair, illegal, and inequitable.

11. At this juncture, I must emphasise the point that even though the petitioners have averred in paragraph 11 of the petition that changes in the criteria stipulated for admission were brought about *via* the impugned press release by the University without the sanction of its Academic Council, the University, for reasons best known, chose to skirt this issue by not filing a counter-affidavit in the matter. This lapse is egregious as this very aspect had been flagged in the hearing held on 09.08.2019.

11.1. Therefore, the presumption that can be drawn, and which has to be against the University, is that, the sanction of the Academic Council was necessary and that the same was not obtained prior to issuance of the impugned press release.

12. The condition incorporated in the 4th bullet point of the impugned press release is bad in law to that extent. Therefore, the consequent effect on the petitioners which marred their chances to be considered for admission to SRCC cannot be legally sustained. However, given the fact that admissions

have already taken place, the relief that can be granted to the petitioners would have to be modulated. I will deal with this aspect of the matter at the very end.

Issue No. II: -

13. No doubt the previous five (5) cut-off lists had fixed the cut-off marks on a sliding-scale, nothing has been brought to my notice which would demonstrate that respondents were required to issue the 7th and 8th admission list with cut-off marks lower than the previous admission list.

13.1. That being said, the practice adopted by the University to issue directives to colleges and departments running under its aegis after the admission process has commenced creates uncertainty amongst candidates seeking admission which could best be avoided.

13.2. Given the intense competition for each seat and the quantum of fee involved, candidates find it difficult to wait till the last admission list is published. Under the present dispensation, there is no certainty as to the number of lists to be published. It is a legitimate expectation of students to seek admission into the best institution/college and at the same time not mar the chances of others by unnecessarily blocking the seats in more than one college.

13.3. The University needs to come up with a more robust and a viable framework so that these concerns are addressed. What certainly does not help is the issuance of directives of a change in the rules of the game after the admission process has commenced. Since this is an aspect the University is best equipped to deal with, I do not intend elaborating further on the issue.

14. Suffice it to say that the University will look into the issues which have been flagged in the current academic year and attempt to ensure that those concerns do not remain outstanding in the ensuing academic years.

Relief: -

15. SRCC in its counter-affidavit has averred, as noticed above, that against 149 seats sanctioned in the OBC-NCL category in B.Com. (Hons.) course, it has admitted 150 students and therefore no seats are available.

16. SRCC has not indicated as to whether any seats are left vacant in other categories. Thus, the petitioners can be considered for admission, only if, there are vacant seats in other categories. That the petitioners can be considered against other categories is evident from the observations made in the following cases:

- i. *Miss Asha Kumari v. The Rajendra Agricultural University & Ors.*, AIR 1997 Pat 102. [See paragraph 9-10 at page No. 106]
- ii. *Hari Singh Nalwa Trust (Regd.) and Ors. vs. State of Haryana and Ors.*, 2014 SCC OnLine P&H 20880. [See paragraph 5]

16.1. This exercise will be carried out with due expedition, though, not later than 2 weeks from receipt of a copy of the judgement.

16.2. In the event that no seats are available in any of the categories, in my view, the petitioners' request, if made, for migration to B.Com. (Hons.) course offered by SRCC should be considered if seats are available in the near future as per the extant rules and regulations.

17. I must also indicate that the argument that there are others who may also want to seek admission, in my view, is untenable as those who are placed in similar circumstance and choose not to agitate their cause can neither seek parity nor relief from the Court.

17.1. Therefore, this apprehension should not detain the respondents from considering the petitioners' case who have chosen to ventilate their grievance by approaching the Court for necessary relief. The petition is disposed of in the aforesaid terms.

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18. This contempt petition is based on the purported failure on the part of respondents in complying with the directions contained in the order dated 09.08.2019 passed by this Court.

18.1. I have perused the order dated 09.08.2019. The only direction which was issued *qua* the respondents was to file their respective counter-affidavits within 2 weeks.

18.2. Furthermore, based on the submissions on behalf of the University, its counsel was asked to take instructions as to whether the impugned press release had been “ratified and approved” by its Academic Council.

18.3. The petitioners’ grievance is that instead of respondents filing their counter-affidavits within the stipulated timeframe they went on to publish the 8th admission list. A plain reading of the order dated 09.08.2019 would show that it did not injunct the respondents from publishing the 8th admission list.

19. Given this position, to my mind, no case is made out for proceeding against the respondents in the captioned contempt petition. The contempt petition is, accordingly, dismissed.

(RAJIV SHAKDHER)
JUDGE

NOVEMBER 14, 2019