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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 01.11.2019
Judgement pronounced on 18.11.2019

+ **W.P.(C) 9075/2019**

RAMSWAROOP

..... Petitioner

Through : Ms. Deepali Gupta, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. Bhagwan Swarup Shukla, CGSC
with Mr. Sarvan Kumar Shukla, and
Mr. Murari Kumar Shukla, Advocates
for R-1.

Mr. Mohinder J.S. Rupal, and Mr.
Kousik Ghose, Advocates for the
University of Delhi.

Ms. Shobhana Takiar, Advocate for
R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface: -

1. The petitioner *via* this writ petition seeks a slew of directions which effectively boil down to the following:

(i) First, he is given admission in the Economically Weaker Section (EWS) category by respondent No. 3 i.e. Shaheed Bhagat Singh College, Delhi (in short “SBS College”) in B.A. programme (Political Science +

Geography) [in short “subject programme”] in the academic session 2019-2020.

(ii) Second, the rejection of petitioner’s application for issuance of an EWS category certificate by respondent No. 4 i.e. the Sub-Divisional Magistrate, Mehrauli (in short “SDM”) was arbitrary and illegal and, therefore, the wrong needed to be corrected by having the SDM issue such a certificate.

Background: -

2. The case set up by the petitioner has broadly the following contours.

2.1. On 21.06.2019, the petitioner filled-up the online registration form for seeking admission under various undergraduate programmes offered by respondent No. 2 i.e. the University of Delhi (hereafter referred to as “University”) including the subject programme.

2.2. It is averred that on that very date, the petitioner approached the SDM for issuance of an EWS certificate. The petitioner claims that the SDM refused to entertain his request as at that juncture he was a minor.

2.3. This exchange, it appears, took place between the petitioner and the SDM orally. The SDM, according to the petitioner, suggested that the petitioner should have his mother apply for issuance of an EWS certificate.

2.4. The petitioner avers that consequently, an application was filed by his mother which was erroneously rejected by the SDM. Apparently, the application made by the mother on 21.06.2019 was rejected by the SDM on 22.07.2019.

2.5. The petitioner goes on to aver that he had sought reconsideration of the order by which his mother’s application for issuance of an EWS

certification was rejected. It appears that this application was not disposed of till the institution of the instant writ petition and hence, the prayer made in the writ petition for issuance of necessary directions to the SDM.

2.6. On 30.07.2019, SBS college published the 6th admission list. *Qua* the subject programme, the cut-off marks were pegged at 90%.

2.7. The petitioner being eligible, made endeavours to obtain admission under the EWS category with SBS college.

2.8. The petitioner avers that admission to him was declined on the ground that his application was not accompanied by an EWS certificate.

2.9. The petitioner claims that he attempted to inform the concerned authorities in the SBS college that being a minor, he could not obtain an EWS category certificate in his name and, therefore, his mother had applied for being issued an EWS certificate, which had been wrongly rejected by the SDM, and accordingly, an application for reconsideration of the decision had been filed which was pending with the SDM.

3. Given these circumstances, the petitioner sought provisional admission to the subject programme pending resolution of the matter by the SDM.

3.1. The petitioner's request for provisional admission was, however, declined by the concerned authorities in SBS college.

3.2. It appears that on 05.08.2019, the SBS college furnished its 7th admission list in which the cut-off marks *qua* the subject programme fell to 89%.

3.3. Since the petitioner had obtained 90% marks in the best-four subjects, he once again approached the concerned authorities in the SBS college for

seeking admission. The petitioner's request for provisional admission was once again declined by the SBS college.

3.4. The petitioner claims that he escalated his grievance to the University but met with no success. The University also took the stand that since the petitioner did not have in his possession an EWS certificate, he could not hope to obtain admission in that category with SBS college.

3.5. Simultaneously, the petitioner had also on that very date i.e. 05.08.2019, lodged a complaint with the Additional District Magistrate, South, Saket, New Delhi (in short "ADM") *qua* non-issuance of an EWS certificate to him.

3.6. Since the complaint was not disposed of on the date when the petition was instituted, the grievance in that behalf is also contained in the writ petition.

4. It is in this background that the petitioner has approached this court by way of the instant writ petition.

4.1. Notice in this petition was issued on 21.08.2019. On that date, notice on behalf of respondent No. 1/Union of India (UOI), respondent No.2/the University and respondent No. 4/SDM was accepted by Mr. Bhagwan Swarup Shukla, Ms. Aditi Shastri, and Ms. Shobhana Takiar respectively.

4.2. It was directed that on steps being taken notice shall issue *qua* SBS college.

4.3. Ms. Takiar who appeared for SDM informed the court that since the petitioner's mother had filed an application for issuance of an EWS certificate, the same would be disposed of expeditiously. On the returnable date i.e. 27.08.2019 the following was recorded:

“1. Ms. Gupta, who appears for the petitioner, says that the petitioner’s mother has been able to obtain an EWS Certificate.

1.1 Learned counsel will file the same.

1.2 A copy of the same is also furnished to Mr. Rupal, who appears for the University of Delhi.

2. Since the petitioner is 17 years of age the EWS Certificate issued to the mother will ordinarily apply to the petitioner as well. However, the University of Delhi will make necessary inquiries and if the EWS Certificate is found to be in order, the same will be accepted.

3. The University of Delhi will enquire as to which college under its aegis has a seat available under the EWS category. If a seat is available, it will issue [the] necessary directions to reserve a seat for the petitioner.

4. Let a counter affidavit be filed by the respondents within ten days from today.

5. Renotify the matter on 17.9.2019.”

4.4. On the next date i.e. 17.09.2019, since the counsel for the University i.e. Mr. Prang Newmai stated that he had no instructions in the matter, he was directed to obtain instructions in the matter in terms of the directions contained in the order dated 27.08.2019.

4.5. In effect, the University was required to inform the court as to whether there is any seat available in the EWS category in any college and, if it was, the same had to be reserved for the petitioner.

4.6. The matter was posted for further hearing on 10.10.2019. On the said date, once again, the counsel for the University was unable to inform the court as to whether any seat was available in any college in the EWS category. Accordingly, the following direction was issued:

“1. Mr. Rupal, who appears for the University of Delhi will ascertain as to whether any vacancy is available in the EWS Category in Sri Venkateswara College or any other college in the B.A. Programme as indicated in [the] order dated 27.8.2019.

2. Renotify the matter on 15.10.2019.”

4.7. The direction to ascertain as to whether any seat was available in the EWS category in Sri Venkateswara College was issued as the petitioner seemed to have information that possibly a seat was available in that college.

4.8. On the next date, i.e. 15.10.2019, Mr. Rupal informed the court that one seat in the EWS category was available in SBS college.

4.9. Furthermore, the counsel for the petitioner, Ms. Deepali Gupta informed the court that in the interregnum, the SDM had issued an EWS certificate in the name of the petitioner as well. Therefore, Ms. Gupta's submission was that the petitioner was now in possession of two EWS certificates, one in the name of his mother which was dated 26.08.2019 and the second, which was issued in his name and was dated 30.09.2019.

5. Given this position, a direction was issued to SBS college who was not represented on 15.10.2019 to reserve one seat, if available, in the EWS category for the petitioner. Furthermore, fresh notice was issued to SBS college which was made returnable on 01.11.2019.

5.1. The report of the Registry shows that SBS college was served on 31.10.2019. Despite service, there was no representation on behalf of SBS college on 01.11.2019.

5.2. Since the petitioner was pressing for urgent relief, the arguments in the matter were heard and the judgement was reserved. The record shows that except for the University none of the other respondents i.e. respondent

Nos. 1 and 4 have filed their counter-affidavit. As noted above, SBS college which is arrayed as respondent No. 3, chose not to be represented in the matter.

Submissions of Counsel: -

6. It is in this background that arguments were heard on behalf of the parties who chose to be represented. The University which is the main contesting party was represented by Mr. Rupal.

6.1. In view of the fact that the EWS certificate had already been issued in favour of both the petitioner and his mother by the SDM during the pendency of the petition, Mr. Rupal's argued that the petitioner could not be granted admission under the EWS category as he did not have the EWS certificate in his possession on the date when he had registered for admission for the subject programme.

6.2. Mr. Rupal went on to state that even on the date when the admissions were closed i.e. 31.08.2019, the petitioner did not possess an EWS certificate. According to Mr. Rupal, the fact that the mother had obtained an EWS certificate before the cut-off date i.e. 31.08.2019 would be of no avail.

7. Ms. Deepali Gupta, on the other hand, contended to the contrary. In support of her submissions, she relied on the averments made in the writ petition and the record as it stood before the court as on 01.11.2019.

7.1. It was Ms. Gupta's submission that since the petitioner was a minor, he was, perhaps, wrongly advised that he could not be issued an EWS certificate even though an attempt was made in that behalf by him in and about 21.06.2019.

7.2. According to Ms. Gupta, the fact that the SDM wrongly rejected the application of the petitioner for issuance of an EWS certificate which was made as far back as 21.06.2019 solely on the ground that she owned a plot having an area of more than 100 sq. yds., an error which got corrected much later, could not be the reason for denying the relief to the petitioner.

7.3. Ms. Gupta went on to state that since the petitioner during the pendency of the writ petition has obtained an EWS certificate, he ought to be granted reliefs sought for in the writ petition.

Analysis and Reasons: -

8. Having heard the counsel for the parties and perused the record, what emerges is as follows:

(i) In and about 21.06.2019, when the petitioner had registered for admission with the University, even though he had indicated that he fell in the EWS certificate, he did not have in his possession a certificate evidencing that fact.

(ii) The mother of the petitioner on 21.06.2019, did apply for the issuance of an EWS certificate. This application was, however, rejected on the ground that the mother possessed a plot admeasuring more than 100 sq. yds. An application for reconsideration of the order was filed with the SDM. The SDM finally corrected the order and issued a certificate to the petitioner's mother which is dated 26.08.2019.

(iii) During the pendency of the writ petition, the petitioner has also secured an EWS certificate which is dated 30.09.2019. This certificate, however, is not on record. A reference to this aspect has been made, as noticed above, in the order dated 15.10.2019.

9. As noted above, the SDM has not filed a counter-affidavit rebutting the averments made by the petitioner and that he was orally advised by him that an EWS certificate could not be issued to him as he was a minor. Therefore, the version set up by the petitioner will have to be accepted.

10. Given this position, could the petitioner be denied his right to seek admission under the EWS category in the subject programme only because the SDM carried out the course correction much later i.e. on 30.09.2019?

10.1. As noted hereinabove, the mother was issued an EWS certificate on 26.08.2019 i.e. five days before the cut-off date. Since the petitioner was not 18 years of age on that date (the position is no different even now), it would have been safe to presume that he would fall in the EWS category and would meet the eligibility parameters as set out in Office Memorandum No. F No: 12-4/2019-U1 dated 17.09.2019 issued by the Government of India, Ministry of Human Resource Development, Department of Higher Education.

10.2. This circumstance coupled with the fact that the petitioner had approached the SDM in time and the course correction *qua* him would have to relate to the date when he first approached the SDM, the delay in issuing the EWS certificate cannot be put at the doorstep of the petitioner.

Conclusion: -

11. Given the foregoing, I am inclined to allow the petition. It is ordered accordingly. The petitioner will be considered for admission against the seat reserved in the EWS category in the subject programme.

12. The petitioner will fulfil the requisite formalities as directed. The SBS college will make the suitable adjustments, such as, arranging extra classes for the petitioner.

13. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

NOVEMBER 18, 2019

