

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 01.11.2019
Judgement pronounced on 05.11.2019

+ **W.P. (C) 9347/2019 & CM APPLs. 40537/2019 & 46208/2019**

MS. SANCHI DILAVARI

..... Petitioner

Through Ms. Rajeshwari H., Advocate.

versus

UNIVERSITY OF DELHI AND ANR.

..... Respondents

Through Mr. Mohinder J.S. Rupal with Mr.
Kousik Ghosh, Advocates for R-
1/University of Delhi.
Mr. Amit Bansal with Ms. Seema
Dolo, Advocates for R-2/CBSE.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface: -

1. The petitioner's grievance stems from the fact that while seeking admission in the B.A. Honours (Business Economics) programme *qua* academic session 2019-2020 the marks obtained by her in the best-four subjects in grade-XII were scaled down by 2.5% as it included Multimedia and Web Technology as one of the subjects.

Background: -

2. The petitioner had made her choice with regard to the subjects which she wanted to pursue in grade-XI and grade-XII, in 2016-2017, when she passed her grade-X examination. Thus, the subjects the petitioner chose and pursued in grade-XI and grade-XII, which are detailed out hereafter, were in line, with Circular No. 26 dated 23.10.2003 (hereafter referred to as “2003 circular”) issued by respondent No. 2 i.e. Central Board of Secondary Education (in short “CBSE”):

(i) English Core; (ii) Economics; (iii) Business Studies; (iv) Accountancy; (v) Multimedia and Web Technology; (vi) Mathematics; (vii) Work Experience; (viii) Physical and Health Education; and (ix) General Studies.

2.1 The petitioner sat for the grade-XII examination conducted by the CBSE in May 2019. The petitioner secured 92% in grade-XII examination which was calculated based on the marks obtained in the best-four subjects i.e. English, Business Studies, Economics, and Multimedia and Web Technology.

3. On 03.06.2019 the petitioner made an online application for gaining admission, *inter alia*, in B.A. Honours (Business Economics) programme in various colleges run under the aegis of the University of Delhi (hereafter referred to as “the University”) including Shyama Prasad Mukherjee College for Women, Shyam Lal College (Morning), and Dr. Bhim Rao Ambedkar College, amongst others.

4. The petitioner claims that she was unable to get admission in a college of her choice, in particular, in the morning session as her marks were scaled down by 2.5% on account of Multimedia and Web Technology being included by her in the best-four subjects chosen by her while arriving at the percentage of marks secured by her in grade-XII exam.

5. Given this position, the petitioner was left with no option but to take admission in Shyam Lal College, *albeit*, in the evening session.

6. Being aggrieved, the petitioner approached this Court by way of the instant writ petition.

7. The writ petition came up for hearing for the first time in this Court on 28.8.2019 when, while issuing notice to the respondents, an interim order was passed directing the University to ensure that one seat in the morning session is retained in the B.A. Honours (Economics) programme either in Dr. Bhim Rao Ambedkar College or Satyawati College. This order was passed after the grievance of the petitioner, as articulated by her counsel, was noted and upon hearing Mr. Rupal, the counsel for the University, and Mr. Bansal, who appeared for the CBSE.

8. On the next returnable date i.e. 20.09.2019, Mr. Rupal was once again directed to ascertain as to whether or not a seat was available in the B.A. Honours (Economics) programme in either Dr. Bhim Rao Ambedkar College or Satyawati College.

8.1 The matter was thereafter taken up for hearing on 27.09.2019 when Mr. Prang Newmai who appeared on behalf of the University furnished the

information that one seat was available in the EWS category in the morning session in Satyawati College.

8.2 Mr. Newmai upon being queried as to whether the petitioner who belonged to the general category could be given a seat in the EWS category after the cut-off date i.e. 31.08.2019 had been crossed was unable to give a response.

8.3 Given this situation, and the backdrop in which order dated 28.08.2019 had been passed, as also the fact that the University had not filed a counter-affidavit, a direction was issued that the petitioner would be provisionally admitted in Satyawati College, *albeit*, in the EWS category. The direction issued for provisional admission was, however, made subject to the outcome in the writ petition. Furthermore, Satyawati College was arrayed as a respondent in the writ petition and, accordingly, notice was also issued to the newly arrayed respondent.

9. The matter was listed for further proceeding on 13.11.2019. In the interregnum, the petitioner filed an interlocutory application i.e. C.M. No. 46208/2019 which was listed in Court on 21.10.2019.

9.1 In this application the grievance articulated on behalf of the petitioner was that she was not being allowed to attend classes in Satyawati College despite the order of the Court. At the request of counsel for the petitioner, the matter was listed for further proceeding on 22.10.2019.

9.2 On 22.10.2019 Mr. Rupal informed the Court that the order of this Court had been communicated by the Dean of the University to the

Principal, Satyawati College. Since the petitioner's counsel had not taken requisite steps for effecting service on Satyawati College and had failed to file an amended memo of parties, a direction was issued that necessary steps would be taken by 23.10.2019.

9.3 Furthermore, once again, the Principal, Satyawati College was directed to comply with the order passed on 27.09.2019. The petitioner, as well as Mr. Rupal, was directed to communicate the order passed on 27.09.2019 to the Principal, Satyawati College.

10. The matter was listed for further proceeding on 24.10.2019. Since the order passed by the Court had not been complied with, the Registrar General of this Court was directed to communicate the order to the Principal, Satyawati College and a direction was issued to seek the presence of the Principal, Satyawati College at 3 P.M. on the same date.

10.1 The matter was, thus, taken up for hearing on 24.10.2019 at 03:00 P.M. when the Principal, Satyawati College i.e. Dr. Manjula Das and Mr. Virender Kumar, Admission-in-Charge, Satyawati College were present. Since they informed the Court that the petitioner would be granted provisional admission in the morning session at Satyawati College, as indicated in the earlier order of the Court, at the request of counsel for the parties, the date of the hearing of the matter was advanced to 01.11.2019.

10.2 Consequently, the date already fixed in the matter i.e. 13.11.2019 was cancelled. Satyawati College was given liberty to file a counter-affidavit in the matter on or before 30.10.2019. It was, however, made clear that the direction issued in favour of the petitioner for grant of provisional admission

was protem in nature and therefore, would be subject to the outcome in the writ petition. The petitioner was also given liberty to file a rejoinder in the matter before the next date of hearing i.e. 01.11.2019.

10.3 The record shows while the University and the CBSE have filed a counter-affidavit in the matter, no counter-affidavit has been filed by Satyawati College.

Submissions of Counsel: -

11. The arguments in the matter were advanced by counsel for the parties in line with their respective pleadings.

12. Thus, while Ms. Rajeshwari, Advocate who appeared for the petitioner argued that the scaling down of the petitioner's mark by 2.5% was unsustainable in law and contrary to the provisions of the 2003 circular issued by the CBSE which granted equal weightage to all three courses related to computer i.e. Computer Science, Informatics Practices, and Multimedia and Web technology; Mr. Rupal contended to the contrary.

13. It was Mr. Rupal's submission that when the University had issued the information bulletin for the academic session 2019-2020 in the first instance, on 29.05.2019, there was no provision for scaling down of marks on account of inclusion of Multimedia and Web Technology in the best-four subjects by a candidate. The inclusion of such a provision, according to Mr. Rupal, was brought about on account of directions contained in the judgment rendered by a Division Bench of this Court, dated 14.06.2019, passed in

W.P.(C)No.6571/2019, titled ***Charanpal Singh Bagri vs. University of Delhi.***

13.1 The argument was that because of the directions contained in ***Charanpal Singh Bagri's*** case, the University had to grant admissions in the academic session 2019-2020 based on the eligibility criteria provided for admissions to the undergraduate courses in the academic session 2018-2019.

13.2 In other words, the inclusion of the provision requiring scaling down of marks by 2.5%, if the best-four subjects included Multimedia and Web Technology, occurred on account of the judgement rendered in ***Charanpal Singh Bagri's*** case.

13.3 Furthermore, Mr. Rupal submitted that the grievance raised in the instant writ petition was the subject matter of the judgement dated 09.07.2019, rendered by a Single Judge of this Court, in W.P.(C)No.6896/2019, titled ***Muskan Aggarwal vs. University of Delhi,*** wherein the concerned petitioner was not granted any relief.

13.4 Mr. Rupal also contended that since the seat available in the Satyawati College (Morning) was a seat that fell in the EWS category, the petitioner who belonged to the General category could not be granted admission as a regular student against the said seat.

13.5 In support of his submission. Mr. Rupal relied upon the judgement dated 14.10.2014, rendered by the Division Bench of this Court, passed in LPA 590/2014, titled ***Pankaj Kumar Tiwari & ORs. vs. Vice-Chancellor, University of Delhi & Anr.***

14. On the other hand, Mr. Bansal submitted that the 2003 circular of the CBSE made it clear that all computer subjects which included Computer Science, Informatics Practices, and Multimedia and Web technology carried equal weightage and that they were at par with other subjects such as Physics, Chemistry, Mathematics, Accountancy, Geography etcetera for all other purposes. Mr. Bansal also submitted that the change in the information bulletin of the University whereby the provision for scaling down of a candidate's marks by 2.5%, if included in best-four subjects, Multimedia and Web technology, was not communicated to the CBSE.

Analysis and Reasons: -

15. Given the arguments advanced before me by counsel for the parties and the state of the pleadings, the issues which would arise for consideration would be the following:

(i) First, what was the true ratio of the judgments rendered in *Charanpal Singh Bagri's* case and *Muskaan Aggarwal's* case? In other words, is the issue which is raised in the instant writ petition covered by these judgments?

(ii) Whether the University could have incorporated the provision for scaling down a candidate's marks by 2.5% if it included the subject Multimedia and Web technology in best-four subjects without informing the CBSE?

16. Insofar as the judgment in *Charanpal Singh Bagri's* case is concerned, it dealt with the grievance concerning the alteration of eligibility criteria for admission to certain courses.

16.1 The judgement notices that insofar as B.A. Honours (Economics) and B.Com. (Honours) programmes were concerned, mathematics which was only a qualifying paper in the information bulletin issued for academic session 2018-2019, was required to be mandatorily included in the best-four subjects in the academic session 2019-2020. The grievance was that the petitioners who had already sat for the grade-XII examination in 2018-19 could not have adapted to the altered eligibility criteria. It is in this context; the Division Bench passed the following directions in paragraph 18 of the judgment:

“18. In the circumstances, the W.P.(C) 6751/2019, W.P.(C) 6770/2019 & W.P.(C) 6774/2019 are disposed of with directions to the University of Delhi and the University Grants Commission to allow the students to apply for the under-graduate courses for the year 2019-20 to the University of Delhi on the basis of the eligibility criteria for admissions to the under-graduate courses for the year 2018-19.”

16.2 In **Muskaan Aggarwal's** case, though the grievance raised was concerning the scaling down of 2.5% marks in case of best-four subjects which included Multimedia and Web Technology, that issue was not decided by the learned Single Judge. This is evident upon the perusal of the following observations made in the judgment:

“In these circumstances, it is apparent that if there is any modification of the said terms of the directions dated 14.06.2019 in the aforesaid three writ petitions sought by the petitioner in any manner whatsoever, the petitioner would need to seek separate redressal. It is apparent that the respondents can do nothing but comply with the directions in the said judgment dated 14.06.2019.

In the circumstances, submissions made by the petitioner, Ms. Muskan Aggarwal as also the prayer made by Ms. Tanu Priya, the petitioner are declined.”

16.3 Concededly, an appeal has been preferred with the Division Bench against the judgment dated 09.07.2019 rendered by the Single Judge in **Muskaan Aggarwal’s** case. The appeal is numbered LPA 501/2019. The appeal has been admitted and is listed for final hearing in the category of “After-notice Miscellaneous Matters” before the Division Bench on 12.12.2019.

16.4 However, given the urgency of the matter, the instant writ petition has been pressed.

17. Therefore, to my mind, as indicated above, neither the judgement in **Charanpal Singh Bagri’s** case nor the judgement of the learned Single Judge in **Muskaan Aggarwal’s** case has dealt with the issue which arises for consideration in the instant writ petition. The broad principle which has been formulated in the Division Bench judgement was that change in the eligibility criteria for admission of students to colleges cannot be done mid-stream. Therefore, if this principle is applied, it would only help the cause of the petitioner.

17.1 In the instant case, what is material is that the petitioner had chosen the subjects that she wished to pursue in grade-XI and grade-XII in 2016-17 after she passed her grade-X exam. This choice was made in line with the representation made by the CBSE in its circular that all computer subjects had equal weightage. More specifically, the 2003 circular portrayed to the students/candidates that irrespective of which of the three courses related to

computer they were to choose, all of them would have the same weightage and that they would be at par with other subjects such as Physics, Chemistry, Maths, Accountancy, Geography, etc. for all other purposes. Therefore, a mid-stream change could not have been brought about by the University without consulting the CBSE.

17.2 Mr. Rupal's argument that the scaling down provision obtained even in the information bulletin issued for the academic session 2018-19 would not support, in any way, the case of the University as the petitioner could not have altered her choices of subjects after she had indicated her options in 2016-17.

18 The other argument advanced by Mr. Rupal that the petitioner cannot be admitted to the EWS category against a seat reserved for the EWS category would have had merit if the students in the EWS category were available for the admission. The EWS category seat is lying vacant.

18.1 It is only when Mr. Rupal was asked to inform the Court as to whether any seat was available in the morning session was this information supplied to the Court.

19. Insofar as the Division Bench judgement in ***Pankaj Kumar Tiwari & Ors.*** case is concerned, the same has no bearing on the point in issue. The point in issue is: as to whether an EWS seat could be accorded to a General category candidate.

19.1 ***Pankaj Kumar Tiwari & Ors.*** was a case wherein the petitioners alleged that there were irregularities in the admission process and therefore

directions were sought for the constitution of an independent panel under the aegis of the Court for investigation of the irregularities and, furthermore, as a consequential relief, cancellation of admission of candidates who are found ineligible. No such issue arises in the instant case. Hence, the judgement is distinguishable.

19.2 Ordinarily the reserved seat should go to a candidate who falls in such a category. If, however, no candidate is available in the reserved category, the seat ought not to be wasted only because the person seeking admission belongs to the General category.

19.3 This following principle is articulated by the Supreme Court in the matter of *P.V. Indiresan (2) vs. Union of India & Ors.*, (2011) 8 SCC 441:

“54. We, therefore, dispose of this appeal, affirming the decision dated 7-9-2010 [Apurva v. Union of India, WP (C) No. 4857 of 2010 order dated 7-9-2010 (Del)] of the learned Single Judge of the High Court, subject to the clarifications/observations above, and subject to the following conditions:

XXX

XXX

XXX

(ii) If in any Central educational institution, the OBC reservation seats remain vacant, such institutions shall fill the said seats with OBC students. Only if OBC candidates possessing the minimum eligibility/qualifying marks are not available in the OBC merit list, the OBC seats shall be converted into general category seats. ...”

(Emphasis is mine)

19.4 The other judgment, which takes a somewhat similar view is the judgement of the Patna High Court, dated 02.05.1996, passed in Civil Writ

Jurisdiction Case No.1591/1996, titled **Miss Asha Kumari v. The Rajendra Agricultural University & Ors.**, AIR 1997 Pat 102¹.

¹ “9. I find absolutely no justification for the University for keeping the two seats vacant while the qualified candidates are available for admission. The claim of the University that in view of the fact that the petitioner is neither a Home Science Graduate nor an in-service candidate and, therefore, she cannot be accommodated either against the seat earmarked for Home Science Stream or for in-service candidate, is wholly untenable. The purpose of earmarking the seats for different streams and reserving the same for different communities is to grant protection to the candidates belonging to different streams and communities and, therefore, so long the candidates belonging to those streams and communities are available the same have to be offered to them. But by no stretch of imagination it could be claimed that even if the candidates of those streams and communities are not available, the other qualified candidates are not entitled for admission against them. The admission in an educational institution cannot be equated with the appointment in a particular service. One may be justified in not offering the post reserved for a particular category of candidates to other category of candidates for the reason that the post can be carried forward, but there cannot be any justification for not offering the seat vacant in an educational institution to the candidates of other categories if the candidates of the category, for which they are reserved, are not available inasmuch as the seats in an educational institution cannot be carried forward. The refusal of the University to admit the petitioner against the vacant seats is not only against her interest but is also against the national interest. A poor country, like ours, which cannot afford even to provide basic education to its citizen, cannot certainly afford the luxury of keeping the seats in an educational institution vacant when qualified candidates for admission are available. When the University had invited applications for admission against four seats of M.Sc. (Biochemistry) it must be well equipped to teach four candidates. The denial of admission to the petitioner would mean that the University which is well equipped to teach four candidates will be teaching only two candidates. In other words, the University will have to incur the expenditure for teaching four candidates, while teaching only two candidates. Thus the cost of teaching M.Sc. (Biochemistry) course per student will be double. It will be something like running a factory at half of its capacity and in the process causing avoidable loss to the nation.

10. The right of education may not be a fundamental right or an enforceable legal right but at the same time in view of Article 41 of the Constitution it cannot be reasonably claimed that the State is not under any obligation to impart education to its citizen. In this context it will be relevant to refer to Article 41 of the Constitution which provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want. Thus, it is clear that the State is under an obligation to make effective

W.P. (C) No. 9347/2019 Page 13 of 16

provision for securing to its citizen the right of education subject to its economic capacity. In this view of the matter, when the University is well equipped to teach four students in M.Sc. (Biochemistry) it is not justified in keeping two seats vacant although qualified candidates are available for admission. Otherwise also, no civilised society or democratic Government can afford to say that even if it is within its capacity to provide education to its citizen it is not under any obligation to do so. In other words the only excuse for not providing education to its citizen can be the economic reason and not the whims of the person in authority at a particular time.

11. The claim of the University that the curriculum of M.Sc. (Biochemistry) for different stream is different, is proved to be false from its own prospectus, which provides that the students from all the streams are eligible to apply for admission to M.Sc. (Biochemistry) course. It has been specifically claimed by the petitioner in the writ petition that there is common curriculum for M.Sc. (Biochemistry) for the candidates of all the streams, which has been denied in the counter-affidavit merely by saying that the curriculum is different without specifying the alleged difference. On the other hand, the petitioner has reasserted in para 3 of the rejoinder affidavit that there is common curriculum for M.Sc. (Biochemistry) for the students of all the streams. Paragraph 3 of the rejoinder affidavit which has not been controverted runs as under: —

“That the statements made in paragraphs 4 to 14 of the counter-affidavit are misleading and incorrect. M.Sc. Biochemistry Programme is a consolidated programme having a common syllabus though the Scholars admitted in this course come from different streams as mentioned in the Prospectus. The only difference on account of different disciplines is that after passing the final examination relating to common syllabus the name of the particular subject will be indicated in the Degree i.e. a Veterinary graduate will get M.V.Sc. degree, an agriculture graduate will get M.Sc. (Agr.) degree, a Home Science graduate will get M.Sc. (H.Sc.) degree, an honours graduate will get M.Sc. degree and in all the aforesaid degree Biochemistry is suffixed. Thus the course for students coming from different streams is one and only one and they attend together the same classes. Thus there is no separate P.G. Programme like M.Sc. (Home Science). It is also wrong to say that late admission beyond 15 days is not permissible. On respondents own showing one Dharmendra Kumar Singh ordered to be admitted by the Board of Management at its meeting dated 30-12-95 and consequent office order was issued by the Registrar sometime in January, 1996 much beyond 14-12-95. Even in past the respondents have admitted much after commencement of the course e.g. one Sri Ashok Kumar Singh was admitted in Ph.D. Programme in second semester i.e. after 1st Semester of six months and that too against a seat earmarked for in-service candidate and undeniably the in-service seat is still vacant apart from one seat earmarked for Home Science.”

12. Learned counsel for the University then contended that in view of the fact that there are more meritorious students available the petitioner is not entitled for admission. I find no substance in this argument of the learned counsel in view of the admitted position that the petitioner is the only candidate belonging to the reserved category and is, therefore, entitled for admission in preference to the candidates of general category.

Conclusion: -

20. Thus, for the foregoing reasons, I am persuaded to hold that the denial of admission to the petitioner by scaling down her marks by 2.5% because she included Multimedia and Web technology as one of the subjects in the best-four subjects chosen by her was not fair and, in that sense, violative of Article 14; which is the unspoken gravamen of the petitioner's case.

21. The fact that Multimedia and Web Technology has been singled out for scaling down of marks whereas no such provision is made *qua* other computer subjects (i.e. Computer Science and Informatics Practices) makes the unfairness even more egregious.

Moreover, no other candidate has approached this Court against the denial of admission by the University which can be another reason for giving preference to the petitioner over other candidates. In the end, learned counsel for the respondents contended that in view of the fact that classes had begun long ago this Court will not be justified in directing the University to admit the petitioner. It is true that ordinarily an educational institution should not be compelled to grant admission to a candidate in the mid-session but in this particular case where the petitioner has approached this Court immediately on refusal of the University to grant her admission and the hearing of the petition was repeatedly adjourned to enable the University to decide the matter at its end, it is not open for the University to raise this objection moreso when even in the past the University had been granting admission to the students long after beginning of the classes. It will be relevant to point out here that in the case of Raj Kumar (supra) when the University approached this Court for modification of the order on the ground that in view of the fact that the classes has started long ago even if the student was admitted it would not be possible for him to complete 90% required attendance of the Semester period, which was rejected by this Court with the observation that even if it was not possible for the student to complete the attendance the same should be relaxed by the Vice-Chancellor as a special case. The view taken by the Division Bench in rejecting the application of the University for modifying the order, will also hold good for the petitioner. In other words, once a similar plea was rejected by a Division Bench in the writ petition of Raj Kumar (supra) the same cannot be a ground for refusing the relief to the petitioner for no fault on her part."

22. In these circumstances, the writ petition is allowed. The petitioner, who already stands admitted to Satyawati College (Morning), *albeit*, provisionally, will continue in the said college as a regular student. The petitioner will fulfill necessary formalities in that behalf.

22.1 Resultantly, CM APPLs. 40537/2019 & 46208/2019 shall stand closed.

23. *Dasti* under signatures of the Court Master.

RAJIV SHAKDHER, J

NOVEMBER 05, 2019

सत्यमेव जयते