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

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Judgement reserved on 12.12.2019

Judgement pronounced on 16.12.2019

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W.P.(C) 9525/2019

MOHD ASIPH SHAHID ALI

..... Petitioner

Through : Mr. Manjunath Meled, and Mr. Anuj
Saini, Advocates.

versus

UNIVERSITY OF DELHI THROUGH
ITS REGISTRAR DELHI

..... Respondent

Through : Mr. Mohinder J.S. Rupal, Mr. Kousik
Ghosh, and Ms. Manisha Relia,
Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

JUSTICE RAJIV SHAKDHER

Preface:-

1. The captioned writ petition falls in a narrow compass. There are two short issues which arise for consideration in this case. First, whether the petitioner's candidature is rightly resisted by the University of Delhi (in short "University") on the ground that he produced the Other Backward Classes (OBC) certificate on a date beyond the cut-off date when the reason communicated *via* its official web-portal is "non-payment of fees"?

1.1. In other words, can the affidavit of the University set out reasons different from what was officially communicated to the petitioner?

1.2. Second, even if it is assumed that the University can take recourse to the defence, which is, that the petitioner's OBC certificate dated 07.09.2019 was produced after the cut-off date and hence it cannot be considered – is such a defence valid in the facts and circumstances obtaining in the instant case?

Background:-

2. Thus, in order to adjudicate upon these core issues, the following broad facts are required to be noticed.

2.1. The petitioner's family hails from Mathura in the State of Uttar Pradesh. The petitioner's father belongs to the "Quraishi" community. The petitioner's parents, however, carry on business in Kolkata in the State of West Bengal.

2.2. The petitioner was born on 16.11.1993 in Kolkata.

2.3. The petitioner cleared his grade-XII exam in 2013 from a school affiliated to the Board of High School and Intermediate Education, Uttar Pradesh.

2.4. The petitioner obtained a degree in B.A. (Hons.), in 2019, from Baba Saheb Bhimrao Ambedkar University, Uttar Pradesh.

2.5. In June 2019, the University invited applications for various courses and programmes including the 3-year LL.B. programme (in short "LL.B. programme"). The petitioner filed an application *qua* the LL.B. programme under the OBC (Non-Creamy Layer) category [in short "OBC-NCL category"].

2.6. As required, the petitioner sat for the Delhi University Entrance Test, 2019 (in short "entrance exam"). Based on the result of the entrance exam, the petitioner's name was shown in the 2nd combined admission list at S. No.

95. This list disclosed that the petitioner had been ranked 139 in the entrance exam.

2.7. Pertinently, even before the 2nd combined admission list was issued, on 15.06.2019, the petitioner had applied to the office of the Welfare Officer for Backward Classes in Kolkata, State of West Bengal, for issuance of an OBC certificate. This step was taken by the petitioner under a *bona fide* belief that he could obtain the certificate from the State of West Bengal being the State in which he was born.

2.8. On 01.08.2019, the petitioner approached the concerned officer in the University along with the requisite documents for seeking admission. On that date, the petitioner's request for grant of admission was not entertained.

2.9. According to the petitioner, the impediment put forth, *albeit* orally, was that he did not possess the OBC certificate. The petitioner avers that he informed the concerned officer in the University that even though he had applied for an OBC certificate to the concerned authority in the State of West Bengal he had not received the same and therefore he be given some leeway.

3. The petitioner further claims that in support of his plea, he had produced before the University official the acknowledgement slip issued to him by the concerned office in the State of West Bengal.

3.1. The petitioner claims that based on a written undertaking submitted by him, the concerned officer in the University granted him a leeway of 15 days to produce the OBC certificate. The petitioner further avers that on his request made on 22.08.2019, time for submission of the OBC certificate was extended up until 26.08.2019, *albeit*, once again, *via* oral instructions.

3.2. The petitioner claims that upon visiting the web-portal of the

concerned department of the State of West Bengal (with which he had made an application for issuance of an OBC certificate), it got revealed that his application had been rejected, *inter alia*, on the ground that his father was a permanent resident of State of Uttar Pradesh and not of State of West Bengal.

3.3. A perusal of this very order does disclose though that an observation is made that the petitioner's father and his siblings had been issued OBC certificates, on 13.08.2004, by the State of Uttar Pradesh.

3.4. Given this development, on that very date i.e. 26.08.2019, the petitioner approached the concerned officer in the University for being granted further time to produce the OBC certificate from the State of Uttar Pradesh.

3.5. A formal request in this behalf was made by the petitioner with the Registrar of the University on 27.08.2019. In this representation, the petitioner, *inter alia*, adverted to the fact that he belongs to the Quraishi community which stood categorized as OBC under the Central List. The representation was, *inter alia*, accompanied by the acknowledgement slip dated 15.06.2019 issued at the relevant point in time by the concerned office of State of West Bengal as also the order of rejection issued by the very same office which was downloaded by the petitioner on 26.08.2019.

3.6. Furthermore, the OBC certificates issued to his siblings by the State of Uttar Pradesh were also enclosed with the representation.

3.7. In order to hasten the process of obtaining the OBC certificate, an application was made by the petitioner, on 27.08.2019, to the concerned office in the State of Uttar Pradesh.

3.8. To the petitioner's surprise, the University, without taking any action

on his representation, on 28.08.2019, rejected his candidature, not on the ground that he had failed to produce the OBC certificate, but on the ground that he had not paid his fees.

3.9. Left with no alternative, the petitioner moved this Court by way of the instant writ petition. The petition was filed on 30.08.2019 (Friday).

4. The petition came up for hearing on 02.09.2019. However, the matter could not be taken up on that date due to non-availability of one or the other counsel for the parties. The matter was, thus, posted for hearing on 05.09.2019 when the Court did not convene.

4.1. The matter could, thus, be heard only on 17.09.2019 when briefly, the contours of the controversy in issue were etched out. On that date, Mr. Mohinder J.S. Rupal, Advocate, appeared on behalf of the University and sought time to obtain instructions as to the reason why the petitioner's admission had been cancelled. The matter was, thus, posted for further hearing on 27.09.2019.

4.2. On 27.09.2019, on behalf of the University, further time was sought and, accordingly, time was granted to file a counter-affidavit in the matter.

4.3. The matter was posted for hearing on 01.11.2019 when Mr. Rupal appeared and assured the Court that the counter-affidavit will be filed with the Registry by the next date. A copy of the same was, however, handed over to the petitioner's counsel in Court. Liberty was given to the petitioner's counsel to file a rejoinder in the matter. The matter was, thereafter, taken up on 27.11.2019 when Mr. Rupal sought accommodation to confirm as to whether the OBC certificate dated 07.09.2019 issued to the petitioner fell within the ambit of the Central List.

4.4. It is in this background that the matter was posted for 12.12.2019. On

12.12.2019, Mr. Rupal informed me that he had obtained instructions from the University *via* an email to the effect that the Quraishi community to which the petitioner belongs is recognized as a backward class by the Government of India and that the OBC certificate submitted by the petitioner pertains to the Central List.

4.5. Having said so, Mr. Rupal emphasized that since the OBC certificate is dated 07.09.2019 and the admission process closed on 31.08.2019, no relief could be granted to the petitioner.

4.6. Mr. Rupal, however, did not dispute the fact that the seats were still available in the LL.B. programme.

Analysis and Reasons: -

5. Therefore, given this backdrop, the following has emerged *qua* which there can be no dispute:

- (i) That the petitioner sat for the entrance exam and passed the same.
- (ii) The petitioner was ranked 139 in the combined merit list.
- (iii) On 15.06.2019, the petitioner applied for being issued an OBC certificate to the concerned office under the aegis of State of West Bengal.
- (iv) In June 2019, the petitioner applied for admission to the LL.B. programme under the OBC-NCL category.
- (v) The petitioner's name appeared in the 2nd combined admission list, which was, published on 30.07.2019.
- (vi) The petitioner's request for admission made on 01.08.2019 was declined.
- (vii) On 26.08.2019, the petitioner downloaded the order issued by the concerned office in the State of West Bengal whereby his application for being issued an OBC certificate was rejected on the ground that his father

was a permanent resident of the State of Uttar Pradesh and that his father and his siblings had been issued the OBC certificates by the State of Uttar Pradesh.

(viii) On 27.08.2019, the petitioner filed a representation with the Registrar of the University for being accorded further time to furnish the OBC certificate and in the meanwhile, be granted provisional admission.

(ix) On that very date i.e. 27.08.2019, the petitioner made an application to the concerned office in the State of Uttar Pradesh for being issued an OBC certificate.

(x) On 28.08.2019, the petitioner's candidature was rejected, *albeit*, on the ground of "non-payment of fees".

6. Therefore, given the aforesaid undisputed facts what is required to be examined is whether the University's stand is legally tenable?

6.1. The petitioner, as is apparent from the dates and events recorded hereinabove, did everything which was in his power to obtain an OBC certificate in order to seek admission under the said category.

6.2. The petitioner filed an application for the first time in that behalf, *albeit*, erroneously, as he discovered to his grief, with the concerned office in the State of West Bengal on 15.06.2019. It is when he downloaded the rejection order on 26.08.2019 that he brought this fact by way of a formal communication to the notice of the Registrar of the University on the very next date i.e. 27.08.2019.

6.3. Crucially, the representation made by the petitioner to the Registrar of the University, in no uncertain terms, adverted to the fact that he belonged to the Quraishi community which was categorized as OBC under the Central List. Besides this, the representation was accompanied by an order dated

26.08.2019 passed by the concerned office in the State of West Bengal which, *inter alia*, alluded to the fact that the petitioner's father and siblings had been issued OBC certificates by the State of Uttar Pradesh.

6.4. For the reasons best known to him, the Registrar of the University chose not to take any action on the petitioner's representation. The petitioner's candidature, though, was rejected on an entirely different ground which was non-payment of fees.

6.5. As is clear from the record, the payment of fees was never an issue up until then. It is because the petitioner had not been allowed to take admission as he did not have the OBC certificate in his hand, he could not deposit the fees.

6.6. Had the concerned officials in the University been as diligent (as they were upon a direction issued by the Court), they would have found out that what the petitioner stated in his representation, which is, that the Quraishi community fell in the Central List, was correct.

6.7. That the petitioner belonged to the Quraishi community would have been evident to anyone, in particular, the Registrar, had he taken the time out to peruse the representation and the annexures appended to the representation, in particular, the OBC certificates issued by the State of Uttar Pradesh to his siblings.

6.8. A little bit of effort and cross-referencing would have revealed that the Quraishi community, as was averred by the petitioner in his representation, fell in the Central List issued by the Government of India. Though, the petitioner made an application for being issued an OBC certificate to the concerned office in State of Uttar Pradesh on 27.08.2019, i.e. well before the purported cut-off date, it came to fruition only on

07.09.2019.

7. Given these circumstances, can one say that the delay in procuring the OBC certificate on account of the systemic deficiencies should be laid at the door step of the petitioner resulting in denial of admission?

7.1. While the argument that the documents required for admission should be filed before the cut-off date is sustained more often than not, *inter alia*, on account of administrative necessity, it has lent itself to one exception, which is, where the eligibility/status of the candidate is not in dispute and the delay in producing the proof of the same is not attributable to the candidate.

7.2. There are series of judgements which the Supreme Court has rendered in this behalf. I may, for the sake of convenience, cite the following three judgements and the dicta laid down therein :

Charles K. Skaria vs. Dr. C. Mathew, (1980) 2 SCC 752

“19. Now we come up against the other limb of the argument which appealed to the High Court. The three candidates already admitted to the ophthalmology course secured their seats on the basis of ‘diploma marks’. Had they no diplomas they would have been screened out. The High Court has taken the view that the diplomas of the appellants should have been excluded from consideration by the selection committee. Why? The ground is given by the Full Bench in appeal thus:

.....
20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the

application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

“(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application.”

This composite statement cannot be read [in] [a] formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: Has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an incontestable but

unorthodox probative process. Equity shall overpower technicality where human justice is at stake.

22. The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment the submission on 2% for outsiders) that if the diploma scores were added, the applicants, by the measure of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time. Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.

23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from

over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.

25. We thus reach the conclusion that the three candidates who had been eventually admitted by the selection committee could not be ousted merely for the reason that the certificate of diploma had not been produced together with the application for admission. Nor, indeed, could government be faulted for issuing a directive to the selection committee that applications from students of the diploma course could be considered subject to the condition that they would “produce the diploma certificates before finalising the selection to post-graduate courses”. The equity of this instruction of the government comes into bold relief when we realise that no party in this Court has a case that the candidates admitted by the selection committee did not secure a diploma in ophthalmology.

26. Even so, there is a snag. Who are the diploma holders eligible for 10 extra marks? Only those who, at least by the final date for making applications for admissions possess the diploma.

Acquisition of a diploma later may qualify him later, not this year. Otherwise, the date-line makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the concerned authority. An examinee for a degree or diploma must complete his examination — written, oral or practical — before he can tell the selection committee or the court that he has done his part. Even this is not enough. If all goes well after that, he cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled viz. the official communication of the result before the selection and its being brought to the ken of the committee in an authentic manner. Maybe, the examination is cancelled or the marks of the candidates are withheld. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the selection committee has the result before it at the time of — not after — the selection is over. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory; a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a selection committee requesting the concerned universities to inform them of the factum and get the proof straight by communication therefrom — unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unveracious

touch about the process.

27. Judged by the above tests it is conceded that while the Calicut University's diploma holders had completed their examination before the last date for M.D. applications and produced the certificate before the selection, the Kerala University diploma holder completed his diploma examination including publication of results only after the last date for applications and produced the certificate before the selection. By this token he is ineligible for admission because his diploma result was published only after the last date for applications. The accident of time has cheated him even as in human affairs generally, be it individual or collective, fortune ebbs and flows, influenced critically by happenstances of time and circumstances of life. That is the Relativity of Life, if one may look at problems philosophically. We, therefore, hold that Appellants 2 and 3 are entitled to admission and their appeal must succeed. By the same token the appeal of Appellant 1 must be dismissed.

28. To dismiss an appeal is merely to declare that judicial remedy will not issue and not that by other processes justice should not be sought or granted. From the humane perspective and with a view to helping Appellant 1 to pursue his relief through the university or other appropriate State agency, we directed the impleadment of the Indian Medical Council which is the statutory body concerned, at the national level, with higher medical degrees and courses. The Medical Council has not appeared before the court though its presence would have helped the forensic process to heal the fractured academic course. But we cannot wait longer. It behoves the State to give academic justice — not legal remedy — to Appellant 1 if circumstances permit, having regard to the fact that, with diploma qualification, he has spent months in doing his ophthalmology degree course. In law he fails, in justice he need not, if marginal adjustments by increasing one seat more were possible without injury to academic efficiency. What we mean is that though Appellant 1 has no legal claim to a seat, the overall circumstances will merit compassionate consideration, and we direct the Kerala University and the Indian Medical Council to permit him to complete his course by adding one more seat, for this year only, to the ophthalmic degree course.

(Emphasis is mine)

Dolly Chhanda vs. Chairman, JEE, (2005) 9 SCC 779

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in [the] application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

(Emphasis is mine)

Dr. Vinayak Varma vs. Medical Counselling Committee, 2018 SCC OnLine SC 3113

“21. The appellant was clearly entitled for admission as per his merit, by declining the relief, the writ petition had been virtually rendered infructuous for practical purposes. In the circumstances, we have heard the matter finally on merits and we are of the considered opinion that the High Court has erred in law in permitting admission contrary to the Regulation 2000 as amended in 2018. The appellant has been wrongly deprived of MS (Surgery). However, it would not be appropriate for us to disturb the admission given on those three seats as candidates who have been given admissions have pursued their course for the last 4-5 months and in one of the case of Dr. Rohan Kapoor the SLP has

been dismissed by this Court in limine and they are not made parties in the instant matter in this Court.

22. It is a case of illegal deprivation of admission in spite of the fact that the rights were protected vide High Court's order dated 18th May, 2018 extracted herein above as well as vide order dated 31st May, 2018 the appellant has been made to suffer for no fault on his part. It is settled proposition when court has protected interest. The Maxim Actus Curiae Neminem Gravabit comes to rescue of appellant. It would be travesty of justice in the facts of the case to deny him admissions on the ground that 31.05.2018 cut-off date for admission is over.

23. In the peculiar facts and circumstances, we direct admissions as an exception to general rule, as the admission were made subject to the outcome of the petition and we have found on merits that the appellant is entitled for admission; we have decided matter on merits, now nothing further survives in the writ petition pending in the High Court that stands disposed of and order passed by the High Court is hereby set aside. The Civil appeal is allowed.

24. Let the appellant be given admission within a week from today. It is stated that in Vardhman Medical College there are seats of MS (Surgery) lying vacant. Let the appellant be admitted against one of the seats. He will have to complete the entire duration of the course of three years. Writ petitions pending before the High Court stand disposed of."

8. In this case, the University's assertions in the counter-affidavit are clearly not in consonance with the stand taken before the Court on 12.12.2019, to which I have made a reference hereinabove.

8.1. In the counter-affidavit, the University, contrary to the stand taken before me on 12.12.2019 that the Quraishi community falls in the Central List, repeatedly conveys that the Quraishi caste is recognized as a backward caste in the State of Uttar Pradesh and not in the Central List. This counter-affidavit has been sworn as late as on 31.10.2019.

9. As alluded to hereinabove, had the University been a little more

diligent, the petitioner would have got the fruits of his labour in time and would not have to approach the Court for redressal of his grievance. The delay between 07.09.2019 and now cannot be held to be attributable to the petitioner.

9.1. Insofar as the period between 31.08.2019 and 07.09.2019 is concerned, the petitioner had done all that which was in his power to obtain an OBC certificate. First, he approached the State Government of West Bengal and then the State Government of Uttar Pradesh.

9.2. Had the Registrar of the University taken time out to peruse the petitioner's representation, he would have known that his siblings had been issued OBC certificates and their claim that they belonged to the Quraishi community had been accepted by the State of Uttar Pradesh.

9.3. A wee bit of effort would have revealed well before the cut-off date that Quraishi community fell in the Central List. Instead, the University, unfairly declined admission to the petitioner on the ground that he had not paid his fees.

9.4. The University, realising that this reason may not receive the imprimatur of the Court, if challenged, as it had itself *via* notice dated 03.09.2019¹ extended time for payment of fees for postgraduate courses,

¹ As extracted in judgement dated 22.11.2019, passed in W.P.(C) 11177/2019, titled **HIMANSHU & ORS vs. UNIVERSITY OF DELHI, FACULTY OF LAW THROUGH REGISTRAR:**

“Notice for Postgraduate Admissions 2019-20.

In order to redress the Grievances received by the Admission Office, it is hereby resolved to process the Admissions on 05th and 06th September, 2019 in the respective Faculties, Departments and Colleges for those Postgraduate applicants whose names appeared in the final admission list declared on 31st August, 2019 and were unable to report and/or pay their fees on 31st August, 2019.

However, fee payment link for all the above cases shall only be activated after the completion of DUSU election scheduled on 13th September, 2019.

sought to defend its action of declining admission to the petitioner on the ground that the OBC certificate was submitted after the cut-off date.

9.5. As alluded to hereinabove, apart from the fact that the delay cannot be attributed to the petitioner, it has to be borne in mind that once the eligibility and/or the caste, the class or the ethnicity of the candidate is not in doubt, the mere delay in placing the proof on record of having acquired the same on account of bureaucratic inaction cannot be used to deny admission to such a candidate.

9.6. If such actions are allowed to pass muster by the courts, it would result in complete negation of the principle of affirmative action. The observations made by the Supreme Court in this behalf in ***Ram Kumar Gijroya v. Delhi Subordinate Services Selection Board***, (2016) 4 SCC 754 : (2016) 1 SCC (L&S) 742 : 2016 SCC OnLine SC 184 at pages 759-761, although in context of employment, being apposite, for the sake of convenience, are extracted hereafter as it adverts to the rights conferred by the State, *inter alia*, under Article 14 and Article 15(4) of the Constitution upon persons falling in reserved categories on account of their social and economic inequalities and educational inadequacy.

“13. After hearing both the parties at length and perusing the impugned judgment and order passed by the Division Bench of the High Court, we are of the view that the Division Bench erred in setting aside the judgment and order passed by the learned Single Judge. We record our reasons hereunder.

03rd September, 2019”

**OSD Admissions
Admission Office,
University of Delhi,
Delhi-110007.**

(Emphasis is mine)

14. The Division Bench of the High Court erred in not considering the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] . In that case, the learned Single Judge of the High Court had rightly held that the petitioners therein were entitled to submit the OBC certificate before the provisional selection list was published to claim the benefit of the reservation of OBC category. The learned Single Judge correctly examined the entire situation not in a pedantic manner but in the backdrop of the object of reservations made to the reserved categories, and keeping in view the law laid down by a Constitution Bench of this Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] as well as Valsamma Paul v. Cochin University [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . The learned Single Judge in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] also considered another judgment of the Delhi High Court, in Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , wherein the Delhi High Court had already taken the view that the candidature of those candidates who belonged to the SC and ST categories could not be rejected simply on account of the late submission of caste certificate.

15. The relevant paragraph from the judgment of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] has been extracted in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] along with the speech delivered by Dr Ambedkar in the Constituent Assembly and reads thus: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 9)

“9. ... ‘251. Referring to the concept of equality of opportunity in public employment, as embodied in Article 10 of the Draft Constitution, which finally emerged as Article 16 of the Constitution, and the conflicting claims of various communities for representation in public administration, Dr Ambedkar emphatically declared that reservation should be confined to “a minority of seats”, lest the very concept of equality should be destroyed. In

view of its great importance, the full text of his speech delivered in the Constituent Assembly on the point is appended to this judgment. But I shall now read a few passages from it. Dr Ambedkar stated:

“... firstly, that there shall be equality of opportunity, secondly, that there shall be reservations in favour of certain communities which have not so far had a ‘proper look-in’ so to say into the administration. ... Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. ... Therefore the seats to be reserved, if the reservation is to be consistent with sub-clause (1) of Article 10, [Ed.: The matter between two asterisks has been emphasised in Indra Sawhney case, 1992 Supp (3) SCC 217.] must be confined to a minority of seats [Ed.: The matter between two asterisks has been emphasised in Indra Sawhney case, 1992 Supp (3) SCC 217.]. It is then only that the first principle could find its place in the Constitution and effective in operation. ... we have to safeguard two things, namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State....” [Constituent Assembly Debates, Vol. 7, pp. 701-02 (1948-1949).]

These words embody the raison d'être of reservation and its limitations. Reservation is one of the measures adopted by the Constitution to remedy the continuing evil effects of prior inequities stemming from discriminatory practices against various classes of people which have resulted in their social, educational and economic backwardness. Reservation is meant to be addressed to the present social, educational and economic backwardness caused by purposeful societal discrimination. To attack the continuing ill effects and perpetuation of such injustice, the Constitution permits and empowers the State to adopt corrective devices even when they have discriminatory and exclusionary effects. Any such measure, insofar as one group is preferred to the exclusion of another, must necessarily be narrowly tailored to the achievement of the fundamental constitutional goal.’ (Indra Sawhney case [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC

(L&S) Supp 1 : (1992) 22 ATC 385] , SCC pp. 433-34, para 251)”

16. In Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant paragraphs from Tej Pal Singh [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] have also been extracted, which read thus: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)

“11. ... ‘15. The matter can be looked into from another angle also. As per the advertisement dated 11-6-1999 issued by the Board, vacancies are reserved for various categories including SC category. Thus in order to be considered for the post reserved for SC category, the requirement is that a person should belong to SC category. If a person is SC he is so by birth and not by acquisition of this category because of any other event happening at a later stage. A certificate issued by competent authority to this effect is only an affirmation of fact which is already in existence. The purpose of such certificate is to enable the authorities to believe in the assertion of the candidate that he belongs to SC category and act thereon by giving the benefit to such candidate for his belonging to SC category. It is not that petitioners did not belong to SC category prior to 30-6-1998 or that acquired the status of being SC only on the date of issuance of the certificate. In view of this position, necessitating [sic: insisting] upon a certificate dated prior to 30-6-1998 would be clearly arbitrary and it has no rationale objective sought to be achieved.

16. While taking a particular view in such matters one has to keep in mind the objectives behind the post of SC and ST categories as per constitutional mandate prescribed in Articles 15(4) and 16(4) which are enabling provisions authorising the Government to make special provisions for the persons of SC and ST categories. Articles 14(4) [sic: Article 15(4)] and 16(4), therefore, intend to remove social and economic inequality to make equal opportunities available in reality. Social and economic justice is a right enshrined for protection of society. The right in social and economic justice envisaged in the Preamble and elongated in the fundamental rights and directive principles of the Constitution, in particular Articles 14, 15, 16, 21, 38, 39 and 46 are to make the quality of the life of the poor, disadvantaged and disabled citizens

of the society meaningful.’ (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del paras 15-16)”

17. Further, in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , relevant portion from the judgment of Valsamma Paul case [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] has also been extracted, which reads as under: (Pushpa case [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] , SCC OnLine Del para 11)

“11. ... ‘17. ... “21. The Constitution through its Preamble, fundamental rights and directive principles created a secular State based on the principle of equality and non-discrimination, striking a balance between the rights of the individuals and the duty and commitment of the State to establish an egalitarian social order.” (Valsamma Paul case [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] , SCC pp. 560-61, para 21)’ (Tej Pal Singh case [Tej Pal Singh v. Govt. (NCT of Delhi), 1999 SCC OnLine Del 1092 : ILR (2000) 1 Del 298] , SCC OnLine Del para 17)”

18. In our considered view, the decision rendered in Pushpa [Pushpa v. Govt. (NCT of Delhi), 2009 SCC OnLine Del 281] is in conformity with the position of law laid down by this Court, which have been referred to supra. The Division Bench of the High Court erred in reversing the judgment and order passed by the learned Single Judge, without noticing the binding precedent on the question laid down by the Constitution Benches of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Valsamma Paul [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] wherein this Court after interpretation of Articles 14, 15, 16 and 39-A of the directive principles of State policy held that the object of providing reservation to the SCs/STs and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity. The

constitutional concept of reservation envisaged in the Preamble of the Constitution as well as Articles 14, 15, 16 and 39-A of the directive principles of State policy is to achieve the concept of giving equal opportunity to all sections of the society. The Division Bench, thus, erred in reversing the judgment and order passed by the learned Single Judge. Hence, the impugned judgment and order passed by the Division Bench in Letters Patent Appeal No. 562 of 2011 is not only erroneous but also suffers from error in law as it has failed to follow the binding precedent of the judgments of this Court in Indra Sawhney [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] and Valsamma Paul [Valsamma Paul v. Cochin University, (1996) 3 SCC 545 : 1996 SCC (L&S) 772 : (1996) 33 ATC 713] . Therefore, the impugned judgment and order [Delhi Subordinate Services Selection Board v. Ram Kumar Gijroya, 2012 SCC OnLine Del 472 : (2012) 128 DRJ 124] passed by the Division Bench of the High Court is liable to be set aside and accordingly set aside. The judgment and order dated 24-11-2010 passed by the learned Single Judge in Ram Kumar Gijroya v. Govt. (NCT of Delhi) [Ram Kumar Gijroya v. Govt. (NCT of Delhi), WP (C) No. 382 of 2009, order dated 24-11-2010 (Del)] is hereby restored.”

(emphasis is mine)

9.7. Besides this, the University, in my opinion, ought not to be allowed to furnish a reason in its counter-affidavit for denying admission to the petitioner different from the reason officially communicated to him. [See: **Mohinder Singh Gill vs. Chief Election Commissioner**, (1978) 1 SCC 405]

9.8. It now appears that the reasons given by the University in its counter-affidavit that the Quraishi community did not fall in the Central List was a ruse used to delay the petitioner's admission.

10. I may also note that during the course of his arguments, Mr. Rupal referred to the judgement of the Division Bench of this Court rendered in **Ravi Yadav vs. University of Delhi**, (2017) SCC OnLine Del 12187 in support of his plea that since the OBC certificate was not submitted by the

petitioner on or before the cut-off date, the petitioner cannot be granted admission in the LL.B. programme.

10.1. A careful perusal of the aforementioned judgement would show that its *ratio decidendi* veers around the failure of the petitioner, in that case, in submitting the result of his supplementary examination within the stipulated period.

10.2. In *Ravi Yadav's* case, the petitioner had neither averred nor did he submit the OBC certificate to the University, which, in any event, as noticed above, did not form the main plank of the decision arrived at in the matter. Hence, the aforementioned judgement is clearly distinguishable on facts.

Conclusion: -

11. Thus, for the foregoing reasons, I am inclined to allow the writ petition. It is ordered accordingly. Both the issues are found in favour of the petitioner. The petitioner will be given admission in the LL.B. programme in the OBC-NCL category in the academic session 2019-2020.

12. Given the fact that the examinations for some of the papers in the first term have already been held, the University will make suitable adjustments in accordance with the extant rules and regulations framed in that behalf.

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

RAJIV SHAKDHER, J

DECEMBER 16, 2019

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