

0* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 752/2019 & CM.No.51436/2019 (stay)

Date of decision: 01.05.2020

IN THE MATTER OF:

SHRI RAM COLLEGE OF COMMERCE Appellant
Through : Mr. Amit Bansal and Ms. Seema
Dolo, Advocates.

versus

SAHIL & ORS Respondents
Through : Mr. Lalit Kumar, Advocate with
Mr. Jeet Raja, Advocate for R-1 to 3.
Mr. Mohinder J.S. Rupal and
Mr. Kaushik Ghosh, Advocate for
DU.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

HIMA KOHLI, J.

1. The appellant/Shri Ram College of Commerce (in short, '**SRCC**') is aggrieved by the judgment dated 14.11.2019, passed by the learned Single Judge in a writ petition filed by the respondents No.1-3/students praying *inter alia* for issuing a writ of *certiorari*, to quash a press release dated 26.7.2019, issued by the respondent No.4/University of Delhi (in short, '**University**') and notice dated 31.7.2019, issued by SRCC and for directions to the college and the respondent No.4/University to consider

their case for admission into the B.Com (Hons.) course for the Academic Year 2019-20.

2. The learned Single Judge has examined the press release dated 26.7.2019, issued by the respondent No.4/University whereunder, a special drive for Undergraduate admissions was announced for the Academic Year 2019-20 for two days (between 29.07.2019 to 30.7.2019), subject to the conditions stipulated therein and colleges governed by the University were called upon to issue a Notification of the 6th cut-off marks. Finding fault with the press release on at least four counts, the learned Single Judge has declared the fourth bullet point of the said press release as bad in law. Thereafter, keeping in mind the fact that Undergraduate admissions had already taken place on the basis of the impugned press release, the relief in the writ petition was moulded and the appellant/SRCC was directed to consider admitting the respondents No.1-3/students if there were any vacant seats in any other category. If no seats were available in any of the categories, then it was directed that if the respondents No.1-3 do make a request to the appellant/SRCC for migration to the B.Com (Hons.) course on completion of the first Academic Year, the same shall be considered if seats are available at that time, in terms of the extant rules and regulations.

3. We may first advert to the relevant facts of the case. Respondents No.1-3/students belong to the Other Backward Classes/Non-Creamy Layer category (in short, '**OBC/NCL**'). They had secured 95% marks in the best four subjects in the Class XII examinations. Respondents No.1 and 2 got admission in Hindu College and the respondent No.3 in LSR. Though respondents No.1-3 had applied to the appellant/SRCC for admission, they

could not figure in the first five admission lists as the marks secured by them were below the cut-off percentage.

4. On 26.7.2019, respondent No.4/University issued a press release announcing a special drive for Undergraduate admission, the relevant part whereof is extracted herein below:-

“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.”

5. Admittedly, none of the private respondents fell under the categories carved out in the captioned press release and were therefore, ineligible for admission in the Special drive i.e., the 6th Cut-off list.

6. Vide e-mail dated 29.7.2019, OSD, Admission of the respondent No.4/University informed all the colleges that they were required to determine the method/provision of cut-off percentage in such a manner that seats were filled optimally and well in time and at the same time, they were to ensure that no over-admission took place.

7. It is not in dispute that prior to taking admission under the Special drive (6th Cut-off list), the last cut-off percentage declared for the subject course under the 5th Cut-off list was 95.125%. On receiving the e-mail dated 29.7.2019 and noting that there were still 5 un-filled seats under the OBC category after making admissions under the 5th cut-off list, the appellant/SRCC decided to bring down the cut-off percentage from 95.125% to 95%, for making admissions to the subject course under the Special drive.

8. Vide Notification dated 31.7.2019, the appellant/SRCC released the 6th Cut-off Notice (Admission under Special Drive) for admission to B.Com (Hons.) and B.A (Hons.) courses wherein, the cut-off percentage for admission to the B.Com (Hons.) course for the OBC candidates was set as 95%. Under the Special drive, the appellant/SRCC admitted 3 candidates in the OBC category whose names have been furnished in an affidavit dated 15.1.2020, directed to be filed by the appellant/SRCC. A glance at the said affidavit reveals that all the three candidates, who have been given admission, had secured 95% marks, but none of them had taken admission in any of the colleges governed by the respondent No.4/University or any other University.

9. It is also a matter of record that in the subsequent Cut-off lists declared by the appellant/SRCC i.e. the 7th and 8th Cut-off lists, the cut-off percentage for the OBC candidates was maintained at 95.125%, as was the position under the 5th Cut-off list. It is also noteworthy that admissions under the 7th and 8th Cut-off lists were made open to all the candidates who fulfilled the cut-off percentage even though they may have already taken admission in a particular college. To put it differently, the criteria laid down for admission under the Special drive was not made applicable to the admissions made under the 7th and 8th Cut-off lists. On declaring the 7th and 8th lists, the appellant/SRCC was able to fill up all the vacant seats under the OBC category. Thus, on the date of closure of admissions, i.e. on 31.8.2019, the total number of admissions of OBC category students in B.Com (Hons.) was 150 as against the sanctioned strength of 149, thus leaving no vacant seat under the said category for admission.

10. The grievance of the respondents No.1-3/students is directed against the press release dated 26.7.2019, issued by the respondent No.4/University, particularly the fourth bullet point. The terms and conditions in the fourth bullet point of the press release was that the candidature of only those applicants, who could not seek admission or had cancelled their admission in any of the Colleges/Departments of the University during any of the preceding cut-offs for any reason, till the 5th Cut-off and were not admitted, but meet any of the preceding cut-offs, would be considered for admission under 6th Cut-off list subject to availability of seats.

11. It was contended by the respondents No. 1-3 that the aforesaid condition incorporated by the appellant/SRCC in the Circular dated 31.7.2019, had resulted in their unfair exclusion from consideration, though they were similarly placed as those candidates who were permitted to apply under the Special drive, for admission to the B.Com (Hons.) course having secured 95% marks in the OBC category. It was thus urged that the respondent No.4/University had worded the impugned press release in such a manner so as to deprive the respondents No.1-3 from seeking admission in the subject course in the appellant/SRCC though they fell in the OBC/NCL category and had secured 95% marks.

12. Finding merit in the submission made by learned counsel for the respondents No.1-3/students, the learned Single Judge has declared the impugned press release as bad in law insofar as the stipulation set down in the fourth bullet point is concerned. It has been held that the respondents No.1-3 could not have been treated any differently from those candidates, who were unsuccessful in seeking admission in the first five Cut-off lists or

those who had secured admission in the first five admission lists but had cancelled their admissions. The learned Single Judge observed that the respondents No.1-3 could not have imagined that the cut-off percentage would drop from 95.125%, as declared in the 5th admission list, to 95% in the Special drive i.e., the 6th admission list declared by the appellant/SRCC. The fourth bullet point of the impugned press release was declared to be illegal and inequitable due to failure on the part of the University and SRCC to demonstrate an intelligible differentia between the two classes of students.

13. Aggrieved by the aforesaid decision and the directions issued by the learned Single Judge calling upon the appellant/SRCC to consider admitting the respondents No.1-3/students if there were vacant seats in other categories of the subject course, the present appeal has been filed.

14. The grounds taken by Mr. Amit Bansal, learned counsel for the appellant/SRCC to assail the impugned judgment are that the learned Single Judge failed to appreciate that the respondents No.1-3/students had already secured admission in reputed colleges of the respondent No.4/University and directing to grant them admission in SRCC would entail cancellation of their admissions in their respective colleges, resulting in wastage of their seats; that granting them admission midstream is unjustified; that the Special drive was undertaken only to offer one more opportunity to the students who had incorrectly mentioned their categories (SC/ST/OBC/EWS/PWD/KM/CW etc.) and to those students who did meet the previous five cut-off percentage but for some reason, could not take admission or had to cancel their admissions.

15. It was sought to be urged on behalf of the appellant/SRCC that till the declaration of the 5th cut-off list and before the 7th and the 8th list, the cut-off percentage was fixed as 95.125% and it was only during the Special drive i.e., the 6th cut-off list that the percentage was brought down to 95%. Therefore, the respondents No.1-3/students could not claim any vested right to admission in the appellant/SRCC. Lastly, it was submitted that the decisions relied upon and referred to in para 16 of the impugned judgment, for directing the appellant/SRCC to consider the respondents No.1-3 for admission, if there existed vacant seats in any other category, could not apply to the instant case for the reason that the respondent No.4/University had issued a Circular dated 22.5.2014, specifically stating *inter alia* that seats reserved for SC/ST category students could only be filled up by students, who fall in the said categories and none else.

16. *Per Contra*, Mr. Lalit Kumar, learned counsel for the respondents No.1-3 supported the impugned judgment and asserted that by issuing the impugned press release, the respondent No.4/University has tried to change the rules of admission midstream, which was impermissible; that the case of the respondents No.1-3 could not be treated as any different from the case of students who were permitted to apply for admission under the Special drive (6th Cut-off list) as they had secured the same marks in the OBC category as those who were permitted to apply for admission in the Special drive. It was submitted that once the respondents No.1-3 met the cut-off percentage fixed in the Special drive (6th cut-off list), there was no reason to keep them out in the cold and treat them as ineligible to apply. Lastly, learned counsel stated that in the event this court is not inclined to uphold the impugned judgment

insofar as the appellant/SRCC has been directed to admit the respondents No.1-3 against any vacant seat in any other category, then appellant/SRCC may be bound down to the directions issued in the alternative in the impugned judgment.

17. We have heard the arguments advanced by learned counsel for the parties, carefully perused the impugned judgment and the relevant documents. As noticed above, the entire issue raised in the writ petition hinged on the conditions stipulated in the fourth bullet point of the press release dated 26.7.2019, issued by the respondent No.4/University wherein, it was decided to undertake a special drive from 29.7.2019 to 30.7.2019, for Undergraduate admissions and only those applicants were considered to be eligible to apply who could not seek admission in any of the Colleges/Departments of the University during the preceding cut-off for any reason or who had got admissions, but had cancelled their admissions. While the respondents No.1-3 raised no grievance in respect of the first to the third bullet points of the press release, they are aggrieved by the fourth bullet point as all of them had secured admission in colleges governed by the respondent No.4/University before the press release came to be issued, thereby making them ineligible for applying under the Special drive (6th Cut-off list) directed by the University.

18. It is not in dispute that before issuance of the press release whereunder, it was proposed to make admissions in the Undergraduate course through a Special drive, the appellant/SRCC fixed the last cut-off percentage for the subject course as 95.125%. Admittedly, the respondents No.1-3 having secured 95% could not secure admission in the

appellant/SRCC. After undertaking the process of admissions as per the 5th Cut-off list, five seats had remained unfilled in the OBC category. Therefore, in terms of the e-mail dated 29.7.2019, addressed on behalf of the respondent No.4/University, the appellant/SRCC was told that the Admission Committee had resolved that the 6th Cut-off list shall be treated as a Special drive and that it was left to the concerned colleges to determine/make provision of cut-off percentage to avoid over-admissions and at the same time, ensure that all seats are filled up.

19. It was in the above background that the appellant/SRCC issued the Notification dated 31.7.2019 releasing the 6th Cut-off (Admission under Special Drive) Notice for admissions to B.Com (Hons.) and B.A (Hons.) courses wherein, the cut-off percentage for admission to the B.Com (Hons.) course for the OBC candidates was pegged at 95%. During the said Special drive, the appellant/SRCC was able to fill up three out of five vacant seats, which were allocated to students who had secured 95% but had not taken admission in any of the colleges under the respondent No.4/University or any other University, as stipulated in the fourth bullet point of the press release dated 26.7.2019, issued by the respondent No.4/University.

20. Thereafter, the respondent No.4/University sent an e-mail dated 4.8.2019 to the appellant/SRCC for issuing the 7th Cut-off list and make admissions under all categories, in the usual manner and not as a Special drive. On doing so, two more admission were made in the 7th Cut-off list, but no admission could be made in respect of two vacant seats under the OBC category. In the 8th Cut-off list, two more admissions were made on 28.8.2019, on the basis of the cut-off percentage fixed at 95.125%. This

resulted filling up of all vacant seats under the OBC category in the subject course.

21. For the respondents No.1-3/students to urge that the appellant/SRCC ought to have followed the sliding scale principle which was adopted for the first five admission lists and ought not to have increased the cut-off marks to a higher percentage, over and above the percentage fixed in the Special drive (6th admission list), for making admissions in the 7th and 8th Admission list, is found to be untenable for the reason that the Special drive directed by the respondent No.4/University was a one-time process. In other words, it was not the norm, but an exception. A small window was opened by the respondent No.4/ University in terms of the impugned press release permitting admissions under the Special drive, just to afford one more opportunity to such of the students who had erroneously mentioned incorrect categories in their applications or those who did meet the cut-off percentages fixed in the five previous Cut-off lists, but could not take admission or had to cancel their admissions. Therefore, the appellant/SRCC cannot be faulted for reverting back to the cut-off percentage fixed as 95.125% in the 5th Cut-off list and apply the same cut-off percentage to the admissions made in the 7th and 8th Admission list.

22. We are of the opinion that the respondents No.1-3/students having already managed to secure admission in prestigious colleges in the respondent No.4/University i.e., Hindu College and LSR, they have not suffered any hardship. There is no reason for this court to displace the three candidates, who had applied for admission under the 6th Cut-off list (Admission under Special Drive), being eligible in terms of the impugned

press release dated 26.7.2019 and had secured admission. Any order passed in favour of the respondents No.1-3/students at this belated stage shall not only deprive the students who have already been admitted in the subject course in terms of the 6th Cut-off list, but shall also result in three vacant seats going abegging in the concerned colleges, where they are presently admitted.

23. The court can also not be blind to the fact that the students who have been admitted in the appellant/SRCC in terms of the 6th Cut-off list were not even impleaded as co-respondents in the writ petition. Any direction to dislodge them cannot be countenanced behind their back, as it would be in gross violation of the principles of natural justice. It does not appeal to this court to resort to such a course of action for another reason which is that by now the Academic Year 2019-2020 is at the fag end. Respondents No.1-3 have taken the first semester examination and are soon going to sit for the second semester examination in the concerned colleges where they have secured admission. We are therefore, not inclined to direct the appellant/SRCC to take them in at this stage.

24. We also find merit in the submission made by learned counsel for the appellant/SRCC that the respondents No.1-3/students could not be given admission in the left over seats in the subject course in the light of the Circular dated 22.5.2014, issued by the respondent No.4/University that lays down the Guidelines for admission to various undergraduate and post-graduate courses and stipulates in para 3 that “*The seats reserved for the SC/ST shall be filled by the SC/ST candidates only. However, in the case of non-availability of the eligible candidates the reserved seats may be*

interchanged between the SC & ST. It still any seat remains unfilled, the same shall be left vacant.”. In view of the aforesaid condition, respondents No.1-3/students, who belong to the OBC/NCL category, could not have been granted admission even if there were vacant seats in the SC/ST category. For the aforesaid reason, reliance on the judgments in Miss Asha Kumari vs. The Rajendra Agricultural University & Ors., reported as **AIR 1997 Pat 102** and Hari Singh Nalwa Trust (Regd.) and Ors. vs. State of Haryana and Ors., reported as **2014 SCC OnLine P&H 20880**, is misplaced and cannot strengthen the case of the respondents No.1-3/students as in those cases, there is no reference to any circular of the nature issued by the respondent No.4/University.

25. For the aforesaid reasons, we are unable to uphold the directions issued in the impugned judgment calling upon the appellant/SRCC to admit the respondents No.1-3/students in the subject course against the vacant seats still available in any other category. At the same time, there is no good reason why the applications, that may be submitted by the respondents No.1-3/students to the appellant/SRCC for seeking migration to the B.Com (Hons.) course on completion of the first Academic Year cannot be considered if any seats are/may be available at that point in time. It is therefore, directed that in the event the respondents No.1-3/students submit applications to the appellant/SRCC for seeking migration to the B.Com (Hons.), in the second year i.e., in the Academic Year 2020-21, their requests shall be duly considered and if there are seats available and they are eligible in accordance with the rules, they shall be duly accommodated.

26. The appeal is disposed of on the above terms, while leaving the parties to bear their own costs.

HIMA KOHLI, J,

ASHA MENON, J

MAY 01, 2020
NA/hsk

