

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

+ **LPA 728/2019 & C.M.Applns.49913-14/2019**

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Date of decision: 13.01.2020

YOGESH

..... Appellant

Through: Mr. Rajat Navet and Mr. Kushagra
Pandit, Advocates

versus

UNIVERSITY OF DELHI & ANR

.....Respondents

Through: Mr. Mohinder J.S.Rupal, Mr. Koushik
Ghosh and Ms. Manisha Relia, Advocates for
respondent No.1/University of Delhi
Mr. Amit Bansal and Ms. Seema Dolo, Advocates
for respondent No.2/SRCC

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. The appellant is aggrieved by the judgment dated 15.11.2019, passed by the learned Single Judge, dismissing his writ petition wherein he had sought the following reliefs: -

“(a) Issue an appropriate Writ, Order or Direction in the nature of a writ of mandamus and/or any other writ directing the Respondents and more particularly Respondent No.2 to grant admission to the Petitioner in Economics (H) Course in Respondent No.2 for the Academic Year 2019-2020 under the Sports Quota; and

(b) Pass any other Order and/or further orders that this Hon'ble Court may deem fit and proper in the facts and

circumstances of the present case; ”

2. The appellant/petitioner was an aspirant to the Economics (H) course and had sought admission in the Academic Year 2019-2020 with the respondent No.2/Shri Ram College of Commerce on the basis of his achievements in sports. According to the Bulletin of Information issued by the respondent No.1/University, for the academic year 2019-20, four seats were reallocated for men in the Basketball Quota in the respondent No.2/College with two seats for the “Centre Position”. The appellant/petitioner ranked at the 9th place in the overall list of “Centre”, but in the category of students having Maths, which was a mandatory eligibility condition prescribed by the respondent No.2/College, he ranked at number 2. However, the respondent No.2/College reduced the seats from two to one. As a result, the appellant/petitioner was denied admission in the respondent No.2/College. When written representations did not yield the desired result, the writ petition was filed, which, as noticed above, was dismissed by the learned Single Judge by observing that the appellant/petitioner could not claim to have any vested right to seek admission in the Sports category and, on that basis, seek admission for the desired course in the respondent No.2/College.

3. According to Mr. Rajat Navet, learned counsel for the appellant/petitioner, the respondent No. 1/University of Delhi had earlier prescribed 5% reservation under the Sports Quota and thereafter, directed 1% reservation of seats for Extra-Curricular Activities (ECA) category, thus leaving only 4% seats available for the Sports category and it was because of this additional reservation that the appellant/petitioner was deprived of

admission. Learned counsel also referred to the information published by Hindu College in its prospectus for the academic year 2019-20 to contend that out of a total of 824 seats for various undergraduate courses, 42 seats had been reserved by the College for Sports category, which came to 5% of the total strength and there was no justification for the respondent No.2/College to have denied admission to the appellant/petitioner. It was also argued that the appellant/petitioner was being victimized on account of a difference of opinion between the two respondents with regard to filling up of 5% supernumerary seats in the Sports category.

4. *Per contra*, Mr. Amit Bansal, learned counsel for the respondent No.2/College submitted that seats for selecting students in the Sports category and the ECA category were supernumerary seats, created beyond the sanctioned strength of seats and in fact, there was no vacancy available in the respondent No.2/College for accommodating the appellant/petitioner.

5. Mr. Rupal, learned counsel for the respondent No.1/University submitted that it was mandatory for all the colleges to reserve 1% of the strength of seats for ECA category and remaining 4% seats for the Sports category and under no circumstance could supernumerary seats be allocated beyond 5% of the sanctioned strength of seats. Mr. Rupal also relied on the observations made by the Supreme Court in Neelu Arora (Ms.) and Anr. V. Union of India and Ors., **AIR 2003 SC 1082** to submit that even if seats remained vacant, the appellant/petitioner could not claim a right to seek mid-session admission, though in the present case, the seats being supernumerary, as a matter of fact there were no vacant seats available. Respondent No.1/University has also filed an affidavit pursuant to directions issued by this court, stating *inter alia* that none of the colleges affiliated with

the University of Delhi have been allowed to exceed the Sports category seats beyond 4% and that the mandatory nature of this direction was duly intimated to the respondent No.2/College through an email dated 09.07.2019, which was the reason why the University did not respond to the letter dated 19.07.2019 addressed to it by the respondent No.2/College subsequently, wherein it had sought clarifications regarding 4% Sports category seats.

6. Having heard the learned counsel for the parties and on considering the relevant material on record, we find no merit in the present appeal. It needs to be emphasised that the appellant/petitioner has failed to establish any vested right for being granted admission in the respondent No.2/College and in the facts and circumstances of this case, the doctrine of legitimate expectation has no applicability.

7. No doubt, the Information Bulletin published by the respondent No.2/College had mentioned a 5% reservation of seats in the Sports category and the appellant/petitioner had applied for the same. However, the record does not disclose that there was any “dispute” between the two respondents in respect of 1% of the supernumerary seats created for the ECA category or that the appellant/petitioner had become an unwitting victim of the same. In fact, the respondent No.1/University has clarified in the affidavit filed before us that it was on account of the fact that the position had been duly clarified to the respondent No.2/College vide email dated 09.07.2019, that it did not deem it necessary to respond to a subsequent letter issued by the respondent No.2/College, dated 19.07.2019.

8. A perusal of the record filed before the learned Single Judge would show that on 08.05.2019, the respondent No. 1/University through the Dean,

Students' Welfare had informed all colleges that in order to have a more healthy and fair distribution of seats amongst ECA category and Sports category, at least 1% seats must be reserved for the ECA. The respondent No. 1/University had conveyed in so many words that *“representation of at least 1% each of ECA and Sports separately is mandatory for all colleges, for the distribution of overall 5% supernumerary seats”*.

9. It is not clear how the respondent No.2/College deemed it appropriate to consider the above communication as advisory in nature. That was an error on the part of the respondent No.2/College. However, when a complaint was received regarding non-filling of the ECA category seats, the respondent No.2/College had communicated the error committed to the respondent No. 1/University seeking notification of seats available for ECA category. This is so reflected in the letter dated 24.06.2019 issued by the respondent No.2/College through its Principal to the Dean, Students' Welfare, University of Delhi. It may be noted that in response to the aforementioned communication dated 24.06.2019, issued by the respondent No.2/College, vide letter dated 25.06.2019, the respondent No.1/University had once again reiterated that the Resolution of the Standing Committee on admission to 1% share of seats for ECA category and 4% share of seats for the Sports category separately, was mandatory.

10. Accordingly, on 28.06.2019, the respondent No.2/College informed the respondent No.1/University that it had 7 seats in ECA category and 28 seats in the Sports category. The respondent No.1/University in turn informed the respondent No.2/College that since it was too late to modify the 'seat matrix' for ECA category, as this exercise had to be done before the first cut-off list was published on 27.06.2019, it reaffirmed its position

that the 'seat matrix' under the Sports category should be restricted to a maximum of 4% of the sanctioned strength of seats. Thereafter, at the time of the finalisation of the provisional admission on sports basis in the respondent No.2/College on 16.07.019, there was no confusion insofar as the respondent No.2/College was concerned regarding the number of students it could allot in the Sports category.

11. As Hindu College is not before us therefore, the discrepancy in the Bulletin of Information issued by the said College, reserving 42 seats under the Sports category cannot come to the aid of the appellant/petitioner, more so, in the light of the affidavit sworn by the Dean, Students Welfare and Chairman of Admission Committee, University of Delhi to the effect that no college had been allowed to exceed the limit of 4% of the total strength under the Sports category. Any discrepancy in the intake of students in the Sports category by the said college cannot give any advantage to the appellant/petitioner.

12. Thus, there is no force in the argument advanced by learned counsel for the appellant/petitioner that his client is an unfortunate victim of a misunderstanding between the respondent No.1/University of Delhi and the respondent No.2/College with regard to the number of students who could be inducted under the Sports category. The submission made by learned counsel for the appellant/petitioner that since 1% of seats under ECA category has not been filled up in the respondent No. 2/College, that seat was now available for being allocated to the appellant/petitioner, is also found to be devoid of merits. As pointed out by learned counsel for the respondent No.1/University, the Sports and ECA category seats are supernumerary in nature and they lose their existence when they are not

filled up by suitable candidates. There is, therefore, no 'vacant seat' available in the respondent No.2/College against which the appellant/petitioner can be accommodated and admission given to him under the Sports category or any other category.

13. In the facts and circumstances of the present case as discussed above, no relief could have been granted to the appellant/petitioner and his petition has been rightly dismissed by the learned Single Judge. The appeal being meritless, is accordingly dismissed alongwith the pending applications.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

JANUARY 13, 2020
s/MK/pkb/s