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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: March 07, 2022

+ W.P.(C) 756/2021 with CM APPLs. 1909/2021, 4984/2021, 19314/2021 & 19326/2021

VIDHI UPPAL

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

+ W.P.(C) 1424/2021 with CM APPL. 6197/2021

SARTHAK ABROL

..... Petitioner

versus

UNIVERSITY OF DELHI

..... Respondent

+ W.P.(C) 914/2021 with CM APPLs. 2474/2021 & 4994/2021

PIYA UPPAL

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Present:- Mr. Mukul Talwar, Sr. Advocate with Ms. Aastha Dhawan, Ms. Pallavi Saigal and Mr. Aditya Raj, Advs. for the Petitioner in W.P.(C) Nos. 756/2021 & 914/2021. Mr. Sarthak Abrol, petitioner in person in W.P.(C) 1424/2021. Mr. Mohinder J.S. Rupal, Std. Counsel with Ms. V. Bhawani, Advocate with Mr. Ankur Chhibber, Advocate with Mr. Anshuman Mehrotra, Mr. Nikunj Arora, Advocates for University of Delhi. Mr. Ghanshyam Mishra, Advocate for R-1 in W.P.(C) Nos. 756/2021 & 914/2021.



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CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. These three writ petitions have been filed by candidates for admission to the three-year LL.B. course of the Faculty of Law, University of Delhi [hereinafter, “the University”] in the academic session 2020-2021. As the petitions raise several common questions, they were taken up for hearing together and are disposed of by this common judgment.

A. Facts

2. The Law Faculty of the University published a Prospectus in March, 2020 [hereinafter, “the Prospectus”] for admission to the LL.B. course commencing in the academic session 2020-2021. The petitioners applied for admission pursuant thereto, under the Unreserved (General) category [hereinafter, “UR category”]. They also appeared in an entrance test held on 09.09.2020.

3. After the publication of the answer key dated 06.10.2020 for the entrance test, Ms. Vidhi Uppal, the petitioner in W.P.(C) 756/2021, raised a challenge to the answer key in respect of one question [Question No. 44, Question ID 8394]. However, her challenge was unsuccessful.

4. In the entrance test, out of the maximum score of 400 marks, the petitioners’ scores were declared as follows: -



S. No.	Writ Petition No.	Name of the Petitioner	Marks Scored
I.	W.P.(C) 756/2021	Ms. Vidhi Uppal	216
II.	W.P.(C) 914/2021	Ms. Piya Uppal	203
III.	W.P.(C) 1424/2021	Mr. Sarthak Abrol	209

5. The University published four admission lists in respect of the LL.B. course – on 01.12.2020, 08.12.2020, 21.12.2020 and 30.12.2020. As admissions for the academic year 2020-2021 were considerably delayed by virtue of the COVID-19 pandemic, the University took a decision to close the admissions process on 31.12.2020. During the course of hearing, it was stated that this was in accordance with the directions of the University Grants Commission [hereinafter, “UGC”].

6. The petitioners found that their applications for admission were unsuccessful, and have filed these writ petitions challenging the admissions process undertaken by the University. They have also placed on record a “Centre Allocation List” dated 15.01.2021 and a revised allocation list dated 22.01.2021 which, according to them, demonstrate that the admissions process itself was tainted by irregularities and malafides.

B. Reliefs sought

7. In the writ petitions, the following reliefs have been sought:

**W.P.(C) 756/2021**

“a. Issue a writ of Certiorari or any other writ or direction to the Respondents and call for the records of the entire admission process for the academic year 2020-21 and quash the entire admission process as tainted with mala fide;

b. Issue a writ of Mandamus or any other writ or direction in the nature thereof for appointing an expert external agency to look into the relevant records and suggest measures to correct the mistakes made by the Respondents

c. Issue a writ of Mandamus or any other writ or direction in the nature thereof granting the Petitioner the extra 5 marks for the question no. 8394 and thereby increasing her final marks to 221;

d. Issue a writ of Mandamus or any other writ or direction in the nature thereof directing the Respondents to fill up the 437 vacant seats for the academic year 2020-21 in the LL.B. course;

e. Issue a writ of Mandamus or any other writ or direction in the nature thereof to grant admission to Petitioner to the LL.B course for the present academic year 2020-21 against the admittedly available vacant seats and those seats that shall become available after correcting the mistakes made by the Respondents;

f. Any other and further relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in favour of the Applicant.”

W.P.(C) 1424/2021

“(i) Issue an appropriate Writ or Order or direction directing the Respondent to grant admission to the Petitioner in the L.L.B. Program at the Faculty of Law,



*University of Delhi for the academic session 2020-23;
and*

(ii) Pass such other or further order(s) as this Hon'ble Court may deem fit and proper in facts and circumstances of the present case.”

W.P.(C) 914/2021

“a. Issue a writ of Certiorari or any other writ or direction to the Respondents and call for the records of the entire admission process for the academic year 2020-21 and quash the entire admission process as tainted with mala fide;

b. Issue a writ of Mandamus or any other writ or direction in the nature thereof for appointing an expert external agency to look into the relevant records and suggest measures to correct the mistakes made by the Respondents

c. Issue a writ of Mandamus or any other writ or direction in the nature thereof directing the Respondents to fill up the vacant seats as per the final allocation list for the academic year 2020-21 in the LL.B. course;

d. Issue a writ of Mandamus or any other writ or direction in the nature thereof to grant admission to Petitioner to the LL.B course for the present academic year 2020-21 against the admittedly available vacant seats.”

C. Contentions of the parties

8. The following principal grounds of challenge have been articulated in the writ petitions:

A. That out of the total number of 2922 seats advertised in the Prospectus, 437 seats remained vacant after the close of



admissions, despite the fact that several eligible candidates have not been granted admission.

- B. Ms. Vidhi Uppal also contended that one of the questions asked in the entrance examination was incorrectly answered in the answer key prepared by the National Testing Agency [hereinafter, “NTA”], which conducted the examination on behalf of the University. She sought award of grace marks in respect of the incorrect question.
- C. The petitioners allege a lack of transparency in the process of preparation of the various admission lists, inasmuch as no information was disclosed by the University during the admissions process as to the number of seats offered, the cut-off marks in each category, the number of students who took admission in each round, etc.

9. During the course of hearing of the writ petitions, as recorded in the order dated 09.02.2021, the contention of the petitioners was that several candidates for admission to the LL.B. course have been admitted in the UR category despite having scored less marks than the petitioners in the entrance test. This contention was advanced relying upon the Centre Allocation Lists annexed by the petitioners alongwith two interlocutory applications¹. The aforesaid allegations were expressly disputed by the University. Having regard to the contentions raised by the parties on the basis of the documents placed on record,

¹ CM APPL. 4984/2021 filed in W.P.(C) 756/2021, and CM APPL. 4994/2021 filed in W.P.(C) 914/2021



the University was called upon from time to time to file affidavits with regard to specific issues. For further clarity, the University was also directed to produce the records before the Court, after giving inspection thereof to learned counsel for the petitioners. As some grievances remained on both sides with regard to the conduct of the inspection, the petitioners were directed to enumerate their queries and documents of which disclosure was sought by way of an affidavit, which the University was required to answer, also on affidavit. A representative of the University, who was familiar with the admissions process, was requested to remain present during the hearing, either physically or by way of video conference, in order to assist the Court with the relevant records. Prof. Vandana, the then Dean, Faculty of Law, and other representatives of the University thereafter attended the hearings by video conference.

10. On behalf of Ms. Vidhi Uppal and Ms. Piya Uppal, I have heard Mr. Mukul Talwar, learned Senior Counsel. Mr. Sarthak Abrol appeared in person and supplemented the submissions made by Mr. Talwar. On behalf of the University, submissions were advanced by Mr. Mohinder J.S. Rupal and Mr. Ankur Chhibber, learned counsel. Prof. Vandana also answered some factual queries.

11. Learned counsel on both sides were given the opportunity to take me through the detailed factual record in support of their respective contentions. Mr. Talwar's endeavour at each stage of the process was to demonstrate that the documents disclosed by the University did not reveal a satisfactory and objective method of



undertaking the round-wise process of admissions. In the final hearing of the petition, he sought to justify this stand on the basis of the list of documents submitted by the University in an affidavit dated 24.05.2021. According to Mr. Talwar, the position that emerges from an analysis of the aforesaid documents is that all the advertised seats under various categories were, in fact, not offered by the University to any of the candidates prior to 31.12.2020. He further contended that, in fact, after closure of the admissions process on 31.12.2020, a very large number of seats had admittedly become vacant, which ought not to be wasted. In the face of the improbably large number of existing vacancies, even according to the University itself, Mr. Talwar submitted that the seats ought to be clubbed together, irrespective of the category in which the vacancies arose, and be offered to eligible candidates.

12. On the question of whether relief could be granted to the petitioners alone, Mr. Talwar cited authority in support of the proposition that no fresh round of counselling was mandatory and that the Court can grant relief of admission to those candidates who have asserted their legal rights by approaching the Court. Without prejudice to this contention, Mr. Talwar also submitted that in the event the Court finds an illegality in the conduct of the admissions process and considers it appropriate to order a fresh round of counselling, all vacant seats – whether arising before or after the close of admissions – ought to be filled.



13. On the basis of the affidavit of the University dated 24.05.2021, Mr. Talwar submitted that the University had provided information only regarding the number of candidates who took admission in the UR category. He pointed out that the affidavit and the enclosed documents did not contain sufficient information to understand the dynamic process of admissions through the four rounds which admittedly took place.

14. According to Mr. Talwar, the University's affidavit and the chart annexed to it demonstrate that out of the total number of 1167 UR seats advertised in the Prospectus, 1156 seats were taken. However, he stated that these included two students who were shifted to the UR category from the Economically Weaker Section category [hereinafter, "EWS category"] after the fourth admission list, and also two students who had been granted admission only after the admissions process was closed, pursuant to the Grievance Redressal Mechanism [hereinafter, "GRM"]. Mr. Talwar questioned the conduct of the University in having kept these seats in the UR category vacant, even at the end of the admissions process. Taking the total number of UR category admissions as 1156 in accordance with the University's affidavit, Mr. Talwar submitted that the University's contention that 11 candidates cancelled their admission after 31.12.2020 is belied by its earlier list dated 23.03.2021, wherein vacancies in the UR category were shown as zero. Mr. Talwar contended that the list dated 23.03.2021 shows 96 vacancies. According to him, this was after filling up of 34 vacancies by the GRM and cancellations which took



place after 31.12.2020. He submitted that this fact clearly demonstrates that all seats for admission were not offered at all during the admissions process.

15. Mr. Talwar asserted that the position of vacancies, cancellations and seats filled up by the GRM shows that as of 31.12.2020, there were **at least** 19 seats vacant across various categories, including four in the UR category, three in the Scheduled Caste category [hereinafter, “SC category”], six in Scheduled Tribe category [hereinafter, “ST category”], and six in the EWS category.

16. With regard to the allegation that one of the questions in the entrance test was patently incorrect, Mr. Talwar referred to Question 44 [Question ID 8394] which reads as follows:

“44) Which of the following grounds can be invoked to restrict freedom of speech and expression according to the Constitution of India?

Choose the correct answer from the options given below

- A. Sovereignty and Integrity of India***
 - B. Friendly relations with foreign States***
 - C. Security of the State***
 - D. Contempt of court***
- [Question ID = 8394]***

- 1. A, B and D only
[Option ID = 33570]
- 2. B, C and D only
[Option ID = 33571]
- 3. A, B and C only
[Option ID = 33572]
- 4. All of these
[Option ID = 33573]”



In the answer key, the correct answer stipulated by the NTA was “A, B and D only” [Option ID = 33570]. Mr. Talwar submitted that a mere reference to Article 19(2) of the Constitution of India would show that the Constitution permits restriction of freedom of speech and expression *inter alia* on the grounds of sovereignty and integrity of India, friendly relations with foreign States, security of the State and contempt of Court. According to him, therefore, the correct answer should have been “All of these” [Option ID = 33573]. He submitted that, in terms of a section of the Prospectus entitled ‘Important Instructions’², objections to the answer key were to be addressed to the Dean, Law Faculty in writing alongwith supporting documents, and to be decided by an expert body of law teachers. Mr. Talwar contends that the objection was duly raised by Ms. Vidhi Uppal, but the answer key was not corrected.

17. In support of the aforesaid contentions, Mr. Talwar cited the order dated 11.09.2017 of a learned Single Judge of this Court in *Manmeet Kaur Sareen vs. Union of India and Another*³, the judgment of this Court in *Saumya Chopra vs. University of Delhi*⁴ and the judgment of the Supreme Court in *Ashok Alias Somanna Gowda and Another vs. State of Karnataka by its Chief Secretary and Others*⁵.

18. Mr. Talwar submitted that, in the order dated 11.09.2017 in *Manmeet Kaur Sareen*⁶, this Court, relying upon the judgment of the

² Page 46 of W.P.(C) 756/2021

³ W.P.(C) 7730/2017

⁴ W.P.(C) 12929/2018 decided on 18.12.2018

⁵ (1992) 1 SCC 28

⁶ Supra (note 3)



Karnataka High Court in *M. Shravana Kumar vs. Karnataka Regional Engineering College*⁷, categorically held that seats in educational institutions ought not to remain vacant, particularly when they cannot be carried forward to the next year. In these circumstances, this Court came to the conclusion that the vacant seats ought to be allotted to eligible candidates, regardless of the category under which they had applied.

19. The judgments in *Saumya Chopra*⁸ and *Ashok*⁹ were cited to argue that in the circumstances of these cases, relief can be granted to the candidates who have come before the Court.

20. Mr. Abrol sought to supplement Mr. Talwar's arguments with reference to three judgments. He submitted that the Supreme Court in *Index Medical College, Hospital and Research Centre vs. State of Madhya Pradesh and Others*¹⁰ held that an attempt should be made to ensure that seats in professional colleges are filled up. For the same purpose, he also relied upon the judgment of a learned Single Judge of the Punjab and Haryana High Court in *Sumedha Kalia (Ms.) and Others vs. The State of Haryana and Others*¹¹. Mr. Abrol lastly submitted that admissions to the LL.B. course of the University were the subject matter of litigation in the previous year also in *Saharsh*

⁷ ILR 1991 Karnataka 594 [W.P. No. 19603/1990 decided on 28.01.1991]

⁸ Supra (note 4)

⁹ Supra (note 5)

¹⁰ (2021) SCC Online SC 318 [Civil Appeal No. 867/2021 @ SLP(C) 179/2021 decided on 03.02.2021] [paragraphs 24-26]

¹¹ (1991) 2 ILR Punjab and Haryana [Civil Writ Petition No. 11980/1989 decided on 22.01.1990] [paragraphs 10 and 11]



*Saxena vs. University of Delhi and Another*¹² and connected matters, in which this Court granted relief only to those candidates who had approached the Court. Mr. Abrol submitted that a similar course ought to be adopted for the year in question also.

21. In the submissions made on behalf of the University, Mr. Rupal and Mr. Chhibber argued that the grievances raised by the petitioners in the writ petitions were substantially at variance from the arguments advanced in the course of hearing. They submitted that the petitioners have, through the course of this litigation, sought to enter into a roving inquiry to substantiate their allegations of deficiencies in the admissions process.

22. Mr. Rupal submitted at the outset that the affidavits and documents placed on record by the University make it abundantly clear that as far as the UR category is concerned, which is the category in which all three of the petitioners had applied, the entirety of 1167 seats were, in fact, offered for admission and filled prior to 31.12.2020. The University has also categorically stated in its affidavits dated 17.02.2021, 03.04.2021 and 24.05.2021 that, as far as the UR category is concerned, the minimum score in the entrance test for successful candidates was 225 marks, and no candidate has been admitted with a lower score.

23. On the question of vacancies in the UR category, Mr. Rupal prefaced his factual submissions by stating that the admissions process in the year 2020-2021 was, for the very first time in the history of the

¹² Order dated 30.01.2020 in W.P.(C) 10345/2019



University, undertaken online. In the wake of the COVID-19 pandemic, the University was compelled to design an online admissions portal and undertook the process through the said mechanism. He submitted that there were 11 cancellations after the close of admissions [five each in January and February, 2021 and one in March, 2021], resulting in 11 seats becoming vacant. It was clarified on behalf of the University that the two EWS category candidates who were listed in the chart annexed to the affidavit dated 24.05.2021 as having been shifted to the UR category “*after the fourth list cut-off*” were moved to the UR category at the time of preparation of the fourth list itself, after determination of the cut-off. It was also categorically submitted that the candidates whose admissions were ordered by the GRM were, in fact, candidates who had been admitted in the course of the four rounds of admissions. They had also deposited their fees and accepted their place. In the cases of these candidates, the admissions, however, were reflected as ‘cancelled’ on the University’s admissions portal by reason of some discrepancy or error. None of the candidates so admitted had, in fact, withdrawn their fees or otherwise cancelled their admissions, and all of them had scored higher than the entrance test cut-off of 225 marks. It is in these circumstances that they took their cases to the GRM which directed the University to take necessary action to admit them. It was specifically stated that no seats in the UR category were kept vacant at the end of the admissions process.



24. Mr. Rupal countered the petitioners' submission that unoffered seats in reserved categories ought to have been offered to the UR category candidates with the following submissions:

- (a) As far as vacant seats in the SC and ST categories are concerned, Mr. Rupal drew my attention to the stipulation in Clause 2.4.1 of the Bulletin of Information of the University [hereinafter, "the Bulletin"], which provides that seats reserved for the SC and ST categories would be filled only by candidates belonging to the respective categories, and would be interchangeable *inter se*, but would remain vacant if they still remained unfilled. He referred to a Division Bench judgment of this Court in *Shri Ram College of Commerce vs. Sahil and Others*¹³, wherein a similar clause in a circular issued by the University dated 22.05.2014 relating to undergraduate admissions was held to preclude admission of the petitioner-candidates therein to unfilled seats in the SC/ST category.
- (b) As far as the EWS category is concerned, Mr. Rupal submitted that even if there remained any unfilled seats in the EWS category, those could not be reverted to the UR category as there were eligible EWS category candidates whose candidature would be required to be considered against those vacancies in priority to the candidature of the petitioners herein. In fact, Mr. Rupal submitted that there are three writ petitions pending in this Court in which EWS candidates seeking admission to the

¹³ 269 (2020) DLT 41[LPA 752/2019 decided on 01.05.2020] [paragraph 24]



LL.B. course in the same academic year have sought relief in their favour.

- (c) As far as supernumerary seats are concerned [including foreign students, children and wards of defence personnel and PWD category], Mr. Rupal submitted that the Prospectus provides that, if such seats are left vacant, they could not be offered to candidates in any other category.

On this analysis, Mr. Rupal submitted that, even if seats in any category other than the UR category are found to have remained vacant, the petitioners are not entitled to the relief of admission against those vacancies.

25. Mr. Rupal distinguished the order dated 11.09.2017 in *Manmeet Kaur Sareen*¹⁴ cited by Mr. Talwar, on the basis that, in that case, there does not appear to have been any restrictive stipulation prohibiting the offer of vacant seats to UR category students. Relying upon *Shri Ram College of Commerce*¹⁵, Mr. Rupal urged that the order in *Manmeet Kaur Sareen*¹⁶ would not apply when the Bulletin itself contains a contrary stipulation. In any event, Mr. Rupal drew my attention to the final order dated 21.11.2017 passed in *Manmeet Kaur Sareen*¹⁷, wherein it is recorded that during the pendency of the writ petition, the University had granted admission to candidates in the General category who had scored between 230 and 234 marks. The

¹⁴ Supra (note 3)

¹⁵ Supra (note 13)

¹⁶ Supra (note 3)

¹⁷ Supra (note 3)



petitioner therein, having scored 231 marks, had therefore been granted admission on her merit and rank in the General category. In the final order, therefore, it was recorded that the prayer of the petitioner therein stood satisfied.

26. Mr. Rupal distinguished the judgment in *Saumya Chopra*¹⁸ by reference to paragraphs 7, 18, 21, 22 and 24 thereof. He submitted that the relief in that case was premised upon the fact that the petitioners would have succeeded in obtaining admission if the alleged irregularities in the admissions process had not been committed. In the present case, in contrast, he submitted that 156 unsuccessful UR category candidates secured marks higher than the score claimed by Ms. Vidhi Uppal, i.e. between 221 and 225 marks¹⁹. In fact, he stated that 15 candidates who secured the cut-off score of 225 marks were also not granted admission. Between the score of 209 marks [attained by Mr. Abrol] and 225 marks, there were, in fact, 882 candidates who were not granted admission. In the peculiar circumstances prevalent in 2020, the UGC had directed the University to complete all admissions for the session 2020-2021 by 31.12.2020, and on that date all seats in the UR category had been filled. According to Mr. Rupal, *Saumya Chopra*²⁰ does not dilute the legal principle that vacant seats cannot be filled mid-session as a matter of right.

¹⁸ Supra (note 4)

¹⁹ Ms. Vidhi Uppal's score, as declared, was 216 marks. Her score would increase to 221 marks if she is granted 5 additional marks as a result of an incorrect question, as claimed by her.

²⁰ Supra (note 4)



27. Mr. Rupal submitted that the matter at hand is, in fact, covered by the legal principles enunciated by the Full Bench in *Dr. Sandhya Kabra and Others vs. University of Delhi*²¹. He submitted, relying upon paragraph 45 thereof, that relief cannot be confined to the petitioners who have approached this Court. Mr. Rupal also drew my attention to paragraphs 69 and 70 of the Full Bench decision, wherein it has been held that the perception of hardship by candidates who are denied admission despite availability of vacant seats is not dispositive of the matter. The Full Bench has cautioned that, in the absence of finding any arbitrariness, educational policy is a matter best left to experts and the Court cannot normally direct filling up of vacant seats after the commencement of the academic year, at least not as a matter of right. He pointed out that the view of the Punjab and Haryana High Court in *Sumedha Kalia*²², which was cited by Mr. Abrol, has been expressly disapproved by the Full Bench of this Court.

28. The aforesaid decision of the Full Bench has been referred to in the judgment of the Supreme Court in *Santosh Kumari vs. Union of India and Others*²³ in respect of the question of unfilled all India seats in medical colleges. In the aforesaid judgment, the Supreme Court has also distinguished the judgment in *Ashok*²⁴, cited by Mr. Talwar.

29. With respect to the judgment of the Supreme Court in *Index Medical College*²⁵, Mr. Rupal submitted that the Court was concerned

²¹ (1992) SCC Online Del 420 [Civil Writ No. 1657/1992 decided on 07.09.1992]

²² Supra (note 11)

²³ (1995) 1 SCC 269

²⁴ Supra (note 5)

²⁵ Supra (note 10)



with a challenge to Rule 12(8)(a) of the Admission Rules (Madhya Pradesh Chikitsa Shiksha Pravesh Niyam), 2018. It is in the context of a challenge to the constitutional validity of the Rule itself that the Court observed that the prohibition on filling up of vacant seats was not related to the avowed objective of ensuring objectivity in the admissions process.

30. In support of his contention that a further round of counselling was not warranted in the facts and circumstances of this case, Mr. Rupal relied upon the Division Bench judgment in *Maharaja Agrasen Institute of Technology vs. Guru Gobind Singh Indraprastha University*²⁶, and the judgment of a Coordinate Bench in *Saubhagya Dua vs. Union of India and Others*²⁷. Mr. Chhibber also referred in this connection to two judgments of this Court – *Shefali Shukla vs. University of Delhi and Another*²⁸ and *Vansh Saroa vs. Vice-Chancellor, University of Delhi and Others*²⁹ – to submit that the Court will not pass a direction to fill seats which have become vacant as a result of cancellations after the close of admissions.

31. In rejoinder, Mr. Talwar submitted that the relief sought by the petitioners in the UR category can be granted without affecting the rights of the EWS category candidates. He reiterated his contention that there are sufficient seats vacant in the EWS and/or UR category at present. According to him, the seven vacancies in the EWS category

²⁶ LPA 952/2004 decided on 16.11.2004 [paragraphs 37 and 38]

²⁷ W.P.(C) 8303/2019 decided on 13.08.2019

²⁸ W.P.(C) 1330/2021 decided on 02.02.2021

²⁹ W.P.(C) 860/2021 decided on 15.02.2021



admitted by the University, and the two EWS candidates who were subsequently granted admission in the UR category, accounted for nine vacant seats in the EWS category. He contended that in the three writ petitions filed by the EWS category candidates, there are a total of five petitioners who can be accommodated, in addition to the three petitioners in the present batch of petitions. Mr. Talwar submitted that the petitioners in the cases related to the EWS category admissions, in fact, seek increase in the number of reserved seats, and the petitions are not directed only at admissions being granted in favour of those petitioners. However, he conceded that these arguments proceed on the basis that the Court may grant admission only to those candidates who have come to the Court, without reference to the other candidates in the same category. Mr. Talwar reiterated his submission that, subject to the cut-off date, no seat should go waste. He, therefore, submitted that, if fresh counselling is ordered for the EWS category seats, then it can also be granted for the purpose of the UR category.

32. Mr. Talwar sought to distinguish the judgment of the Supreme Court in *Santosh Kumari*³⁰ on the ground that the appellant therein was not a party to the writ petition before the High Court. He submitted that the present case is closer on facts to the judgment in *Ashok*³¹ than to the ratio of *Santosh Kumari*³².

33. Mr. Mukesh Kumar, learned counsel, appeared on behalf of the intervenors who have filed writ petitions in respect of the EWS

³⁰ Supra (note 23)

³¹ Supra (note 5)

³² Supra (note 23)



category reservation. He submitted that the relief sought in those petitions did not relate to the admission of the petitioners therein only because they were filed prior to the admissions being complete. Mr. Kumar opposed the grant of admission against those seats to the petitioners herein, who applied in the UR category, on the ground that unsuccessful EWS category candidates, such as the intervenors, have a higher claim to admissions against those vacancies.

D. Analysis

34. As detailed above, learned counsel for the parties raised several contentious arguments with regard to the process undertaken by the University, and the validity of the manner in which seats were allocated in each category. The principal allegation pressed on behalf of the petitioners in this regard, however, does not pertain *per se* to admissions in the UR category in which they had applied, but to vacancies in the SC, ST and EWS categories which they contend should have been passed on to the UR category candidates.

35. As far as the UR category is concerned, a few factual elements may be noticed. The petitioners scored 216, 209 and 203 marks in the entrance test. Ms. Vidhi Uppal challenged the answer key in respect of one question [Question ID 8394]. Assuming that her grievances with regard to this question are correct, she would have scored an additional five marks, i.e. bringing her score up to 221 marks³³. The University's position is that no candidate has been admitted in the UR

³³ It is undisputed that the difference between a wrong answer and a right answer is five marks, as a wrong answer would have been penalized with a deduction of one mark, whereas a correct answer would be awarded four marks.



category below 225 marks. In fact, the University stated that there are 15 candidates who scored 225 marks who were also not admitted. Although some controversy was initially raised on this account, that was on the basis of a Seat Allocation List, which dealt with the allocation of admitted candidates to various centres of the Law Faculty, and not on the basis of the Admission List itself.

36. The only grievance directly relating to the UR category admissions concerns two candidates – Aalok Singh and Ritabrata Mitra. Mr. Talwar has referred me to the charts placed on record by the University to submit that these two candidates were admitted after the close of admissions on 31.12.2020 by recourse to the GRM. The implication, according to Mr. Talwar, is that two seats remained unoffered in the UR category. He submitted that, although these candidates were offered admission in the first and the second lists, they did not pay the fees within the stipulated time and their seats ought to have been treated as vacant. I am of the view that this contention cannot be accepted in view of the stand of the University in its affidavits dated 19.05.2021 and 24.05.2021, that the grievances of these candidates had been submitted prior to the deadline of 31.01.2021 and both qualified on merit. In a dynamic process of admissions, a situation may arise where certain seats are offered to meritorious candidates who have been erroneously denied admission. As long as the candidates who were admitted pursuant to the GRM were otherwise qualified on merit for admission, and the admissions were carried out in terms of the transparent grievance redressal



procedure, which was available to all candidates, I cannot accept Mr. Talwar's contention that this reveals an irregularity in the procedure warranting the interference of the writ court.

37. The next question is whether the vacant seats in any other category, particularly the ST and EWS categories, were liable to be transferred to the UR category.

38. As far as the ST category seats are concerned, Mr. Rupal relied upon Clause 2.4.1 of the Bulletin, which provides as follows:

"2.4.1 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. If any seat still remains unfilled, the same shall be left vacant."

The stipulation in the Bulletin is clear: unfilled ST category seats could be transferred only to the SC category, and not to any other category for admission. It is not possible to accept the petitioners' contention in the face of such an express provision in the Bulletin. The judgment of this Court in *Shri Ram College of Commerce*³⁴, cited by Mr. Rupal, upholds a similar stipulation with regard to undergraduate admissions for the academic year 2019-2020. Paragraph 24 of the said judgment reads as follows:

"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

³⁴ Supra (note 13)



*respondent No.4/University that lays down the Guidelines for admission to various undergraduate and postgraduate 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. If 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.”*

39. Similar considerations apply to the supernumerary seats [foreign nationals, children and wards of defence personnel and PWD categories] as well. Such seats are stated in the Prospectus to be non-transferable to any other category. A section of the Prospectus entitled ‘Counselling for LL.B./LL.M. Admission’³⁵ in this regard provides as follows:

“Supernumerary seats, if vacant, shall not be offered to any candidate from any other category.”

40. I now turn to the EWS category. As far as this category is concerned, the written submissions filed by the University state as follows:

³⁵ Page 50 of W.P.(C) 756/2021



“O) In the **EWS Category List** there are a total of 117 seats in the EWS category which got filled up initially. There were 7 vacant seats available in this category on 31/12/20 which had gone unnoticed by the Admission Committee due to an inadvertent technical error/glitch reflected in the EWS list on the portal maintained by the DUCC as it showed the total EWS admissions as 124. The actual admissions were 110 with 7 seats vacant which was reflected as 124 admissions on the portal. The fault was noticed by the Admission Committee after the closing date of admissions.”

41. The position that there were certain vacant seats which remained unoffered in the EWS category is therefore undisputed. The question, however, is whether these seats should have been offered to the UR category. The petitioners’ case in this regard is based principally on three decisions – those of this Court in *Manmeet Kaur Sareen*³⁶ and *Saumya Chopra*³⁷, and of the Supreme Court in *Ashok*³⁸.

42. As far as *Manmeet Kaur Sareen*³⁹ is concerned, the petitioners have relied upon an interim order dated 11.09.2017. The order deals with admissions to the LL.B. course in the University in the year 2017. Relying upon the judgment of the Karnataka High Court in *M. Shravana Kumar*⁴⁰ and the judgment of the Supreme Court in *State of Orissa and Another vs. Dr. Asim Kumar Mohanty and Others*⁴¹, this Court observed as follows:-

³⁶ Supra (note 3)

³⁷ Supra (note 4)

³⁸ Supra (note 5)

³⁹ Supra (note 3)

⁴⁰ Supra (note 7)

⁴¹ (1989) 3 SCC 549



“The ends of justice would definitely not be served if available seats in educational institutions are allowed to go waste; this could also not have been the intention of the educational legislators; admitted position being that these seats would continue to remain vacant as they would not be carried forward to the next year. This would be a denial of opportunity to an otherwise meritorious student. In fact in the judgment of the Karnataka Bench even where the vacancies in the scheduled Castes and scheduled Tribes could be carried forward, the Court had thought it fit to transfer those seats to the general category.

Petitioner has applied for her choice in Law Centre-2. There are 8 vacant seats in that centre; 7 seats in the Scheduled Tribes category and 1 seat in the Foreign National category.

The petitioner be granted admission in any of the aforementioned 8 vacant seats. A writ of mandamus is issued accordingly to enforce the aforementioned directions. Application disposed of.”

The writ petition was ultimately disposed of by an order dated 21.11.2017, which proceeds on an entirely different basis, in view of certain developments that had taken place in the interregnum. The order dated 21.11.2017 records that the University had, in the course of related litigation, admitted the petitioner on her own merits, in view of an increase in the number of seats during the pendency of the petition. In view of this position, I am of the view that the petitioners’ reliance upon the interim order dated 11.09.2017 is misplaced. The said order also cannot assist the petitioners with regard to transfer of the unfilled ST category seats, as it does not deal with a case where there was an express condition in the Information Bulletin to the



contrary. The present case is directly covered by the Division Bench decision in *Shri Ram College of Commerce*⁴².

43. In the course of argument, Mr. Talwar submitted that reliance upon the judgment in *Saumya Chopra*⁴³ was limited to showing that the Court can grant relief only to the petitioners before the Court without reference to other candidates⁴⁴. However, it is evident from paragraph 7 of the said judgment that the petitioners therein came within the next 35 students in the General category after the last student who had been admitted. Their grievance related to admissions having been granted to 35 students who had not appeared in the counselling despite being admitted in the earlier admission list. The Court formulated the factual position in the following terms:

“7. All the students belonging to the General Category, in this batch of writ petitions, claim to come within the next 35 students, after the last student who was admitted, namely Aashi Garg, with 222 marks. Had, therefore, 35 students, who had earlier been included in the first three Admission Lists, and who had not turned up for counselling, not been given a second chance, to figure in the fourth and the fifth Admission Lists, 35 more general category students, who had cleared the entrance examination, would have had a chance for admission to the LL.B. course conducted by the University. These 35 students, therefore, it is contended, were denied the right to secure such admission only because of the illegal act, of the University, in giving a second chance to students

⁴² Supra (note 13)

⁴³ Supra (note 4)

⁴⁴ Although an appeal against the judgment of the learned Single Judge in *Saumya Chopra* [LPA 37/2019] was dismissed by an order dated 02.04.2019, this point was not discussed in the Division Bench decision.



*whose names had already figured in the first three Admission Lists, contrary, as they would contend, to the afore-extracted Clause (iii) of the Admission Bulletin issued by the University”.*⁴⁵

44. The records of the present cases do not reveal an analogous position. Even accepting Ms. Vidhi Uppal’s argument with regard to an incorrect question in the entrance examination, there are a number of candidates who would be entitled to admission before any of the petitioners. The factual position stated by Mr. Rupal in this regard, as recorded above, has not been controverted. Unlike *Saumya Chopra*⁴⁶, therefore, there would be meritorious candidates who would be denied their due if the Court were to grant relief to the petitioners alone.

45. The judgment of the Supreme Court in *Ashok*⁴⁷, relied upon by Mr. Talwar, arose in the context of appointments to the post of Assistant Engineers in the Public Works Department of the State of Karnataka. The Supreme Court directed the State Government to grant relief only to the candidates who had approached Karnataka Administrative Tribunal:-

“3. We, therefore, allow the appeal and direct the respondents to give appointment to the appellant Ashok alias Somanna Gowda on the post of Assistant Engineer (Civil) and appellant Rajendra on the post of Assistant Engineer (Mech.) in Public Works Department within a period of two months of the communication of this order in case the appellants are found suitable in all other respects according to the Rules. Learned counsel

⁴⁵ Emphasis supplied.

⁴⁶ Supra (note 4)

⁴⁷ Supra (note 5)



appearing on behalf of the State of Karnataka pointed out that there are many other candidates who had secured much higher marks than the appellants in case the above criteria is applied for selection. In view of the fact that appointments under the impugned Rules were made as back as in 1987 and only the present appellants had approached the Tribunal for relief, the case of other candidates cannot be considered as they never approached for redress within reasonable time. We are thus inclined to grant relief only to the present appellants who were vigilant in making grievance and approaching the Tribunal in time. Learned counsel for the State also submitted that the State Government had already framed new rules, and as such we do not find it necessary to quash the Rules under which the present selections were made as they are no longer in existence. No order as to costs.”⁴⁸

46. However, the Supreme Court itself has commented upon the aforesaid judgment in *Santosh Kumari*⁴⁹ and confined its applicability to the facts and circumstances of that case. In *Santosh Kumari*⁵⁰, the Court made it clear that the allotment of seats should go according to merit and cannot depend upon who comes to court and who does not. Paragraph 8 of the judgment reads as follows:

“8. The third respondent who appeared in-person and we must say, she put forward her case with admirable clarity and grace – submitted that inasmuch as none of the said six candidates including Dr. Vibha Aggarwal and Dr. Shiv Prasad Aggarwal have chosen to approach the Court complaining of their non-admission, they should not be considered for admission against the said

⁴⁸ Emphasis supplied.

⁴⁹ Supra (note 23)

⁵⁰ Supra (note 23)



seat and that she, who had approached the Court at the earliest possible moment, should be admitted to that seat. She relied upon the decision of this Court in *Shri Ashok alias Somanna Gowda and Anr. V. State of Karnataka J.T.1991 (4)*. 160 in support of the said submission. It is not possible to agree. **The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle and should not depend upon who comes to the court. A more deserving candidate may not have the means to approach the court.** Be that as it may, even the Division Bench of the Rajasthan High Court has not directed that the said seat should be given to the third respondent (appellant before them). On the other hand, they have directed the official respondents to “consider the candidature of the petitioner (third respondent in this appeal) or any other candidate who may deserve the admission to that said post,” The Division Bench has further directed that “proper notice on the Notice Board may be affixed by the respondents. In all the colleges giving 15 days time for making applications and the said seat may be allotted to the meritorious candidate”. It is in pursuance of this direction that notices were sent to six candidates referred to above. The submission of the third respondent cannot, therefore, be accepted. **The direction made in Ashok alias Somanna Gowda related to selection to the post of Engineers and was made in the particular facts and circumstances of that case. The direction made therein cannot be treated to be one of general application.** As stated hereinabove, there are not only six candidates above the third respondent in the merit list but two of them have indicated their willingness to be admitted against the said vacancy.”⁵¹

47. The three judgments relied upon by the petitioners do not therefore make out the case that they are entitled to be admitted

⁵¹ Emphasis supplied.



against the vacancies which may have remained unfilled in the EWS category – that too, to the exclusion of other candidates in the UR category. Further, the factual situation shows that eligible EWS category candidates, who had not been granted admission, were also available. To ignore their claim and transfer the vacant seats to the UR category would defeat the purpose of the reservation.

48. The next argument to be considered is whether the University ought to be directed to hold a fresh round of counselling to fill all the unfilled seats at this stage. For the reasons mentioned above, the petitioners' case in this regard can only be considered with respect to vacancies which have arisen in the UR category. These vacancies have arisen after the close of admissions. Mr. Rupal rightly pointed out that even in *Saumya Chopra*⁵², the Court accepted that no candidate could claim admission on the basis of the vacancies arising after the cut-off date. In paragraph 18, the Court observed as follows:

“18. In view of the above, it becomes unnecessary to address the submission, of Mr. Rupal, that no candidate had a vested right to claim admission merely because seats remained vacant even after the cut-off date for effecting admissions. To that proposition, there can possibly be no cavil. The case of the petitioners is not, however, required to be pitched so high as, in their submission, had the “no show” candidates of the first three Admission Lists, not been granted a second chance in the fourth, and the fifth Admission Lists, the petitioners would have secured admission, given their merit position.”

⁵² Supra (note 4)



49. In fact, the Court relied upon the judgment in *Neelu Arora vs. Union of India*⁵³ wherein the Supreme Court cautioned against directing for further rounds of counselling merely because seats remained unfilled.

50. This position is also evident from the Division Bench decision in *Maharaja Agrasen Institute of Technology*⁵⁴, which reads as follows:

*“37. If one keeps above observations in mind, it would be apparent that the system of counseling itself is designed to maximize allocation of seats in various institutions. **However, that cannot imply that the process is endless; it has a definite terming quo in point of time.** In the present case, the date of commencement of classes was 02.08.2004 in spite of this, the second round of counselling was envisaged and that terminated on 28.08.2004. This fact is essential while considering the challenge to the reasonableness of the impugned condition. It shows that outer limit acceptability of a student’s absence from class after they commenced in the first term was about four weeks.*

*38. Another aspect of the matter is that the prohibition from filling vacant seats after the second counselling, appears to be dictated by certain policy considerations. **The permissibility of a further round would mean that there would be further drops outs from other institutions leading to complaints by them and uncertainty in the admission process, as described in the judgment quoted above. Such an uncertainty at the commencement of the academic year itself, in our opinion, is unacceptable.**”⁵⁵*

⁵³ (2003) 3 SCC 366

⁵⁴ Supra (note 26)

⁵⁵ Emphasis supplied.



51. In *Saubhagya Dua*⁵⁶ also, a Coordinate Bench of this Court has denied a plea for further rounds of counselling in the face of seats remaining vacant. To similar effect are the judgments of this Court in *Shefali Shukla*⁵⁷ and *Vansh Saroa*⁵⁸.

52. In *Santosh Kumari*⁵⁹, the Court also referred to the Full Bench judgment of this Court in *Dr. Sandhya Kabra*⁶⁰. The observations of the Full Bench in paragraphs 45 and 70 are relevant to the determination of the present petitions also:

“45. One other contention raised by Sh. Mariaputham, on behalf of the respondent, was that the petitioner in any case cannot be allowed change of subject for the simple reason that there are candidates in the merit list who are senior to her and had also opted for the same subjects namely, M.D. (Paediatrics) and M.D. (Medicine). In this connection the learned counsel relied upon the decision of the Supreme Court in the case of State of Kerala v. T.P. Roshana, 1979 (1) SCC 572. This case was concerned with admission to Medical Colleges and at page 589, it was observed by the Supreme Court that the selection of the students to whom relief was to be given was not to be confined to those who have moved the Supreme Court or the High Court because “The measure is academic excellence, not litigative persistence. It will be thrown open to the first 30, strictly according to merit measured by marks secured”.

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⁵⁶ Supra (note 27)

⁵⁷ Supra (note 28)

⁵⁸ Supra (note 29)

⁵⁹ Supra (note 23)

⁶⁰ Supra (note 21)



70. Before concluding, reference may usefully be made to the observations of the Supreme Court in Dr. Ajay Pradhan's case (supra) wherein it has been held that there is no question of a right of admission to a seat falling vacant in the midst, or towards the end of, the academic session. The Court, of course, held that normally the question of a seat being filled up must arise at the commencement of the academic year or soon thereafter which means that if some drop outs are there, then candidates may be selected from the waiting list but such admission in the midst or towards the end of the academic year is not by way of a right."⁶¹

53. For the reasons aforesaid, I am of the view that the petitioners are not entitled to a direction securing their admissions to the LL.B. course for the 2020-21 session. As far as their category (UR) is concerned, the position is that no candidate who had secured less than 225 marks in the entrance examination has been granted admission. On the point of vacancies, I am of the view that the University has answered the allegations of the petitioners satisfactorily. The petitioners are not entitled to admission against vacant seats in other categories, both for the reason that those seats were not liable to be transferred to the UR category, and because the petitioners' claim of admission in priority to other UR category candidates who had secured higher marks than them cannot be accepted. As the present vacancies in the UR category are a consequence of post-admission cancellations, I am also not inclined to direct a further round of counselling to be conducted at this stage.

⁶¹ Emphasis supplied.

**E. Conclusion**

54. In view of the above, I am unable to grant any relief to the petitioners in these writ petitions, which are accordingly dismissed, alongwith the pending applications. There will be no order as to costs.

PRATEEK JALAN, J.**MARCH 07, 2022***'hkaur'*