

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2390/2023**

Date of Decision: 10.03.2023

IN THE MATTER OF:

BIJITA NAYAK
D/O BAILOCHAN NAYAK
AGED ABOUT 22 YEARS,
D-2, GIRI APARTMENT,
WARD NO.2, MEHRAULI,
NEW DELHI-110030

..... PETITIONER

Through: Mr. Aayush Agarwala, Ms. Bhumika
Sharma & Mr. Auritro Mukherjee, Advocates

Versus

UNIVERSITY OF DELHI
NORTH CAMPUS,
DELHI - 110007

..... RESPONDENT

Through: Mr. Ankur Chibber & Mr. Anshuman
Mehrotra, Advocates

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The present petition has been filed under Article 226/227 of the Constitution of India seeking directions to the respondent-University for filling up the vacant seats under the Economically Weaker Sections (EWS) in Post Graduate Course, *i.e.* Master of Journalism in the respondent-University for the Academic Session 2022-24.

2. Learned counsel appearing on behalf of the petitioner submits that there are two seats remaining vacant under EWS category and no useful purpose would be served if the seats continue to remain vacant. According to him, if the endeavour is made by the respondent-University to fill up the two seats, the same would be in the interest of the student as well as in the University. He explains that the petitioner is not asking for the relief to straightaway grant her admission but her case is to make an endeavour to fill up the seats strictly, in accordance with merit. If the petitioner's name finds place in the merit list, she would be entitled for the admission, otherwise the meritorious candidates can be given admission against the seats in question. He further submits that once the petitioner came to know that the seats in question are vacant, she approached the respondent-University and made various representations in that regard but no action was taken by the respondent-University. He further submits that the petitioner filed an application under the RTI Act and then only the petitioner on 06.02.2023 came to know that the seats are lying vacant in the respondent-University. He also submits that in the Faculty of Law, the admission process even continued beyond 15.01.2023.

3. Learned counsel for the petitioner has placed reliance on the decision of this court in the case of *Deepanshu Khanna and Another v. University of Delhi*.¹ and states that in view of the principle laid down in the said case, the respondent-University be directed to fill up the seats in question.

4. Learned counsel appearing on behalf of the respondent-University opposes the submissions and submits that in the present case the entire admission process was completed on 26.12.2022. According to him, the last

¹ 2022 SCC OnLine Del 347

candidate admitted in the concerned course obtained 176 marks out of 400 and the merit position of the petitioner is admittedly less than the last admitted candidate. He further submits that though two seats are vacant in the respondent-University in the concerned course, however, those seats have fallen vacant only after 31.12.2022. He explains that the last date for admission in the concerned course was 26.12.2022 and thereafter no admission was granted to any of the candidates. He, therefore, submits that after the cut off date for grant of admission is over and if the seats remained vacant on account of any exigency including forfeiture by concerned candidates, the respondent-University cannot be directed to fill up those seats mid-term. He further submits that if the mid-term admissions are continued to be granted, there would be complete indiscipline in the academic calendar and the students would not be able to complete their required study. He placed reliance on the decisions of this court in the cases of *Shefali Shukla v. University of Delhi & Anr.* dated 02.02.2021 and *Vansh Saroa v. Vice Chancellor, University of Delhi & Ors.* dated 15.02.2021 and submits that the petitioner does not deserve any relief.

5. I have heard learned counsel for the parties and perused the record.

6. The decision as to whether after the cut off date, on account of any vacancy, further admission can be given to the students, is purely an academic decision. The experts in the field who deal with day to day affairs of the concerned University are well conversant with the facts and situation prevalent therein. Normally the courts are not well-equipped to decide as to what would be the appropriate course to be adopted by an education institution.

7. In the instant case, it is a matter of record that no less meritorious candidate has been given admission before 26.12.2022. The cut off date was 26.12.2022 and after that, no admission to any candidate was granted. It is also to be noted that the seats in question have fallen vacant after 31.12.2022. If the process of the admission after the expiry of the cut off date continues, the academic discipline is bound to be disturbed.

8. So far as the submission with respect to the admissions beyond 15.01.2023 in the Faculty of Law is concerned, the same is not the subject matter of the instant case, as the course in question in the present case is Master of Journalism. The petitioner is not able to point out that after 26.12.2022 any admission is granted in the concerned course.

9. This court in the case of ***Utkarsh Mittal v. Maulana Azad Medical College & Ors.*** in W.P.(C) 2671/2023, dated 03.03.2023, while dealing with an almost similar prayer has held that merely on the basis of vacancy of a seat, no direction can be given to grant admission once the academic session has already commenced. Paragraphs Nos. 10 to 13 of the said decision are reproduced as under:-

*“10. The Hon’ble Supreme Court in the case of **Medical Council of India v. Madhu Singh** has held that no admissions can be granted after the scheduled date. The MCI in that case was directed to ensure that the examining bodies fix a time schedule specifying the duration of the course, the date of its commencement and the last date for admission. It was directed that in case of any deviation by the institution concerned, appropriate action shall be taken by the MCI. The principal laid down in the case of **Madhu Singh (supra)** have been reiterated by the Hon’ble Supreme Court in the case of **Mridul Dhar (Minor) & Anr. v. UOI and Ors.** Besides other, it has been held that the time schedule for grant of admission to Post Graduate courses shall be adhered to and for granting admission, the merit determined by*

*competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode. The same principles were laid down in the case of **Supreet Batra & Ors v. Union Of India & Ors.** In paragraph No. 7 of the said decision the Hon'ble Supreme Court has clearly held that it would not be advisable to go on altering the scheme as and when seats are vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. If the process to fill up the seat is to be adopted till the last seat is filled up it will become an endless process. Such a process is not the object of the scheme formulated for admission.*

11. *In the matter of **Education Promotion Society for India and Anr. v. Union of India**, the Hon'ble Supreme Court was considering the prayer for general extension of time in the form of additional mop round of counselling on the ground that a large number of seats of PG courses were lying vacant. The Hon'ble Supreme Court has held that the seats lying vacant, is not a ground to grant extension of time and grant further opportunity to fill up the vacant seats.*

12. *While considering the aforesaid principles, the Hon'ble Supreme Court in the case of **Astha Goel and Ors. (supra)** has held that there cannot be any compromise with the merit and/or quality of medical education which may ultimately affect public health.*

13. *The case of the petitioner is even worse than the cases where additional round of counselling was declined after completion of already scheduled counselling. The petitioner wants outright admission only on the ground of vacancy or seat position. Such an approach cannot be legally countenanced. No direct admission is permissible unless all similarly situated candidates are allowed to participate in the counselling. Admittedly the Academic Session has commenced and mid-term admissions are not permissible”.*

10. The decision relied upon by learned counsel for the petitioner is of no

assistance. This court in the said decision while considering the controversy therein has also taken into consideration the effect of Covid-19 pandemic and while noting the extraordinary situation, has exercised power under Article 226 of the Constitution of India. The facts in the present case are distinguishable, accordingly, no relief can be granted to the petitioner.

11. Having considered the facts and circumstances of the case, this court is not inclined to issue any direction to the respondent-University to fill up two vacant seats after cut off date is over.

12. The petition is accordingly dismissed.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 10, 2023

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