

(2023) 08 DEL CK 0222

In the Delhi High Court

Case No : Letter Patent Appeal No. 482 Of 2023, Civil Miscellaneous Application
No. 30829-31, 38620 Of 2023

Noorakshi Dahiya

APPELLANT

Vs

Guru Gobind Singh Indraprastha University, Through, The
Registrar & Ors.

RESPONDENT

Date of Decision : 31-08-2023

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g)

Citation : (2023) 08 DEL CK 0222

Hon'ble Judges : Suresh Kumar Kait, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Saurav Agrawal, Ashish Tiwari, Sahib Patel, Anita Sahani, Puneet Mittal, Kumar Utkarsh, Sakshi, Santosh Tripathi, Anuj Aggarwal, Prashansa Sharma

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

1. The present appeal under Clause- 10 of the Letters Patent Act r/w Delhi High Court Rules has been filed against the judgment and order dated 17.05.2023 passed by the learned Single Judge of this Court in W.P. No.16709/2022 as well as order dated 21.05.2023 in Review Petition No.148/2023, whereby appellant's prayer seeking admission for Academic Sessions 2023-24 has been turn down.

2. The brief background of the case is that appellant-Shubham Jha sought admission in Bachelors of Technology course against 10% Management Quota Seat in respondent No.2- Maharaja Surajmal Institute of Technology.

3. On 16.09.2022, respondent No.2- Institute issued list of 68 candidates, alongwith their marks on its website and on Notice Board, who had applied for Management Quota Seat.

4. On the same day, this Court in WP (C) 11906 of 2022 vide order dated

16.09.2022 directed the respondent-Institutes to comply with the requirements as contained in "Para 8. Allotment of Seats" under "6.2 Management Quota Admissions" of the admission brochure for 2022-23 issued by Guru Gobind Singh Indraprastha University in respect of admission process relating to management quota.

5. On 27.09.2022, the respondent No.1-University instructed the institutes to provide the schedule for counseling to incorporate in the online portal in respect of Management Quota seats.

6. On 14.10.2022, respondent No.1-University issued Notice to the Institutes to upload the schedule for online registration in Management Quota seats on 17.10.2022 in terms of Notification dated 27.09.2022 and to tentatively commence the online registration on 19.10.2022.

7. The respondent No.2-MSIT, along-with other batch of petitions filed by three more institutes, vide WP (C) No. 14678/2022 challenged the Circulars dated 22.09.2022, 27.09.2022 and 14.10.2022 passed by the University.

8. Learned Single Judge of this Court vide order dated 17.05.2023 dismissed the said petitions partly modifying the Circular dated 22.09.2022. Vide impugned order dated 16.05.2023 two Writ Petitions filed by appellant-Shubham Jha, being W.P.(C) Nos.11906/2022 and 14347/2022 were also decided.

9. Appellant-Shubham Jha in W.P.(C) Nos.11906/2022 had pleaded that the respondents had not issued him form for Management Quota Seat and vide W.P. (C) No. 14347/2022, he prayed for strict compliance of Circular dated 22.09.2022 and to constitute Grievance Committee to ensure redressal of problems of the petitioner and other similarly situated students.

10. This Court vide order dated 22.10.2022 in one of the said batch petitions i.e. WP (C) 14677-14680 of 2022 directed two Institutes i.e. respondent No.2- MSIT and VIPS to put details with regard to Management Quota seats on the online portal, however, refused to grant stay of aforesaid circulars. These two Institutes informed that they had received applications from 122 and 250 candidates respectively. The Court directed these Institutes to display information of the candidates who had filed applications prior to issuance of Circular dated 22.09.2022 on the online portal of the Institutes.

11. On 22.10.2022 itself, the respondent No.2-MSIT prepared merit list of 69 candidates and put it on the online portal of the Institute. On 22.10.2022 itself, MSIT vide letter dated 22.10.2022 requested the University to publish the said list on the portal of the University so that counseling could commence.

12. On 24.10.2022, the appellant submitted the online registration form and application for Management Quota seat and also paid the Registration-cum-Enrolment for management quota fees and Management quota Counseling fees.

13. On 26.10.2022, respondent No.2-MSIT issued notice regarding first

counseling session on 27.10.2022, though according to appellant, online registration process was still going on and no merit was published on the website of the University.

14. On 27.10.2022, respondent No.2-MSIT did first round counseling wherein 63 students attended against the merit list of 69 candidates and a list of 41 admitted students was prepared. The appellant has averred that that respondent No.2-MSIT did not publish the purported merit list on its website and the Notice for counseling stated "subject to outcome of the case and related from orders from the Government and the University". Yet again, respondent No.2-MSIT published the admission list for 2nd counseling on 29.10.2022, wherein additional 22 students were given admission.

15. The appellant has averred that a list of all the applications registered on the portal of the University for admission under management quota was published on 02.11.2022, wherein his name appeared at Serial No. 656 (with a total of 849 candidates).

16. According to appellant, the respondent-University vide Notice dated 04.11.2022 directed the affiliated Institutions to display the list of candidates on the website portal of the University, who had applied for management quota seats. However, it was not so done by respondent No.2-Institute and to the contrary, classes of the students commenced. However, pursuant to communication dated 11.11.2022 by the respondent -University to the respondent No.2-MSIT, stating that admissions in Management quota seats were in violation of sub rule (ii) (iv) and (v) of Rule 8 and if the respondent No.2-University does not adhere to the directions, the management quota admissions for academic year 2022-23 shall be treated as nil. Pursuant to the aforesaid communication, respondent No.2-MSIT notified for fresh counselling in respect of all the candidates registered on the portal of University and notified the candidates to report for first and second counselling on 13.11.2022.

17. The appellant claims to have attended the counselling with other students on 13.11.2022. Respondent No.2-MSIT claimed that 99 students had come for counselling, out of which 31 were online applicants and 68 offline applicants. According to appellant, every Institute had admitted the students on the basis of online registration, though respondent No.2-MSIT published list of only 31 candidates and not 99 candidates, which shows that 99 students did not attend the counselling session.

18. The appellant thereafter came to know that respondent No.2-MSIT had issued a notice dated 13.11.2022 that only 04 seats are available for second round of counselling that too only for online applicants, though no reason therefor was mentioned.

19. Being aggrieved, appellant claims to have written to the respondent -University for ratification of 66 students, out of which 41 seats were filled during first round of counselling on 27.10.2022; 21 seats on 29.10.2022 during second

round of counselling and 04 seats on 13.11.2022 during special counselling. According to appellant, the respondent-University thereafter vide letter dated 14.11.2022 informed respondent No.2-Institute that all admissions under management quota were void. The appellant further claims to have filed a complaint against respondent No.2-MSIT for not publishing the names of candidates who had participated in the first round of counselling held on 13.11.2022.

20. Distressed against the inaction of respondent No.2, appellant preferred a petition before this Court being W.P.(C) 16709/2022, wherein, according to appellant, respondent No.2-University concealed various communications of respondent No.1-University to respondent No.2-MSIT and rather misled that the merit list was issued on 16.09.2022.

21. Pursuant to directions of this Court in W.P.(C) 16709/2022 vide order dated 14.02.2022 to bring-forth all the affected candidates, another petition being W.P.(C) 2368/2023 was filed by 57 students who were provisionally appointed under Management quota seats by respondent No.2-MSIT, challenging the various communications of respondent No.1-University vide letter dated 28.10.2022, 04.11.2022 and 14.11.2022 to uphold the merit list published by respondent No.2 on 16.09.2022.

22. All the petitions on this subject matter were heard together and vide impugned judgment dated 17.05.2023 refused to grant any relief to appellant though it was held that the process of admission undertaken to fulfil management quota seats by respondent No.2 –MSIT was in contraventions of the impugned circulars dated 22.09.2022 and 27.09.2022 issued by the respondent No.1-University.

23. The stand of appellant in W.P.(C) 16709/202 was that the petitioner had reported to the respondent No.2-Institute on 13.11.2022 and if her case was considered on the said day, excluding the candidates who were given admission on 27.10.2022 and 29.10.2022, she would have secured admission in respondent No.2-MSIT. The appellant pleaded that the counselling notice dated 13.11.2022 could not have been confined to a few seats and that the approach of respondent No.2-MSIT was against the provisions of 2007 Act and Rules and the Circular dated 22.09.2022 and 27.09.2022 issued by the respondent-University was required to be complied with.

24. On the other hand, respondents in writ petition [W.P.(C) 16709/2022] took the stand that the appellant had not applied for management quota admission pursuant to advertisement issued by respondent No.2-MSIT on 26.08.2022; she did not participate in the counselling dated 27.10.2022 and also she had secured 78% marks, which were lower than those students who were granted admission by respondent No.2-MSIT and none of the candidates, who were given admission, were less meritorious than the appellant.

25. The learned Single Judge vide impugned judgment dated 17.05.2023 decided

the case of appellant holding as under:-

"185. This Court has already held that the admission process carried out by MSIT where this Petitioner has participated in the counselling dated 13.11.2022 is against the provisions of the Act of 2007, Rules of 2007, Circular issued by the State and the University and the mandate of this Court. Ideally, fresh counselling should be directed. However, this Court has not disturbed the admission granted by MSIT in view of the larger interest of the students who have already been admitted in the Academic Session 2022-2023 and who have also appeared in their first semester examination. Therefore, so far as the Academic Session 2022-2023 is concerned, in the absence of any vacant seat and on account of the Academic Session having progressed substantially, no relief can be granted to the Petitioner.

186. It is also to be noted that the Petitioner has obtained 78% marks in the qualifying examination and a categorical stand has been taken by MSIT that none of the candidates admitted in the CSE branch is less meritorious than Noorakshi Dahiya. Noorakshi Dahiya in her short note dated 28.03.2023 has pointed out that one Himanshu Deswal has obtained 77.6% marks and has been allotted CSE branch. In pursuance of the said submission, MSIT in its note dated 16.03.2023 has explained that the branch allotted to Himanshu Deswal, CSE at serial No.10 be read as I.T. and the branch allotted to another candidates Deepash Rohil, I.T. at serial No.17, be read as CSE, as the same had happened on account of some typographical error. Corrigendum dated 04.11.2022 with respect to the aforesaid clarification reads as under :-

XXXX

187. The Petitioner claims admission on the basis of her appearance in the counselling dated 13.11.2022. The other admitted candidates also appeared on that date. It is thus seen that none of the candidates who are less in merit, have been granted admission in MSIT in the Academic Session 2022-2023 and, therefore, for this additional reason, no relief can be granted to Noorakshi Dahiya."

26. To challenge the aforesaid judgment dated 17.05.2022 rejecting the case of appellant, learned counsel appearing on behalf of appellant submitted that the impugned judgment and final order suffers from arbitrariness, biasness and non-application of mind being full of contradictions. It was submitted that those students who have been given admission by respondent No.2-MSIT had also participated in online registration process and the learned Single Bench failed to appreciate that those 66 students who were given admission were in violation of circulars dated 22.09.2022 and 27.09.2022 and these students could not have been given admission unless the limited window of providing admission form was given to them as pre-selected candidates. Also, all the registered candidates, including these 66 candidates, were required to undergo counselling on 13.11.2022, but these candidates did not participate in the counselling held on

13.11.2022 contrary to the notice dated 10.11.2022 issued by respondent-University.

27. Learned counsel submitted that the learned Single Bench did not consider the fact that respondent No.2-MSIT had failed to comply with the Rule and Regulations of 2007 and the fact that when the Circular dated 22.09.2022 was issued by respondent –University, the admission process was still incomplete and thus, any admission in violation thereof is bad in law, especially when respondent-University, vide letter dated 14.11.2022 had informed respondent No.2-Institute that all admissions under management quota were void.

28. Learned Counsel submitted that against the available 66 vacancies in Management Quota, only 65 admissions were done and one vacancy was still available in Computer Science Branch for the academic session 2022-

23. It was submitted that the case of other candidate, Shubham Jha, whose writ petition was also considered along with batch of petitions vide impugned judgment, is entirely on different footing and he had never sought admission in respondent No.2-MSIT and so, case of appellant cannot be equated with his case. Lastly, it was submitted that appellant had participated in the counselling session held on 13.11.2022, which is the only valid session as per the notification of respondent-University and so, the case of appellant deserves to be considered for admission in respondent No.2-MSIT under management quota seat for the academic session 2022-23.

29. To the contrary, the stand of respondent No.2-MSIT to stamp out the case of appellant is that appellant has scored 78% marks in class-XII and her JEE rank is 5,59,801 and by making such prayer, the appellant seeks to disturb the admission of students who have scored above 83% marks in CBSE and below the rank of 5,38,787. Moreover, the first round of counselling in respondent No.2-MSIT was done on 26.08.2022 after due publication of notice in leading newspapers and notice affixed on notice board as well as website. The registration were closed on 12.09.2022 and the results were uploaded on the website on 16.09.2022 i.e. prior to coming into force the Circular dated 22.09.2022 and 27.09.2022 issued by respondent-University. Also, the admission process was under observation of this Court in W.P.(C) 11906/2022 and same was strictly followed under the applicable Act and Rules.

30. Learned counsel appearing on behalf of respondent No.2-MSIT submitted that the complete schedule for counselling was uploaded on the website and full transparency was made. With regard to notification of only 4 seats for counselling available as on 13.11.2022, learned counsel submitted that only 04 seats were available to be filled under Management Quota on 13.11.2022 and all the already selected candidates were also present and since they had secured more marks than the appellant, their candidature was not touched upon.

31. It was next submitted that on 26.08.2022, respondent No.2-MSIT published advertisement for admission in Management Quota in newspapers, affixed on

notice board of the Institute and uploaded on the web portal of the Institute; on 12.09.2022 the process for application was completed and on 16.09.2022 list of candidates who had applied and given admission, merit wise as per aggregate marks secured by them, was displayed. Since respondent-University vide notification dated 27.09.2022 fixed date of 13.11.2022 for counselling, respondent No.2-MSIT notified that the process of counselling for 04 unfilled seats shall be carried out. It was vehemently submitted that the candidates given admission in the first round of counselling had much higher aggregate than the appellant for CSE Computer Science Branch. Also submitted that respondent No.2-MSIT has time to time, vide communications dated 07.10.2022; 26.10.2022; 03.11.2022 and 14.11.2022 been informing the respondent-University about the process and admission of students under Management Quota and so, it cannot be said that respondent No.2-MSIT has not maintained transparency.

32. Lastly, it was submitted that there is no substance in the claims of appellant and the judgment passed by the learned Single Bench is well founded and calls for no interference by this Court.

33. The submissions advanced by learned counsel representing both the sides were heard at length and the material placed before this Court has been carefully perused.

34. Before analysing the rival contentions of both the sides, it is relevant to note that the impugned judgment dated 17.05.2023 passed by the learned Single Judge in W.P.(C) 14677/2022; with which the writ petition being W.P.(C) 16709/2022 preferred by the appellant herein, was decided with other batch of petitions; has already been challenged by Vivekanand Institute of Professional Studies by filing LPA 563/2023, where-under the Circulars dated 22.09.2022, 27.09.2022 and 14.10.2022 issued by respondent -Guru Gobind Singh Indraprastha University have been sought to be declared ultra vires of Articles 14 and 19 (1)(g) of the Constitution of India and violative of the provisions of the Act and Rules, 2007.

35. This Court vide Judgment dated 04.08.2023 (further corrected on 07.08.2023) in LPA 563/2023 has inter alia held as under:-

"32. In the light of aforesaid observations, in the considered opinion of this Court, by making the aforesaid observation, the learned Single Judge has appreciated that the Act of 2007 provide sufficient mechanism with regard to admission process and has therefore, therefore directed that no MQAMC was required to be constituted and its requirement envisaged under the impugned Circular dated 22.09.2022 shall cease to operate. In the considered opinion of this Court there is no infirmity in this opinion rendered by the learned Single Judge and it not even challenged before this Court. The appellant is aggrieved with the directions to display online the seats available under the Management Quota and admission on merit basis.

33. This Court is in concurrence with the appellant that the directions enshrined in the impugned circular are not by the competent authority i.e. the Lieutenant Governor of Delhi, however, we find that to ensure fair mechanism to fulfil the Management Quota seats available under different branches of private self funded institutions, affiliated to respondent No.3-University, fair procedure has to be adopted.

34. We hereby dispose of the present appeal upholding the following directions notified in the circular dated 22.09.2022 with partial modification that besides online mode, the candidates shall also be eligible to apply in "offline mode" for Management Quota seats. The directions are as under:-

"i) GGSIP University to make an online portal to display the branch-wise college wise seats available under Management Quota

ii) Prospective students can apply on line on the portal of the institute as well as off line (in the prescribed form downloaded from the website of the college against receipt issued from the college) against available seats under management quota.

iii) The college shall display the list of aspirant admission seekers on the online portal as well as on the notice board of the college

iv) The college shall prepare common merit wise list of candidates who have applied through online and offline mode

v) The merit list college wise shall be published online.

35. In view of the above, the respondents are directed to issue necessary orders to comply the above directions within two weeks. It is made clear that these directions shall cease to follow for the session 2022-23 and the seats already filled till 2022-23 under the Management Quota by colleges for different branches shall not be disturbed."

36. Since the controversy with regard to Circulars dated 22.09.2022, 27.09.2022 and 14.10.2022 issued by respondent- University to the affiliated Institutes has already been put to rest by this Court in LPA No. 563/2023, the plea of appellant that strict adherence to the Circular dated 22.09.2022 is rejected in view of observations made in LPA No. 563/2023.

37. So far as the plea of appellant that her case was not considered on 13.11.2022, i.e. the date fixed by the respondent-University for candidates who had applied on the on-line portal for counselling is concerned, this Court has already permitted the affiliated Institutes of respondent-University to give admissions to candidates who apply through both the modes i.e. offline as well as online mode as per their merit and directed to display the list on the Notice Board as well as website portal of the Institutes.

38. It is a matter of fact and record and not disputed by appellant herself and has also been noted by the learned Single Judge in the impugned judgment that

petitioner had obtained 78% marks in the qualifying examination and none of the candidates who have been admitted in respondent No.2-MSIT are less meritorious than the appellant. The respondent No.2-MSIT has also displayed a merit wise list of candidates who have been selected for the Session 2022-23 in CSE Branch of B.Tech course on its website portal, which clearly depicts the percentage of marks secured by the candidates.

39. The learned Single Judge has further observed that the selected candidates have already appeared in the First Semester examination for the Session 2022-23 in CSE Branch of B.Tech and in the absence of any vacant seat, no relief can be granted to the appellant herein. Even the review petition [Review Petition No.148/2023 in W.P.(C) 16709/2022] preferred by the appellant against the impugned Judgment has been dismissed by the learned Single Bench vide order dated 24.05.2023 observing that "non-availability of seat is not the sole reason for not considering the claim of petitioner for allotting a seat in the academic session 2023-24".

40. The Hon'ble Supreme Court in State of U.P. Vs. Anupam Gupta (Dr), 1993 Supp (1) SCC 594 has held as under:-

"14. Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and be completed within the schedule, so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the midstream would disturb the courses and also work as a handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained."

41. The pertinent observations of the Supreme Court in State of U.P. Vs. Anupam Gupta (Dr) (Supra) aptly apply to the facts of the present case. Accordingly, in the considered opinion of this Court, there is no merit in the claims raised by the appellant and no ground to interfere in the impugned judgment dated 17.05.2023 is made out.

42. The present appeal and pending application, if any, are accordingly dismissed.