

(2015) 08 DEL CK 0101

In the Delhi High Court

Case No : Writ Petition (C) 7770 and 7788 of 2015

Shubham Jain and Others

APPELLANT

Vs

Guru Gobind Singh Indraprastha University and Others

RESPONDENT

Date of Decision : 14-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0101

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sudhir Nandrajog, Senior Advocate, Sanjeev Narula and Vipin Malik, for the Appellant; Mukul Talwar, Sr. Adv., Sumedha Dang and Vipin Singh, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Sahai Endlaw, J.

CM No. 15347/2015 in W.P.(C) No. 7770/2015 & CM No. 15417/2015 in W.P.(C) No. 7788/2015 (both for exemption)

1. Allowed, subject to just exceptions.

2. The applications are disposed of.

W.P.(C) 7770/2015 & CM No. 15346/2015 (for stay) & W.P.(C) 7788/2015 & CM No. 154178/2015 (for stay)

3. The sixteen petitioners in W.P.(C) No. 7770/2015 and the three petitioners in W.P.(C) No. 7788/2015 (which has been received just before lunch, on listing on urgent mentioning) are aspirants for admission to Bachelor of Technology (B.Tech.) course in the respondent No. 3 Maharaja Agarsain Institute of Technology (respondent No. 3 College) affiliated to the respondent No. 1 Guru Gobind Singh Indraprastha University (respondent No. 1 University). The All India Council for Technical Education (AICTE) which has accorded recognition to the respondent No. 3 College for imparting education in B.Tech. course is

impleaded as respondent No. 2 in both the petitions. The petitions impugn the Notification dated 7th August, 2015 of the respondent No. 1 University to the effect that self-financing colleges / institutes, as the respondent No. 3 College, will be solely responsible for making any admissions, contrary to the instructions of the respondent No. 1 University and that the respondent No. 1 University shall not permit regularisation of any such admissions. The petitions also seek a direction to the respondent No. 1 University to admit the petitioners to B.Tech. course in the academic session 2015-2016 in the respondent No. 3 College.

4. Though the petitions have come up before this Court for the first time today itself (taken up for hearing at 1500 hours) but considering the nature of the controversy and the relief claimed, it is felt that inviting counter- affidavits or otherwise not dealing with the petitions today itself, would make the reliefs claimed therein infructuous, even if the petitioners were to be ultimately found to be entitled thereto.

5. Thus, the senior counsel for the petitioners in W.P.(C) No. 7770/2015, the senior counsel for the respondent No. 1 University, the counsel for the respondent No. 2 AICTE as well as the senior counsel for the respondent No. 3 College, appearing on advance notice, have been heard with an intent to dispose of the matters one way or other.

6. Though prima facie it appears that the aspirants for admission have filed these petitions as a proxy for the respondent No. 3 College, inasmuch as the grievance urged ought to be of the respondent No. 3 College and the respondent No. 3 College itself, if aggrieved, ought to have come before the Court but since the aspect of, seats in B.Tech. course in the respondent No. 3 College (which the senior counsel for the respondent No. 1 University himself contends enjoys a good reputation and high priority with the admission seekers) going waste, is at stake, this fact is ignored.

7. The respondent No. 1 University, as per the schedule of admission announced, conducted the last i.e. third round of counselling on 16th July, 2015; thereafter, a fourth round of counselling called the "spot counselling" was also conducted on 30th July, 2015. The respondent No. 1 University thereafter came out with a Schedule dated 4th August, 2015 for filling up remaining vacancies, if any, after 31st July, 2015, in the academic session 2015-2016. It was stated therein that after conducting third round of Online Counselling and Spot Counselling, there were vacant seats in different programmes in different colleges; the vacancy position in different programmes in different colleges was attached to the said Schedule. The Schedule prescribed, i) the date of 5th August, 2015 for constitution of Admission Committee at respective colleges comprising inter alia of an observer of the respondent No. 1 University; ii) the date of 6th August, 2015 for Newspaper Advertisements by Affiliated Colleges regarding filling up of vacancies; iii) time from 6th August, 2015 to 10th August, 2015 to eligible candidates for making applications to the respective affiliated colleges; iv) the date of 12th August, 2015 for display by each college of the merit list on the

website and notice boards; v) the dates of 13th & 14th August, 2015 for counselling to be held by the respective colleges from the merit list, for provisional allotment of seats; and lastly, vi) the date of 16th August, 2015 for admission.

8. In the list of colleges appended to the said Schedule, as against the respondent No. 3 College, "NIL" seats available in the B.Tech. course, were shown.

9. The respondent No. 1 University informs, i) that the last date prescribed by the Supreme Court in *Parshavanath Charitable Trust and Others Vs. All India Council for Tech. Edu and Others*, (2013) 1 AD 1 : (2013) 1 JT 557 : (2012) 12 SCALE 219 : (2013) 3 SCC 385 : (2013) 2 SCT 163 for admission to the B.Tech. course is 15th August, 2015; and, ii) that the procedure as announced vide the Schedule dated 4th August, 2015 has been introduced by the respondent No. 1 University for the first time this year, after making efforts to complete the counselling by 31st July, 2015 and to ensure that no vacant seats remain. It is stated that the respondent No. 1 University is in the process of evaluating that the procedures so introduced is not misused / abused by the colleges or by the students for admissions otherwise than on merit.

10. The respondent No. 3 College claims that contrary to the Schedule dated 4th August, 2015 showing nil vacant seats in B. Tech programme in respondent No. 3 College, it has 67 vacancies in B.Tech. course. It is their case that the said 67 seats though had been filled up earlier but the students who had been admitted thereto, have either withdrawn their candidature or communicated that they would not be joining the respondent No. 3 College. It is stated that some of the students have also taken back their original certificates.

11. The stand of the respondent No. 3 College is that the respondent No. 1 University announced the vacancies in different programmes / Colleges in the Schedule dated 4th August, 2015, on the basis of allocations made in the counselling conducted by it and without bothering to collect any information whether the student allocated a seat in the counselling having joined the college allocated or not or having withdrawn the admission earlier taken. They claim that they, on 1st August, 2015 itself, informed the respondent No. 1 University of the said position and sought permission for filling up of the said vacant seats. A copy of the letter dated 1st August, 2015 in this regard bearing the stamp in acknowledgment of the respondent No. 1 University is handed over in the Court. The respondent No. 3 College further claims to have, after publication of the Schedule dated 4th August, 2015 *supra*, written two letters dated 5th August, 2015 to the respondent No. 1 University, copies of which also are handed over and of which one bears the stamp in acknowledgement of receipt of the respondent No. 1 University. They state, that upon not receiving any reply from the respondent No. 1 University, a reminder dated 7th August, 2015 was issued and where to a reply dated 11th August, 2015 was received from the respondent No. 1 University.

12. It however appears, that the respondent No. 3 College, notwithstanding the Schedule dated 4th August, 2015 not showing any vacant seats in respondent No. 3 College, advertised the seats being available for admission and which led the respondent No. 1 University to publish the impugned Notification dated 7th August, 2015 supra, cautioning the students. The respondent No. 1 University accordingly, in its reply dated 11th August, 2015 supra also, drew the attention of the respondent No. 3 College to the said Notification dated 7th August, 2015 and asked it not to admit any students.

13. The petitioners have filed these petitions claiming the reliefs aforesaid, contending that the vacant seats in the respondent No. 3 College be not allowed to be wasted and seeking admission there. Reliance is placed on Varun Saini Vs. Guru Gobind Singh Indraprastha University, (2015) 1 ESC 121 : (2014) 10 SCJ 133 to contend that such seats are a natural resource.

14. It is the contention of the senior counsel for the respondent No. 1 University:

(i) that the respondent No. 1 University apprehends that the respondent No. 3 College or any miscreants may have blocked the seats in the respondent No. 3 College, with an intent to fill up later with non-meritorious candidates, thereby jeopardizing the fairness of the admission process and to the prejudice of the meritorious students;

(ii) that the respondent No. 3 College did not approach the respondent No. 1 University with the vacancy position or seeking appointment of an observer for making admissions in accordance with the Schedule dated 4th August, 2015;

(iii) that the respondent No. 3 College appears to be attempting to, while retaining the fee deposited by the aforesaid 67 students who are alleged to have withdrawn, also earn fee from the fresh admissions made for the said seats;

(iv) that it is not as if any seat in the respondent No. 3 College would remain vacant; after the first semester, upgradation is permitted and students who have been able to get admission in a stream lower in their priority would be able to, in the event of seat being vacant in a stream with higher priority, upgrade thereto; that the seats so vacated, can be filled up by migration from other colleges / institutes; allowing the vacant seats to be filled up now would thus be to the prejudice of those who would have been able to upgrade / migrate;

(v) that the aforesaid can also give rise to profiteering by the affiliated colleges who may use the said procedure for earning capitation fee; and,

(vi) that the respondent No. 3 college has not even satisfied the respondent No. 1 University of the admitted students having withdrawn their admission.

15. I have considered the aforesaid contentions of the respondent No. 1 University.

16. This Court, at this stage, is not concerned with the apprehensions expressed of misuse / attempted misuse, of the procedure introduced by the respondent

No. 1 University this year for the first time. They are after all only apprehensions, howsoever justified. This Court for the time being is concerned with an attempt being made to ensure that no valuable seat remains vacant, specially when the last date of admission is 17th August, 2015, 15th and 16th August, 2015 being holidays. This Court, while directing such seats to be filled up, not at the whim of respondent No. 3 College, but in a fair manner always impose conditions to ensure the respondent No. 3 College does not unduly benefit therefrom.

17. The senior counsel for the respondent No. 3 College, on instructions, states that the respondent No. 3 College through its Director, Mr. M.L. Goel undertakes to this Court, to deposit the entire amount received from the 67 candidates who have withdrawn their candidatures from the respondent No. 3 College with the respondent No. 1 University for the respondent No. 1 University to refund the same to such the students, if found entitled thereto or to return the same to the respondent No. 3 College after conducting an enquiry, if the respondent No. 3 College is found entitled thereto or to retain the same itself.

18. Similarly, the aspect of misuse / attempted misuse, if any by the respondent No. 3 College is taken care of by providing that merely because this Court is permitting the vacant seats to be filled up, would not prevent the respondent No. 1 University from, if otherwise deems it necessary, conducting an investigation and / or taking action, including of revoking the affiliation, if feels necessary in the facts of the case.

19. As far as the apprehension expressed by the senior counsel for the respondent No. 1 University of the admissions, if so allowed being to the prejudice of the other students who may be able to upgrade / migrate, is concerned, I am of the opinion that the same has no merit. The students who have been admitted till the third round of counselling were prevented from participating in the fourth round of spot counselling held on 30th July, 2015 and the admissions made in the fourth round of Spot Counselling similarly prejudiced the right of students admitted till third round to upgrade. It is also not as if this Court is directing fifth round of counselling. The decision to hold the same is of the respondent No. 1 University itself. All that this Court is doing upon finding the assessment of the respondent No. 1 University of vacant seats in the respondent No. 3 College to be factually incorrect is to direct the respondent No. 1 University to include the respondent No. 3 College also in the fifth round of counselling, from which the respondent No. 1 University had excluded the respondent No. 3 College on the basis of its finding of no seats being available therein.

20. In this respect, I indeed find gaps in the assessment made by the respondent No. 1 University, of the vacant seats, before publishing the Schedule dated 4th August, 2015. No attempt, after 30th July, 2015, appears to have been made to collect any data individually from the colleges of the vacancy position, if any therein. The respondent No. 1 University may consider the said aspect in the following academic session.

21. The respondent No. 1 University has not suggested any condition which can be further imposed to prevent abuse by respondent No. 3 College or anyone else. After all the procedure to be adopted in the said fifth round, in which respondent No. 3 College is now being ordered to be included, is prescribed by respondent No. 1 University itself and is expected to be fair. It is not as if this Court is directing admission of petitioner over other meritorious candidates.

22. Accordingly, it is directed:

(I) the respondent No. 3 College to report to the Office of the Registrar of the respondent No. 1 University on Sunday i.e. 16th August, 2015 at 1000 hours to satisfy the respondent No. 1 University about the withdrawal of candidatures by those who had obtained admissions and / or the seats being thus vacant;

(II) the respondent No. 1 University as well as the respondent No. 3 College to, on their respective website, forthwith advertise the factum of the counselling scheduled on 17th August, 2015 for approximately 67 vacant seats, subject to verification by the respondent No. 1 University, so as to inform all concerned, to participate in the counselling;

(III) the respondent No. 3 College to also insert advertisement in prominent newspapers either on 15th or 16th August, 2015 of the counselling aforesaid scheduled on 17th August, 2015;

(IV) the counselling to take place at the respondent No. 3 College at 1400 hours on 17th August, 2015 and to be completed on the same day;

(V) the admissions during the counselling to abide by the procedure prescribed in the Schedule dated 4th August, 2015; and

(VI) the respondent No. 3 College to, in accordance with its undertaking aforesaid which is accepted and by which the Director of the respondent No. 3 College is ordered to be bound, deposit the entire amount received from the 67 candidates who have withdrawn their candidature from the respondent No. 3 College, with the respondent No. 1 University on or before 18th August, 2015.

23. The petitions are disposed of with the aforesaid directions.

No costs.

Copy of this order be given dasti under the signatures of the Court Master.