

(2010) 12 DEL CK 0295

In the Delhi High Court

Case No : Writ Petition (C) No. 6776 of 2010

Tanvi Yadav

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Citation : (2010) 12 DEL CK 0295

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Naushad Ahmed Khan, V. Elanchezhiyan and Rajesh Kumar, for the Appellant; Mohinder J.S. Rupal and Sonam Gupta, Advs in W.P. (C) No.6776/2010 and in W.P.(C) No.6895/2010 and Neeraj Chaudhary, CGSC and Akshay Chandra and Mohit Auluck for Respondent No. 4 in W.P.(C) No.6895/2010, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The Petitioner in both the petitions claim to be belonging to OBC Category. They applied for admission in University of Delhi in LL.B & M. Sc. (Chemistry) course respectively in the academic year 2010-11. They were however not admitted as per the Admission Policy of the Respondent University qua OB Cs. The same Admission Policy, as is being followed by the Respondent University qua OB Cs, was also being followed by the Jawaharlal Nehru University (JNU). This Court vide judgment dated 7th September, 2010 in WP(C) No. 4857/2007 titled Apurva v. Union of India held the said Policy to be bad. The Petitioners, contending that they have been denied admission for the reason of the Respondent University following the policy not approved of by this Court in Apurva (supra), and that else they would have been entitled to admission, have filed the present petitions for scrapping the entire admission procedure followed by the University and for directing afresh admissions in consonance with what has been approved by this Court in Apurva.

2. The petitions came up before this Court on 5th October, 2010 and 8th October,

2010 respectively. On those very dates, it was observed that even if finding the procedure followed by the Respondent University to be flawed, since admission of students more than the prescribed capacity tends to put unnecessary stress on infrastructure in the College/Institution and further since the academic session had already begun, no relief could be granted to W.P.(C) Nos. 6776/2010 & 6895/2010 Page 3 of 8 the Petitioners. The counsel for the Petitioners however contended that some seats were still lying vacant in each of the courses and in the circumstances, notice of the petitions was issued and the counsel for the Respondent University asked to take instructions.

3. The Respondent University has filed a short affidavit in each of the cases. The counsel for the Petitioners did not want to file any rejoinder. The counsels have been heard.

4. The University of Delhi was not a party to the judgment in Apurva. It thus has a right to argue the matter afresh. The counsel for the University has as such been heard in opposition to the view taken in Apurva inasmuch as if Apurva were to be not good law, the Petitioners would have no claim.

5. The counsel for the Respondent University has contended that the Constitution Bench of the Supreme Court in Ashoka Kumar Thakur Vs. Union of India (UOI) and Others, had left it to the Government to lay down the procedure for admission to the seats reserved for OB Cs under the Central Educational Institutions (Reservation in Admission) Act, 2006. He contends that the Government in pursuance to the same brought out an Office Memorandum dated 17th October, 2008 and the University has abided by the same. He has in this regard drawn attention to paras 535, 629 & 645 of the judgment in Ashoka Kumar Thakur (supra). He has further contended that W.P.(C) Nos. 6776/2010 & 6895/2010 Page 4 of 8 the view in the judgment of Dalveer Bhandari J. in Ashoka Kumar Thakur was subsequently ratified by all the other Hon'ble Judges of the Constitution Bench, in P.V. Indiresan and Others Vs. Union of India (UOI), and thus is now the view of the Constitution Bench. It is further the contention that the distinction between qualifying marks and cut off was noted in para 408 of the judgment in Indra Sawhney Vs. Union of India (UOI) and Others, and of which the Constitution Bench in Ashoka Kumar Thakur was fully seized. It is thus argued that the use of expression "cut off" in Ashoka Kumar Thakur is distinct from qualifying marks as in the context of para 408 of the judgment in Indra Sawhney (supra).

6. Per contra, the counsel for the Petitioners has contended that the 97th Amendment to the Constitution was not there at the time of judgment in Indra Sawhney and thus no reliance thereon can be placed. He has also referred to para 16 of Harinder Kaur and Others Vs. Union of India (UOI) and Others, .

7. I have considered the contentions aforesaid of the counsel for the Respondent University. The same do not persuade me to take a view different from that already taken in Apurva. In Apurva, it has been held that the challenge to the

reservation for OB Cs in Ashoka Kumar Thakur was primarily on the premise of the reservation on the basis of caste/class being antithesis to the goal of the Constitution of a casteless/classless society. The said challenge was negated by the Supreme Court. However, since to justify the challenge it was also urged that such large scale reservation may W.P.(C) Nos. 6776/2010 & 6895/2010 Page 5 of 8 lead to lowering the standard of excellence of the educational Institutions and the country, the observations relied on by the Government and the Respondent University using the expression "cut off" came to be made. It was further held that none of the opinions in Ashoka Kumar Thakur upheld the reservation for OB Cs for the reason of making the same subject to the OB Cs being within the bandwidth of 10% of the last candidate admitted in the Unreserved Category. It was thus held that the observations in the opinion of Arijit Pasayat, J. and Dalveer Bhandari J. are in the form of recommendation to the Government. More importantly, it was held in Apurva that if only such of the OBC candidates who secure marks within the 10% bandwidth of the cut off in the Unserved Category are held entitled to admission, the same would lead to making the Reserved Category candidates compete with the Unreserved Category candidates and which is not permissible. It was further held that there is nothing in the Act to the said effect and if the reservation is implemented as was being done by the JNU, that would defeat the very purpose of constitutional amendment and the Act.

8. I am afraid none of the aforesaid reasoning has been dented by the counsel for the Respondent University.

9. I am therefore not inclined to take a view different from that in Apurva. The Respondent University though not a party to Apurva would nevertheless be bound by what has been held therein.

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10. The counsel for the Respondent University has also argued that the Petitioners were aware of the admission criteria since the publication of the prospectus and did not challenge the same and were satisfied with the same; they also accepted rejection of their admissions on the basis of the said criteria; that the present petitions have been filed as an afterthought after about a month of the judgment in Apurva.

11. The Respondent University in the affidavit in each of the petitions has further stated that there are no seats available in either of the courses; that the unfilled seats of the OBC Category as per judgment in Ashoka Kumar Thakur devolved on the Unreserved Category and have been filled up; that the academic session has begun and tests/practical had already held by the time the petitions were filed and the Petitioners are thus not entitled to the relief claimed.

12. The counsel for the Petitioners has in opposition argued that the Respondent University being at fault cannot take advantage of its own wrong. It is further contended that though the academic session has begun but owing to the

intervening Commonwealth Games not much progress has been made and the Petitioners upon being admitted would be able to catch up. It is contended that since the Respondent University is in the wrong it can always hold either special classes or admit the Petitioners as supernumeraries. It is contended that instances of admission to Medical Colleges in midterm are in W.P.(C) Nos. 6776/2010 and 6895/2010 Page 7 of 8 abundance. It is further urged that there is no sanctity to the maximum strength of seats provided in each course inasmuch as all those of the previous academic session who fail in any case add to a new session. Reference is made to para 3 of Medical Council of India Vs. Manas Ranjan Behera and Others, . Relying on the Division Bench judgment dated 10th December, 2009 of this Court in LPA No. 622/2009 titled Dr. Manish Patnecha v. Chairperson Counseling Committee AIIMS, it is contended that even if the Petitioners are held to be not entitled to admission in this year, a seat for them should be reserved in the next year. Reference is also made to Avinash Singh Bagri and Others Vs. Registrar IIT Delhi and Another, where additional coaching for SC/ST candidates was directed.

13. None of the aforesaid arguments prevail with me. The fact remains that the Petitioners were satisfied with the Admission Policy/Procedure of the University and have taken a chance by filing the present petitions owing to the judgment of this Bench in Apurva. I may notice that the counsel for the University on the very first day when the petitions had come up had also contended that the notice has been issued in the SLP preferred by Mr. P.V. Indiresan in the Supreme Court seeking clarification on the matter. However, on that date, I was persuaded by the pleas of the Petitioner of their being vacant seats. What has transpired now is that there are no vacant seats. The question involved is not of the Petitioners alone but a general question relating to admissions of OB Cs. The decision of the said W.P.(C) Nos. 6776/2010 and 6895/2010 Page 8 of 8 question would not entitle the Petitioners alone to the relief but would entitle the other OBC candidates also who had applied for admission and who were denied admission to the relief. It is best left for the matter to work itself out in the next academic year rather than give relief selectively to those who approach the Court.

The petitions are therefore dismissed. No order as to costs.