
(2021) 05 DEL CK 0173

In the Delhi High Court

Case No : Civil Writ Petition No. 8301 Of 2019, 1246 Of 2020, Civil Miscellaneous Application No. 34382, 34384, 55279, 55280, 55281 Of 2019, 4280, 1287 Of 2020, 15858, 15863, 17013, 17019 Of 2021

Tanya Mann

APPELLANT

Vs

Registrar, Guru Gobind Singh Indraprastha University & Ors

RESPONDENT

Date of Decision : 25-05-2021

Acts Referred:

Citation : (2021) 05 DEL CK 0173

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Jai Singh Mann, Atul Kumar, Anita Sahani, Shreesh Chadha, Gaurang Kanth, Siddarth Agarwal, Hetu Arora Sethi, Harish Vaidyanathan Shankar, Kinjal Shrivastava, Tejaswini Verma

Final Decision : Disposed Of

Judgement

Prateek Jalan, J

The proceedings in the matter have been conducted through video conferencing.

1. The petitioners in these two petitions, Ms. Tanya Mann [â??Tanyaâ?] and Ms. Anjali [â??Anjaliâ?], were both aspirants for admission to the

MBBS course at Guru Gobind Singh Indraprastha University [â??the Universityâ?] in the academic year 2019-2020, in the Delhi Region Other

Backward Classes Defence [â??DOBCDEFâ?] category.

2. By way of W.P.(C) 8301/2019, Tanya challenges the admission granted to Anjali and another candidate, Atul, in the said category. It is the

contention of Tanya that the aforesaid two candidates did not qualify for OBC reservation in terms of the relevant Office Memorandum issued by the

Union of India [â??the Office Memorandumâ?]. Tanya, having secured third

position on merit in the aforesaid category, claims admission in their place. The reliefs in the writ petition are framed as follows:

â??A. to quash the Seat Status Reports- MBBS dated 26-07-2019 issued and notified by respondent No.1 through their website notified on

notice board after admission counseling conducted on 26-07-2019 (ANNEXURE-P-1) pertaining to DOBCDEF category for MBBS course

for the session 2019-2020; and/or

B. to direct the respondent No. 1 to withdraw the seat allotment letters issued by the respondent No.1 in respect of private Respondents

during admission counseling conducted on 26-07-2019 pertaining to DOBCDEF category for MBBS course for the session 2019-2020;

and/or

C. to direct the respondent to issue seat allotment letter to the petitioner for MBBS course in the session 2019-2020 in DOBCDEF category;

and/or Any other relief as may be deemed fit and proper in the facts and circumstances of the case may also be granted to the petitioner.â??

3. In the aforesaid writ petition, an order dated 28.08.2019 was passed recording that Atul had given up his claim to the seat allotted to him. It was

further directed as follows:

â??3. Ms. Anita Sahani, Advocate, who appears on advance notice on behalf of the respondent no.1, informs me that at present 17 seats

fall vacant which includes the OBC defence category seat that fell vacant on account of withdrawal by respondent no.4.

4. Ms. Sahani says that the respondent no. 1 University is obliged to follow the directive given in the order dated 09.05.2017, passed by the

Supreme Court, in W.P.(C)No.267/2017, titled Dar-US-Slam Educational Trust & Ors. v. Medical Council of India & Ors. Ms. Sahani, in

particular, has drawn my attention to paragraph 7 of the said order.

5. Having regard to the stand taken by Ms. Sahani, the respondent No.1 University is directed to complete the process of filling up the 17

seats (including OBC defence category seat) as directed by the Supreme Court vide order dated 9.5.2017.

6. Needless to say, the petitioner will also be considered along with other eligible candidates.â??

4. Against the aforesaid order, Tanya filed LPA 556/2019. The Division Bench, by an order dated 30.08.2019, noted her contention that she had filed

a complaint before the Sub-Divisional Magistrate [â??SDMâ?], Narela about the certificate issued to Atul and that the candidature of Atul had been

withdrawn. The Court directed the SDM, Narela to be joined as a party, and further directed him to verify the legality of the OBC certificate issued to

Atul. By the aforesaid order, the Court directed that Tanya would be given provisional admission by the University, subject to verification as directed,

and subject to the final outcome of the appeal. The appeal was ultimately disposed of by a judgment dated 24.10.2019, alongwith a writ petition [W.P.

(C) 9605/2019] filed by another candidate for the same seat, Ms. Rashmi Nagia [â??Rashmiâ?]. The Court found that Rashmi had a superior

entitlement to the seat vacated by Atul, as opposed to Tanya. Consequently, the writ petition filed by Rashmi was allowed and the provisional

admission granted to Tanya was cancelled. The appeal filed by Tanya against the interim order dated 28.08.2019 was dismissed.

5. In the meanwhile, Tanya and her father Mr. J.S. Mann, an Advocate, filed complaints dated 05.08.2019, 10.09.2019, 07.11.2019 and 11.11.2019,

against the validity of the OBC certificate dated 29.12.2014 and the Non-Creamy Layer certificate [â??NCL certificateâ?] dated 30.06.2019, issued

by the Government of NCT of Delhi [â??GNCTDâ?] in favour of Anjali. The GNCTD, acting upon the complaint dated 07.11.2019 filed by Mr.

Mann, passed an order dated 6.01.2020 cancelling Anjaliâ??s OBC certificate.

6. W.P.(C) 1246/2020 has been filed by Anjali assailing the aforesaid cancellation. In the said writ petition, this Court passed an interim order dated

05.02.2020, directing the University to maintain status quo with regard to the seat allocated to her.

7. Having regard to the aforesaid factual situation, the issue which first requires determination concerns the validity of the order of the GNCTD dated

06.01.2020, cancelling Anjaliâ??s OBC certificate. In the event Anjali succeeds in the aforesaid writ petition, Tanyaâ??s writ petition will be

rendered infructuous. This position is also noted in an order dated 17.11.2020 passed in both the writ petitions, and is in fact accepted by learned

counsel on all sides.

8. I have heard Mr. Harish Vaidyanathan Shankar, learned counsel for Anjali, Mr.

Shadan Farasat, learned counsel for the GNCTD, and Tanya's

father, Mr. J.S. Mann, Advocate, who made submissions on her behalf. Mr. Atul Kumar, learned counsel appears on behalf of Ms. Anita Sahani,

learned counsel for the University, who is stated to be indisposed due to COVID-19. Mr. Mann expresses some urgency on the ground that

Tanya's entitlement to admission depends upon the fate of Anjali's petition.

9. As the University is not directly concerned with the determination of Anjali's writ petition, I have heard learned counsel on that petition first.

10. Anjali challenges the order of the GNCTD dated 06.01.2020, by which her OBC certificate was cancelled at the instance of Tanya and her father.

In the complaints filed by Tanya and her father, the grounds urged were that Anjali's family had not been residents of Delhi since prior to

08.09.1993, as required by the relevant Office Memorandum, and that Anjali was not entitled to the benefit of reservation as her family income was in

excess of Rs. 8,00,000/- per annum. It is the admitted case that no documentary evidence was submitted by the complainants. However, the GNCTD

issued a notice addressed to Anjali on 15.11.2019 citing the complaint of Mr. Mann and directed her to submit the original documents on the basis of

which the OBC certificate was issued, a copy of her identity document, age proof, and proof of her parents staying in Delhi prior to 08.09.1993, as

well as the caste certificate of her paternal family.

11. Anjali's mother attended the office of the SDM, Patel Nagar on 23.11.2019 and 26.12.2019, but stated that she did not have the documents in

question. It is her case that when she went to the said office on 26.12.2019, the concerned officer did not attend to her and she therefore left after

three hours. This controversy is not material, given the events that have transpired thereafter.

12. The GNCTD ultimately passed the impugned order dated 6.01.2020, which is reproduced below:

“Whereas, a complaint vide Dy. No. 14459 dated 07.11.2019 of Sh. J.S. Mann, R/O H.No. 1321, Gali No. 1 Shiv Mandir Colony, Alipur,

Delhi-110036 received in this office against issue of OBC Certificate bearing No. OBC/90508911224290 Dated 29.12.2014 and NCL

Certificate No. F- 10(8)/THE/2019/34683 dated 30.06.2019 to Ms. Anjali D/o Sh. Ved Prakash R/O RZ-45 Near Pali Factory Indra Park

Extn. East Uttam Nagar New Delhi-110059.

And Whereas, in the complaint, it is alleged by Sh. J.S. Mann, that OBC Certificate and NCL Certificate is obtained by Ms. Anjali D/o Sh.

Ved Prakash by concealment/ misrepresentation of the facts. He further stated that Sh. Ved Prakash and his family is original inhabitant of

Haryana and Sh. Ved Prakash is migrated to Delhi. It is also alleged by him that the annual family income of Ms. Anjali is more than Rs.

12,60,000/- which is more than the criteria of Rs. 8,00,000/- per annum for issuance of OBC Certificate.

And Whereas, in order to verify the above facts, Ms. Anjali D/o Sh. Ved Prakash was called to produce certificates/ documents for proving

her family residence in Delhi before 1993 vide notice dated 15.11.2019.

And whereas, Ms. Ravita (mother of Ms. Anjali) W/O Sh. Ved Prakash appeared in this office on 23.11.2019, but she did not submit

documents proving her family residence in Delhi prior to 08.09.1993. However, she stated that her husband is out of station and the

documents sought by this office available with him and she requested to provide some more time to produce the documents and afterward

the matter was fixed for 16.12.2019.

And Whereas, on 16.12.2019, neither Ms. Anjali nor anyone appeared on her behalf. Accordingly, vide this office notice dated 18.12.2019,

final opportunity was given to Ms. Anjali D/o Sh. Ved Prakash to submit the above documents on or before 26.12.2019 by 02.00 PM.

And Whereas, no documents have been submitted so far by Ms. Anjali D/o Sh. Ved Prakash in the above matter.

And Whereas, it is established principal that for issuance of OBC certificate GNCT of Delhi, candidate must produce proof of residence of

parents in Delhi prior to 08.09.1993 in terms of guidelines issued by the GNCT of Delhi Which have not been produced by Ms. Anjali D/o

Sh. Ved Prakash despite repeated notices.

Now, therefore, OBC certificate bearing No. OBC/90508911224290 dated 29.12.2014 issued to Ms. Anjali D/O Sh. Ved Prakash by the

then Tehsildar (Patel Nagar) stands cancel for all purpose.

Â This issue with the prior approval of the Competent Authority.Â??

13. It is evident from the impugned order that the action of the GNCTD was predicated only on the inability of Anjali and her family to produce the documents in question.

14. The GNCTD filed a short affidavit dated 10.02.2020 stating inter alia that the record pertaining to the issuance of Anjali's OBC certificate of 2014 was not available. According to the said affidavit, it is in view of the non-availability of the documents in the GNCTD's record that Anjali was called upon to supply the documents by notice dated 15.11.2019.

15. By an order dated 17.08.2020, this Court noted that the OBC certificate issued to Anjali must have been issued on the basis of some documentation. It was further noted that the issuance of the OBC certificate had been challenged by Tanya because she is a claimant to the seat presently occupied by Anjali, who had already completed one year of the MBBS course at the University. Noting the aforesaid contentions in the counter affidavit of the GNCTD, the Court observed as follows:

“5. It is odd that an official file should just vanish into thin air. If it did, what action was taken by the EM/SDM is not known. Who was the record keeper? When was its misplacement realised? Was an internal inquiry initiated or was a complaint registered? There is no information at all in this regard. Therefore, the statement on behalf of the SDM that the OBC Certificate was issued erroneously, cannot ex facie, be sustained. It would be proper to examine what was the consideration which went into the issuance of the OBC Certificate in the first place. The Court is informed that the aforesaid OBC certificate, was revalidated by another SDM in the year 2019. The latter revalidation would, certainly, have been based on some records.

6. Let the State file an appropriate affidavit in this regard before the next date.”

16. Pursuant to this order, the GNCTD filed a further affidavit dated 29.09.2020, in which it was stated as follows:

“3. That it is submitted that the OBC Certificate records pertaining to the year December-2014 were maintained only in physical form and are currently stored at the Certificate Section Branch of the Sub-Division of Patel Nagar at Old Office situated at Old Middle School Building Ramupra, Delhi-110035. The said records were managed by the

concerned record keeper, who was responsible for indexing and arranging the said records.

4. That the Respondent No.1 realised the records of the Petitioner were missing/untraceable when a complaint was received from Sh. J.S.

Mann, wherein he alleged that Ms. Anjali has obtained OBC Certificate by concealment /misrepresentation of the facts and her family is

original inhabitant of Haryana and has migrated to Delhi much later then the cut of year, 1993.

5. That I was posted in SDM Office Patel Nagar in December 2019 and hence was unaware of the record keeper in 2014.

6. Accordingly, an attempt has been made to trace the record keeper for 2014 (which is the relevant year in this case), as it is not possible

to trace the file without the assistance of the record keeper.

7. To this end, a letter dated 28.08.2020 was addressed to the Office Superintendent (Admin) requesting him to provide the contact details

of the record keeper posted at the Certificate Section Branch of the Sub-Division of Patel Nagar in 2014. A copy of the letter dated

28.08.2020 sent by the Tehsildar, Patel Nagar to the Office Superintendent is annexed herewith as Annexure A-1.

8. That the reply was received from the Office Superintendent (Admin) on 31.08.2020 informing that the record keeper in 2014 retired on

31.07.2016 and passed away on 14.06.2019. A copy of the letter dated 31.08.2020 sent by the Office Superintendent (Admin) to the

Tehsildar, Patel Nagar is annexed herewith as Annexure A-2.

9. It is humbly submitted that without the assistance of the concerned record keeper, it is not possible to trace the files for 2014 from the

record room at Old Office, situated at Old Middle School Building Rampura, Delhi-110035. This office shifted to Plot No.3 Shivaji Place,

Raja Garden New Delhi-110027 in the month of August-2018 from Old Middle School Building Rampura.

XXXX XXXX XXXX

12. Thus, it is humbly submitted that the record for the year 2014 pertaining to OBC Certificates is not traceable as the concerned record

keeper for that time has passed away. In such circumstances, the Petitioner may be called upon to provide the documents based on which

the Petitioner had obtained the OBC Certificate so that it can be assessed whether the same was correctly granted or not.â??

17. The GNCTD filed a further affidavit dated 11.11.2020, stating that the records relating to the NCL certificate dated 03.06.2019 were also not traceable.

18. However, at the hearing on 10.03.2021, it was pointed out by Mr. Farasat that the Department had belatedly been able to locate the documents filed by Anjaliâ??s family for issuance of the OBC certificate. The said documents have been placed before the Court by way of an additional affidavit.

19. I am of the view, at the outset, that the manner in which the GNCTD proceeded to cancel Anjaliâ??s OBC certificate was unsustainable. The certificate was issued in the year 2014. Complaints were received in 2019 as to the validity of the certificate, but without any material evidence being placed by the complainant, so as to support even a prima facie conclusion. The record of the GNCTD itself was untraceable. Other than a bare allegation, there was no basis for the GNCTD to initiate the process for cancellation of Anjaliâ??s OBC certificate. However, the onus was put entirely on Anjali to produce the record which had been submitted by her family five years prior. There is no finding of fraud or misrepresentation in the impugned order, which proceeds only on the lack of records. The contention of the GNCTD in paragraph 3.7 of the affidavit dated 10.02.2020, regarding fraud and misrepresentation on the part of Anjali or her family, is not borne out by the order itself. Although Mr. Farasat candidly stated that no procedure has been laid down by the GNCTD for cancellation of such documents, the procedure adopted in the present case, particularly when it comes to the cancellation of a certificate already issued, cannot be regarded as fair or reasonable.

20. Further, the situation now is that the basis upon which the impugned order was passed, no longer exists. The documentary basis for the certificate has come to light from the GNCTDâ??s records itself. The matter cannot then be left to rest at the cancellation predicated on non-availability of the record, either with Anjali or with the GNCTD.

21. The impugned order dated 06.01.2020 is therefore liable to be set aside.

22. Mr. Farasat submits that the GNCTD may be permitted to reconsider the issue

and take a fresh decision in accordance with law. Mr. Mann

however submits that Anjali and her family did not produce any documents before the authorities in response to the complaint, and that no such

documents have been produced before this Court either. As documents have now been traced by the GNCTD, it is permitted to reconsider the matter.

23. However, having regard to the aforementioned peculiar features of this case, it is directed that, prior to taking any further action, the matter be

placed before the Chief Secretary, GNCTD for consideration of the following issues:

a. The present case reveals a very serious and far reaching issue with regard to the maintenance of records by the GNCTD. The affidavits extracted

above make it clear that records are not being maintained in a manner which is administratively efficient or secure. It is astounding, to say the least,

that the GNCTD should state on affidavit that it is unable to trace records due to the death of a particular record keeper, who had in any event since

retired. It need not be emphasised that this indicates serious systemic failures which require attention at the highest administrative level. In the context

of the present case itself, it may be noted that Clause 5(a) of the guidelines dated 07.03.2017 relating to the issuance of OBC certificates (annexed to

the affidavit of the GNCTD dated 10.02.2020), provides that an OBC certificate is permanent in nature and its record is kept securely.

b. The Chief Secretary will also examine whether the action taken on the complaint of Tanya and her father was in conformity with the administrative

practices of the GNCTD and will direct action to be taken against the erring officers, if necessary.

24. In the event the GNCTD considers it necessary to enter into a de novo exercise in this regard, it will issue a fresh show cause notice to Anjali, to

enable her to file a reply, alongwith any documents she wishes to rely upon, and grant a hearing to the concerned parties before passing an order. Mr.

Vaidyanathan submits that the GNCTD has no jurisdiction or authority to review the certificate already issued. It is open to Anjali to raise this

contention in the event the matter is re-opened by the GNCTD. This order is also without prejudice to the rights of the parties to take their remedies in

accordance with law against any order which may be passed by the GNCTD pursuant to these directions.

25. In view of the fact that the cancellation of Anjali's OBC certificate has been set aside by the aforesaid order, the relief sought by Tanya in

W.P.(C) 8301/2019 does not survive.

26. Both the writ petitions, alongwith pending applications, are disposed of in terms of the aforesaid directions.