

(2019) 08 DEL CK 0398

In the Delhi High Court

Case No : Letters Patent Appeal No. 559 Of 2019, Civil Miscellaneous Application No. 38982, 38983 Of 2019

Tanya Singh & Ors

APPELLANT

Vs

University Of Delhi & Ors

RESPONDENT

Date of Decision : 30-08-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 08 DEL CK 0398

Hon'ble Judges : Hima Kohli, J;Sanjeev Narula , J

Bench : Division Bench

Advocate : Mritunjay Kumar Singh, Ranjana Tiwary, Mohinder J.S. Rupal, Aditi Shastri, Kaushik Ghosh, Preet Pal Singh, Saurabh Sharma

Final Decision : Dismissed

Judgement

1. The appellants are aggrieved by the rejection of their writ petition by the learned Single Judge vide order dated 8.8.2019, declining their prayer for issuing directions to the respondent No.1/University of Delhi and the respondent No.2/Faculty of Law for allocating unreserved category seats to them in the respondent No.2, for the Academic Year 2019-20 in terms of the Guidelines dated 20.7.2019 and rejecting their plea that the reserved category candidates have been wrongly allocated 300 seats that actually fall in the unreserved category.

2. A brief glance at the relevant facts of the case is necessary. The respondent No.2/Faculty of Law, established by the respondent No.1/University of Delhi, conducts a three-year LLB Course at three Centres, namely, Campus Law Centre (CLC), Law Centre-1 (LC-1) and Law Centre-2 (LC-2). The Bulletin of Information issued by the respondent No.2/Faculty of Law for the Academic Year 2019-20 furnished the following break-up of the seats distribution and the reservations made for LLB admissions in a tabulated form:-

SEAT DISTRIBUTION FOR LL.B. ADMISSIONS

Category

CLC

LC1

LC2

TOTAL

UR

389

389

389

1167

OBC

228

229

229

686

SC

127

127

127

381

ST

64

63

63

190

EWS

39

39

39

117

TOTAL

847

847

847

2541

PwD

43

42

42

127

CW

42

43

42

127

FM

42

42

43

127

Total

974

974

974

2922

3. The last date for registration was fixed as 22.6.2019. On 3.7.2019, the National Testing Agency (NTA) conducted the Entrance Examination, whereafter the merit list was released on 15.7.2019.

The appellants/petitioners claim that on 20.7.2019, the respondents had uploaded an undated Notice on their website that reads, as follows:-

"All OBC/SC/ST/CW/PwD/EWS candidates who have secured marks within the range of cut off for the unreserved category in the first list and their name appears in either the unreserved category list or in the category list are entitled to choose to take admission either in the unreserved category or their respective reserved category.

In either case they are required to submit a written application clearly indicating the exercise of their choice for confirmation of their admission in that category. No request for change of their category will be entertained thereafter. It is further clarified that allocation of Law Centre will be done on the basis of the category they so choose to be admitted in."(emphasis added)

4. On 29.7.2019, the respondent No.2/Faculty of Law uploaded another notice that laid down the guidelines for PG Admissions, relevant extracts whereof is reproduced herein below:-

"1. The Admission List for the Unreserved (UR) Category seats will comprise all the applicants in order of merit, and admission to UR Category seats will be strictly as per the merit without excluding EWS / OBC (Non-Creamy Layer) / SC / ST / PwD / CW applicants. In other words, it will also include EWS / OBC (Non-Creamy Layer) / SC / ST / PwD / CW applicants, if they meet the criterion of merit for the UR Category. Any applicant will not be excluded from the UR Category Merit List just because he/she belongs to or has applied under any of the aforementioned categories.

2. x x x x x

3. x x x x x

4. x x x x x

NOTE:

Guidelines Adopted for the Allocation of Seats in PG Courses

1. x x x x x

2. x x x x x

3. x x x x x

4. x x x x x

5. x x x x x

If a category candidate is getting the same preference in UR as in his/her category and candidate is fulfilling the minimum eligibility of UR then the Candidate's name will be considered in UR.

If a category candidate is getting better preference in their respective category than the UR, then candidate's name will be considered in his/ her respective category only."

5. The cut-off marks in the first admission list for the candidates belonging to different categories was published by the respondents on 23.7.2019, declaring as follows:-

"Category

Marks

Unreserved

222

OBC

189

SC

149

ST

102

EWS

189

6. The second admission list published on 30.7.2019 indicated the following cut-off marks for the candidates belonging to different categories:-

"Category

Marks

Unreserved

218

OBC

164

SC

140

ST

85

EWS

183

7. The grievance of the appellants/petitioners is that the respondents have violated the Notices/Guidelines dated 20.7.2019 and 29.7.2019 that required the

candidates belonging to the reserved category to submit a written application exercising their choice for confirmation of their admission in the relevant category i.e. either in the unreserved category or in their respective categories. It is contended that the respondents proceeded to allocate them seats in the unreserved category without receiving any written application from them in that regard. Thus, claiming that about 300 candidates belonging to the reserved categories had been wrongly admitted by the respondent No.2/Faculty of Law in the unreserved/general category, it is urged that the appellants/petitioners have been illegally dislodged.

8. In the impugned order dated 8.8.2019, the learned Single Judge has held that as per the Bulletin of Information for the Academic Year 2019-20, there was nothing to indicate any compulsion on a candidate to exercise his choice of seats either in the reserved category or the unreserved category. For arriving at the aforesaid conclusion, the learned Single Judge drew strength from the decision of the Supreme Court in the case of Dega Venkata Harsha Vardhan and Ors. vs. Akula Ventaka Harshavardhan and Ors. reported as 2018 (10) SCALE 618. The learned Single Judge also took into consideration the denial of the learned counsel for the respondents that the respondent No.1/University of Delhi had ever issued any notice dated 20.7.2019.

9. Mr. Mritunjay Kumar Singh, learned counsel for the appellants/petitioners assails the impugned judgment on the ground that the learned Single Judge failed to take into account the terms and conditions prescribed in the Notice dated 20.7.2019; that merely because the Notice dated 20.7.2019 did not bear the signatures of any authority or mention any date, would not be a ground to ignore the same once it had been uploaded on the website of the respondent No.1/ University, as even in the previous Academic Year 2018-19, an identical notice was issued by the respondent No.1/University under the signatures of the respondent No.2; that the respondents could not have changed the rules/guidelines on 29.7.2019, after the admission process had already commenced; that the learned Single Judge failed to appreciate the fact that appellants are meritorious students belonging to the unreserved category, who were eligible for admission in the CLC but on account of the misapplication of the rules by the respondents, 300 unreserved/general category seats have been allocated to reserved category candidates. Lastly, it has been urged that the reserved category candidates have been allocated seats in the unreserved category without their even opting for the said category, by taking steps to submit an application, as required and as a matter of fact, they have been forcefully admitted by the respondents in the unreserved category, without obtaining their consent.

10. Per contra, Mr. Rupal, learned counsel for the respondents No.1 and 2 has supported the impugned order and submitted that the Notice dated 20.7.2019, sought to be relied upon by the appellants, had not been issued by the respondents for admissions in the LLB Course for the Academic Year 2019-20,

which is apparent from the fact that the same does not bear any date or the signatures of any office bearer. He, however, does not deny the fact that such a notice has been uploaded on the website of the respondent No.1/University and submits that it is neither an official notice issued by the University, nor has it been issued by the Central Admission Committee of the University. He reiterates the submission made by him before the learned Single Judge that as per the guidelines issued by the respondent No.1/University of Delhi, a meritorious reserved category candidate is entitled to allocation of a seat in the unreserved category and consequently entitled to admission in the Law Centre of his choice. He cites the judgment of the Supreme Court in *Dega Venkata Harsha Vardhan and Ors.* (supra) to canvass that a meritorious reserved category candidate, who occupies a general category seat, cannot be counted against the quota reserved for a reserved category candidate. Rather, he ought to be treated as a candidate belonging to the unreserved/general category.

11. We have carefully perused the impugned order, the pleadings in the writ petition and the documents filed by the appellants. We have also considered the arguments advanced by learned counsel for the parties.

12. We may first refer to the decision in *Dega Venkata Harsha Vardhan and Ors.* (supra) where the Supreme Court was called upon to examine a judgment passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh, whereunder a Government Order was partly set aside "to the extent the same permitted the filling up by reserved category candidates, of open and/or general category seats in institutions offering inter alia Medical and/or Dental Course, which became vacant when meritorious reserved category candidates who had ranked well enough to secure those seats as general candidates, opted for other disciplines or institutions where they could only have secured admission as reserved candidates".

13. Citing its earlier decision in the case of *Indra Sawhney Vs. Union of India* reported as 1992 Supp. (3) SCC 217 wherein, the State were directed to afford substantially equal opportunities to those who were placed unequally, the Supreme Court held in the captioned case that the concept of equality under Articles 14 to 16 of the Constitution contemplates elimination of inequalities of status between classes and/or castes and reservation in favour of Schedules Castes, Scheduled Tribes or Backward Classes ensures that an opportunity is provided to the socially disadvantaged classes to come into the main stream through education, public appointments etc. by eliminating stiff competition from the socially strong. We may profitably refer to the following view expressed by the Supreme Court in the captioned case:-

"6. Often, in competitive examinations held for the purpose of selection for admission to educational institutions or may be appointments, some candidates belonging to reserved categories, rank high on their own merit. Depending on their performance in the common entrance test such candidates are often placed in the general merit list. Such class of candidates belonging to reserved

categories, who qualify on their own merit, in the general merit list, are for convenience, referred to as Meritorious Reserved Candidates. Meritorious Reserved Candidates who occupy a general category seat are not counted against the quota reserved for a reserved category candidate, but treated as open and/or general candidates.

7. A candidate from a reserved category might, by dint of his own merit, rank sufficiently high in an entrance examination, to secure admission to a specific professional course, but not rank high enough to get admission to a discipline or to an institution of his choice as a general category candidate. However, it is possible that such candidate might be able to secure admission to a discipline or an institution of his/her choice, as a candidate of the reserved category to which he belongs.

8. The law is well settled that provisions relating to reservation cannot work to the disadvantage of a Meritorious Reserved Candidate. A Meritorious Reserved Candidate cannot be placed at a more disadvantageous position than a less Meritorious Reserved Category candidate. Candidates from amongst the reserved category who would otherwise come in the open merit list are therefore given the choice of opting for reserved seats without affecting the total number of reserved seats. However, for the purpose of reservation, such a candidate would continue to be treated as an open category candidate and the seat as per his entitlement as a candidate of the general quota would go to a reserved candidate."(emphasis added)

14. To reinforce the view expressed above, the Supreme Court referred to its earlier decisions in *Ritesh R. Sah Vs. Dr. Y.L. Yamul and Ors.* reported as (1996) 3 SCC 253, *Union of India Vs. Ramesh Ram* reported as (2010) 7 SCC 234, *Samta Aandolan Samiti and Anr. Vs. Union of India* reported as (2014) 14 SCC 745 and *Tripurari Sharan and Anr. Vs. Ranjit Kumar Yadav and Ors.* reported as (2018) 2 SCC 656.

15. A glance at the aforesaid judgment shows that those candidates, who belong to the reserved category and get selected in the open competition on the basis of their own merits, must be included in the general/unreserved category and not in the quota meant for the reserved category. A meritorious reserved category candidate would be allocated a seat reserved for the class to which he belongs only for the limited purpose of enabling him to get a better choice of seat and if he does so, the seat that is left by him, would go to a candidate in the same reserved category. The underlying object of adopting this procedure is that in a situation where candidates belonging to the reserved category rank higher in the general merit list on the basis of their performance in the Common Entrance Test, they would qualify on their own merits and in that eventuality, they would be entitled to occupy a general category seat instead of their being counted against the quota for the reserved category candidates.

16. In view of the methodology required to be followed for working out

reservation in making a selection for admission to educational institutions, the appellants herein cannot be heard to state that only on the unreserved category candidates submitting a written application for exercising their choice of the Law Centre out of three Centres run by the respondent No.2, could they have been allocated seats by the respondents. On the contrary, the judicial dicta is that those candidates who belong to the reserved category and get selected in the open competition on the basis of their own merit, must be automatically included in the general/unreserved category and not be counted against the quota reserved for their specific category, as in Scheduled Castes, Scheduled Tribes, OBC, EWS etc.

17. Given the aforesaid legal position, even if an undated and unsigned Notice has been uploaded on the website of the respondent No.1/University of Delhi, which the appellants claim is identical to an earlier notice dated 20.7.2018, issued by the respondent No.2 at the time of conducting admissions for the Academic Year 2018-2019, the Guideline dated 29.7.2019 would have to prevail, which is essentially nothing but a reaffirmation of the principles of law declared by the Supreme Court in *Dega Venkata Harsha Vardhan and Ors.* (supra).

18. We also do not find any merit in the submission made by learned counsel for the appellants that the reserved category candidates have been coerced by the respondent No.2/Faculty of Law to opt for seats in the unreserved/general category thereby giving them preference for a seat in the CLC that is the most preferred Centre over the other two Law Centres, i.e. LC-1 and LC-2 on the basis of their status as reserved category candidates. In our view, the grievance, if any, on this count could have been raised by those candidates who belong to the reserved category and have purportedly been compelled to take admission in the CLC without their having exercised any choice by giving their written consent. But such a plea is certainly not available to the appellants who belong to the unreserved/general category. Nor can this argument be accepted for the appellants to seek dislodgment of candidates belonging to the reserved category, who on their own merit, based on their performance in the Common Entrance Test, have been placed in the unreserved category for allocation of seats in the Centre of their choice.

19. In view of the aforesaid discussion, we are of the opinion that the impugned order does not warrant any interference. The appeal is accordingly dismissed as meritless alongwith the pending applications.

20. Before parting with the case, a word of advice to the appellants, who are all preparing to enter the stream of law. Their first brush with law may have been unpalatable on account of dismissal of their writ petition, but we hope that it will neither dishearten them, nor dampen their enthusiasm. At the end of the day, it is merit and merit alone that counts. A student who scores a high rank by the sheer dint of his hard work is well on his way to transforming into a successful professional, irrespective of the ranking of the Institution to which he may belong. An Institution is not just measured by its infrastructure or by the quality

of its teaching faculty. It is also measured by the standard of excellence achieved by its students on passing out. The appellants must accept this as a challenge and demonstrate that just as an Institution chisels a skilled professional out of a student, a student equally contributes to the growth of an Institution by raising the benchmark of excellence.