

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 31st October, 2011**

+ **LPA 837/2011**

SALMA KHAN **Appellant**
Through: Mr. Sitab Ali Chaudhary, Advocate

versus

UNIVERSITY OF DELHI & ANR **Respondents**
Through: Mr. Mohinder Rupal with Ms. Shawarna
Bari, Advocates for DU.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Not necessary |
| 2. | To be referred to the reporter or not? | Not necessary |
| 3. | Whether the judgment should be reported in the Digest? | Not necessary |

RAJIV SAHAI ENDLAW, J.

1. The appellant, belonging to OBC category, has preferred this appeal against the judgment dated 3rd October, 2011 in WP(C) No. 6656/2011 preferred by the appellant seeking direction for her admission to the LL.B.

First Year Course in the respondent University.

2. The undisputed facts are that the appellant appeared in the Entrance Test and secured rank of 444 in the OBC Category; that in the counselling held on 13th July, 2011, OBC candidates till the rank of 330 only were admitted; that the next counselling for the OBC category candidates was scheduled for 20th July, 2011 but was not held; that the respondent University however on 12th August, 2011 notified by affixation on the notice board and through website the date of 20th August, 2011 for the next counselling for the OBC category students; that the appellant did not participate in the counselling on 20th August, 2011 though OBC candidates with rank till 1017 were admitted on that day; that the appellant on 9th September, 2011 sought admission and upon being refused, filed the writ petition aforesaid.

3. At this stage it may also be mentioned that even after the counselling on 20th August, 2011, about 50 seats in the said Course in the OBC Category remained vacant and this Court in WP(C) No. 6933/2011 titled ***Anuj Sharma vs. University of Delhi*** vide order dated 3rd October, 2011 has directed the respondent University to convert the said 50 seats into

General Category seats and to fill up the same. The counsel for the respondent University informs that though a writ petition against the said judgment was preferred but was withdrawn and as of today there is no challenge to the said judgment dated 3rd October, 2011 in **Anuj Sharma** and in compliance thereof the vacant OBC seats have been converted and filled up with General Category students.

4. There is a background to the respondent University, in the counselling held on 13th July, 2011 not filling up all the OBC category seats and also not holding the second counselling scheduled for 20th July, 2011. The respondent University had been interpreting the judgments of the Apex Court in **Ashoka Kumar Thakur vs. Union of India** (2008) 6 SCC 1 and in **P.V. Indiresan v. Union of India** (2009) 7 SCC 300 as limiting the admission to OBC seats of only those OBC candidates who had secured marks within 10% below the marks of the last student admitted in the General Category. Though this Court had vide judgment dated 7th September, 2010 in **Apurva v. Union of India** 172 (2010) DLT 326 held that admission to the OBC category seats could not be so limited/restricted but the said judgment had till then not been accepted by

the respondent University. Moreover, an SLP converted into Civil Appeal No. 7084/2011 was also pending before the Supreme Court in this regard titled ***P.V. Indiresan v. UOI***. The Supreme Court vide judgment dated 18th August, 2011 reported as 2011 (9) SCALE 33 concurred with the judgment of this Court in ***Apurva*** (supra) and held that the admission to 27% OBC seats in accordance with the Central Educational Institutions (Reservation in Admission) Act, 2006 could not be so restricted but it appears that the respondent University in anticipation of the said judgment, on 12th August, 2011 itself notified the counselling for the remaining OBC seats which were so available.

5. It is the case of the appellant that she had continuously been approaching the respondent University and was always told that the question of further admissions, if any, to the OBC category seats would be decided after the pronouncement of the judgment of the Supreme Court in ***P.V. Indiresan (II)*** (supra); however she on 12th August, 2011 left for her native place for the marriage of her sister scheduled on 4th September, 2011 and as such missed the notice dated 12th August, 2011 and returned to Delhi on 8th September, 2011 only when she learnt that those with inferior

rank to her had been admitted. Contending that the seats in the OBC category were still available, she filed the writ petition.

6. The learned Single Judge in the judgment impugned in this appeal has held that as per the prospectus of admission, no individual notices of intimation of date of counselling were to be sent and the students were expected to keep themselves abreast of the developments either personally or through the website; that the appellant having not participated in the counselling notified on 12th August, 2011 and held on 20th August, 2011 had thus missed the bus and could not claim any right to admission. However, since the direction in *Anuj Sharma* (supra) had been given for converting the vacant OBC seats to General Category seats, liberty was granted to the appellant to seek admission to the said 50 vacant seats as a General Category student.

7. Notice of this appeal was issued and vide order dated 14th October, 2011, one of the 50 OBC seats directed to be converted into General Category was directed to be not filled up till further orders. Vide order dated 24th October, 2011 the counsel for the respondent University was directed to produce the records. The counsel for the respondent University

has today produced before us the letter dated 25th October, 2011 of the Faculty of Law to the Deputy Registrar (Legal) alongwith enclosures. The same discloses, that in compliance with the order dated 14th October, 2011, one seat has been kept vacant; that as against the 50 OBC seats converted into General Category, 56 students had to be admitted since seven candidates had the same marks as 49th candidate admitted in the General Category. The records also show that the special counselling in pursuance to the directions in *Anuj Sharma* (supra) was held on 18th/19th October, 2011.

8. We have heard the counsel for the parties. The counsel for the respondent University has reiterated that the appellant having not participated in the counselling held on 20th August, 2011 has been rightly denied the relief; it is further stated that if any indulgence is shown to the appellant it would open the floodgates inasmuch as other Reserved Category students who had also failed to appear in the counselling will also seek admission.

9. We are of the view that the principle that a student who fails to participate in counselling cannot be allowed to turn back the clock, cannot

be made applicable in the peculiar facts of the present case. The prospectus of information for admission specified the dates of counselling. As per the said prospectus the last counselling for the OBC Category was to be held on 20th July, 2011 and the vacant seats under any category to be filled up at 10.00 a.m. on Monday 25th July, 2011. However, inspite of the seats being vacant in the OBC Category, the respondent University did not hold the counselling on 20th July, 2011 or on 25th July, 2011 owing to its interpretation of the judgment in *Ashoka Kumar Thakur* and *P.V. Indiresan* (I) and inspite of the judgment in *Apurva*. The respondent however on 12th August, 2011 suddenly changed its views/opinion and opened up the remaining OBC seats for counselling. Though undoubtedly the respondent on 12th August, 2011 notified the next date of counselling as 20th August, 2011 but we are of the opinion that the appellant cannot be held to be so negligent as to be deprived of a seat to which she had an entitlement and which was available till she preferred the writ petition and which has been reserved for her vide interim orders in this appeal. It cannot be disputed that the University was then in a state of flux; it was awaiting the judgment in *P.V. Indiresan* (II). However even before the

judgment it decided to hold the counselling; the appellant could not be expected to visit the University every day to keep a track of further notices; though the Notification dated 12th August, 2011 is stated to have been put up on website also but again, not seeing it on the website for the reason of the appellant being busy in the marriage of her sister at native place cannot be said to be amounting to negligence to the extent of curtailing her entitlement or nipping her merit in the bud.

10. We cannot also lose sight of the fact that the respondent University did not wait for the judgment in *P.V. Indiresan* (II) as it was earlier intending to; had the University so waited, the counselling would have been much after 20th August, 2011 and perhaps after the time the appellant had returned from the wedding. The respondent University itself was dillydallying and cannot place the entire blame on the petitioner.

11. We are also of the view that the appellant having preferred the writ petition prior to the writ petition in *Anuj Sharma* and the learned Single Judge being of the view that the seats ought not to be allowed to remain vacant and having decided both the writ petitions i.e. one preferred by the appellant and the other preferred by Anuj Sharma, on the same day, ought

not to have deprived the appellant who belonged to the Category to which the seats belonged and ought to have directed the appellant to have been admitted. We are unable to uphold the impugned judgment directing the appellant belonging to the Reserved Category to compete with the Unreserved Category and which is contrary to the principles of reservation.

12. Though the counsel for the respondent has also contended that the session has begun but the admissions in pursuance to the judgment in *Anuj Sharma* have been made barely two weeks ago and with Diwali holidays in between, the appellant if directed to be admitted would be at par with the 56 students so admitted. It cannot also be lost sight of that though the direction was only of converting 50 OBC Category seats into the General Category seats but 56 students had to be admitted owing to 7 students having the same marks. Admission of another would not make any difference particularly when one seat was reserved for her.

13. As far as the apprehension expressed by the counsel for the respondent University of the order in favour of the petitioner opening the floodgates is concerned, we find that no other candidate has filed the petition as the appellant had filed before the said 50 OBC seats were

directed to be converted and filled up. What has prevailed with us is that the appellant had shown expediency and as such we are of the view that the order of admission of the appellant would not enable any other candidate to claim parity with her.

14. We accordingly allow the appeal and direct the respondent University to admit the appellant to the LL.B. First year Course.

No order as to costs.

Dasti under signature of the Court Master.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

OCTOBER 31, 2011/M.