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

+ **W.P.(C) 1843/2022 & CM APPL. 5298/2022 (Interim relief)**

Reserved on: 11.04.2022
Date of decision: 21.04.2022

ASHUTOSH SINGH

..... Petitioner

Through: Ms.Raavi Kumar Jotwani, Mr.Nishant
Kumar & Mr.Nitin Yadav, Advs.

versus

UNIVERSITY OF DELHI

..... Respondent

Through: Mr.Mohinder JS Rupal &
Ms.V.Bhawani, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present writ petition under Article 226 of the Constitution of India has been preferred by a student belonging to the Non Creamy Layer of the Other Backward Castes being aggrieved by the respondent/University's action in rejecting his candidature in the 'Spot Admission' round held on 31.12.2021 for the 2-year/3-year LL.M programme for the academic session 2021-22 on account of the caste certificate, submitted by him alongwith his application not being of the current financial year without giving him anytime to submit the requisite certificate.

Brief Factual Matrix

2. The petitioner, after acquiring his LLB degree from the respondent University, applied for admission to the 2-year/3-year LLM programme in the respondent University under the OBC category. As per the Admission Bulletin (hereinafter referred to as '*the bulletin*'), issued by the respondent for Post Graduate programmes, 2021-2022; the students were, for applying under the OBC category, required to furnish an OBC Non-Creamy Layer Certificate (hereinafter referred to as the '*OBC-NCL certificate*') for the financial year 2021-22 as issued after 31.03.2021. The bulletin however, contained a provision enabling students in the OBC category, who were not in possession of an OBC-NCL certificate for the financial year 2021-22 as issued after 31.03.2021, to apply for admission by uploading either the earlier OBC-NCL certificate or the acknowledgement slip of having applied for issuance of an OBC-NCL certificate for 2021-22, subject to their producing the requisite OBC-NCL certificate for 2021-22 at the time of admission.

3. Since the petitioner was already possessing an OBC-NCL certificate dated 15.07.2018 issued by the Government of Uttar Pradesh, he, while submitting his application for LLM uploaded a copy of this certificate dated 15.07.2018. Based on his registration as an OBC candidate, the petitioner on 28.09.2021, appeared in the Delhi University Entrance Test, 2021 (hereinafter referred to as '*the DUET 2021*') for admission to the LLM programme in which entrance test, he scored 180 marks out of a total of 400.

4. On 22.11.2021, the schedule for admission to the LLM programme in the Faculty of Law, Delhi University was published, wherein it was

provided that two allotment lists would be issued; the first on 23.11.2021 and the second on 30.11.2021. It was also stipulated that in case if required, a third allotment list would be issued on 07.12.2021. The dates for issuance of the second and third allotment list was thereafter changed to 10.12.2021 and 27.12.2021, respectively. The petitioner's name however did not appear in any of the three allotment lists.

5. On 30.12.2021, the respondent issued a notice informing the students that a fourth allotment list for 'spot admissions' to be carried out on the same date, would be published on 31.12.2021. To his good luck, the petitioner found his name in the fourth list which came to be issued on 31.12.2021. Vide a communication issued at 8.59 am on 31.12.2021, all the shortlisted candidates including the petitioner, were informed that they had to upload all the requisite documents between 9 am and 1 pm on the same day and a payment link for the payment of fees after the verification of documents would be generated by 10 pm on the same day.

6. Immediately after receiving the aforesaid mail, the petitioner uploaded all his documents including his OBC-NCL certificate dated 15.07.2018. While he was waiting to receive the payment link, he received an e-mail from the respondent at 10:27 pm, informing him that his admission was not approved as the OBC-NCL certificate submitted by him did not pertain to the financial year 2021-2022. On receiving the said communication, the petitioner, through his e-mail sent at 11.59 pm requested the respondent for time to submit the requisite OBC-NCL certificate for the financial year 2021-2022. Alongwith his request letter, the petitioner also enclosed a copy of the acknowledgment slip of his application for issuance of an OBC-NCL certificate for the financial year 2021-2022. The

respondent, however, rejected his request on the ground that, no opportunity for furnishing the documents at a later stage in the 'spot admissions' round could be granted.

7. Being aggrieved, the petitioner on 01.01.2022 made yet another representation to the respondent, once again seeking time to produce the requisite OBC-NCL certificate. Receiving no reply to his representation, the petitioner, armed with the requisite OBC-NCL certificate for the year 2021-22, approached this Court on 25.01.2022.

8. Upon notice being issued, the respondent has filed a counter affidavit opposing the petition primarily on the ground that the fourth allotment list, in which the petitioner found his name in 'spot admission' round was one where no further time could be granted for the production of documents. It has been further stated that the petitioner, despite being well aware right from August 2021, that for admission under the OBC category, he was required to produce an OBC-NCL certificate for the financial year 2021-22 issued after 31.03.2021, applied for the same only as late as on 28.12.2021 and therefore, it is he alone, who is to be blamed for non-approval of his admission in the spot admission round.

9. Before the learned counsel for the parties commenced arguments, this Court directed the learned counsel for the respondent to obtain instructions as to whether there were any existing vacant seats in the OBC category in the LLM programme for the academic year 2021-22 against which the petitioner could now be granted admission. The Court was informed that two seats in the OBC category in the 3-year LLM programme for the academic year 2021-2022 had remained unfilled.

Submissions of the parties

10. In support of the petition, Ms. Raavi Jotwani, learned counsel for the petitioner has made the following submissions: -

(i) The first and foremost submission of Ms. Jotwani is that it is only because the University itself had failed to adhere to the laid down Schedule for issuance of allotment lists that it had, in order to hurriedly complete the admission process by 31.12.2021, given an extremely narrow window of four hours to students in the fourth list. The University, instead of publishing the third list on 07.12.2021 as per the Schedule, published the same only on 27.12.2021, despite being well aware that the last date for admission was 31.12.2021. She submits that the University never informed the students that a spot counselling list would be issued on 31.12.2021 wherein they would be provided barely 4 hours to upload all the documents. The petitioner, therefore, had no reason to imagine that even after the issuance of the third merit list, he may still be shortlisted for admission. Moreover, the University had never released any consolidated merit list and therefore, the petitioner had no possible way to ascertain the probability of being offered admission in the respondent University. Furthermore, unlike the candidates in the first three lists, the candidates in the fourth list were treated unfairly and were denied the opportunity to submit undertaking to produce documents at a later stage.

(ii) Learned counsel for the petitioner then submits that even otherwise, denying admission to OBC candidates like the petitioner solely on the basis of a few days' delay in furnishing the requisite OBC certificate for the prescribed financial year was unfair and unjust, especially when there was

no denial to the fact that the petitioner was eligible for admission on the basis of his merit position. By placing reliance on the decision of a coordinate Bench of this Court in *W.P.(C)9525/2019* titled *Mohd. Asiph Shahid Ali v. University of Delhi*, she contends that bureaucratic delays in issuance of the renewed OBC-NCL certificate, which cannot be attributed to the petitioner ought not to be a ground to harm his academic future when he promptly produced the certificate dated 01.01.2022 as received by him on 05.01.2022.

(iii) Ms. Jotwani then submits that it was only vide the communication sent by the respondent at 10:27 p.m. on 31.12.2021 that the petitioner was, for the first time informed that since the admissions in the fourth allotment list were 'Spot Admissions', no further time could be granted to him for submitting the 'OBC-NCL' certificate. She, therefore, contends that the respondents' failure to disclose the manner and process of conducting admission to the stakeholders well in time was in gross violation of the 'Principle of Natural Justice'.

(iv) Finally, she submits that the rejection of the petitioner's candidature by the respondent not only suffers from complete arbitrariness but also shows gross apathy on their part. It is not as if the petitioner did not belong to the 'OBC-NCL' category till 01.01.2022, when the requisite certificate was issued by the concerned state authorities for the current financial year, or that there was even any doubt about his OBC status which could only be cleared by the issuance of the OBC-NCL certificate for the financial year 2021-2022. Since the petitioner already had a valid OBC-NCL certificate which had been accepted by the very same University at the time of his admission to the LLB course in 2018, the respondent University ought to

have granted him admission in the spot admission on 31.12.2021 by granting him suitable extension to furnish the certificate which was issued on 01.01.2022 and received by him on 05.01.2022. She therefore prays that the writ petition be allowed and the petitioner be granted admission against the available vacant seat in the OBC category for the academic year 2021-2022 in the 3-year LLM programme.

11. Per contra, Mr. Rupal while vehemently opposing the petition, has made the following submissions:

- (i) By relying on the Bulletin of Information issued by the respondent University, he contends that it is because of the petitioner's own negligence that his candidature was rejected by the respondent University, as despite being aware that he did not possess the OBC-NCL certificate for the year 2021-2022, he had applied for the LLM programme under the OBC category even though the admission process had commenced way back on 21.08.2021. The petitioner for inexplicable reasons waited till 28.12.2021 to apply for issuance of the requisite certificate despite knowing fully well that the last date for admissions was 31.12.2021. He, therefore, contends that the petitioner had ample time to obtain a fresh certificate in terms of the requirement laid down in the admission guidelines.
- (ii) Mr. Rupal further submits that the petitioner's plea that since the notification dated 22.11.2021 i.e., the admission schedule issued by the respondent University, did not contemplate a fourth list, he cannot be penalised for not producing the requisite OBC-NCL certificate at the time of admission, is wholly misplaced. He contends that the schedule issued

on 22.11.2021 specifically provided that further lists would be declared if the University deemed it necessary. Moreover, the petitioner, having failed to challenge either the notification dated 22.11.2021 or the notification dated 30.12.2021 providing that the fourth allotment list would be a spot admission round, cannot now contend that the condition for mandatory submission of all documents on 31.12.2021 itself, was in any manner, arbitrary.

- (iii) Mr. Rupal then contends that the petitioner's plea that the refusal to accept undertakings from students whose names were included in the fourth allotment list was discriminatory, is wholly without any merit as keeping in view the prescribed last date of 31.12.2021 for admissions, even the candidates in the third allotment list issued on 27.12.2021 were not allowed to furnish any undertakings for submission of documents.
- (iv) Without prejudice to his aforesaid plea that there was no infirmity in the respondent's decision to not grant time to the petitioner to produce the requisite OBC-NCL certificate, Mr. Rupal submits that even otherwise, the petitioner ought not to be granted any relief at this stage, when the first semester is already over and exams for the said semester are underway. He submits that the mere availability of unfilled seats in the OBC category cannot be a reason to grant admission to the petitioner at this belated stage in the academic session 2021-22. He, therefore, prays that the writ petition be dismissed.

Findings and Analysis

12. Having considered the submissions of the parties and perused the record, I find that only two issues arise for my consideration in the present petition. The first and foremost being as to whether the respondent was

justified in not approving the petitioner's admission on account of his failure to upload the renewed OBC-NCL certificate for the financial year 2021-22 alongwith his application in the four hours' time granted to the shortlisted candidates on 31.12.2021. Depending upon the answer to this question, the next issue which would need to be determined is as to whether the petitioner should at this stage be granted admission against the available unfilled seats for the OBC category in the academic session 2021-22 in the 3-year LLM programme.

13. Before delving into the rival submissions of the parties on this issue, it may be apposite to note in extensor, the communications exchanged between the parties from 31.12.2021. The same reads as under:

(i)

*Fri. Dec 31, 2021
8:59 AM*

*"Dear Candidate,
Congratulation!*

*Your name is shortlisted in the 4th admission list. Please upload all documents up to 1.00 pm today for verification. No undertaking shall be entertained for mark sheet, OBC, non-creamy layer, EWS, SC, ST certificates, and other essential documents. After verification of the documents, a payment link **will** be generated, and pay it up to 10.00 pm today.*

*Best Wishes
Admission Committee"*

(ii)

*Fri. Dec 31, 2021
10:27 PM*

“This is to inform you, that admissions under the fourth list are spot admissions, therefore all your documents should be complete. Your caste certificate not being of this financial year (mandatory requirement as per the University admission guidelines), we cannot approve your admission.

*Regards
Admissions Team”*

.....
(iii) *“Respected, Authority*

*Fri, Dec 31, 2021 at
11:59 PM*

This is to bring to your notice that I Ashutosh Singh(LLM passed out CLC batch 2021) presents a request to the fourth L. L.M admission list 2021. I have been shortlisted in the fourth admission list in the OBC category having Application No. 21LAWC1149714 And Roll No. 210620146034.1 have uploaded all the required documents upto time. I am hereby informed that I uploaded the OBC category certificate of 2018 year. I have applied for a renewed certificate, the issuance of which is under process. I am attaching the copy of the under processed application. As my admission is rejected due to the above issue I request the respected authority to kindly grant me a few days to submit the renewed certificate.

THANKS & REGARDS

*Sincerely,
Ashutosh Singh”*

(iv)

Sat, Jan 1,
2022
at 12:17 AM

“Dear Ashu,

The fourth list is under the spot admission category, in which only those candidates are admitted who upload the valid documents on the portal. No time is given for the submission of documents like the 1st and 2nd lists.

Thanks”

(v)

Sat, Jan 1, 2022
at 12:54 AM

“Sir kindly requesting you to grant few days, my renewed certificate is under process so I will submit in least possible time.

Thanks & Regards

*Your Sincerely
Ashutosh Singh”*

14. From the communications exchanged between the parties, what clearly emerges is that the petitioner was informed about his name being shortlisted for admission in the fourth admission list only on the 31.12.2021. A communication in this regard was served on all the shortlisted candidates only at 8:59am on 31.12.2021. It was only at this stage that the petitioner was informed that he was required to submit all the necessary documents by 1 pm i.e., within 4 hours from 8:59 am. It also emerges from the record that

the petitioner, who is an OBC candidate and had earlier secured admission in LLB in the respondent University in the OBC category on the basis of his OBC-NCL certificate dated 15.07.2018, had in August 2021, applied for admission to LLM programme on the basis of the same certificate. The petitioner's application was duly accepted as the bulletin itself permitted the students to apply on the basis of their earlier OBC certificate subject to their producing a certificate for the financial year 2021-22 at the time of admission. Para 8.2 of the bulletin which permits such a course of action may be noted hereinbelow:

"8.2 Reservation for Other Backward Classes (OBCs) Candidates"

27% of the total numbers of seats are reserved for candidates belonging to Other Backward Classes (OBC) in Govt. of India List.

The OBC candidates shall be given a relaxation both in the Minimum Eligibility in the Qualifying Examination as well as in the Minimum Eligibility (if any) in the Entrance Test to the extent of 10% of the Minimum Eligibility Marks prescribed for the Unreserved Category (UR) candidates. For example, if the Minimum Eligibility for admission to a program for the UR Category candidates is 50%, the Minimum Eligibility for the OBC candidates will be 45%.

The certificate must mention non-creamy layer status of the candidate (Non-creamy layer status issued by an authority mentioned in DOPT Office Memorandum no. 36012/22/93-Estd. (SCT) dated 15.11.1993).

The OBC candidates who belong to the 'Non-Creamy Layer' and whose caste appears in the Central List of the OBCs (notified by the Ministry of Social Justice and Empowerment

on the recommendations of the National Commission for Backward Classes available at the website <http://ncbc.nic.in/backward-classes/index.html>), shall be eligible to be considered for admission under the OBC category (Validity period of OBC certificate in respect of non-creamy layer status of the candidates as per DOPT Office Memorandum No. 36036/2/2013-Estt. (Res-1) dated 31 March 2016) The validity of the non-creamy layer certificate shall be for the financial year 2021-2022, issued after 31st March, 2021

If the candidate does not have the OBC non-creamy layer certificate of the latest financial year 2021 2022 at the time of registration, the candidate may upload the previously issued (older) OBC non creamy layer certificate or the acknowledgement slip of OBC non-creamy layer certificate application. However, at the time of admission, the candidate must produce the recent financial year's (2021-22) OBC non-creamy layer certificate, issued by the same competent authority. This additional certificate must have reference of his/her already issued original caste certificate.”

(emphasis supplied)

15. The petitioner's case is that when his name did not appear in any of the three allotment lists till 27.12.2021 with the last date of admission being 31.12.2021, there was no reason for him to apply for a fresh OBC-NCL certificate as he remained under a *bonafide* impression that he will not make it to the admission list. It is only on 27.12.2021, after the issuance of the third allotment list, that he realised that there were some unfilled seats and he may be able to get admission in the further lists, if any, issued by the respondent University. He then promptly applied for a renewed OBC-NCL certificate for the financial year 2021-22 on 28.12.2021. The same was issued on 01.01.2022 and received by him on 05.01.2022. It has, therefore,

been contended by the petitioner that once he had duly informed the respondent about his having applied for a renewed certificate on 28.12.2021, he ought to have been granted admission upon his undertaking to produce the fresh certificate as required within a week. The respondent has however, defended its action on the ground that being a spot admission round, no time could be granted to any candidate.

16. Having given my thoughtful consideration to the submissions of the parties, I find that while the respondent may be justified in urging that as the admission process had to be finalised before 31.12.2021, all the shortlisted candidates were required to produce their certificates at the time of admission, but what is important to note is that the students were given only 4 hours to upload all their certificates. The fact that no undertaking will be accepted in this round was also brought to their knowledge only on 31.12.2021. It is also an admitted position that in the first two lists, candidates were granted admission by accepting their undertakings to produce the requisite documents within the prescribed time. In the light of these facts, when the respondent was anxious to complete the admission process by 31.12.2021, even though its refusal to grant admission in the fourth list without complete documents may not be per se arbitrary, the fact remains that there remained two unfilled seats in the OBC category even as on 01.01.2022. In their eagerness to complete the admission process by 31.12.2021, the respondent has just brushed this vital factor that the shortlisted students were granted only four hours to upload their documents and that too without having been earlier put to notice that no undertakings would be accepted. Moreover, when the respondent had itself permitted students to apply for admission on basis of their earlier OBC-NCL

certificates, atleast some reasonable time ought to have been granted to the students like the petitioner to produce their documents especially when they had already applied for issuance of a renewed OBC-NCL certificate.

17. I cannot also lose sight of the fact that the purpose of reservation for OBC candidates is to encourage such students to fulfil their dream to obtain higher education. All the authorities, therefore, have a duty to take such steps in furtherance of this constitutional goal of reservation for OBC candidates. In facts of the present case, the manner in which the respondent had given barely 4 hours to the students to upload all their documents and have let two precious seats reserved for OBC candidates go waste, I have no hesitation in holding that the action of the respondent in not approving the petitioner's admission was arbitrary and wholly unsustainable.

18. However, what next? Should the petitioner be now granted admission in the 3 years LLM programme when exams for the first semester are already underway? Though on the first blush, the respondent's objection to grant any relief to the petitioner at this stage appears attractive but when considered in the light of the peculiar facts of this case, the respondent's objection deserves to be rejected. The petitioner has been before this Court from 25.01.2022, when the academic session had just begun. The matter had to be adjourned from time to time on account of various unavoidable reasons including time being granted on a number of occasions to the learned counsel for the respondent to obtain instructions and to file a counter affidavit. The course in question is a 6-semester course where students who miss or fail to clear a semester are routinely granted permission by the respondent to appear in the exams for the said semester along with the exams for the next semester. Moreover, it is not a case where there was any

negligence on the part of the petitioner. On the other hand, it is the respondent who failed to put students to advance notice that this fourth round would be a spot admission where unlike the earlier allotment lists, no undertaking would be accepted. The petitioner, in my considered opinion, cannot be left in the lurch or made to face fait accompli when his merit position is undisputed. He is, in my considered opinion, entitled to be granted admission to the 3-year LLM against the vacant seats for 2021-22 as he even as per the respondent was in the merit position for the said seat.

19. Reference in this regard may be made to the decision of a coordinate Bench of this Court in *Saumya Chopra v. University of Delhi (2018) SCC OnLine Del 13061* wherein a similar course of action was adopted by the Court. The relevant extracts of the *Saumya Chopra (supra)* reads as under:

“19. The cause of action, insofar as the petitioners were concerned would, indeed, have arisen only when, after the admission process was over, they found that they had not managed to secure admission. When, at that stage, they came to know that “no show” candidates, of the first three Admission Lists, had occupied the entire fourth Admission List, as well as 8 seats in the fifth Admission List, the petitioners, in my view, certainly had a right to agitate their claim before this Court. They cannot, in such circumstances, be non-suited, either on the ground of delay and laches, or even for the reason that classes have already commenced and continued for two months. Learned counsel for the petitioners has also correctly contended, in this regard, that, though classes commenced in the first week of August 2018, the admission process continued till 31 August, 2018 (admittedly the cut-off date) and that, therefore, there could be no question of the petitioners approaching the Court before 31 August, 2018, when the admission process came to a close, and they found themselves left in the lurch. They have approached this Court within a reasonable period of the said date, i.e. within less than a month

and cannot, therefore, be thrown out, without addressing their grievance on merits. Even otherwise, applying the principle of lis pendens, the fact that classes may have commenced, and continued for two months, cannot afford a ground to deny relief to the petitioners.”

20. For the aforesaid reasons, the writ petition is allowed. The respondent is directed to forthwith grant admission to the petitioner in the 3-year LLM programme for the academic year 2021-22. As the exams for the 1st semester are already underway, the petitioner will be permitted to appear in the 1st semester exams along with the exams for subsequent semesters as per the practice being followed by the University. In case the petitioner is required to attend any additional classes, the respondent will issue appropriate instructions in this regard which the petitioner will be required to follow.

(REKHA PALLI)
JUDGE

APRIL 21, 2022

kk/ms