

**Ms. Jyoti Yadav and anr Vs. Gnctd and anr**

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**SooperKanoon Citation :** [sooperkanoon.com/924515](http://sooperkanoon.com/924515)

**Court :** Delhi

**Decided On :** Feb-01-2012

**Appellant :** Ms. Jyoti Yadav and anr

**Respondent :** Gnctd and anr

**Advocate for Def. :** Mr. A.K. Singh, Ms. Sujata Kashyap, Ms. Latika Chaudhary, Mrs. Avnish Ahlawat

**Advocate for Pet/Ap. :** Ms. Deepali Gupta

**Judgement :**

\*IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision: 1st February, 2012 + W.P.(C) 7093/2010 % MS. JYOTI YADAV and ANR. .... Petitioners Through: Ms. Deepali Gupta, Adv. Versus GNCTD AND ANR. .... Respondents Through: Mr. A.K. Singh, Adv. for Ms. Sujata Kashyap, Adv. for R-1. Ms. Latika Chaudhary, Adv. for Mrs. Avnish Ahlawat, Adv. for R-2. CORAM :- HON'BLE THE ACTING CHIEF JUSTICE HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW JUDGMENT RAJIV SAHAI ENDLAW, J..

1. The two petitioners have filed this writ petition impugning the selection process, for shortlisting students for Elementary Teacher Education (ETE) Diploma course for the session 2010-12, as prescribed in the prospectus published by the respondent No.2 State Council of Educational Research and Training (SCERT), particularly Clause 5 of Chapter-IV and Clause 6 of Chapter-XII thereof; the

petitioners W.P.(C) 7093/2010 *Page 1 of 15* axiomatically also seek quashing of the selection and direction for inclusion of their own names in the shortlist and admission to the course..

2. Though, the prospectus aforesaid was made available and the applications were to be submitted from 28.05.2010 to 08.06.2010; the applications were scrutinized and rejected on 18.06.2010; the candidates were to report on 21<sup>st</sup> or 22<sup>nd</sup> June, 2010; the first list of admission was published on 25.06.2010, the second list on 07.07.2010 and the waitlist on 17.07.2010; admissions made from 20.07.2010 to 23.07.2010 and the academic session commenced from 26.07.2010, this writ petition was filed only in or about October, 2010 and came up before the Court first on 25.10.2010 when notice thereof was issued. Counter affidavit was filed by the respondents. No rejoinder has been filed by the petitioners inspite of opportunity. The counsels have been heard..

3. The two petitioners claim to be belonging to OBC category and applied for admission in the said category for which 15% reservation was prescribed. The challenge by the petitioners in this petition to the admission process is predicated on the fact that they had 78% and 76% W.P.(C) 7093/2010 *Page 2 of 15* marks respectively in their Senior Secondary School Examination and which marks were the primary criterion for shortlisting, while they were not admitted, applicants with lower marks in the Senior Secondary School Examination were admitted to unreserved category..

4. Clause 5 of Chapter-IV and Clause 6 of Chapter-XII of the prospectus for admission for the year 2010-12 were as under: "5. Column.

5. Candidate is required to select only one category, best suitable to him / her in one application form and fill up separate application form for each category. Write the abbreviation of category and the applicable code of the category in the boxes. The abbreviation and code number specified to different categories are given in CHAPTER-III (4) Reservation Provision. Candidate is also required to darken only one corresponding circle for his / her category. If a candidate belongs to more than one category may fill-up separate application form for each category belongs. The candidate who leaves category column blank, shall be treated under general

category. No request for change in W.P.(C) 7093/2010 *Page 3 of 15* category will be entertained. An eligible candidate of a particular category will be considered for admission in that category only, in order of merit and subject to availability of vacant seat." "6. One candidate shall submit separate application form for one admission process (ETE course of Govt. DIETs or ETE course of Self Financing Private Institute or ECCE course of SFS Private Institute). However, if a candidate is willing to apply for all the 3 admission processes, he / she has to fill up three separate application forms for each admission process."

5. The petitioners admittedly filled up only one form claiming admission in the OBC category. They did not fill up a separate application form for admission in the unreserved category and hence were not considered for admission in the unreserved category where students with lower marks than the petitioners were admitted; in the OBC category, the last student admitted had marks higher than the petitioners. W.P.(C) 7093/2010 *Page 4 of 15*.

6. The contention of the petitioners is that in the prospectus for admission for the previous academic year 2009-11, there was no such requirement for filling up of separate application forms for being considered in separate categories; on the contrary, as per the prospectus of the previous year, a reserved category candidate was to be considered for admission under the general merit if qualifies for the same, in addition to the category opted by the candidate and a reserved category candidate selected under general merit was to be counted as general category candidate, though for allotment of institute, the reserved category standing in general merit was to be given priority over the candidate having lower merit order of the respective reserved category. It is the contention of the petitioners that there was no basis whatsoever for the respondent No.2 SCERT to change the procedure for selection by requiring the applicants to apply separately for unreserved and reserved category. It is contended that the same has resulted in applicants from the reserved category though higher in the order of merit losing out to the candidates belonging to the unreserved category with lower merit. It is yet further contended that the petitioners were not aware of the requirement to fill separate forms and the W.P.(C) 7093/2010 *Page 5 of 15* Clauses aforesaid in the prospectus inadvertently escaped their attention since the advertisement

published in the newspapers only required filling up of separate application forms for District Institutes of Education and Training (DIETs), for ETE recognized private institutes and for ECCE recognized private institutes and did not specify that separate applications had to be filled up for being considered under separate categories. It is argued that the procedure adopted by the respondents has resulted in reverse discrimination against the petitioners. As far as the delay in filing of this petition is concerned, the petitioners claim that they had earlier filed W.P.(C) No.5536/2010 which was dismissed vide judgment dated 16.08.2010; that they had preferred intra court appeal being LPA No.643/2010 thereagainst but which was withdrawn with liberty to challenge the validity of the Clauses aforesaid in the prospectus and whereafter the present writ petition has been filed. The petitioners in the writ petition itself rely on *Indra Sawhney Vs. UOI* 1992 Supp. (3) SCC 217, *UOI Vs. Virpal Singh Chauhan* (1995) 6 SCC 684, *Ritesh R. Sah Vs. Dr. Y.L. Yamul* (1996) 3 SCC 253 and *UOI Vs. Satya Prakash* (2006) 4 SCC.

500. They also contend that though the seats to be reserved for the W.P.(C) 7093/2010 *Page 6 of 15* OBC category are to be 27% as per the Policy of the government and also as per the Central Educational Institutions (Reservation in Admission) Act, 2006 but the respondent No.2 SCERT is reserving only 15% of the seats for OBCs..

7. The respondent No.2 SCERT in its counter affidavit has pleaded, that the petitioners having participated in the selection procedure, upon being unsuccessful are not entitled to challenge the same and reliance in this regard is placed on *Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand* (2011) 1 SCC 150; that SCERT is an autonomous body of the Government of NCT of Delhi (GNCTD) established in 1988 and is the nodal agency recognized by National Council of Teacher Education (NCTE) for admission, curriculum construction, course conduct, guidance, examination and certification of the pre-service training programme for elementary school teachers; that SCERT runs a two year diploma in ETE which is offered in nine DIETs and eighteen recognized private institutes in Delhi; that as per the provisions of the National Council for Teacher Education Act, 1993, the W.P.(C) 7093/2010 *Page 7 of 15* State Government is empowered to frame its own policy for reservation for admission of candidates in Elementary

Education course; that the prospectus under challenge is as per the provisions of NCTE Act and approved by the GNCTD; that reservation procedure incorporated in the said prospectus is as per the reservation policy of the GNCTD; that if a candidate wanted to be considered in more than one category, he / she was required to fill up separate form for each category; that the said procedure was prescribed to ensure that no seat in any category remains unutilized; that reservation for OBC category was kept at 15% to ensure that the total reservation did not exceed 50%; that the petitioners have themselves to blame for not reading the prospectus and not filling up separate form for consideration in the unreserved category..

8. The counsel for the petitioners during the hearing also referred to judgment of the Division Bench of this Court in *Tej Pal Yadav Vs. UOI* 174 (2010) DLT 510 and to *UOI Vs. Ramesh Ram* AIR 2010 SC 2691..

9. At the outset it may be noted that the petitioners, neither at the time of filing of this writ petition (by that time the academic session to which W.P.(C) 7093/2010 *Page 8 of 15* admission was claimed was more than three months through) nor now could / can be granted the relief of admission to the course which commenced on 26.07.2010 and must be now nearing completion and the writ petition qua the said relief is now infructuous. We have recently in judgment dated 20.12.2011 in LPA No.1069/2011 titled *Rajat Goel Vs. Ministry of Human Resource and Development (Government of India)* held that in such cases, even if the petitioners are found to have been wrongfully denied admission, no direction for admission in the next academic year can be issued since the same would be to the prejudice of the aspirants for admission in the next academic session, the seats available for admission for whom will stand so reduced. It was held that to succeed in the race in the next year, one is required to participate therein and cannot succeed on the basis of the result of the previous year..

10. However, since challenge has been made to the procedure for admission as well as to the reservation policy of the respondents and which is likely to be repeated year after year, need is felt to adjudicate on the said aspect also rather than merely dismiss the petition as infructuous. W.P.(C) 7093/2010 *Page 9 of 15*.

11. As far as the legal position is concerned, neither has any contest been raised by the respondents nor is there any scope for ambiguity. The candidates selected in General (unreserved) category on their own merit, even if belonging to the reserved category cannot be counted in the reserved category so as to reduce the number of seats prescribed for the reserved category. Reserved category candidates can compete for unreserved category seats. An unreserved seat is available to all the candidates but a reserved seat is confined for candidates of that particular category. In an open competition, while the general category candidates are entitled to compete only against unreserved seats but a reserved category candidate in addition to his right to be considered against the reserved seat is also entitled to be considered against unreserved seats. His option in the application, for consideration of his candidature for a reserved seat is only a declaration of his intention to be considered against reserved seats without depriving himself of the right to be considered against an unreserved seat. Articles 15 and 16 of the Constitution of India confer certain benefits on the persons belonging to these categories but which benefits are not in substitution of any other right which may W.P.(C) 7093/2010 *Page 10 of 15* otherwise be available to them as citizens of the country. Members belonging to the reserved category cannot be asked to occupy only the reserved seats; they are free to occupy any seat including unreserved seats; however the requirement of law is that while claiming selection against unreserved seats, they should prove their merit like any other citizen who is not entitled to the benefit of reservation..

12. The respondent No.2 SCERT in its prospectus under challenge also did not seek to confine the reserved category candidates to the reserved seats only. The only difference was that to be entitled to be considered for the unreserved seats they were required to fill up a separate application form. What thus falls for consideration is, whether the requirement of filling up of a separate application form can be said to be contrary to the law as recorded above..

13. We find that W.P.(C) No.5536/2010 earlier preferred by the petitioners (and intra court appeal whereagainst was withdrawn as aforesaid) was dismissed relying on UOI Vs. Dalbir Singh AIR 2009 SC 2438 and the judgment of the Division Bench of this Court in Anand Lal W.P.(C) 7093/2010 *Page 11 of 15* Yadav

Vs. NCT of Delhi MANU/DE/1758/2002 laying down that having opted to have his/her case considered only under the OBC category, a candidate thereafter cannot claim that his/her case requires to be considered in the general merit, only because he/she had secured better percentage of marks than the last selected candidate in the general category list and that candidates cannot be permitted to change the category under which they originally applied after the last date fixed for receipt of applications..

14. It thus cannot ex facie be said that the action of the respondent SCERT in requiring the candidates to fill up separate forms for consideration in separate categories is bad. However having observed so, we are still constrained to observe that the law as enunciated under various dicta and summed up in para 11 above does appear to sway in favour of a candidate applying in the reserved category not forfeiting his right for consideration in the unreserved category. A better course for the respondents to follow in future thus appears to be in not requiring separate applications to be filled up for the reserved and unreserved category even W.P.(C) 7093/2010 *Page 12 of 15* if such procedure were to serve the administrative convenience of the respondents better. Reservation is a benefit in addition to the already existing right including the Fundamental Right of equality. If any scheme of reservation or the procedure evolved with a view to give effect to such scheme is made to depend upon the condition of truncating the fundamental or any right of an individual, such scheme of reservation would be contrary to the constitutional provisions and the law and to the extent it curtails fundamental right or any other right of a person belonging to such category would be liable to be declared illegal. The Apex Court in *Jitendra Kumar Singh Vs. State of U.P.* (2010) 3 SCC 119 also held that a reserved category candidate cannot be deprived of his right to be considered against general vacancy on the basis of merit. The practice of preparing category wise list was also deprecated in para 43 of *A.P. Public Service Commission Vs. Balaji Badhavath* (2009) 5 SCC 1 as being detrimental to the interest of meritorious candidates belonging to the reserved category. W.P.(C) 7093/2010 *Page 13 of 15*.

15. The challenge thus by the petitioners to the Clauses aforesaid of the prospectus published by the respondents for admission to the academic year

2010-12 succeeds..

16. As far as the second aspect of the challenge, of the reservation for the OBC category being required to be 27% instead of 15% as prevalent is concerned, the petitioners rely on the Office Memorandum No.36012/22/93-Estt. (SCT) dated 08.09.1993 of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), Government of India. However, the respondents are Institutions of the GNCTD and not of the Central Government. It is the categorical stand of the respondents that they are not bound by the Policy of the Government of India of reservation for OBC category to the extent of 27%. Similarly, Central Educational Institutions (Reservation in Admission) Act, 2006 also pertains to the Institutions of the Central Government only and would have no application to the respondents. The petitioners have thus been unable to make out a case for issuance of any directions to the respondents to reserve 27% seats for the OBC category. W.P.(C) 7093/2010 Page 14 of 15.

17. The petition is therefore partly allowed. The respondent No.2 SCERT is directed to, in future, consider the candidates applying for admission in the reserved categories in the unreserved category also, on the basis of merit without requiring them to fill up and irrespective of whether they have filled up or not, a separate application form. It is further declared that the reserved category candidates admitted to the unreserved category on the basis of merit shall not be counted in the reserved category so as to reduce the number of seats prescribed for the reserved category. No order as to costs. RAJIV SAHAI ENDLAW, J ACTING CHIEF JUSTICE FEBRUARY 01, 2012 'gsr' W.P.(C) 7093/2010 Page 15 of 15

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