2024:DHC:6589-DB

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

\+ LPA 846/2024 & CM APPL. 49559/2024, CM APPL. 49560/2024, CM APPL. 49561/2024

ST. STEPHEN COLLEGE .....Appellant

Through: Mr. Romy Chacko with Mr. Kartik Venu, Mr. Akshat Singh, Ms. Himani Sharma, Mr. Varun Mudgal and Mr. Sachin Dalal, Advs.

versus

HARGUN SINGH AHLUWALIA AND ORS. .....Respondents

Through: Mr. Rishi Malhotra, Sr. Advocate with Mr. Ravinder Singh, Ms. Ansuiya, Ms. Raveesha Gupta and Mr. Shivansh Maini, Advs.
Mr. Mohinder JS Rupal and Mr. Hardik Rupal, Advs. for R-7/DU.
Mr. Sanjay Khanna, Standing Counsel, Ms. Pragya Bhushan, Mr. Karandeep Singh, Mr.Tarandeep Singh, Advocates for R-8/NTA.

% Date of Decision: 29th August, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

1. Present appeal has been filed challenging the impugned interim order

dated 23rd August, 2024 passed by the learned Single Judge in W.P.(C) 11695/2024, whereby the Respondent nos. 1 to 6 were granted provisional admission in the Appellant College in accordance with the allocation by the Respondent No. 7-Delhi University.

2. Learned senior counsel for the Appellant states that Respondent no.7-Delhi University has, instead of allocating students against the sanctioned and permitted intake, made excess allocations which according to the Respondent no. 7-Delhi University, were for convenience as normally all the students do not take admissions, resulting in some seats remaining vacant. He emphasises that admission in Appellant-College is much sought after and students allotted to different Programs of study in the college ordinarily accept the same and the number of vacancies after the initial allotment are very minimal or nil. He states that after raising protest against such policy, the Respondent no. 7 Delhi University vide its e-mail dated 19th August, 2024 (Page 239) agreed that excess allotment to the Appellant-College would be limited to 5% in each program.

3. He, however, states that contrary to the aforesaid commitment/ undertaking, the Respondent no. 7-Delhi University allotted more students over and above the permitted intake and also more than 5% excess intake agreed upon by the college. To illustrate the point, he states that in the B.A. Programme course the Delhi University has allotted 36 students as against the sanctioned strength of 24 students in the General Category i.e. in excess of 50% of the sanctioned strength. He states that as the intake of General Category students has been increased by the university, the intake of minority students would also have to be proportionately increased.

According to him if the increase in intake of both the categories is given effect to, the strength of the class would become much beyond the sanctioned strength.

4. Learned senior counsel for the Appellant also submits that the impugned order has violated the Appellant's right to select students for admission, as part of its fundamental right under Article 30 of the Constitution to establish and administer minority educational institutions. He states that such right of minority institution was recognized by the Supreme Court in ***St. Stephen's College v. University of Delhi, (1992)1 SCC 558***. He states that such right cannot be interfered with or taken away as has been sought to be done by the Respondent no. 7 Delhi University by the impugned order.

5. He lastly states that the impugned order has been passed in undue haste and without giving adequate notice to the Appellant as a copy of the writ petition was not served upon the Appellant in advance and despite request, sufficient time was not given to the Appellant to prepare and obtain instructions.

6. *Per contra*, Mr. Rupal, learned counsel for Delhi University states that an advance copy of the present appeal has not been served upon him. He prays for some time to obtain instructions. He, however, states that Delhi University has allocated only 5% extra seats in the unreserved category in the Appellant college.

7. Learned senior counsel for Respondents no.1 to 6 submits that the present appeal is not maintainable. In support of his submission, he relies upon the judgment of the Apex Court in ***Midnapore Peoples' Coop. Bank***

Ltd. v. Chunilal Nanda and Ors. (2006) 5 SCC 399 wherein it has been held as under:

> *"15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:*
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> *(i) Orders which finally decide a question or issue in controversy in the main case.*
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> *(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main case.*
>
> *(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.*
>
> *(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.*
>
> *(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.*
>
> *16. The term "judgment" occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, "judgments" for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not "judgments" for the purpose of filing appeals provided under the Letters Patent."*

8. This Court is of the opinion that the impugned order does not fall in either category (iv) or (v) of Para 15 of the ***Midnapore*** *(supra)* judgment. Though the impugned order states that provisional admission has been granted to Respondents no.1 to 6 by virtue of an interim order, yet this Court is of the view that it has finality attached to it as it affects the vital and

valuable rights and obligations of the parties. Consequently, the impugned interim order falls under categories (i) to (iii) of paragraph 15 of the ***Midnapore*** (supra) judgment. The impugned judgment also creates a scenario which will be difficult to undo.

9. During the course of hearing, this Court has asked the learned senior counsel for Respondents no.1 to 6 as to whether the Respondents are willing to give effect to paras 20 and 21 of the impugned order by taking admission in colleges according to their second preference. However, learned senior counsel for Respondents no.1 to 6 states that they would not take admission in the colleges according to their second preference and would insist on admission in the Appellant college as they have already been allotted seats. The aforesaid submission of learned senior counsel for Respondents no.1 to 6 lends credence to the *prima facie* view of this Court that the Respondents do not treat their admission as provisional but final.

11. The Apex Court in large number of cases has stated that the Courts should be circumspect in directing admission of students by virtue of interim orders and that too without giving sufficient notice to the Respondents. The observations of the Supreme Court in ***Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and Others, (2016) 11 SCC 530*** are reproduced hereunder:

> *"27. That apart, we are of the opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25-9-2015. There was no need for the High Court to rush into an area that MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved — what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it*

> *enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.*
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> *28. Whichever way the matter is looked at, we find no justification for the orders passed by the High Court, particularly the order dated 25-9-2015 and order dated 4-3- 2016."*

12. The aforesaid judgment was reiterated by the Supreme Court in ***Medical Council of India v. N.C. Medical College and Hospital and Other, Civil Appeal No.6001/2018*** dated 4th July, 2018**.**

13. This Court is further of the view that the Appellant's argument that excessive allocation has been made by the University has not been rebutted with specificity by the University. This Court would like the University to appreciate that excess allocations of seats in a college would not only create a burden on the available limited infrastructure but would also impair the ability of the college to impart quality education to its students. Such action could also jeopardise the careers of young students.

14. Keeping in view the fact that the matter is listed for final hearing before the learned Single Judge, this Court disposes of the present appeal by directing the Respondents to file their counter affidavit/rejoinder affidavit within three working days. The date of hearing before the learned Single Judge is pre-poned to 4th September, 2024.

15. Till further orders, the Respondents no.1 to 6 shall be at liberty to take admission in their second preference colleges if they so desire in terms of paras 20 and 21 of the impugned order. The Delhi University will facilitate

the Respondents no.1 to 6 in this process, if they so desire.

16. Since the final hearing before the learned Single Judge has been expedited and with a view to balance the equities, this Court directs that till the disposal of the writ petition, the Respondents no.1 to 6 shall not attend the classes at the Appellant-college. This Court clarifies that the observations in this order are only for determination of the present appeal. The rights and contentions of all the parties are left open.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

AUGUST 29, 2024
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