

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

Judgment reserved on: 23.12.2015

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Judgment delivered on: 19.01.2016

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WP(C) 7574/2015

GAUTAM SHARMA

..... Petitioners

Versus

JAWAHAR LAL NEHRU UNIVERSITY & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. A. Mariarputham, Sr. Advocate with Mr A. Subba Rao, Mr Yusuf Khan, Ms Anuradha Arputham, Ms Savita Singh & Mr K.L.D.S. Vinober, Advocates.

Mr Rajeev K. Virmani, Sr. Advocate/ Amicus Curiae.

For the Respondents: Mr. Mohinder J.S. Rupal & Ms Simran Jeet, Advocates for R-1 to 3.
Mr Bhagvan Swarup Shukla, CGSC with Mr Pradeep Desodia,
Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

WP(C) 7574/2015 & CM No. 14574/2015 (interim directions)

PREFATORY FACTS

1. The petitioner, who falls in the category of Other Backward Classes (OBC) seeks admission in the M. Phil Programme of Centre for Social Health and Public Medicine, offered by respondent no.1 i.e. Jawahar Lal University (hereinafter referred to as "JNU"), qua academic year 2015-2016.

1.1 Admittedly, the petitioner sat in the entrance exam held for this purpose, by JNU and, in the exam so held, stood second in the merit list drawn up for the OBC category. The petitioner was, however, denied admission to the M. Phil Programme for the reason that he had failed to secure the minimum,

prescribed, eligibility marks in the Master's degree obtained by him. Qua the Centre for Social Medicine and Public Health, the JNU, has pegged the minimum eligibility marks at 55%, whereas the petitioner has secured 50% marks in his Master's degree, which incidentally, as indicated above, is a degree he has obtained from JNU. The petitioner has obtained his Master's in Russian language.

1.2 Apparently, the minimum eligibility criteria prescribed by JNU for admission to the M.Phil Programme, which as noticed above, was fixed at 55%, makes, no distinction between a candidate who falls in the General Category (i.e. the unreserved category) as against one who falls in the OBC category. There is, however, a relaxation extended, in favour of candidates falling in the SC/ST category. In so far as candidates falling in the SC/ST category are concerned, they are required to simply pass the qualifying examination, that is, the base-course. As against this, candidates falling in the OBC category, as adverted to above, are required to secure 55% marks, like those candidates who fall in an unreserved category.

1.3 This disparity is at the heart of the controversy which arises for adjudication in the instant writ petition.

2. Before I proceed further, let me, broadly, notice the relevant facts and circumstances which led to the institution of the writ petition in this court. In February, 2015, JNU, it appears, had taken out its prospectus for the academic year 2015-2016, in respect of admissions for various courses offered by it, including the M. Phil Programme. As per the provisions of the prospectus, as noticed above, the prospective candidates were required to appear in an entrance exam followed by a viva voce.

2.1 It is important to note, that at the stage of the entrance examination, 10% relaxation is offered in favour of candidates falling in the OBC category as

against those who fall in General Category. Therefore, while candidates falling in the General Category were required to secure 40 marks, in so far as those candidates who fell in the OBC category, they had to secure a minimum of 36 marks. Thus, a 10% relaxation in marks was given to the OBC candidates in contrast to those falling in General Category, at the entrance examination stage.

2.2 As would be evident from my narration hereinabove, qua the base-degree i.e. the Master's degree, JNU offered no relaxation to candidates falling in OBC category. Thus, candidates belonging to both OBC and General Category, were required to obtain a minimum of 55% marks vis-a-vis their base-degree i.e. Master's degree.

2.3 This was, however, not the case, as noticed above, vis-a-vis the SC/ST candidates.

2.4 On 19.05.2015, the petitioner took his M. Phil Programme entrance examination. Around the same time, the petitioner also sat for his final examination, for Master's in Russian Language.

2.5 On 03.07.2015, JNU, declared the result for the entrance examination vis-a-vis the M.Phil Programme. The petitioner was among those 70% candidates, who were called for viva voce. Consequent thereto, the petitioner appeared before the interview board, constituted by JNU, on 14.07.2015.

2.6 In and around the aforesaid date, JNU declared the result for the Master's degree in Russian Language. The petitioner secured 50% marks in the said examination.

2.7 On 27.07.2015, JNU put up a list of 18 successful candidates, who had been selected for the M.Phil Programme; having cleared the entrance examination. As noticed above, in his category (i.e. the OBC category), the petitioner was ranked second (2nd).

2.8 The petitioner's joy was, however, short-lived, as he found out, on 24.07.2015, that he had not secured admission in the M.Phil Programme since, in respect of his base-degree (i.e. Master's degree), he had not secured 55% marks.

2.9 Resultantly, the petitioner submitted a representation dated 29.07.2015 to the Vice Chancellor, JNU. In the said representation, the petitioner brought to fore the fact that though he, belonged to the OBC category, he had been put at par with candidates falling in the General Category. In support of his plea, for grant of admission, the petitioner alluded to the UGC's guidelines for National Eligibility Test (in short the NET)/ Junior Research Fellowship (JRF), wherein a relaxation of 10% is provided vis-a-vis OBC candidates. The petitioner, also indicated to the Vice-Chancellor, that since, his father had died in the previous year, he had to take leave from his studies for a period of one month; an unforeseen event, which had impacted his performance.

3. Apparently, there was no response from the Vice Chancellor, JNU to the representation of the petitioner.

3.1 The petitioner, further avers that though his documents, submitted for admission, were rejected, on 31.07.2015, a copy of the demand draft filed to secure the admission, along with an application for extension of time, was accepted by the admission branch of JNU.

3.2 It is the petitioner's case that he was granted extension for seeking admission uptill 14.08.2015.

3.3 It appears, since, there was no response to the earlier representation, the petitioner, dispatched yet another representation dated 05.08.2015, to the Vice-Chancellor, JNU. This time around, as well, there was no response received by the petitioner, to his entreaties for grant of admission.

3.4 Consequently, the petitioner was propelled to move this court by way of

the instant writ petition.

4. The record shows that the petition came up for hearing before this court, for the first time, on 10.08.2015. On the said date, respondent no. 1 to 3, which, in effect, is the JNU, was represented by Mr Rupal, while respondent no.4 i.e. the Union of India (in short the UOI), was represented by Mr Shukla.

4.1 On that date, my predecessor, inquired from the counsel for the petitioner as to the basis on which the petitioner professed that there should be "a lower eligibility criteria for admission" qua candidates falling in the OBC category. In response, learned counsel for the petitioner had relied upon the observations made in *P.V. Indiresan (2) vs Union of India & Ors. (2011) 8 SCC 441*. The record of proceedings shows that counsel was queried further as to whether the dicta in *P.V. Indiresan (2) vs Union of India* would apply to M.Phil Programme, and since, the counsel for the petitioner was not able to, immediately, answer the question, the matter was stood over to 12.08.2015.

4.2 On that date, accommodation was sought by Mr Rupal, the learned counsel for JNU. Resultantly, the matter was fixed for further proceedings, on 14.08.2015.

4.3 On 14.08.2015, counsel for JNU, inter alia, informed the court that the petitioner had failed to disclose that, extension of time for admission in M. Phil Programme, was granted till that day (i.e. 14.08.2015), for the reason that he had applied for re-evaluation of marks obtained in his Master's degree. Mr Rupal, further informed the court, that, as a result of the re-evaluation exercise, the petitioner's grade in Practical Russian (W), bearing Code No. RU509, stood reduced from B- (minus) to C. It was indicated to the court by Mr Rupal that, resultantly, the petitioner's total marks stood reduced from 50% to 49%.

4.4 Based on this, it was contended that, even if, the petitioner's contention was accepted, and a relaxation in the minimum eligibility marks was granted to

him vis-à-vis the base-degree (i.e. the Master's degree), to the extent of 10% on the ground that he fell in the OBC category, he would still not secure admission in the M.Phil Programme. In other words, even if, the minimum eligibility marks were reduced qua candidates falling in the OBC category, from 55% to 50%, even then, the petitioner, would not secure admission in the M.Phil Programme as the re-evaluation exercise had indicated that he had secured 49% marks in his Master's degree in Russian language.

4.5 In view of this input, my predecessor, came to the conclusion that the petitioner would not be entitled to admission in the current academic year. While observing so, the court, however, prima facie, came around to the view that the rationale offered by Mr Rupal on behalf of JNU (which was that, since, a 10% relaxation had been offered in the entrance examination to the candidates falling in the OBC category, as against those in the General Category, and therefore, no further relaxation could be offered vis-a-vis the eligibility marks in respect of the base-degree i.e. the Master's degree), was not correct.

4.6 Since, the issue, according to the learned Judge, could arise in subsequent years, he directed completion of pleadings. Accordingly, time was given to both JNU and the UOI to file their counter affidavit(s). In the very same proceeding, the learned Judge also appointed Mr Rajiv K. Virmani, Sr. Advocate as an amicus curiae, to assist the court in the adjudication of the issues which arose for consideration in the matter. Notice was also issued to the learned Additional Solicitor General as well as the standing counsel for the Govt. of NCT of Delhi (Civil).

5. The record would show that, on 28.08.2015, the petitioner moved an interlocutory application being: CM No. 17516/2015, whereby he brought to fore the fact that his grade had been reverted from C to B- (minus) by JNU,

and thus, he was entitled to admission; which, as noticed above, was his original grade. Since, the earlier order had been passed by my predecessor, this application, was put before him, which was disposed of vide order dated 18.09.2015.

5.1 In the said order, the learned Judge noticed the fact that JNU vide communication dated 24.08.2015 had restored the petitioner's grade to B-(minus), and that, he had thus, in effect, secured 50% marks in his Master's degree, as contended by him when he had first come to court.

5.2 The learned Judge, however, dismissed the application on the ground that since, the last date of admission, which was 14.08.2015, had been crossed, the petitioner could not secure admission in the current academic session i.e. 2015-2016. The writ petition was, however, listed for consideration of legal issues adverted to in his previous order dated 14.08.2015.

6. The petitioner, being aggrieved by the dismissal of his application, preferred an appeal before the Division Bench. The Division Bench vide order dated 08.12.2015 disposed of the appeal with the observation that no admission could be granted for the academic session 2015-2016 by way of an interim order, and that, what was required to be done, instead, was, to expeditiously, dispose of the writ petition. Consequently, the Division Bench advanced the date of hearing, in the writ petition, to 14.12.2015, as against the date fixed earlier i.e. 15.02.2016.

7. It is in this background, that arguments in the writ petition were heard on 14.12.2015 and 15.12.2015. Judgement was reserved by me on the latter date i.e. 15.12.2015. Since, certain clarifications were required, the matter, was listed in court for directions on 22.12.2015. On that date, counsel for parties sought time to respond to the queries raised by me. Resultantly, the matter was fixed for further proceedings on 23.12.2015. On receipt of some answers to

the queries raised, the writ petition was reserved for judgement on that date.

SUBMISSIONS OF COUNSELS

8. It is in this background that arguments on behalf of the petitioner were advanced by Mr Mariarputham, while the submissions on behalf of JNU were made by Mr Rupal. Mr Shukla, who represented the UOI, made no submissions as his approach appeared to be that the issues raised in the writ petition, essentially, pertained to JNU. As indicated above, since Mr Virmani had been appointed as an amicus curiae, in the matter, he made certain submissions, to which I would be making a reference in the course of my discussion, on issues, raised in the writ petition.

9. Mr Mariarputham's submissions can, broadly, be paraphrased as follows:

9.1 The failure on the part of JNU to provide relaxation in the minimum eligibility marks qua OBC candidates was unconstitutional. It was the learned counsel's submission that the unconstitutionality operated on two plains. Firstly, in so far as, it discriminated between OBC candidates and SC/ST candidates. In this context, it was submitted that while the SC/ST candidates had to obtain only pass marks vis-à-vis the base-degree (i.e. the Master's degree), the OBC candidates were required to attain a minimum of 55% marks in the Master's degree. The fact that both, OBC and SC/ ST candidates had suffered social and educational deprivation, could not be denied, and therefore, they had to be placed at par. Qua this submission, the learned counsel relied upon a judgement of a Single Judge of this court dated 07.09.2010, passed in WP(C) No. 4857/2010, titled: *Apurva & Anr. vs UOI and Anr.*, 172 (2010) DLT 326.

9.2 The other illegality, according to the learned counsel, which obtained, was that, the JNU had put the OBC candidates at par with the general

candidates in so far as attainment of minimum eligibility marks, was concerned. This, according to learned counsel, was not only contrary to the judgements of the Supreme Court in the case of *Ashok Kumar Thakur vs UOI (2008) 6 SCC 1*; *P.V. Indiresan & Ors. vs UOI (2009) 7 SCC 300 (1)* and *P.V. Indiresan (2) vs UOI & Ors.*, but was also, not in sync, with the provisions of the Central Education Institutions (Reservation in Admission) Act, 2006 (in short the CEI Act).

9.3 In so far as the latter part of this submission was concerned, learned senior counsel sought to place reliance on Section 3 of the CEI Act, based on which he contended that the entire purpose for which reservations, are extended to, central educational institutions (which inter alia seek to further the interest of candidates falling in OBC category), would be lost if, the relaxation, is restricted only to marks obtained in the entrance examinations and, is not extended to fixation of the minimum eligibility marks, which, a candidate is required to obtain in respect of his base-degree i.e. the Master's degree. In support of this submission, learned counsel relied upon the circular dated 22.05.2014, issued by the University of Delhi and, the notification dated 20.04.2015, issued by CBSE vis-à-vis NET/ JRF, June-2015 examination. Based on the aforesaid circular and notification, Mr Mariarputham contended that relaxation in marks was extended to OBC candidates, who fall in the non-creamy layer, and therefore, there was no good reason as to why JNU, which is a central educational institution, should not, extend the relaxation to the minimum eligibility marks in respect of the base-degree obtained by OBC candidates.

9.4 Furthermore, it was Mr Mariarputham's submission that fixation of unnecessarily high norms and standards by JNU, would be deleterious to the interest of the OBC candidates as, it would prevent a vast majority of

candidates falling in that category from gaining access to higher education. In support of this submission the learned counsel relied upon the observations made by the Supreme Court in the case of *State of Tamil Nadu & Anr. vs Adhiyaman Educational & Research Institution & Ors. (1995) 4 SCC 104*, at page 118-119, in paragraph 22, at placitum C to G.

9.5 In this behalf the learned senior counsel also drew my attention to the fact that in previous year JNU had extended relaxation qua OBC candidates vis-à-vis the requirement to obtain the minimum eligibility mark in respect of the base-degree, as well. Reference in this behalf was made to the prospectus issued by JNU for academic years 2010-2011 and 2014-2015.

9.6 As regards the other aspect: which was, as to whether, at this stage, the petitioner could be granted admission for the academic year 2015-2016, Mr Mariarputham submitted that under the admission policy of JNU, there was, such flexibility provided whereby, a candidate could join the M.Phil Programme even after 14.08.2015, that is, the formal date of closure of admission. For this purpose, learned senior counsel relied upon paragraph 5.6 of the admission policy formulated by JNU.

10. Mr Virmani, the learned amicus curiae, substantially, supported the submissions made by Mr Mariarputham. To a specific query, as to whether a mandamus could be issued to JNU to relax the minimum eligibility marks qua the base-degree, by such percentage of marks as may be determined by the court (assuming that this court were to be persuaded by the arguments advanced on behalf of the petitioner), he submitted, that such, a mandamus could not be issued. Mr Virmani though did submit that if, this court, were to stop-short of granting relief to the petitioner, the seat, presently, available for an OBC candidate, would lie vacant, and thus, get wasted in the process; an eventuality which is best avoided.

11. On the other hand, Mr Rupal, who appeared for the JNU, submitted that the relief sought in the writ petition, could not be granted by this court for the following reasons. First, that the admissions qua academic year 2015-2016, stood closed on 14.08.2015. Second, that the relaxation of 10% marks to OBC candidates had been extended while evaluating them in the entrance examination held for the M. Phil Programme. In this regard, my attention was drawn to the averments made in the counter affidavit filed on behalf of the JNU, wherein, it is stated that a relaxation to the extent of 10% in the minimum qualifying marks required for entrance examination, stood extended to OBC candidates.

11.1 To be noted, JNU in its counter affidavit has averred that while, OBC candidates are required to secure a minimum of 36 marks to qualify the entrance examination, a candidate falling in the General Category, was required to secure 40 marks. Pertinently, in this regard, it is further averred in the counter affidavit, filed on behalf of the JNU, that this, relaxation has been provided in consonance with the judgement of the Supreme Court in the case of *P.V. Indiresan (2) vs UOI & Ors.*

11.2 Mr Rupal thus submitted that relaxation at two stages was neither warranted nor legally mandated and, therefore, non-provision of such relaxation could not be held against JNU.

11.3 Mr Rupal laid a great emphasis on the fact that in so far as the petitioner, in particular, was concerned, no relief could be granted to him, since, the requirement of having obtain a minimum of 55% marks in respect of his Master's degree, was known to him, since February, 2015, when, the prospectus was put in public domain by JNU. For his purpose, Mr Rupal also drew my attention to the relevant averments made in paragraph 3(i) of the writ petition. The contention, in sum, was that, the petitioner having known of the

requirement to obtain the prescribed minimum eligibility marks, in respect of his base-degree, and having taken the entrance examination on that basis he could not approach the court, thereafter, to seek a relief in his favour. In support of this submission, reliance was placed by the learned counsel on the observations made in judgment of the Supreme Court in the case of *Sadananda Halo & Ors. Vs. Momtaz ali Sheikh and Ors.*, (2008) 4 SCC 619, at page 646 in paragraph 59. Based on this, learned counsel emphasized the fact that the petitioner being an unsuccessful candidate, he could not now be allowed to assail the admission process formulated by JNU for gaining entry to the M. Phil Programme.

11.4 Learned counsel further submitted that what was sought to be concealed by the petitioner, was that, extension of time was granted to him by the admission branch of JNU till 14.08.2015, only to, enable him to secure the result of the re-evaluation request made by him vis-à-vis papers written by him in respect of the Master's degree.

11.5 Mr Rupal also submitted that the fact that in the previous year there was a different regime operating (qua requirement to obtain minimum eligibility marks, in respect of the Master's degree), could not have fettered JNU from fixing a fresh standard vis-à-vis the current academic year. Learned counsel submitted that each school, within JNU, provides the necessary input as to what should be the eligibility criteria, based on which, the crystallized eligibility criteria is incorporated in the prospectus issued for a particular academic year. It was, therefore, the submission of Mr Rupal that the minimum eligibility marks qua OBC and General Category candidates were brought at par, based on the input received from Centre of Social Medicine Community Health.

11.6 Learned counsel also placed reliance on clause 9 of the notification

dated 01.06.2009, issued by the UGC titled: UGC (Minimum Standards and Procedure for Awards of M.Phil/Ph.D. Degree), Regulation, 2009, to contend that each university is entitled to fix its own terms and conditions for grant of admission. It was Mr Rupal's submission that the petitioner had not challenged paragraph 5.1 of the admission policy formulated by JNU, based on which, the minimum eligibility marks were prescribed, in respect of candidates who were desirous of seeking admission to the M.Phil Programme. It was thus, the submission of the learned counsel, that the, petitioner having failed to challenge the relevant provision of the extant policy, no relief could be granted to him in the instant writ petition.

11.7 It was also Mr Rupal's submission that paragraph 5.6 of the admission policy of JNU relied upon by Mr Mariarputham, was meant only for those candidates, who sought direct admission to Ph.D. It was submitted that there was discretion vested in the concerned authority qua such candidates, to defer admission, to the winter-semester, however, in so far as M.Phil Programme was concerned, it required taking up course work and, therefore, no admission could be made in the winter semester.

12. Before I proceed further, I may only record that when I had put up the matter for directions, there were two queries, which were essentially, raised by me. First, as to whether the seat in issue was still vacant? Second, if this court were to be persuaded to hold that the failure to provide a relaxation norm for OBC candidates in respect of attainment of minimum eligibility marks vis-à-vis Master's degree, was illegal, whether the petitioner could make-up the classes, which he had not attended in the meanwhile?

12.1 In respect of both queries, Ms Simran Jit sought instructions and, provided, the following information to me. Firstly, that the seat was still vacant. Secondly, that since the first and the second semesters were inter-

linked, and therefore, if at all, this court were to be persuaded by the pleas advanced on behalf of the petitioner, he could, at the earliest, join the M. Phil. Programme in the ensuing monsoon semester.

REASONS

13. Having heard the learned counsel for the parties and perused the record, according to me, the following issues, would require determination :

(i). First, whether the policy adopted by JNU to treat the OBC candidates at par with candidates falling in the General Category vis-à-vis minimum eligibility marks was irrational and unreasonable?

(ii). If issue no.(i) is answered in favour of the petitioner, then, could a mandamus could be issued to JNU to grant relaxation in the minimum eligibility marks to OBC candidates, by such percentage of marks as determined by the court?

(iii). Whether relief, if any, could be granted to the petitioner?

Issue No.(i)

14. The facts, as they have emerged from the record, clearly show, that in the previous years, the minimum eligibility of marks vis-à-vis the base-degree (i.e. the Master's degree) in respect of OBC candidates was fixed at 50% whereas in contrast candidates falling in General Category were required to obtain minimum of 55% marks. The fact that such a provision obtained in 2010-2011 and, in the immediately preceding year (i.e. 2014-2015), is sought to be demonstrated by the petitioner by relying upon the prospectus for those years.

14.1 JNU, on its part, has not disputed this position.

14.2 There is also no dispute raised before me, by JNU, that in so far as SC/ST candidates are concerned, as regards, the base-degree, they are required to obtain only pass marks. In this behalf, I may only advert the relevant

provisions of the prospectus issued by JNU for the academic year 2015-2016 :

“ III. RESERVATION OF SEATS FOR SC/ST/OBC CANDIDATES

22.5% (15% for SC and 7.5% for ST) seats in each Programme of Study are reserved for Scheduled Caste/ Scheduled Tribe candidates respectively. All Scheduled Caste/ Scheduled Tribe candidates who have passed the qualifying examination are eligible to appear in the entrance examination irrespective of their percentage of marks. 27% seats are reserved for OBC candidates (non creamy layer)..”

14.3 The record does reveal and which, is the stand taken, before me by JNU, as well, that a relaxation of 10% qua the minimum qualifying marks in the entrance examination, which is required to be attained, has been accorded to the OBC candidates. As indicated hereinabove, the minimum qualifying marks for a General Category candidate in respect of the entrance examination is 40%, whereas the OBC candidate is required to obtain only 36% marks. This relaxation, however, is not extended by JNU in the academic year 2015-2016 vis-à-vis minimum eligibility marks, which an OBC candidate is required to obtain in respect of the base-degree i.e. the Master's degree. The counter affidavit filed by JNU does not give any cogent reason in that behalf. As a matter of fact, the deviation made in academic year 2015-2016 in contrast with the previous years has been explained by JNU by simply adverting to the fact that a decision in that behalf was taken by the competent authority so that “**better standards**” could be attained. The increase in the minimum eligibility marks vis-à-vis the base-degree from 50% to 55% in respect of OBC candidates when compared to previous years is supported solely by this assertion.

14.4 As noticed above, in the course of my narration, it was argued by Mr. Rupal that the petitioner had not challenged the provision made in this behalf in the prospectus for the academic year 2015-2016. Tied-in with this argument

was the other argument advanced before me, which is that, the petitioner had taken his chance by sitting in the examination, and therefore, could not lay a challenge to the policy formulated by JNU for the academic year 2015-2016, which was, to not grant any relaxation in the minimum eligibility marks vis-à-vis OBC candidates.

14.5 The aforesaid are, in my view, arguments, which really, pertain to the issue as to whether or not the relief could be granted to the petitioner. However, in respect of the tenability of the policy, these arguments have no relevance. Notwithstanding this, I would be dealing with this argument when, I advert to the question of relief.

14.6 Therefore, the only rationale provided for providing relaxation qua OBC candidates by JNU, in its counter affidavit is, to obtain “better standards”. This argument of the petitioner is required to be appreciated in the context of the avowed objective set forth by JNU in its admission policy, which sets out, the following governing principle for enrolment of candidates :-

“..The admission policy of the University is governed by the following principles:

(i). to ensure the admission of students with academic competence and potentialities of high quality so that its alumni may be able to play their role in the process of national construction and social change in a meaningful manner;

(ii). to ensure that an adequate number of students from the under-privileged and society handicapped sections of our society are admitted to the University...”

(emphasis is mine)

14.7 A perusal of the aforesaid extract, in particular, clause (ii) would show that it is the stated object of the JNU’s admission policy to ensure, inter alia, that an adequate number of students from under privileged and socially handicapped sections of the society are admitted.

14.8 Towards this end, JNU has vis-à-vis various programmes including the M.Phil Programme provided relaxation in marks qua candidates falling in the OBC category, SC/ST and physically handicapped category by giving them concession vis-à-vis the minimum qualifying marks required in respect of the entrance examination. Therefore, while the General Category candidates are required to obtain minimum 40% marks in the entrance examination, candidates falling in the OBC category are only required to cross lower threshold, which is fixed at 36% marks.

14.9 Similarly, in so far as the candidates falling in the SC / ST and physically handicapped category are concerned, they are required to attain even a lesser threshold and therefore, are required to attain only a minimum 30% marks to qualify in the entrance examination.

15. The intrinsic reason why JNU has provided varying minimum standards for qualifying the entrance examination for various categories appears to be on account of recognition of the fact that candidates who belong to socially and educationally backward classes of the society, need support for upliftment. Therefore, while a General Category is placed at one end of the spectrum and the SC/ ST category / physically handicapped category is placed at the other end of the very same spectrum, a candidate belonging to the OBC category, is placed in between. The fixation of minimum of 36% marks in the qualifying examination for OBC category candidates as against 40% marks, which are to be attained by a General Category candidate and 30% marks which are required to be obtained by a SC / ST candidate is, a tacit recognition of this reality.

15.1 As a matter of fact, as conceded by JNU, in its counter affidavit, this accords with the view taken by the Supreme Court in the case of ***P.V. Indiresan (2)***. Here it would be relevant to allude to a short legal history as to

how and why the judgement of the Supreme Court in *P.V. Indiresan (2)* case to be passed.

15.2 The judgment of the Supreme Court in *P.V. Indiresan (2)* was preceded by a Constitution Bench judgment in *Ashok Kumar Thakur*'s case where a challenge was laid to the CEI Act and the 93rd amendment to the Constitution. While adjudicating upon the issues raised in those petitions, the majority view was that reservation of 27% seats in favour of the OBCs candidates qua educational institutions as provided in the CEI Act was not illegal and, that if, determination of OBCs was made by the Central government with reference to caste it would exclude creamy layer. (See paragraphs 669-670 at pages 718.)

15.3 Hon'ble Mr. Justice Pasayat (as he then was) and Hon'ble Mr. Justice C.K. Thakkar (as he then was), whose views, formed a part of the majority opinion, in *Ashok Kumar Thakur*'s case, summed up their conclusions vis-à-vis the desirability of fixing the cut-off marks in respect of candidates belonging to the OBC category in the following manner :-

“..The Central Government shall examine as to the desirability of fixing a cut off marks in respect of the candidates belonging to the Other Backward Classes (OBCs). By way of illustration it can be indicated that five grace marks can be extended to such candidates below the minimum eligibility marks fixed for general categories of students. This would ensure quality and merit would not suffer. If any seats remain vacant after adopting such norms they shall be filled up by candidates from general categories...”

15.4 On the other hand, Hon'ble Mr. Justice Bhandari (as he then was) who had dissented on the issue of relaxation in marks, recommended to the government to set the cut-off marks qua OBC candidates - no lower than 10% marks below that of a General Category candidate.

15.5 Having regard to the apparent discordance in the views expressed, the controversy, was examined by the very same Constitution Bench in an

application moved before the Supreme court in *P.V. Indiresan (1)*' case. The Constitution Bench in *P.V. Indiresan (1)*'s case qua this aspect, by way of brief order, made the following observations.

“...A question had been raised in this application as to what should be the extent of cut-off marks for admission of students of OBCs in the Central educational institutions. Having heard the learned Solicitor General of India and learned Senior Counsel on both the sides and also have regard to the observations made in the judgments pronounced by this Court, we make it clear that the maximum cut-off marks for OBCs be 10% below the cut-off marks of general category candidates...”

15.6 It appears that the JNU interpreted the order passed by the Constitution Bench in *P.V. Indiresan (1)* to mean that the minimum marks for admission which were to be secured by an OBC candidate, could not be less than the marks secured by the last candidate admitted under the General Category, by a margin of more than 10%.

15.7 This resulted in a Division Bench of the Supreme Court revisiting the issue in *P.V. Indiresan (2)*. The court after examining the view taken in *Ashok Kumar Thakur* and *P.V. Indiresan-1*, finally, concluded by making the following observations in paragraph 53 at page 473 of the judgment :-

“...The order dated 14.10.2008 means that where minimum eligibility marks in the qualifying examinations are prescribed for admission, say as 50% for general category candidates, the minimum eligibility marks for OBCs should not be less than 45% (that is, 50 less 10% of 50). The minimum eligibility marks for OBCs can be fixed at any number between 45 and 50, at the discretion of the institution. Or, where the candidates are required to take an entrance examination and if the qualifying marks in the entrance examination is fixed as 40% for general category candidates, the qualifying marks for OBC candidates should not be less than 36% (that is, 40 less 10% of 40)...”.

15.8 Therefore, there is undoubtedly a judicial imprimatur and a recognition

of the fact that given the social and educational backwardness of OBC candidates, relaxation qua maximum qualifying marks, is to be granted to them subject to a maximum of 10% marks as compared to a candidate falling in the General Category.

15.9 Thus, undoubtedly, the concerned University, which in this case is, JNU, would have to fix the minimum percentage of marks for OBC candidates below those fixed for the General Category candidate, albeit within the 10% band. JNU in this case, as noticed above, has given relaxation vis-à-vis OBC candidates in respect of only, the minimum qualifying marks which an OBC candidate has to obtain in the entrance examination.

16. This concession or relaxation has not been extended to the minimum eligibility marks which an OBC candidate has to attain vis-à-vis the base-degree i.e. the Master's degree. Undoubtedly, in the previous years, such relaxation in minimum eligibility marks was granted by JNU. As a matter of fact, the Delhi University have been granting a relaxation of 10% in marks qua OBC candidates, belonging to non-creamy layer in respect of both minimum eligibility marks with regard to the base-degree, as well, as the minimum qualifying marks required vis-a-vis entrance test. This aspect is evident upon reading the circular dated 22.05.2014, issued by the University of Delhi. The relevant extract of the circular is set forth hereinbelow :-

“...Other Backward Classes

Ref: Notification No. Aca.I/2012-13/OBC/588 dated 11/04/2012

The OBC candidates shall be given a relaxation in the minimum eligibility in the qualifying examination and in the minimum eligibility (if any) in the admission entrance test to the extent of 10% of the minimum eligibility marks prescribed for the General Category candidates. For example, if the minimum eligibility for admission to a course is 50% for the General

Category candidates, the minimum eligibility for the OBCs would be 45% i.e. (50% less 10% of 50%).

All those OBC candidates who meet the minimum eligibility marks in the qualifying examination and the minimum eligibility marks (if any) in the entrance test shall be eligible for admission in the order of their merit, keeping in view the availability of seats reserved for them.

The OBC candidates who belong to the **‘Non-Creamy Layer’** and whose castes appear in the **Central List** of the OBCs only shall be eligible to be considered for admission under the OBC Category..”

16.1 Similarly, vide notification dated 20.04.2015, vis-a-vis the NET/JRF, June, 2005 examination, the CBSE has provided a concession qua the base-degree (i.e. the Masters Degree) to the OBC to the extent of 10%. This is evident upon reading the following extract from the said notification :-

“...CONDITIONS OF ELIGIBILITY:

Candidates who have secured at least 55% marks (without rounding off) in Master’s Degree OR equivalent examination from universities/ institutions recognized by UGC (list attached page No.21 to 47) in Humanities (including languages) and Social Science, Compute Science & Applications, Electronic Science etc. (list of subjects of post graduation attached at page No. 18 to 19) are eligible for this Test. The Other Backward Classes (OBC) belonging to non-creamy layer/ Scheduled Caste (SC)/ Scheduled Tribe (ST)/ person with disability (PWD) category candidates who have secured at least 50% marks (without rounding off) in Master’s degree or equivalent examination are eligible for this Test...”

16.2 I may also note that the relaxation extends also vis-a-vis the minimum marks to be obtained in the NET examination.

16.3 These incidences of University of Delhi, which is a central education institution, and that of the CBSE notification, are given only to demonstrate that the norm of relaxation qua OBC candidates for base-degree as also for

entrance examination has an acceptability in other major institutions as well. The question therefore is: whether the reason put forth by JNU to defend its decision to deviate from its earlier policy of relaxation, to attain, better standards, is supported by any empirical data. The counter affidavit does not make a reference to any such aspect of the matter.

16.4 As noticed in the foregoing paragraphs of my discussion, that when, Mr. Rupal, was asked as to why OBC candidates had been put at par with the General Category candidates in so far as the minimum eligibility marks vis-a-vis the base-degree was concerned, learned counsel's only response was that, these are aspects qua which, inputs were received from the relevant centres and, in this case, input was received from Centre for Social Medicine and Community Health.

16.5 The counter affidavit filed by JNU in this behalf, is completely devoid of any facts and figures which would demonstrate that the policy which was in vogue in the previous years either eroded the academic standards or, that, the amended policy for the academic year 2015-2016, would lead to improvement in the standards, and that, therefore, parity was brought about in the attainment of minimum eligibility marks in respect of the base-degree as between the OBC and General Category candidates.

16.6 That, lack of material can propel a court to strike down a policy on the ground of, it being violative of Article 14, is exemplified by the judgement of the Supreme Court in the case of *Govind A. Mane & Ors. vs State of Maharashtra & Ors. (2000) 4 SCC 200*. In this case, the Supreme Court was considering a challenge made to a policy framed by the State of Maharashtra, whereby seats for the B.Ed. course were distributed district-wise. The appellants before the Supreme Court had contended that since admission to the B.Ed. course was based on a common admission test, the distribution of seats

amongst four different districts, was violative of Article 14. The appellants, in that case, had contended that a common merit list ought to have been drawn up. The State of Maharashtra, it appears, contended otherwise, and apparently sought to defend its policy based on the backwardness of the concerned districts. The Supreme Court, however, struck down the policy on the ground that there was no material placed before it, which would demonstrate that the district-wise distribution of the seats had any nexus with the object which the State Government sought to achieve. The observations of the Supreme Court in this regard, being apposite, are extracted hereinbelow:

".... 5. This decision was followed in *Minor A. Peeriakaruppan v. State of T.N.* in which it was laid down as under:-

"Before a classification can be justified, it must be based on an objective criteria and further it must have reasonable nexus with the object intended to be achieved. The object intended to be achieved in the present case is to select the best candidates for being admitted to Medical Colleges. That object cannot be satisfactorily achieved by the method adopted. The complaint of the petitioners is that unitwise distribution of seats is but a different manifestation of the districtwise distribution sought in 1967-68 has some force though on the material on record we will not be justified in saying that the unitwise distribution was done for collateral purposes. Suffice it to say that the unitwise distribution of seats is violative of Articles 14 and 15 of the Constitution. The fact that an applicant is free to apply to any one unit does not take the scheme outside the mischief of Articles 14 and 15. It may be remembered that the students were advised as far as possible to apply to the unit nearest to their place of residence."

6. The law, thus, having been laid down clearly by this Court, the High Court was not justified in dismissing the Writ Petition. Since it is not disputed by the respondents that for

the purpose of admission to B.Ed Course, seats were distributed districtwise without indicating any material to show the nexus between such distribution and the object sought to be achieved, it would be violative of Article 14 of the Constitution..."

(emphasis is mine)

16.7 The view taken in *Govind A. Mane's* case was approved by the Supreme Court in *Kailash Chand Sharma vs State of Rajasthan & Ors. (2002) 6 SCC 562*. See paragraph 17 at page 578 and paragraphs 23 and 24 at page 581.

16.8 To my mind, the policy formulated by JNU does not appear to have any rationale nexus with the object it seeks to achieve, that is, to improve academic standards. As a matter of fact, as indicated in the beginning of my discussion qua this aspect of the matter, that the, avowed object of JNU's admission policy is, to ensure that under privileged and socially handicapped sections of the society find representation in its institution. If this is the stated object of JNU's admission policy then, this object, certainly, to my mind, cannot be achieved by fixing the minimum norm for the eligibility marks qua the base-degree, vis-a-vis the OBC candidates which is, at par with the General Category candidate. This one change in policy would deprive representation to the underprivileged and socially backward classes (i.e. the OBC candidates), even though they would have passed the entrance examination. While there can be no dispute that JNU is empowered to change its policy when not hemmed-in by a statute or any statutory regulation, the change should be fair and ought not to be carried out arbitrarily and/or whimsically. Observations to this effect find reflection in the judgement of the Supreme Court in the case of *Reliance Energy Ltd. & Anr. vs Maharashtra State Road Development Corporation Ltd. & Ors. (2007) 8 SCC 1*, in which it cited with approval, in paragraph 37 at pages 21 and 23, the following observations made in *UOI vs International*

Trading Company (2003) 5 SCC 437:

"..... 23. In the case of Union of India and Anr. vs International Trading Co. & Anr., the Division Bench of this Court speaking through Pasayat, J. had held: (SCC P. 445, Paras 14-15)

"14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the state, and non-arbitrariness in essence and substance is the heart beat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reasons, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness...."

(Emphasis is mine)

16.9. The policy, in my view, is therefore, irrational and unfair and, consequently violative of Article 14 of the Constitution. If such a policy is accepted, it would, in effect, result in approving, an egregiously unfair action

of the JNU, which in sum, takes away with one hand what it gives to the OBC candidates with the other. Therefore, issue no.(i) has to be answered in favour of the petitioner.

Issue no.(ii)

17. Which brings me to the other aspect of the matter, which is, as to whether a mandamus could be issued to JNU by this court, whereby, it is directed to grant relaxation in minimum eligibility marks qua OBC candidates including the petitioner, by such percentage, as determined by the court.

17.1 In my opinion, no such mandamus can be granted. Each University has been given, under the 2009 Regulations issued by the UGC, the right to determine the minimum standards and procedure for awarding M. Phil and / or Ph.D degrees. While there is no doubt that JNU will have to distinguish between candidates, who fall in the socially and educationally backward classes or, in the SC/ST candidates or, even physically handicapped category as against those who fall in the General category – the determination as to the extent of relaxation required, would have to be crystallized and arrived at by JNU itself. The institution concerned, in this case, JNU, is presumed to know as to what would be best qua its students and, as regards the institution itself. Thus, issue no.(ii) is answered accordingly.

RELIEF

18. This brings me to the last aspect, as to whether any relief ought to be granted to the petitioner. In this behalf, as noted above, several arguments were advanced on behalf of JNU, by Mr. Rupal. These arguments have already been noted by me hereinabove. Only to briefly recapitulate, Mr. Rupal/ Ms Simraj Jeet had made a submission on behalf of the JNU that no relief could be given to the petitioner, basically, for the following reasons. First, the academic session had closed on 14.08.2015. Second, the petitioner was aware

of existence of the eligibility criteria, and that, having taken a chance by participating in the admission process, he could not now assail the same. Second, the first semester of the M.Phil Programme was over, and that, the petitioner could not make up those classes as there was an inter-linkage between first and second semester.

18.1 As regards, first aspect, which is closure of admission, I may only state at the risk of repetition that the petitioner had approached this court well before 14.08.2015, and based, on the pleas made in the writ petition, had sought an interim relief in the matter. My predecessor while being persuaded to observe, albeit, prima facie, that the legal issues raised in the matter were tenable, denied relief to the petitioner, only for the reason, that he was informed on that date by the counsel for the JNU, that, in a re-evaluation exercise, it had been revealed that the petitioner's grade had been scaled down from B- (minus) to C, and therefore, in effect, the total percentage of marks obtained by him in the Master's degree, stood reduced to 49% from 50%. That this was an aberration, and therefore, not correct, was noticed by my predecessor in the order dated 18.09.2015. However, the relief for grant of admission at the interim stage, was denied to the petitioner only for the reason that the academic session had commenced.

18.2 Aggrieved by the said order, the petitioner had approached the Division Bench, which disposed of the appeal, vide order dated 08.12.2015, passed in LPA 719/2015. By this order, the Division Bench, directed expeditious hearing in the main writ petition. The Division Bench, in fact, advanced the date of hearing from 15.02.2016 to 14.12.2015.

18.3 Having regard to the circumstances, which arise in this matter, it cannot be said that the petitioner had not approached the court in time; albeit before the admission process closed. The admission process closed on 14.08.2015.

The petitioner had moved this petition on 10.08.2015. Mr. Rupal has submitted that the petitioner was, in fact, given extension of time for seeking admission till 14.08.2015 only to enable him to ascertain as to whether or not, he would benefit from the re-evaluation request made, in respect of the papers taken by him, for his Masters degree. In other words, Mr. Rupal had tried to contend both before my predecessor as well as myself that there was a concealment of this aspect of the matter by the petitioner.

18.4 To my mind, the petitioner, cannot be faulted, as the document extending the time, which has been placed on record, does not advert to any reason as to why, time for admission in the M.Phil Programme qua the petitioner was extended on 31.07.2015 till 14.08.2015. Even if, I were to accept the reason put forth by Mr. Rupal, for extension of time granted to the petitioner, that reason, cannot be held against him. The petitioner having qualified the entrance exam was perhaps hoping that if, in the re-evaluation exercise, he would have his marks in the Master's degree enhanced then, he would not have to look for other avenues to seek relief. It was a remedy, which was available to the petitioner and, the fact that he accessed the said remedy cannot be placed as an impediment in his way if, he is otherwise, entitled to relief.

19. The other argument advanced by Mr. Rupal that the petitioner had knowledge of the eligibility condition when, the prospectus was placed in the public domain by JNU, and that, having participated in the admission process for the M.Phil Programme, based on that very condition, he could not now assail the process - to my mind, fails to take into account the fact, that the, petitioner, could have approached the court only if, there obtained a grievance qua him. The petitioner sat for the entrance exam on 19.05.2015. The result of the written exam was declared only on 03.07.2015. Since, the petitioner had

qualified, he was called for a viva voce on 14.07.2015. It is around that time that the petitioner's result vis-a-vis his exam qua the Master's degree in Russian language was declared. The petitioner at this stage found that he had attained 50% marks, which was less than the minimum eligibility marks fixed by JNU in its prospectus published in February 2015. The petitioner's grievance quite clearly arose at this stage. Prior to this stage, though the petitioner may have had a grievance, it was more theoretical in nature and, as Mr. Mariarputham, correctly submitted that if, the petitioner had approached the court at that stage this court may not have entertained the petitioner's request. At best, the petitioner could have perhaps filed a public interest petition and espoused the cause in public weal. Besides, I have grave doubts whether acquiescence and estoppel, which is what Mr Rupal's arguments essentially veer around, can prevent grant of relief to an aggrieved party when a challenge is laid on the ground of violation of Article 14. For all these reasons, I am not inclined to accept this submission of Mr. Rupal.

20. Which brings me to the other submission advanced on behalf of the JNU qua the relief sought in the petition, which is that, the first semester has already concluded qua the M.Phil Programme, and therefore, the petitioner cannot be granted admission. Mr. Mariarputham, in this behalf, had relied upon clause 5.6 of the admission policy. The said clause reads as follows :-

“....Clause 5.6 of Admission Policy

Such of the selected candidates who have given their acceptance alongwith the Bank Draft of the required amount and have appeared in the qualifying examination before 14th August but fail to join the programme by August 14 only on account of their results being declared by the previous Board/ University/ Institution after the dealing of 14th August, may, in case, if they so desire, apply in writing to the Deputy Registrar (Admissions) in the prescribed form requesting for deferred admission in the Winter Semester or during the next academic year, as may be

accepted by the University. University reserves the right not to accept any of the applications for deferred admission....”

20.1 Mr. Rupal, on the other hand, stated that this clause applies only to Ph.D students and not to the M.Phil programme.

20.2 As indicated in the foregoing paragraphs of my discussion, Ms. Simran Jit, who appeared for JNU, in the absence of Mr. Rupal, had taken instructions in the matter. She informed me that not only one seat was available under the OBC category but that due to inter-linkage of the first and the second semester, admission, if at all, could be granted to the petitioner only in the monsoon semester. Therefore, notwithstanding Mr. Rupal’s submission, I am inclined to direct admission of the petitioner having regard to the fact that if, such a direction is not issued, the seat in issue will be wasted, and that, even otherwise grant of admission by itself prejudices no one, much less, the institution itself i.e. JNU.

20.3 There was yet another submission made by Mr. Rupal, in support of his submission that no relief can be granted to the petitioner, which is that, there was no challenge laid by the petitioner to the prescribed eligibility condition qua the base-degree i.e. the Masters degree.

20.4 According to me, prayer (a) of the writ petition would clearly cover such a plea advanced on behalf of the JNU. As per the said prayer, the petitioner has sought a declaratory relief. In sum, the direction sought, is that, this court, should declare the policy of the JNU (whereby, minimum eligibility marks for the M.Phil Programme has been pegged at 55%), as violative of Article 14 of the constitution in so far as it applies to candidates falling in the OBC category. This prayer, to my mind, would necessarily entail a challenge to the criteria fixed in that behalf by JNU.

21. In these circumstances, the policy of JNU, whereby the OBC candidates

are put at par with the General Category candidates, in respect of minimum eligibility marks required to be obtained, vis-a-vis the base-degree, is declared unconstitutional and contrary to Article 14 of the Constitution.

21.1 Resultantly, the JNU will, thus, have the discretion to accord relaxation to the OBC candidates subject to a maximum of 10%, by taking the minimum marks fixed qua the General Category candidates as the starting point.

21.2 Furthermore, having regard to the fact that, if the subject seat is not allotted to the petitioner, it will get wasted, JNU is directed to grant admission to the petitioner against the seat available in the OBC category for the academic year 2015-2016. The petitioner will, however, be permitted to join the course in the monsoon semester of 2016.

22. The petition and the pending application are, accordingly, disposed of in the aforesaid terms. Parties are, however, left to bear their own costs.

RAJIV SHAKDHER, J

JANUARY 19, 2016

kk/yg