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

% Judgment reserved on: 17.12.2024

Judgment delivered on: 30.01.2025

+ LPA 1062/2024, CM APPL. 9467/2024

SUMIT KUMAR SINGH & ANR

....Appellants

versus

UNIVERSITY OF DELHI

....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Gaurav Arora, Mr. Shakti Pandey, Mr. Dhruv Wadhwa and Mr. Ujjwal Malhotra, Advocates.

For the Respondent : Mr. Mohinder Rupal, Mr. Hardik Rupal and Ms. Aishwarya Malhotra, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been preferred under Clause X of the Letters Patent Act, 1866 assailing the judgement dated 15.10.2023 in W.P.(C) 13825/2024 captioned "*Sumit Kumar Singh & Anr vs. University of Delhi*", whereby the learned Single Judge has dismissed the writ petition filed by



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the appellants seeking admission on vacant seat of LLB program of the respondent no.1/University of Delhi.

2. The facts, shorn of unnecessary details and germane to the issue at hand and collated from the underlying writ petition and the present appeal, are as follows:-

- a. It is the case of the appellants that the National Testing Agency (NTA) announced the Common University Entrance Test [CUET (PG) 2024] on 26.12.2023. According to the schedule released by NTA on 26.02.2024, the examination for the subject name “*General (LLB etc.)*” was to be held on 13.03.2024. The appellant nos. 1 & 2 appeared in the said examination.
- b. The appellants stated that NTA released the scorecards of the candidates who appeared in CUET (PG) 2024 on 18.05.2024. The appellants scored 176 marks in the subject name “*General (LLB etc.)*”.
- c. It is the case of the appellants that after the completion of the admission rounds, the respondent no.1/University of Delhi (hereinafter referred to as “*DU*”) announced the schedule for Spot Admission: Round-I for seats left vacant; Round-II for seats left vacant after the admissions in Spot Admission: Round-I; Round-III for seats left vacant after the admissions in Spot Admission: Round-II and Round-IV for seats left vacant after the admissions in Spot Admission: Round-III on dates ranging between 22.07.2024 and



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25.08.2024. No further Spot Admission Rounds were announced by the respondent no.1/DU.

- d. The appellant stated that despite having scored the required marks as per the cut-off/ qualifying marks and the vacancy of seats in all the Law Centers of the Faculty of Law, University of Delhi, neither of the appellants were admitted.
- e. The appellants have sent emails to the grievance redressal cell of the respondent no.1/DU, highlighting the non-allocation of seats to them despite meeting the cut-off. Aggrieved by the lack of response to their grievance, appellants filed an RTI application dated 25.09.2024 seeking relevant details from the respondent no.1/DU.
- f. It is the case of the appellants that since there was no response from the respondent no.1/DU, the appellants had filed the underlying writ petition seeking direction to the respondent no.1/DU to grant admissions to the appellants for the academic year 2024-2025.
- g. *Vide* the impugned judgement dated 15.10.2024, the learned Single Judge had denied the admission to the appellants on the grounds that the appellants obtained marks much below the marks of the last admitted candidate; the respondent no.1/University has not granted admission to any of the less meritorious candidate than the appellants and admission against the seat vacant on account of students leaving the course mid-way are not appreciated unless there are exceptional circumstances.



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h. Hence the appellants filed the present appeal.

CONTENTIONS OF THE APPELLANT:-

3. Mr. Gaurav Arora, learned counsel for the appellants at the outset, submits that that appellants having secured 176 marks in the CUET(PG) 2024 for the subject “*General (LLB etc.)*”, were entitled to admission in L.L.B course. He emphasizes that as on the cut-off date (31.08.2024) as extended till 03.09.2024, there existed vacant seats unfilled by the respondent no.1/DU and thus admission to the appellants could not have been denied. He contended that it is trite that the entire exercise of counselling is undertaken to ensure that all the vacancies are filled and none are wasted.

4. Dilating further, learned counsel submits that 23 seats were vacant in Spot Round - III and 28 seats were vacant in Spot Round - IV and the respondent no.1/DU announced a combined list of Spot Round III and IV admitting students only on 32 seats out of 51 seats declared vacant in Spot Round III and IV for Law Centre-I, which leaves a vacancy of 19 seats. He also stated that 28 seats were vacant in Spot Round - I, 19 seats were vacant in Spot Round II and 22 seats were vacant in Spot Round - III and the respondent no.1/DU announced a combined list of Spot I, II and III admitting students only on 40 seats out of 69 seats declared vacant in Spot Round I, II and III for Law Centre - II. Further he stated that at the end of Spot Round III, 29 seats were vacant however the respondent no.1/DU in Spot Round IV declared only 15 seats were vacant and till date, Law



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Centre-II has not disclosed the list of students admitted in Spot Round-IV. He stoutly contended that the aforesaid information has been collated from the statistics available with the respondent no.1/DU in their website and thus, the University is in no position to deny these figures. He referred to the table drawn out in the pleadings to substantiate the above argument. According to learned counsel, there are in existence many vacant seats against which the appellants could be admitted since they both have scored 176 marks, equal to the last admitted student.

5. Learned counsel in addition to the aforesaid argument had submitted that the stand taken by the respondent no.1/DU in their counter affidavit is contradictory to the stand taken by the counter affidavit before the learned Single Judge. He stated that in the counter affidavit filed by the respondent no.1/DU before the learned Single Judge, it had submitted that the appellants could not be granted admission as the last student admitted in Law Centre I with CUET score of 176 has scored 73.50% in qualifying examination and the last student admitted in Law Centre-II has scored 81.30% in qualifying examination and the scores of the appellants in the qualifying examination were less than the admitted students. However, in the counter affidavit filed in the present appeal, the respondent no.1/DU had stated that there were 30 vacant seats in UR category and all these seats were filled. On this, he submitted that the above pointed discrepancy between the 2 counter affidavits filed by the respondent no.1/DU raises grave concerns about the authenticity of the pleadings made on oath.



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6. Learned counsel for the appellants handed over a letter dated 07.06.2024 of the University Grants Commission (UGC) approving the Standard Operating Procedure (SOP) for Central Universities to fill up their vacant seats. He submitted that the UGC has categorically laid down the procedure for filling up the unfilled seats. He emphasized that the UGC laid stress on the issue that while considering the vacancy, the CUET Scores will remain the primary criteria for admitting students. In that context, learned counsel submits that the appellants having scored above the cut-off and the vacancies still remaining unfilled, as demonstrated above, are entitled to admission.

7. Learned counsel for the appellants relied upon a judgement of this Court in *Deepanshu Khanna & Anr vs. University of Delhi*, reported in **2022 SCC OnLine Del 347** to submit that it would be unfair to the appellants if seats in such a prestigious institute are allowed to go waste, despite there being candidates with merit to fill the same.

8. He then relied upon a judgement of this Court in *Anuj Sharma & Ors vs. Mr. Kush Chaturvedi and Ms. Priyank Priyadarshini, Advs.* reported in **2011 SCC OnLine Del 4266** to submit that the Courts have consistently held that every endeavour by the University and all other institutions should be made to fill all the seats as wastage of seats is not only at the cost of the public exchequer but at the cost of depriving a number of aspiring students struggling to get admission in coveted



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institutions and universities such as Delhi University, which is a dream of many.

CONTENTIONS OF THE RESPONDENT NO.1/DU:-

9. Mr. Mohinder J S Rupal, learned counsel for the respondent no.1/DU at the outset submitted that this is not a case where any vacant seats were left. Rather, it is a case where the respondent no.1/DU had to exercise the “*tie breaker rule*” as per Chapter – 13 of the Common Seat Allocation System of the DU for the Academic Session 2024 – 25.

10. Mr. Rupal explains that though the last admitted candidate as well as the appellants had obtained 176 marks in the CUET, applying the “*tie breaker rule*”, the marks obtained in the qualifying examination would become relevant. He submitted that the admitted candidate had obtained higher marks than the appellants in their respective qualifying examination which was the determinative factor and thus the appellants could not be admitted. Explaining further he submitted that the last admitted candidate in Law Centre - 1 had obtained 73.50 marks in the qualifying examination and stood at the cut-off rank 30, whereas, in Law Centre - 2, the last qualifying candidate had obtained 81.30 marks, and stood at cut-off rank 21. He stated that in contrast, the appellant no.1 obtained 66.20 marks in the qualifying examination and stood at rank 38 and the appellant no.2 obtained 68.71 marks. Thus, according to learned counsel both the appellants obtained marks much below the last admitted candidate in respective Law Centres. He submitted that by the merit principle, the respondent no.1/DU has not



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granted admission to any of the less meritorious candidates than the appellants.

11. He further submitted that so far as the dispute regarding non-grant of admission despite the seats lying vacant is concerned, the classes had commenced in August, 2024 and seats got vacant on account of students leaving the course mid-way and the same cannot be a reason to allow admission to the appellants, as the academic session has already started. He submitted that if such a course is resorted to, the admission process would never come to an end. He further submitted that moreover the classes of the first semester LLB are almost over and the End Semester Examination was proposed to be held from 26.12.2024 onwards and therefore no relief can be granted to the appellants at this stage. He submitted that the last round of admission was held on 31.08.2024 i.e., Spot Round in which 30 seats were vacant in UR category, the candidates who had applied to participate in the Spot Round were considered in this round. Thus, 30 allocations, based on the merit of the candidates who had applied were made. He further submitted that all the seats in the last counselling were allocated and no further round was possible for any subsequent vacancy after the cut-off date which was 31.08.2024.

12. He further submitted that the marks 73.50 and 81.30 are the average marks scored by the last admitted candidates in all six semesters of the qualifying examinations, though the marks obtained only of first five semesters of the qualifying examinations were taken into consideration as



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provided in the Bulletin of Information for the purposes of applying the “*tie breaker rule*”. So far as the allegation of contradiction or discrepancy in the stand taken by the respondent no.1/DU in the counter affidavits filed before the learned Single Judge and this Court is concerned, he refers and relies upon the additional affidavit dated 07.12.2024 to clarify that there is no contradiction at all. According to Mr.Rupal, the “*discrepancy*” pointed out is not sustainable. He submitted that initially the average qualifying marks obtained by the last admitted students were indicated which the said students had filled on the basis of marks obtained in the six semesters. Whereas, the figures shown by the respondent no.1/DU before this Court, were calculated on the basis of the last five semesters obtained in the qualifying examination in accordance with the Bulletin of Information. Thus, according to him, there is neither any “*contradiction*” nor any “*discrepancy*”.

13. Mr. Rupal, learned counsel for the respondent no.1/DU relied upon the judgement of the Supreme Court in ***Neelu Arora & Ors. vs. Union of India & Ors***, reported in **2003 SCC OnLine SC 119** to submit that even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year.

14. Mr. Rupal, also relied on the judgement of the Division Bench of this Court in ***Maharaja Agrasen Institute of Technology vs. Guru Gobind Singh Indraprastha University***, reported in **2004 SCC OnLine Del 1012** to



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submit that it would be apparent that the system of counseling itself is designed to maximize allocation of seats, however, that cannot imply that the process is endless; it has a definite term *quo* in point of time. He thus prays that the appeal be dismissed.

ANALYSIS & CONCLUSIONS:-

15. Learned counsel for the appellants valiantly attempted to demonstrate by referring to the tables and figures obtained from the website of the respondent no.1/DU that there were still in existence a number of vacancies as on 31.08.2024 and till 03.09.2024 which according to him was the extended date of admissions. However, learned counsel for the respondent no.1/DU had categorically submitted that no further seats were left vacant after the Spot Round – IV. Learned counsel for the respondent no.1/DU had also contended that some seats may have fallen vacant on account of students leaving mid way during the session which cannot be included in the category of unfilled vacant seats, for further rounds.

16. There is merit in the contention of the learned counsel for the respondent no.1/DU. If this Court were to agree with the submissions of the appellants, there would be no closure to the admission process/filling up of seats or counseling which would be an incongruous and unpalatable situation. Everytime a seat would fall vacant on account of some student leaving the course mid way, some aspirant would petition the High Court under Article 226 of the Constitution of India seeking mandamus for filling up the vacant seat. The universities would endlessly continue the admission



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process, maybe right uptill the end of the said academic session. This interpretation would create an unending loop for the Universities in general which cannot be countenanced. It was in this context that the Supreme Court in *Neelu Arora (supra)* had laid down as under:

“6. When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the Scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the all-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in *Medical Council of India v. Madhu Singh* has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled, that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind, we do not think any reliefs as sought for by the petitioners can be granted under these petitions.”

(emphasis supplied)

It is pertinent to note that while rendering the above opinion, the Supreme Court also considered the earlier judgement in the case of *Medical*



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Council of India vs. Madhu Singh & Ors; reported in (2002) 7 SCC 258, to reiterate that admitting students midstream would be against the very spirit of statutes governing medical education, as it was in that case. It was also held that even if seats are unfilled, that cannot be a ground for making midstream admissions. The same can be applied on all fours to the present case too. Undeniably, the course commenced from September, 2024 and as per learned counsel for the respondent no.1/DU, End Semester examinations were to be held in December, 2024, thus squarely falling within the mischief of the ratio in ***Medical Council of India (supra)***. As per records, the underlying writ petition was filed only on 30.09.2024, by which time the session had already commenced. Moreover, it has been asserted by the respondent no.1/DU that there were no seats left unfilled.

17. So far as the contention regarding extension of the date of admission is concerned, it is unmerited. A perusal of the letter dated 28.08.2024 clearly stipulates that the “*last date for admissions to various Post Graduate Programmes, B-Tech, B.A. LL.B and BBA LL.B for the Academic Session 2024-25 is 31.08.2024*”. Whereas, the letter dated 02.09.2024 of the Admission Branch of the DU regarding Spot Round - IV appears to be a communication to the Colleges/departments to complete the process of Post Graduate applications and for the purposes of convenience of the admitted students to deposit their fee by 11:59 pm on 03.09.2024. Clearly, this letter does not extend the last date of admission.



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18. This Court also finds that the appellants also did not obtain the appropriate qualifying marks required as per the “*tie breaker rule*” stipulated in Chapter 13 of the Common Seat Allocation System of the respondent no.1/DU for the Academic Session 2024–25. As per the averments in the counter affidavit of the respondent no.1/DU, appellant nos.1 and 2 obtained 66.20 and 68.71 marks which is the average marks scored by the appellants in all six semesters of the qualifying examinations, though the marks obtained only of first five semesters of the qualifying examinations were taken into consideration as provided in the Bulletin of Information and no student/candidate obtaining lower qualifying marks than the appellants had been admitted. This Court finds that there were many students who had scored 176 marks in the CUET, similar to the appellants. In such a situation, the respondent no.1/DU rightly applied the “*tie breaker rule*”. Undeniably, the appellants were way, down low on the qualifying marks and were rightly denied admission.

19. Learned counsel for the appellants also raised the controversy regarding the respondent no.1/DU filing contradictory affidavits, one before the learned Single Judge and the other before this Court. The alleged contradiction is stated to be in respect of incorrect facts disclosed about the qualifying marks. The additional affidavit filed on behalf of the respondent no.1/DU on the directions by this court, explains the alleged “contradiction”. This court deems it apposite to extract paragraphs 2 to 8 of the affidavit dated 07.12.2024, which read thus:



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“2. This Hon’ble Court was pleased to direct the Respondent University to file an Affidavit regarding para 9 of the Counter Affidavit filed by the University of Delhi in WP 13825/2024 read with the list being Annexure R1 to the affidavit filed by University of Delhi dated 07.12.2024 filed in the present LPA.

3. It is respectfully submitted that in the table which forms part of para 9 of the said Counter Affidavit it has been mentioned that the cutoff marks of the last candidate allocated respectively in Law Centre I and Law Centre II are 73.50 and 81.30 while in the list which is Annexure R1 to the said Affidavit the marks of the last candidate admitted respectively in Law Centre I and Law Centre II are mentioned 74.7 and 81.566.

4. It is respectfully submitted that the said marks mentioned in the list being Annexure R1 to the Affidavit filed in the present LPA by University of Delhi are correct.

5. The Respondent University of Delhi stated the marks 73.50 and 81.30 (mentioned in the table in para 9 of the Counter Affidavit) which are the average marks given by the candidates of all six semesters of the qualifying examinations, though the marks only of first five semesters of the qualifying examination scored by the candidates were taken into consideration as provided in the Bulletin of Information.

6. It is respectfully submitted that the marks mentioned in the list under the column “ug_avg_5” are the correct marks computed on the basis of the marks scored by these 30 candidates in the first five semesters of their qualifying examination.

7. Hence both the information provided by the Respondent University of Delhi are correct in their respective context. However, confusion caused owing to this inadvertent mismatch in the table in para 9 of the Counter Affidavit is sincerely regretted and the University of Delhi seek apology from this Hon’ble Court in right earnest

8. Be that it may be this score of the Petitioner is still below the last candidate admitted in Law Centre I and Law Centre II after applying the Tie-break rules.”



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The apparent “*contradiction*” has been satisfactorily explained. There is thus, no merit in the aforementioned contention of the appellants.

20. The reliance on the judgement of the learned Single Judge in ***Deepanshu khanna (supra)*** is misplaced. In the peculiar facts of that case learned Single Judge was dealing with a situation obtaining during the COVID-19 pandemic and where there were vacant seats admittedly available before the cut-off date for admission. Apart from that, the fact that cancellation of ineligible candidates could have been completed before the cut-off date on which premise the students therein could have been admitted, weighed heavily with the learned Single Judge. It was in those circumstances that the learned Single Judge directed the DU to fill up all available vacancies across all categories, including the petitioners therein, as per their merit. However, the facts of the present case are at variance. In the present case, it is categorically asserted that no seats have been left vacant after 31.08.2024, the cut-off date for admissions. It is also asserted that vacant seats were filled up in the Spot Round – IV, coupled with the fact that the admitted students had higher qualifying marks than that of the appellants and no student having qualifying marks lower than the appellants has been admitted. Thus, the contention based on the judgement of ***Deepanshu Khanna (supra)*** is unpersuasive.

21. The reliance by the appellants upon the letter of the UGC dated 07.06.2024 regarding the SOPs that are to be followed by Central Universities while filling up the vacant seats is concerned, the same is



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unmerited. In fact, the general directions may not even apply in the present case inasmuch as there is a categoric assertion that no vacant seats remain unfilled, except maybe those which may have arisen due to students leaving the course midstream. To that, this Court has already rendered opinion, in the preceding paragraphs.

22. For the aforesaid reasons, we do not find any merit in the present appeal and accordingly dismissed, with no order as to costs. Pending applications are also disposed of.

TUSHAR RAO GEDELA, J

VIBHU BAKHRU, J

JANUARY 30, 2025/*rl*