

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

IA.No.7-12

in CIVIL APPEAL NO(s). 5092 OF 2009

SUBHASH CHANDRA & ANR.

Appellant (s)

VERSUS

DELHI SUBORDINATE SER.SEL.BOARD & ORS.

Respondent(s)

(for impleadment and permission to file impleadment along with application for impleadment and directions/clarification and direction and office report)

Date: 13/11/2009 This IA./Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR
HON'BLE MR. JUSTICE CYRIAC JOSEPH

For Appellant(s)

Mr. D.N. Goburdhan, Adv.
Mr. Prabal Bagchi, Adv.

petitioner

in IA 11 & 12

Miss Lata Krishnamurti, Adv.
Miss P.R. Mala, Adv.
Mr. Saurabh Ajay Gupta, Adv.
Mr. Pranav Diesh, Adv.
Mr. Ashish Dixit, Adv.

For Respondent(s)

Dr. Krishan Singh Chauhan, Adv.
Mr. K.C. Lamba, Adv.
Mr. Chand Kiran, Adv.
Mr. Kartar Singh, Adv.

Mr. Mohan Parasaran, ASG.
Ms. Sadhna Sandhu, Adv.
Ms. Anil Katiyar, Adv.

C.A.5092/09

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M/s. Naresh Kaushik, Amita Kalkal,
Lalitha Kaushik, Advs.

Mr. Mohan Parasarn, ASG.
Ms. Sadhana Sandhu, Adv.
Mrs. Anil Katiyar ,Adv.

Mr. Dinesh Kumar Garg ,Adv.
Mr. Renu George, Adv.
Mr. Dhanjayan Gory, Adv.

Mr. Praveen Swarup ,Adv.

UPON hearing counsel the Court made the following
O R D E R

All the applications are disposed of in

terms of the signed order.

(Ganga Thakur)
PS to Registrar

(Juginder Kaur)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

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O R D E R

I.A. Nos.7 & 8 of 2009 have been filed by the Government of N.C.T. Of Delhi and Delhi Technological University, Shahbad Daulatpur, Main Bawana Road, Delhi, in Civil Appeal No.5092/2009, which was disposed of on 4th August, 2009. I.A. Nos. 9 and 10 of 2009 have been filed by one Yashika Tigga and several others, inter alia, for impleadment in the disposed of Civil Appeal and for directions/clarification. I.A.Nos.11 and 12, are similar applications filed by Nawang Phuntscg and others, also for the same directions.

The issue involved in the Civil Appeal, referred to above, was the interpretation and/or application of the notifications and/or the circulars issued by the National Capital Territory of Delhi in terms of clause (1) of Article 341 of the Constitution of India.

The matter arose out of a judgment and order dated 13th May, 2005, passed by a Division Bench of the High Court of Delhi dismissing an appeal preferred against an order passed by a learned Single Judge

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of the said Court. One of the main issues involved in the Civil Appeal was the case of migrant students, who were seeking admission under the Scheduled Tribes quota in the

National Capital Territory of Delhi and it was ultimately held that the High Court had erred in following the decision in the case of S. Pushpa & Ors. vs. Sivachanmugavelu & Ors., (2005) 3 SCC 1, and that it could not have ignored the decision in Marri Chandra Shekhar Rao vs. Dean, Seth G.S. Medical College & Ors., (1990) 3 SCC 130. Following the same, ultimately, it was held that a notification was required to be published under Article 341 of the Constitution for the purpose of identifying Scheduled Tribes living in the National Capital Territory of Delhi.

In the applications filed by the Government of N.C.T., of Delhi, a clarification has been sought in respect of the said order, inasmuch as, for the Academic Year 2009-2010, the prospectus had been published inviting applications from the candidates including those from the Scheduled Tribes, despite the fact that no Notification had been published in the manner indicated in the aforesaid judgment. However, various students belonging to the Scheduled Tribes category from other States had also appeared for the examination and had not only proved successful but had also been selected for counselling. It may be indicated that 15th July, 2009, was fixed for

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counselling of the successful candidates. On 30th July, 2009, the date for counselling of Scheduled Tribes candidates was postponed while counselling for rest of the candidates was held.

The academic session for the year 2009-2010 commenced on 3rd August, 2009, while the judgment and order in Civil Appeal No.5092/2009 was delivered on the next day, the 4th August, 2009. The last date for counselling and admission as per the prospectus and bulletin of information was 31st August, 2009, but the counselling for Scheduled Tribes candidates was not conducted, as a result whereof those belonging to the Scheduled Tribes category, who had been

selected for counselling, were not given admission in terms of the aforesaid prospectus.

The present application filed by the Government of N.C.T. of Delhi is for clarification as to whether the judgment delivered in the Civil Appeal would also cover those Scheduled Tribes students who were successful in the written examination and had been selected for counselling before the judgment was delivered. Therefore, in the said application, the following reliefs have been prayed for:

"a) Pass an order clarifying that the observations made and decision taken by this Hon'ble court in its judgment dated 04.08.2009 in Civil Appeal No. 5092 of 2009 {Subhash Chandra v Delhi Subordinate Services Selection Board & Ors.} would not come in way of hinder the admission process of the Appellant-University & other Delhi Government run colleges and polytechnics in filling up seats reserved in favour of Scheduled Tribe candidates for the academic

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session 2009-2010 only, and can be filled up by Scheduled Tribe candidates immigrating from places outside Delhi; or, in the alternative;

b) Pass an order directing the manner in which the seats reserved for Scheduled Tribes candidates in the Applicant-University be filled up for the academic session 2009-2010 only."

Learned Additional Solicitor General appearing in support of the application filed by the Government of NCT of Delhi, submitted that although a notification had not been issued in terms of Article 341 of the Constitution, by way of past practice, students from the Scheduled Tribes category from other States had also been considered for admission in Delhi University. The learned ASG sought further clarification as to whether the judgment was intended to be prospective or whether it intended to cover those candidates who have already been selected for counselling. Two other applications filed by the students who were successful and have been selected for counselling also pray for the same clarification and for a direction that they be admitted into the institutions for which they had applied and were successful.

In this situation, we had requested the learned ASG,

Mr.Mohan Parasaran, to take instructions from the Government of NCT of Delhi in its Department of Training and Technical Education as to whether the Scheduled Tribes students, referred to hereinabove, could be accommodated although the first semester was to be completed soon. The learned ASG

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has produced a copy of instructions received by him from the OSD, DTU & Deputy Director(TTE) Mr.O.P.Shukla, wherein it has been mentioned that if the Delhi Category of Scheduled Tribes students who were successful and had been selected for counselling were to be admitted, special classes would be arranged for them to complete the mandatory teaching requirements of 13 weeks for one semester and thereafter they could catch up with the other students for the second semester in March, 2010. It has also been indicated that loss of study of these students in January and February, 2010 of second semester will be compensated by holding special/extra classes on Saturdays and Sundays and other vacations. It was also indicated that while issuing directions, the Court should not extend the benefit to Scheduled Tribes candidates who have already taken admission in any Institute/University in Delhi as that would disturb to the entire admission process.

Apart from the learned ASG, we have also heard Mr.Naresh Kaushik, learned counsel, in support of I.A.Nos.9 and 10 and Ms.Lata Krishnamurthy, learned counsel, in respect of I.A.Nos.11 and 12. In addition, we have also heard Mr.D.N. Goburdhan, learned counsel, who had appeared for the appellant in the Civil Appeal. While learned counsel for

the applicants were all ad idem in their approach to the matter, Mr.Goburdhan had reservations and submitted that any

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order that may be passed in these applications would amount to violation of provisions of the Constitution itself.

Having considered the submissions made on behalf of the parties, it should first be clarified that we are only

considering whether the judgment and order passed in the Civil Appeal intended to cover even those Scheduled Tribes candidates who had not only participated in the selection process but had also been selected for counselling prior to the delivery of the said judgment. We are of the view that this does not entail invocation of our power under Article 142 of the Constitution and, accordingly, Mr.Goburdhan's submission, has no merit.

We clarify that the judgment delivered in C.A.No.5092/2009 was intended to take effect prospectively and it was not the intention of the Court that the students who had already applied and had been selected for counselling should also be covered by the same. The High Court had in its judgment indicated that there were no materials on record to prove that the S.T. applicants were migrants. In our view such a consideration is immaterial for our purpose since despite the fact that the notification had been issued under Article 341 of the Constitution, as per past practice, S.T. candidates were being given admission in Delhi educational institutions. Unfortunately, although the applications were made soon after the judgment

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was delivered, the same could not be taken up for final disposal before the first semester has almost come to an end. In such circumstances, we accept the recommendations of the Department of Training & Technical Education, Government of NCT of Delhi, and direct that the successful students who had been called for counselling and have not already taken admission in any institution or University in Delhi, would be entitled to admission in the respective institutions for which they had applied for and also direct that special classes be arranged for the students to enable them to catch up with those who are in the process of completing the final semester. Such admission process should be completed, if possible, within a

week from date.

All the Applications are disposed of by this order.

Let the instructions received by learned Additional
Solicitor General from Shri O.P.Shukla, OSD, DTU &
Dy. Director (TTE) be taken on record.

.....J.
(ALTAMAS KABIR)

New Delhi,
November 13, 2009

.....J.
(CYRIAC JOSEPH)