

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 4980/2011 and CM 4127/2012**

Date of Decision: 16th April, 2012

IN THE MATTER OF

MS. VANYA DANGWAL Petitioner
Through: Mr. Rajesh Aggarwal, Advocate

versus

SHRI RAM COLLEGE OF COMMERCE (SRCC) AND ORS. Respondents
Through: None for respondents No.1 & 2/College.
Mr. Mohinder J.S. Rupal, Advocate for Respondent
No.3/University.
Ms. Neelam Jain, Advocate with Mr. A.D.N. Rao,
Advocate for R-4.

**CORAM
HON'BLE MS.JUSTICE HIMA KOHLI**

HIMA KOHLI, J. (ORAL)

1. The present petition is filed by the petitioner praying *inter alia* for quashing of the admission of respondent No.4 and the wait-listing of respondent No.5 by the respondent No.1/Shri Ram College of Commerce, which is affiliated with the respondent No.3/University, for admission in an undergraduate course on sports basis for the academic year 2011-12, and further, for her selection to the single seat available in the said course.

2. The facts of the case lie in a narrow compass. The petitioner and respondent No.4 & 5 had passed class XII in the academic year 2010-11 and they had applied to the respondent No.1/College for admission on sports basis in the category of lawn tennis. Apart from the petitioner and respondents No.4 & 5, a number of other candidates had applied to respondent No.1/College for admission in the said seat. The criteria for distribution of marks in the sports category in the under-graduate course as prescribed by the respondent No.3/University is that a candidate, who has participated at an international level would be given direct admission and a weightage of 75% would be given to candidates possessing certificates of best performance of the last three years with a weightage of 25% to be given on field trial.

3. It is the case of the petitioner that she alongwith the other candidates had appeared before the respondent No.2/Sports Admission Committee appointed by the respondent No.1/College on 05.07.2011, when field trials were fixed for lawn tennis. On the aforesaid date, though the petitioner did not claim entitlement to direct admission in the respondent No.1/College on the ground of being a candidate of international level, respondents No.4 and 5 did claim that they should be treated as international players for being granted direct admission in the college as they had played under the International Tennis Federation (ITF), Sri Lanka.

The aforesaid candidates were however informed that if they wanted themselves to be considered as international players for laying a claim to direct admission under the University rules, they ought to get their certificates certified by the Advisor, Delhi University Sports Council. In view of the above, not only the petitioner, but the respondents No.4 and 5 had also participated in the field trials that were held on 05.07.2011.

4. The results of the aforesaid field trials for lawn tennis alongwith the results of other sports were declared by the respondent No.1/College on 07.07.2011. As per the said results, the petitioner was assigned 50% marks in the category of "Certificates" and 25% marks in the category of "Field Trials". Thus, she had scored a total of 75% marks. Respondent No.4 was given nil marks in the category of "Certificates" and 20 marks in the category of "Field Trials" but finally, in the remarks column, it was mentioned that she had been selected. As regards, respondent No.5, she was again granted nil marks in the category of "Certificates" and 15 marks in the category of "Field Trial" and in the remarks column, it was noted that she was placed at Sr.No.1 in the wait-list.

5. Aggrieved by the aforesaid results, the petitioner had filed the present petition on 14.07.2011. The petition was listed on 18.07.2011, on which date, counsel for the petitioner had submitted that the petitioner had secured the highest marks but was denied admission in the sports category,

whereas respondent No.4 was wrongly shown in the category of an international level player and was granted admission while respondent No.5 was wrongly placed in the wait list at Sr.No.1. It was his contention that respondent No.4 had been illegally favoured by the respondent No.1/College whereas she was not an international level player and was in fact at CBSE-III level. Similarly, it was stated that respondent No.5 had also been wrongly shown in the wait-list at Sr.No.1.

6. After hearing the submissions made on behalf of the petitioner, notice was issued in the present petition on 18.07.2011, on which date, appearance was entered on behalf of respondent No.3/University on advance copy. On the said date, the Court had directed the Sports Council of the respondent No.3/University to probe the entire issue and submit its report within a period of ten days after obtaining all the necessary documents from the respondent No.1/College. It was further directed that the provisional admission granted by the respondent No.1/College to the respondent No.4 would be subject to the final outcome of the present petition.

7. Counter affidavits have been filed by the respondents No.1 & 2/College, respondent No.3/University and respondent No.4/student. Though respondent No.5 was duly served but she did not enter appearance. Pertinently, none has appeared for respondents No.1 and 2/College today despite the fact that the matter had been passed over once.

8. As per the report submitted by the respondent No.3/University alongwith its affidavit dated 16.09.2011, the committee had examined the documents pertaining to the petitioner, respondents No.4 and 5 as submitted by the respondent No.1/College and after scrutinizing their applications, the conclusion arrived at was as below:-

"Summary of the findings/conclusions:

1. In the opinion of the committee, the admission of Ms. Divija Mandava (respondent No.4), in view of the procedure stipulated by the college (respondent No.1), appears to be quite tenable.
2. The committee feels that the wait list prepared by the college (respondent No.1) is not consistent with the procedure stipulated by it and the same, therefore, needs to be set aside. In the opinion of the committee, Ms. Vaniya Dangwal (petitioner) and not Ms. Smriti Joon (respondent No.5) should be placed at Sl.No.1 in the wait list on the basis of marks awarded by the college in respect of certificates and trials."

9. In view of the aforesaid report that was submitted by the Sports Council of the respondent No.3/University, an affidavit was filed by the Registrar of respondent No.3/University stating *inter alia* that the Council had felt that the wait list prepared by the respondent No.1/College was inconsistent with the stipulated procedure and, therefore, the same was required to be set aside and that in the opinion of the committee, the petitioner herein and not the respondent No.5 ought to have been placed in

the wait list at Sr. No.1, on the basis of the marks awarded by the college in respect of the certificates submitted and the field trials held.

10. As regards respondents No.1 and 2/College, it is averred in the counter affidavit that on 06.07.2011, respondent No.4 had approached the Advisor, Delhi University Sports Council for getting her sports certificates certified and the same were certified to the effect that she was an international player in category A under Position I as she had secured the "winner position" in the singles event at the ITF Girls Tournament in Sri Lanka. Similarly, respondent No.5 had also secured the "quarter finalist position" in the girls doubles lawn tennis event at the ITF Junior Circuit Tournament held in Sri Lanka. Since the final list for admission under the ECS/Sports Quota had yet to be finalized by the respondent No.1/College, which required an endorsement by the Advisor, Delhi University Sports Council, the Sports Admission Committee of the respondent No.1/College had unanimously decided to recognize respondents No.4 and 5 as international players. But, as there was only one seat available in the lawn tennis (girls) category, respondent No.4 was selected for admission under the ECS/Sports Quota as she was shown as a "winner" falling in category A under position I whereas, respondent No.5 was placed in the wait list as she was shown as "quarter finalist" as per the certificates submitted by her.

11. It is the stand of respondent No.1/College that the petitioner had

never pressed her claim for being treated as an international player during the admission process and therefore, she was treated as a national player. Further, being a national player with the highest marks, she was placed in the wait list at serial No.2 and thereafter, the lists of candidates selected for provisional admission and those who were wait-listed were displayed on the college notice board on 07.07.2011. It was only after the final list for admission under sports quota was displayed on the college notice board that the mother of the petitioner had submitted a representation to the respondent No.1/College on 08.07.2011, requesting it to treat the petitioner also as an international player. As the said request was belated, it could not be entertained and the respondent No.1/College communicated the same to the petitioner's mother vide letter dated 12.07.2011 (Annexure R-4). It is further averred by the respondent No.1/College that even if the petitioner was to be treated as an international player, she would still be ranked below respondent No.4 and could not have secured admission in the college as she would not fall in category A under Position-I for the reason that the best position that she had secured on the basis of the certificates that had been submitted by her were "Runners-up" and "Quarter Finalist", unlike respondent No.4, who had been placed in category A under position I by securing "winner position" in the singles event at the ITF Girls Tournament in Sri Lanka.

12. In the course of arguments, counsel for the petitioner has been asked if the petitioner was able to secure admission in any other college affiliated to the respondent No.3/University. Counsel for the petitioner submits that the petitioner has got admission in the Economics Hons. Course in an educational institution affiliated to the respondent No.3/University and since then she has been diligently continuing with her sports activities and that this year, she is the Delhi University Champion in lawn tennis in the singles category and she has also secured 76% marks in academics.

13. It is further submitted by the counsel for the petitioner that in August 2011, the petitioner had applied to the R.K. Khanna Tennis Stadium under the RTI Act, with a request to furnish information pertaining to the names of girls/women lawn tennis players, who had represented India in various tournaments of international level from the year 2008 to 2011, as approved by the Ministry of Sports or the Lawn Tennis Federation and a reply had been furnished to the aforesaid application, by the same officer of the All India Tennis Association (AITA) who had issued the certificates to respondents No.4 and 5, wherein, neither the name of the petitioner nor those of the respondents No.4 and 5 had featured. He states that surprisingly, it was the very same officer of the AITA, who had submitted a reply dated 17.10.2011 to the Associate Professor and Secretary of the Sports Council of respondent No.3/University, informing him that the

petitioner as also respondents No.4 and 5 had participated in international tournaments and were international players and that in the order of merit, the petitioner had features at Sr.No.1, whereas respondent No.5 features at Sr.No.2 and respondent No.4 features at Sr.No.3. It is, thus, pointed out that there are lot of apparent inconsistencies in the reports that were submitted by the aforesaid officer in the AITA, thus causing great hardship to *bona fide* students, who have no option but to rely upon and submit a certificate issued by the said Association, that is recognized by the respondent No.3/University for the purpose of ranking a student in the sports category.

14. Undoubtedly, the submission made by the counsel for the petitioner to the effect that the AITA has not been consistent in issuing certificates indicating the ranking of the petitioner and respondents No.4 and 5 is apparent from a perusal of the reply dated 23.09.2011 submitted by the Executive Director – Tournaments to the father of the petitioner as compared to the subsequent reply dated 17.10.2011, submitted by the same officer to the Associate Professor and Secretary of the Sport Council of respondent No.3/University. However, fact remains that subsequent certification obtained by the petitioner after filing of the petition cannot be permitted to be taken into consideration for deciding this petition for the reason that while exercising powers of judicial review, the Court is required

to examine the records as were available at the relevant time and placed before respondent No.1/College as also respondent No.3/University when the said authorities took a decision inasmuch as the decision making process is being examined by the Court in these proceedings. Admittedly, at that time, the petitioner had not submitted a certificate to the effect that she was an international level player falling in category A in the game of lawn tennis and therefore, it is not permissible for her to claim that she ought to have been granted admission in the sports quota in the respondent No.1/College in the B.A. (Economics Hons.) course, on the basis of the documents that had been submitted by her then.

15. It may also be relevant to mention that almost one year has passed ever since the admission took place and the students are on the verge of appearing for their year end examinations, that are to commence in May, 2012. In the aforesaid circumstances, the court does not consider it prudent to displace either respondent No.4, when respondent No.3/University had endorsed the procedure followed by the respondent No.1/College for granting her admission or change the status of respondent No.5, even if it is assumed that respondent No.1/College had erred in placing her at Sr.No.1 in the wait-list, as the ground reality is that there is no vacancy in the sports quota for adjusting either respondent No.5 or the petitioner and the only seat that was available in the lawn tennis category, is now occupied by the

respondent No.4. Thus, even if the report of the respondent No.3/University is accepted, it shall not make any material difference as the petitioner shall still remain a wait-listed candidate at Serial No.1 and this position would not translate into her actual admission in the respondent No.1/College.

16. The Court is however glad to note that though the counsel for the petitioner states that the petitioner is extremely disappointed and disheartened with the manner in which the respondent No.1/College has treated her case, she seems to have put the entire episode behind her and is making sincere efforts to excel both, academically as also in the field of sports in the college, where she has been granted admission. It is hoped and expected that the petitioner shall remain focussed in her studies and sports and bring laurels to the said institution as well. The petitioner must remain mindful of the fact that there is no substitute for hard work and a disciplined life and that it is the commitment of dedicated individuals that make an institution a cut above the rest, and not the mortar and stone that go into raising the edifice.

17. At this stage, counsel for the petitioner states that the petitioner may be given liberty to approach the respondent No.1/College for seeking migration. Such a request, if made by the petitioner, shall have to be decided in terms of the rules applicable in that regard, which would require a no objection to be obtained not only from the college, where the petitioner is

presently studying, but also from the respondent No.1/College, where she proposes to seek migration. Any such request made by the petitioner shall be considered by both the colleges in accordance with the rules applicable in that regard.

18. The petition is disposed of alongwith the pending application while leaving the parties to bear their own costs.

APRIL 16, 2012
rkb/mk

(HIMA KOHLI)
JUDGE