

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

Date of decision: October 17, 2008

+ **W.P.(C) 6279/2008**

% S.M.HAMOODUR REHMAN FARIDI Petitioner
Through: Mr. P.N. Puri & Ms. Tarannum,
Advocates

versus

JAMIA MILLIA ISLAMIA UNIVERSITY
& ANR. Respondents
Through: Mr. M. Atyab Siddiqui, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported Yes
in the Digest?

VIPIN SANGHI, J.(ORAL)

1. The petitioner appeared in the B. Tech. Common Entrance Test 2008 conducted by the Jamia Millia Islamia University. He secured 128 out of 200 marks and was at the 8th position in the merit list of internal students. The topper in this category secured 133 marks out of 200. The petitioner was denied admission since he did not meet the age requirement of completing 17 years as on 01.10.2008. He fell short of that age by about 2 months. The petitioner sought relaxation of minimum age requirement for grant of admission. The "*Shaikhul*

Jamia" i.e. Vice Chancellor of the respondent University is empowered under the statutory ordinance to grant relaxation in age of upto one year. Ordinance I (1.1), inter alia, reads:

"Save otherwise provided no person shall be qualified for admission to the under graduate Courses of the Respondent University unless he/she has completed 17 years of age on the first of October in the year in which he/she seeks admission.

Provided further that the Shaikhul Jamia (Vice Chancellor) may on the basis of the individual merits, relax the age limit up to a maximum period of one year."

2. The petitioner was not communicated the outcome of the representation made by him for seeking relaxation in age. He approached this Court by filing Writ Petition No.5482/2008. The petition was taken up by the Court on 30.07.2008. Counsel for the respondent stated that the Vice-Chancellor has taken a uniform decision not to grant age relaxation in any such case since there were sufficient number of students for granting admission who satisfied the age criteria set by the University. The respondents stated that the decision taken by the Vice Chancellor on the petitioner's representation would be communicated to him within a week. The petitioner was given liberty to obtain the details of candidates who had been granted admission in the first year B. Tech. Course with particulars of their merit position and the marks secured by them. The petitioner has obtained the merit list and, as aforesaid, from the same it is seen that he would have been at the 8th position in the said merit list from amongst the internal students. The petitioner has,

consequently, preferred the present petition challenging the decision of the Vice-Chancellor of the respondent University not to grant age relaxation to him. I may note that no order refusing the prayer made by the petitioner has been communicated to the petitioner by the respondents. However, the respondent University has filed its counter affidavit to the present writ petition. The stand taken by the respondent is found in paragraphs D & E of the counter affidavit, which reads as follows:

“D. The Vice Chancellor, as matter of policy and principle, has decided that no relaxation shall be granted in the age limits and the said decision is being uniformly observed in all Courses since there are sufficient numbers of students available who satisfy the age criteria set up by the Respondent University. The Vice Chancellor felt, in his discretion, that where Applicants are available who satisfy the notified eligibility criterias they deserve the priority and those claiming relaxations can only be adjusted when vacancies are available, after having exhausted the Applicants who satisfy the eligibility. The Vice Chancellor, in his wisdom, felt that uniformity in age brackets helps/assists the general academic environ. Securing 128 marks by the Petitioner was not an exceedingly high and exemplary meritorious performance that would have entitled him to any relaxation. Also, the 8th position secured by the Petitioner is only in the Jamia Category and not the over all reflection of merit. Since Applicants are available who satisfy the age criterion (as also other qualifying conditions as set up by the Respondent University), such a decision of the Vice Chancellor is neither irrational nor arbitrary. This Hon’ble Court, it is submitted with great respect, may kindly not grant any indulgence in the matter.

E. It is an admitted fact that the Petitioner is short by two months of the requisite age limit and cannot be adjusted in violation of the policy of the Respondent University.”

3. Counsel for the respondent has sought to place reliance upon

the decision of the Supreme Court in AIR 2006 SC 2609 ***Ekta Shakti Foundation v. Govt. of NCT of Delhi*** and (2006) 10 SCC 645 ***Ganesh Bank of Kurundwad Ltd. v. Union of India & Ors.*** to submit that in judicial review of administrative action, the Court would confine itself to the question of illegality and would decide whether the decision making authority has exceeded its powers, or committed an error of law, or committed a breach of the rules of natural justice. The Court would interfere only where the decision is such that no reasonable Tribunal would have reached, or where it has found that the administrative authority has abused its power. 'Illegality' in this context in ***Ganesh Bank*** (supra) is defined to mean where the decision maker does not understand correctly the law that regulates its decision making power and does not give effect to it. In ***Ekta Shakti Foundation*** (supra) the Supreme Court has held that the policy decision must be left to the Government as it alone can decide which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government, so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

4. Discretionary power vested in any authority has to be guided. An unguided discretionary power may be attacked as vesting an

arbitrary power in the authority and the exercise of such discretionary power may result in arbitrary and whimsical exercise of that power. The guideline for the exercise of the discretionary power by the Vice Chancellor in this case is found in the relevant Ordinance itself.

5. In ***Shriram Sugar Industries Ltd. Vs. State of Andhra Pradesh and Others*** (1974) 1 SCC 534, the Supreme Court quoted with approval the following passage from Halsbury (Vol.1), 4th Edition Para 33 at page 35 as under:

“A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers, consistent with the purpose of the enabling legislation and not arbitrary or capricious. **Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests, hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment.** These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example, the award of discretionary investment grants and the allocation of pupils to different classes of schools. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its discretion in favour of a particular class of persons; **and such a power may be expressly conferred by statute.**” (emphasis supplied)

6. In ***Khudi Ram Dass Vs. State of West Bengal*** (1975) 2 SCC 81 the Supreme Court was dealing with a case involving judicial review of an administrative action which required subjective satisfaction of the authority concerned for the exercise of his

discretion. I may note that the discretion exercised by the Vice Chancellor while considering the aspect of age relaxation under the ordinance in question requires the objective consideration of the cases before him. The scope of judicial review of administrative action based on objective considerations would be the same, if not wider than the judicial review of administrative action based on subjective satisfaction. The Supreme Court in Khudi Ram Dass Vs. State of West Bengal (supra), inter alia, held as follows :

“9..... But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute..... **and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied.** Then again the satisfaction must be grounded “on materials which are of rationally probative value”. Machindar v. King, AIR 1950 FC 129. The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be

relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. **If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad.** **Pratap Singh v. State of Punjab, AIR 1964 SC 72.** If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider.”

“10. There is also one other ground on which the subjective satisfaction reached by an authority can successfully be challenged and it is of late becoming increasingly important. The genesis of this ground is to be found in the famous words of Lord Halsbury in *Sharp v. Wakefield*, 1891 AC 173, 179:

“... when it is said that something is to be done within the discretion of the authorities ... that something is to be done according to the rules of reason and justice, **not according to private opinion** ... according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular.””

“11. This discussion is sufficient to show that there is nothing like unfettered discretion immune from judicial reviewability. The truth is that in a Government under law, there can be no such thing as unreviewable discretion. “Law has reached its finest moments”, said Justice Douglas, “when it has freed man from the unlimited discretion of some ruler, some ... official, some bureaucrat.... Absolute discretion is a ruthless master. It is more destructive of freedom than any of man’s other inventions”. *United States v. Wunderlick*, (1951) 342 US 98. And this is much more so in a case where personal liberty is involved. That is why the courts have devised various methods of judicial control so that power in the hands of an individual officer or authority is not misused or abused or exercised arbitrarily or without any justifiable grounds.” (emphasis supplied)

7. In ***S. R. Venkataraman Vs. U.O.I.*** (1979) 2 SCC 491, the Supreme Court cited with approval English decisions in ***Queen on the prosecution of the Richard Westbrook Vs. The Vestry of Saint Pancras*** (1890) 24 Q BD 371, 375 and ***Sadler Vs. Sheffield Corporation (1924) 1 Ch 483***. In ***Westbrick*** (Supra) the House of Lords speaking through Lord Esher, M.R. held :

“If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.”

8. Keeping in view the aforesaid position in law, I proceed to examine whether the Vice Chancellor of the respondent University has kept in view the correct guidelines as emerge from the aforesaid ordinance.

9. The first thing that strikes me is that the decision taken is “as a matter of policy and principle” not to grant relaxation in age limit and to ‘uniformly’ follow the age limit norm in all courses. The purpose of vesting discretionary power of relaxation in the Vice Chancellor by the aforesaid ordinance is to enable the Vice Chancellor, in deserving cases which meet the guideline set out in the ordinance, to relax the age limit upto a maximum period of one year. Every power is coupled with a duty. The discretionary power to relax the age is coupled with the duty to examine in each case, individually, whether the candidate is deserving of the relaxation sought or not. A ‘uniform’ decision “as a matter of policy and principle” not to grant age relaxation in any case tantamounts to failure to perform the corresponding duty that goes

with the discretionary power. In my view, the Vice Chancellor could not, by one stroke of pen, refuse to grant relaxation in all the cases before him in the name of “uniformity”. “Uniformity” is a relative term and does not necessarily imply “non-discriminatory” conduct. It may result in under classification in a given case, which too is not permitted by Article 14 of the Constitution. The “policy and principle” has already been laid down in the aforesaid Ordinance of the University. The Vice Chancellor while exercising his discretionary power under the Ordinance is required to follow and apply that “policy and principle”. He cannot evolve a “policy or principle” which, in effect, goes contrary to it. The guideline or “policy and principle” as emerging from the Ordinance is not to deny age relaxation ‘uniformly’. In fact, it is to enable the Vice Chancellor to exercise his discretion in a deserving case in favour of a deserving candidate. In deciding not to grant age relaxation in any case and to observe the said “policy and principle” “uniformly”, in my view, the approach of the Vice Chancellor was contrary to the guideline that emerges from the aforesaid ordinance.

10. The justification given by the respondent for the impugned decision of the Vice Chancellor is that since other eligible students who meet the age norm are available, the age relaxation should not be granted. If that were the purport of the Ordinance, the Ordinance itself would have contained such a condition, before enabling age relaxation for any candidate. It is pertinent to note that the ordinance in question does not confer any express power on the Vice chancellor to exclude all candidates from consideration for age relaxation in the event of

their being sufficient number of eligible qualified candidates. While exercising discretion, the Vice Chancellor has superimposed this additional condition, which is not found in the guiding Ordinance. The Vice Chancellor, in my view, could not have self imposed upon his discretionary power such limitations and fetters as a matter of “policy or principle” and dealt with all the cases before him “uniformally” by applying the same additional conditions for exercise of the discretionary power. This particular consideration may well be one of the relevant considerations that the Vice Chancellor may keep in mind, but the same cannot be turned into an edict. Once again, it appears that the approach and orientation of the Vice Chancellor while exercising his discretion was contrary to the spirit of the aforesaid ordinance.

11. The third reason stated in the counter affidavit is that the Vice Chancellor in his wisdom felt that uniformity in age brackets helps/assists the general academic environ. The question that arises for consideration is whether this view of the Vice Chancellor is in consonance with the ordinance, as aforesaid. In my view, the answer is a simple no. This is because the ordinance itself postulates that the age requirement may be relaxed by one year, and, therefore, it is acceptable that students who are less than the minimum age of 17 years by upto one year are granted admission in the undergraduate courses. The wisdom of the Vice Chancellor in this respect is clearly contrary to the wisdom discernible from the ordinance in question, which has been framed by the Academic Council and the Executive

Council of the respondent University. The Vice Chancellor is bound by the same and cannot take a decision on a basis which is contrary to the one that emerges from the ordinance.

12. In my view, it may have been more relevant to enquire as to by how many days or months the students is falling short of the minimum age while exercising the discretion in question. I also find it curious that an internal student, who has had his schooling (Secondary as well as Senior Secondary) from a school within the Jamia Millia Islamia fold should face the age bar, and that too on the minimum side, when no such bar was placed against him when he appeared at the Secondary or the Senior Secondary examinations. The result is that though the candidate is said to have validly passed the qualifying examination without being underage, he is sought to be denied admission as being “underage” when he wishes to pursue an undergraduate course run by the same university soon after his schooling. The minimum/maximum age limits should be addressed at the schooling stage, and an internal student who is seeking admission to an undergraduate course, soon after his schooling, should not face the age bar. The purpose of the discretionary power vested in the Vice Chancellor has to be viewed in this light. It appears, the discretionary power provides a way out of this anomalous situation to mitigate the hardship that such a candidate would suffer for no fault of his. The prescription of minimum/maximum age for admission to the undergraduate courses in the respondent University, particularly for the internal candidates, it appears, needs a fresh look to remove such

anomalies. However, the considerations which have to be kept in mind by the Vice Chancellor is not for the Court to lay down and I, therefore, do not propose to go in this direction any further.

13. The last reason given by the respondent for the decision of the Vice Chancellor is that the petitioner had secured only 128 marks out of 200 marks, which could not be said to be exceedingly high and exemplary meritorious performance which would entitle him to any relaxation. In my view, though this may be relevant factor, it is equally relevant to note that the said marks had been obtained in a Common Entrance Test which is a competitive test and on the basis of relative merit the candidates are granted admission. Therefore, it also should have been kept in mind that the petitioner ranked 8th amongst the internal candidates, despite his having the handicap of being amongst the youngest candidate.

14. I am, therefore, of the view that while exercising his discretionary power of age relaxation, some of the aforesaid guidelines that the Vice Chancellor has followed are at variance with the guidelines which emerge from the ordinance in question, and the exercise of discretion by him cannot be sustained. The same appears to be illegal. At the same time it is not for the Court to substitute its own view, and it would have to be left to the Vice Chancellor to take a fresh decision, in the light of the observations made herein.

15. I, therefore, quash the decision taken by the Vice Chancellor not to grant age relaxation in the case of the petitioner for grant of admission to the B. Tech. Course, and direct that the matter be again

placed before the Vice Chancellor for a fresh consideration in the light of the aforesaid observations. The matter may be placed before the Vice Chancellor within 10 days and he may take a decision within the next 10 days.

Petition stands disposed of.

VIPIN SANGHI, J.

OCTOBER 17, 2008
rsk/dp