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

+ W.P.(C) 1945/2010

% ***Judgment Delivered on: 23.03.2010***

KUMARI ANAMIKA

..... Petitioner

Through : Mr. Ranjan Dwivedi and Mr. R.S. Sharma,
Advts.

versus

PRINCIPAL DAULAT RAM COLLEGE AND ORS

..... Respondents

Through : Mr. Amit Bansal, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Present petition is directed against the order dated 10.2.2010 passed by respondent no.1 cancelling the admission of M.A.(Prev.) English 2009-2010 of the petitioner after about eight months of admission and after the petitioner had appeared in the second semester examination.
2. Brief facts of the case, as set out in the present petition are that the petitioner had filled up the admission form for M.A. English (Prev. year) for the academic session 2009-2010. Petitioner had secured 44.7% in B.A. (Hons.) English. Petitioner in the admission form, admittedly, mentioned her percentage as 45. She also enclosed along with the admission form her statement of marksheet issued by respondent no.3 according to which she had secured 44.7%. The petitioner was granted provisional admission to M.A. English (Prev. Year). Subsequently, the University vide letter dated 29.1.2010 informed the college that as the petitioner

did not fulfill the minimum eligibility requirements prescribed for admission to MA (P) English course thus her provisional admission may be cancelled. The college in turn based on the letter of the University informed the petitioner about the cancellation of her admission vide letter dated 10.2.2010. The admission of the petitioner has been cancelled as the petitioner did not fulfill the minimum eligibility requirement prescribed for admission to M.A. (Prev.) English course, which is minimum 45%.

3. Learned counsel for the petitioner submits that the petitioner had rounded off her percentage from 44.7 to 45 and thus the petitioner meets the eligibility criteria. In support of his argument, learned counsel for the petitioner has relied upon ***State of U.P. and Another Vs. Pawan Kumar Tiwari And Others***, reported at (2005) 2 SCC 10, and more particularly para 7, which reads as under:

7. We do not find fault with any of the two reasonings adopted by the High Court. The rule of rounding off based on logic and common sense is: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. 46.50 should have been rounded off to 47 and not to 46 as has been done. If 47 candidates would have been considered for selection in general category, the respondent was sure to find a place in the list of selected meritorious candidates and hence entitled to appointment.

4. Learned counsel for the petitioner submits that with a view to maintain judicial discipline the High Court must follow the declaration of law by the Apex Court. In support of his argument, counsel for the petitioner relies upon ***Mohindra Hire Purchase Vs. Jarnail Singh***, reported at 2008 (15) SCALE 460.
5. Mr. Amit Bansal, learned counsel for respondent no.3 has entered appearance on an advance copy and submits that petitioner had not filled up the admission form truthfully. The petitioner in

column meant for percentage had admittedly written 45% instead of the exact percentage secured by her, which is 44.7%. Counsel further submits that as the petitioner has concealed material information at the time of filling up the application form, on this ground alone, the present petition should be dismissed. He further submits that in case the petitioner had filled up the admission form correctly, the petitioner would not have been granted admission. It is next contended that the University was well within its right to cancel the admission as per the Admission Bulletin as well as the eligibility conditions set out therein. Counsel for respondent no.3 has handed over in Court a copy of the Bulletin of Information for Admission to Post-Graduate Courses, which has been published by the University of Delhi. Counsel for respondent no.3 relies upon page 3 of the Bulletin, relevant portion of which reads as under:

“In case of any discrepancy/irregularity towards admission offered is noticed before or after depositing the fee, the admission would be cancelled by the Faculty Office/College without any reference to the candidate and the candidate would have no claim.”

6. Counsel for respondent no.3 has further relied upon Clause 2 (i) and (iv) of Eligibility Conditions, which read as under:

- (i) Rounding off a fraction of marks for purposes of admission to any course is not admissible.
- (iv) If any irregularity is detected after declaration of merit list/issue of Provisional Admission Slip, before or after depositing the Fee, admission of such candidate will be cancelled without any reference.

7. Counsel for respondent no.3 submits that petitioner cannot be granted admission as rounding off a fraction of marks for the purpose of admission is not admissible as per Clause 2 (i) of the

Eligibility Conditions. Counsel for respondent no.3 further submits that the case of the petitioner is covered by a judgment of a Division Bench of Allahabad High Court in the case of **Noor Ali Ansari Vs. State of Uttar Pradesh**. Counsel also submits that the case of **Noor Ali Ansari** (supra) is applicable in all force to the facts of this case and the case of **State of U.P. Vs. Pawan Kumar Tiwari And Others** (supra) is not applicable as it deals with reservation of posts and not admission to college. Counsel for respondent no.3 has relied upon paragraphs 10 to 14, 17 and 18 of **Noor Ali Ansari** (supra), which read as under:

10. Counsel for the petitioner has made reference to the judgments of the Hon'ble Supreme Court in the cases of State of U.P. and Anr. v. Pawan Kumar Tiwari and Ors. (2005) 2 SCC 10 and State of Punjab and Anr. v. Asha Mehta, (1997) 11 SCC 410, and has contended that if the fraction is 5 or above it has to be rounded up so as to read as 1. On the same analogy, the petitioner contends that the marks obtained by the petitioner should be rounded up and should be read as 55 percent.
11. So far as the judgments in the State of U.P. and Anr. v. Pawan Kumar Tiwari and Ors. (supra) and Bhudev Sharma v. District Judge, Bulandshahar and Anr. (supra) are concerned, they are clearly distinguishable from the facts of the present case inasmuch as in the aforesaid cases, the issue for consideration was regarding the percentage of reservation provided for a particular category. The percentage so provided was not qualified or to be governed by the word minimum. The principle of rounding up is based on logic and common sense: if part is one-half or more, its value shall be increased to one and if part is less than half then its value shall be ignored. More so, while making such a calculation, the Court must keep in mind that the number of reserved vacancies do not exceed the permissible limit i.e. 50 percent.
12. In Pawan Kumar Tiwari (supra), the Hon'ble Apex Court refused to round up 1.86 to 2 for Scheduled Tribes observing that no candidate belonging to Scheduled Tribe had challenged the determination, therefore, it is evident from the aforesaid judgment that the law laid down therein is not of universal application.
13. So far as the judgment in the case of State of Punjab and Anr. v. Asha Mehta (supra) is concerned the judgment specifically records that it had been a procedure of the Public Service Commission in all other cases, therefore, the Hon'ble Supreme Court refused to entertain the appeal without recording anything further merely being its order on the principle that practice adopted for a long period should not be

disturbed. Such a judgment cannot be relied upon by the petitioner except in support of the contention which has been canvassed before us.

14. The case in hand is squarely covered by the Division Bench judgment of this Court in Vani Pati Tripathi v. Director General, Medical Education and Training, Jawahar Bhawan, Ashok Marg, Lucknow and Ors., (2003) 1 UPLBEC 427, wherein this Court considered large number of its earlier judgments making calculations to find out the exact number of members required for removal of an elected office bearer of the local bodies, particularly, Wahid Ullah Khan v. District Magistrate, Nainital and Ors., AIR 1993 All 249 and Rajan Seth v. State of U.P. and Ors, (1992) 1 UPLBEC 636 and came to the conclusion that where inter-se merit of the candidates is to be examined, the rounding up theory is not applicable. In the said case, the candidate seeking admission in MBBS course could not secure the exact qualifying marks i.e. at least 50 percent and her contention that marks secured by her to the extent of 49.67 percent be rounded up and be reads as 50 percent was rejected.
15. In a competition like this, there may be large number of candidates / appellants who might have secured marks equal to the petitioner or between 54.75 and 54.99 percent. No factual foundation has been laid down to the effect that in case his marks are rounded up to 55 percent, no person either of general category or to which the petitioner belongs would stand superseded.
16. In such a fact situation, it would be greatest injustice to those who had secured better marks than petitioner, but could not secure 55 percent, the plea of the petitioner is liable to be rejected on this ground also. The validity of the advertisement has been challenged on various ground inter-alia that in the subsequent advertisement, cut off marks have been reduced from 55 percent to 50 percent. A notification which earlier cannot be challenged on a ground that a different criteria had been adopted by the competent authority at a subsequent stage. More so, the process of selection starts from the issuance of the advertisement and is to be complied with in conformity with the terms and conditions incorporated therein. If for certain reasons, the cut off marks have been reduced in subsequent advertisement, petitioner cannot take benefit thereof."

8. I have heard counsel for the parties. The basic facts are not in dispute that the petitioner had applied for admission in MA (P) English for the academic session 2009-2010. It is also not in dispute that the petitioner had secured 44.7% in B.A. (Hons.) English. While filling up the admission form the petitioner in column meant for percentage secured had filled up the percentage as 45%. Although, in fact, the petitioner had secured

44.7%. Based on the information rendered by the petitioner, college granted provisional admission for MA (P) to the petitioner. It is only subsequently when the form of the petitioner along with mark sheet, which had been submitted by the petitioner, was scrutinized, the University cancelled the provisional admission granted to the petitioner. I have also perused the Information Bulletin for Admission to Post Graduate Course 2009-2010. As per Clause 2 (i) of the Eligibility Condition *“rounding off a fraction of marks for purposes of admission to any course is not admissible.”* Thus, the petitioner suffers from eligibility bar and cannot be granted admission. Even otherwise, in terms of Clause 2 (iv) of the Eligibility Condition, University is well within its right to cancel the provisional admission in case any irregularity is detected. The petitioner was duty bound to fill the admission form correctly and should have mentioned the exact percentage which was secured by her. It seems that petitioner was well aware that in case the exact percentage would have been filled up she would not have been considered for admission by the respondent. I find force in the submission of counsel for the University that the case of **State of U.P. and Another** (supra) is not applicable to the facts of this case and also that the abovesaid case deals with reservation. Moreover in the present case the petitioner can gain no advantage as the rounding off a fraction of marks is not permissible, as has been specifically laid down in the Eligibility Conditions. Petitioner should not have concealed the exact percentage of marks while filling up the admission form. Accordingly, I find no merit in the present petition, the same

stands dismissed.

CM NO.3885/2010 (STAY).

9. Dismissed in view of the orders passed in the writ petition.

MARCH 23, 2010
'msr'

G.S.SISTANI,J