

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) 7984/2011 and CM 18056/2011**

Reserved on: 14.12.2011

Date of decision: 20.12.2011

IN THE MATTER OF

SAEMA KHANAM (MINOR) THROUGH HER COUSIN BROTHER
AND GUARDIAN

..... Petitioner

Through: Mr. Alamgir, Advocate

versus

UNIVERSITY OF DELHI AND ORS.

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Advocate with
Ms. Shawana Bari, Advocate for R-1 to R-3.
Mr. Avijit Datta, UDC for R-4.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The petitioner is aggrieved by the failure on the part of respondent No.1 to 3/University of Delhi and respondent No.4/Faculty of Ayurvedic and Unani Medicines to grant her admission to a five year degree course of Bachelor of Unani Medicine and Surgery (BUMS).

2. It is the case of the petitioner that she is a permanent resident of District Badaun, UP and had completed her XII Standard as a Science candidate having procured 83.33% marks in the board examination. The petitioner applied in the All India Quota for general category for counselling of BUMS course in respondent No.4/College. Clause 7 of the

Bulletin of Information pertaining to Notification of Merit Lists/Counselling stipulated that the merit list would be displayed on the notice board of the Faculty Office and in the office of the Principal of respondent No.4/College on 27.10.2011 for appearing in the counselling for BAMS/BUMS courses and the candidates were also invited to visit the website of respondent No.4/College. They were further informed that BAMS/BUMS seats would be allotted to the candidates strictly in accordance with the merits in the counselling to be conducted by the Joint Admission Committee in the office of the Principal of respondent No.4/College on 28.10.2011 and 31.10.2011 at 9 AM onwards. As per sub-clause (i) of Clause 7 of the Bulletin, no communication was required to be sent to an individual candidate for appearing before the Joint Admission Courses Committee for counselling. The candidates were called upon to appear before the said Committee on the specified dates according to their merits as per the schedule given in the Bulletin of Information. They were told to report at the premises of respondent No.4/College on the stipulated date at 8:30 AM for counselling alongwith the relevant documents of identity. Sub-clause (ii) of Clause 7 stated that if any candidate was unable to appear on the dates mentioned in the Bulletin of Information and the time specified therein, such candidate could send a representative with the appropriate authorization on prescribed proforma. Sub-clause (iii) of

Clause 7 is relevant for consideration and is reproduced hereinbelow for ready reference :-

“(iii) If a candidate or his/her representative is absent on his/her turn at the time of Counselling and comes late on the same day before the end of the Counselling, he/she may be allowed to appear in the Counselling on his/her written request and on payment of ₹500/- in cash as a penalty for late coming. Such candidate/representative shall appear in the Counselling just after the batch for which Counselling was going at the time when he/she submitted his/her request and deposited the penalty for late coming. He/she may opt for a course/institution, which is available to him/her at that time only. He/she will have no claim on the seats already allotted.”

3. As per the petitioner, till late night of 27.10.2011, the merit list had not been displayed on the website of respondent No.4/College and on the very same night, she had received telephonic information from her friend that her name was a part of the merit list for counselling on 28.10.2011. Counsel for the petitioner states that the petitioner is residing in a village situated at a distance of 15 kilometers from District Badaun and on account of lack of adequate transport facilities, she could manage to arrive in Delhi only at around 9 AM and could reach the premises of respondent No.4/College at about 10 AM on 28.10.2011. It is further submitted that upon reaching respondent No.4/College, it took the petitioner some more time to verify the location of the room, where the

counselling was being conducted and by the time she reached the said room, she found that the counselling was already in progress and she had missed her turn.

4. It was stated by learned counsel that as the petitioner could not appear for counselling at the prescribed time, she had approached the office of respondent No.4/College and explained the difficulty faced by her. She also submitted a written representation on 28.10.2011 to respondent No.4/College, explaining the reason for the delay due to which, she could not reach Delhi at the assigned time. It is the case of the petitioner that alongwith the aforesaid representation, she had deposited a sum of ₹500/- as penalty with respondent No.4/College so that she could be allowed to participate in the counselling. But the petitioner was never called for counselling and instead, she was turned away on the ground that the said process had been completed. Aggrieved by the aforesaid action, the petitioner has filed the present petition.

5. Counsel for the petitioner stated that as per the merit list published by respondents No.1 to 3/University, the name of the petitioner was displayed as having attained third rank in the All India Quota for General category and, therefore, she is entitled to be admitted in the BUMS

course, but the respondents failed to call her for counselling, in spite of her having explained the reasons for her coming late and having deposited a sum of ₹500/- as penalty as per the terms of clause 7(iii) of the Bulletin.

6. On 14.11.2011, appearance was entered on behalf of respondents No.1 and 3/University and time was sought to obtain instructions. In the meantime, notice was issued to respondent No.4/College returnable for today. Respondent No.4/College is duly served. Counsel for respondents No.1 to 3/University stated that he has obtained instructions from his clients and hands over a copy of the minutes of the meeting of respondents No.1 to 3/University, wherein amongst others, the case of the petitioner was also considered and it was noted as below:-

"3(a). The Committee considered the representation of Ms. Saema Khanam, rank 3rd (BUMS) in General category of 15% All India Quota and noted that as per information given in the Bulletin of Information-2011 candidates were required to report at 8:30 A.M. on 28th October, 2011 for Counselling, however, Ms. Saema Khanam reported late for the Counselling at 12:35 P.M. and by that time the Counselling for allotment of BUMS Course under 15% All India Quota was over."

7. It was urged by the counsel for respondents No.1 to 3/University that in view of the fact that the petitioner was well aware of the fact that if she failed to appear on the assigned date and time for counselling, she would be allowed to appear in the counselling, subject to her submitting a written request and upon payment of a sum of ₹500/- as penalty for late coming, and further that she would not have any claim on a seat already allotted and she would be given an option only for a course/institution, which was available for her at the relevant time, she cannot have a grievance against the said procedure which was strictly followed by the respondents. He stated that in the present case it was not as if the petitioner had reported during the course of counselling being conducted for her batch. Rather, by the time the petitioner had reported for counselling at 12:35 PM, counselling for allotment of seats in the BUMS course under 15% All India Quota was already over as by then the seats stood exhausted, hence her claim for admission to any course stood forfeited.

8. This Court has examined the minutes of the meeting of the Joint Admission Committee held on 28.10.2011 and 31.10.2011 in the office of the Principal of respondent No.4/College. The observations of the Committee are clear. A perusal of the same reveals that the Committee

had duly considered the representation submitted by the petitioner in the General category of 15% All India Quota and noted that as per the information displayed in the Bulletin of Information-2011, the candidates were required to report for counseling at 8:30 AM on 28.10.2011, but the petitioner herein had reported late for counseling at 12:35 PM, by which time, the counseling for allotment of seats in the BUMS course under 15% All India Quota was over. Further, there is merit in the submission made by the counsel for respondents No.1 to 3/University that the petitioner cannot claim a vested right to participate in the counselling session merely because she had submitted a written request and had paid ₹500/- in cash as penalty for late coming.

9. Fact of the matter is that the petitioner's counselling could have been undertaken only if seats had remained available for allotment even after the counselling for the said batch had been concluded. In the present case, as per respondents No.1 to 3/University, at the end of the counselling session of the batch, in which the petitioner was required to participate, there was no seat left for allotment to be made in her favour. In such circumstances, although the Court can sympathize with the petitioner in acknowledgement of the unfortunate circumstances she finds herself in, however as per the parameters laid down by the respondents

No.1 to 3/University for admission to BUMS course in respondent No.4/College and in view of the conditions of the Bulletin of Information-2011, it has to be held that the decision of respondents No.1 to 3/University to decline the request of the petitioner to sit for counselling at the end of the batch in which she was required to appear for counselling, is neither illegal or arbitrary or tainted with perversity for interference under judicial review.

10. Accordingly, the present petition is dismissed alongwith the pending applications, while leaving the parties to bear their own costs.

DECEMBER 20, 2011
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(HIMA KOHLI)
JUDGE