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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 28.01.2013

Judgment pronounced on : 08.02.2013

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LPA 740/2012

SHARIQ REHMAN

..... Appellant

Through: Mr M.N. Kirishinamani, Sr. Adv with
M. Tarique Siddiqui and Mohd. Usman
Siddiqui, Advs.

versus

JAMIA HAMDARD (HAMDARD UNIVERSITY) & ORS

..... Respondents

Through: Mr V.K. Rao, Sr Adv with Mr Saket
Sikri and Ms Ekta K. Sikri, Advs for
Respondents 1 &2

Mr Dhruv Mehta, Sr Adv with Mr Aanchal
Mullick, Adv for Respondents 4 to 13.

Mr Ashish Kumar and Mr Abhijit Tripathi,
Advs for Medical Council of India.

And

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W.P.(C) 5986/2012

SHARIQ REHMAN

..... Petitioner

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Mullick, Adv for Respondents 4 to 13.

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Advs for Medical Council of India.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V.K. JAIN

V.K. JAIN, J.

1. Pursuant to the permission granted to it by the Medical Council of India (MCI), the respondent Jamia Hamdard (Hamdard University) invited online applications for admissions to its MBBS Programme, under general category as well as in management quota. The petitioner/appellant Shariq Rehman applied on 27.06.2012, for admission to the aforesaid programme, in management quota as well as in general category. The petitioner/appellant appeared in the entrance examination conducted by the said university and his name appeared in the fifth selection list, under the management quota. On 11th August, 2012 the appellant appeared for counseling and the original certificates along with demand draft of Rs.15 lacs for admission in the management quota were deposited by him on 13th September, 2012. However, the petitioner/appellant was not permitted to attend the classes apparently on the ground that he was not eligible for being considered for admission on the date of application form was filled up by him. This is also the case of

the respondent that the petitioner/appellant had submitted a false declaration in the application form, which would disentitle him from admission to the said course. According to the respondent, the minimum marks required for admission to the aforesaid course were 50%, the appellant had failed in Chemistry in the first attempt, but while submitting the application form he concealed this fact and claimed that the result of the qualifying examination was awaited. This is also the case of the respondent that even after re-evaluation, the petitioner/appellant having secured less than 50% marks, he is not entitled for admission to the aforesaid course. The case of the petitioner/appellant in this regard is that he belongs to OBC category and the minimum marks required for admission in the said category being 40%, he was eligible for admission to the MBBS course.

2. The learned Single Judge who heard the writ petition, declined to grant any interim relief to him observing that having secured only 26% marks in Chemistry the petitioner was ineligible for admission. He further observed that the petitioner/appellant had made a false declaration in the application form when he claimed that his result was still awaited.

3. LPA 740/2012 was filed by the appellant challenging the order dated 15th October, 2012 whereby the learned Single Judge had declined to grant any interim relief to him. During the pendency of the writ petition, some of the successful candidates in the management quota were impleaded as respondents No.4 to 13 in the writ petition.

Vide order dated 8th November, 2012, we directed that the writ petition be also listed along with LPA 740/2012. With the consent of the parties, we heard arguments in the main petition on 28th January, 2013.

4. In its counter-affidavit filed in the writ petition, respondent no.3, MCI has stated that as per its regulations, the minimum marks required in the qualifying examination are 50% for the general category candidates, 45% for physically disabled candidates and 40% for SC/ST/OBC candidates. This is the case of the MCI that the admission has to be made strictly on the basis of merit and there can be no deviation from the regulations made in this regard. It is also stated in the reply filed by the MCI that all admissions in medical colleges have to be made strictly in accordance with time schedule prescribed by the MCI and the admissions, in violation of the regulations framed by the said Council are not permissible. It is also stated that Graduate Medical Education

Regulation, require 75% attendance from each student of MBBS course before he/she appears in the examination, the deadline for admission in MBBS course had been fixed as 30th September and it is not possible to complete the syllabus even by holding extra classes considering rigorous teaching and training schedule of MBBS course.

5. As per Regulation 4(3) of Regulations framed by the Medical Council of India in the matter of admission and selection to medical courses, the admission in MBBS courses cannot, in any case, be made after 30th September of the year in which the academic session commences. The deadline for the admissions fixed in the aforesaid regulations being sacrosanct, it is not open to the Court to direct admission on expiry of the aforesaid deadline.

In *State of Bihar & Ors. v. Dr. Sanjay Kumar Sinha & Ors.* (1990) 4 SCC 624, Supreme Court took exception to the non-adherence to the time schedules and reiterated that the admissions to medical colleges and post-graduate courses are governed by the orders of the Apex Court and the Regulations made by the Medical Council of India, which must be strictly followed.

In **Medical Council of India v. Madhu Singh & Ors.** (2002) 7 SCC 258, Supreme Court declared that mid-stream admissions should not be permitted. Noticing the practice of compassion in review of such admissions, the Court also held that late or mid-stream admission, even just four months after beginning of the classes, cannot be permitted.

In **Mridul Dhar (Minor) & Anr. v. Union of India & Ors** (2005) 2 SCC 65, Supreme Court applied the schedule notified by the Medical Council of India (MCI) in Appendix 'E' of the Graduate Medical Education (Amendment) Regulations, 2004 and directed its strict adherence and clarified that adherence to the time schedule by everyone was a paramount consideration. The Court issued a specific direction to all the State functionaries to adopt the said time schedule.

In **Priya Gupta vs State Of Chhattisgarh & Ors.** 2011 (4) SCC 623, Supreme Court again cautioned all concerned that the schedule specified in **Mridul Dhar** (*supra*) should be maintained and Regulations should be strictly followed.

In view of the mandate of Regulations framed by MCI and authoritative pronouncements of Supreme Court, no directions for

admissions of the appellant to the MBBS course of respondent No. 1 can be passed at this stage.

6. Yet another requirement of MCI Regulations is that the person taking admission in such a course must have at least 75% attendance in the academic year. Since we are already in the month of February, it will not be possible for the appellant to achieve the required percentage of attendance even if he is forthwith given admission to MBBS course. This is yet another reason why we cannot direct admission of the appellant at this stage.

7. We cannot direct admission of the appellant to the next academic year since he will be required to compete with other candidates who appear in the entrance examination to be conducted for the next academic year.

8. The learned senior counsel appearing for respondent No.1 submitted that the appellant made a misrepresentation to the University when he stated in the application form, seeking admission to MBBS course, that his result was still awaited though, as a matter of fact, the result had already been declared by that time and he had failed in the

paper of Chemistry, having obtained 26% marks. The learned senior counsel appearing for the appellant submitted that such a declaration was made since the appellant had applied for revaluation of his marks in the paper of Chemistry and the result of revaluation was still awaited. This was countered by the learned senior counsel for the University, who submitted that while filling up the application form, the appellant was duty bound to declare the marks which had been awarded to him in qualifying examination and there was a positive misrepresentation by the appellant when he claimed that his result was still awaited. It was also contended by the learned senior counsel for the University that the relief in exercise of writ jurisdiction being a discretionary relief, should not be exercised in favour of a person who concealed material facts and made a positive representation to the University at the time of seeking admission to the course.

We take note of the fact that the learned Single Judge refused interim relief to the appellant only on account of the false declaration made by him in the application form by withholding the marks obtained by him in each subject and claiming that the result was still awaited. However, considering the fact that, in our opinion, since no admission

can be directed to an MBBS course, after 30th September and the appellant will not be in a position to achieve the required percentage of attendance in the said course, we need not take a view on this aspect of the matter.

9. It transpired during the course of hearing before us that two students, who were granted admission in management quota, did not meet the eligibility requirement of 50% marks in the admission test and two candidates did not appear at all in the entrance examination. These students have been impleaded as respondents No. 10 to 13 in the writ petition. A perusal of the list of students admitted in management quota would show respondent Zara Khan and Sama Rizvi obtained less than 50% marks in the admission test. It appears that the respondents Mohd. Aamir Hussain and Omer Ali Mohammed Alshear did not even appear in the admission test. No marks have been disclosed in the admission test against their names.

10. As per Regulation 5(5) of the Regulations framed by the Medical Council of India for admission to the medical courses, the minimum marks required in admission test are 50% in case of General Category

candidates and a person belonging to General Category and securing less than 50% marks is not eligible for admission to the said course.

It has been held by the Apex Court in various decisions, including the Constitution Bench decision in **Preeti Srivastava & Anr. vs. State of M.P. & Ors.** 1999 (7) SCC 120, that to obtain admission in MBBS course not only has the candidate to appear in the entrance examination, he/she also required to obtain the minimum marks, prescribed in MCI Regulations.

In **Chowdhury Navin Hemabhai and Ors. v. State of Gujarat and Ors** (2011) 3 SCC 617, Supreme Court noticing clause 5.5(ii) of MCI Regulations, held that the candidate must secure the marks prescribed in the said Regulation and even the State cannot prescribe qualifications lower than those prescribed by the MCI.

In **T.M.A. Pai Foundation And Others Vs State Of Karnataka And Others**, (1995) 5 SCC 220, Supreme Court held that even the admission in NRI quota are required to be made in the order of merit. Obviously, in terms of the Regulations framed by MCI, the merit in such a case can be decided only on the basis of the admission test.

11. MCI has taken a categorical stand before us that it is not open and permissible for any private medical college/institution to give admission to such candidates, who do not hold merit positions in Common Entrance Test. Therefore, the admission of the above-referred four students, two of whom did not appear at all in the Entrance Examination and the remaining two did not obtain the requisite minimum marks, appears to be in contravention of MCI Regulations.

12. Regulation 5 of MCI Regulations provides the method of selection of students to Medical Colleges on the basis of merits of the candidates and as held by the Supreme Court in **Rajan Purohit and Ors. v. Rajasthan University of Health Science and Ors.** 2012 (8) SCALE 71, the said regulation does not deal with eligibility of students for admission to MBBS course. It is Regulation 4 which lays down the eligibility criteria for admission to the medical course. This is not the case of the petitioner/appellant that the aforesaid respondents do not fulfil the eligibility criteria as laid down in Regulation 4. Supreme Court observed in **Rajan Purohit** (*supra*) that there is a distinction between a candidate not fulfilling the eligibility criteria for admission to the MBBS course and the candidates who fulfil the eligibility criteria, but have not been

admitted in accordance with the procedure for selection on the basis of merit. In the aforesaid case, the Apex Court did not cancel the admissions which had been made in violation of Regulation 5, but, confirmed to the eligibility criteria laid down in Regulation 4, though penalty was imposed by the Court on the college concerned in the form of directions for surrender of certain seats and financial penalty was imposed on the students who were admitted in violation of Regulation 5 of MCI Regulations.

13. Considering the fact that there is no prayer in the writ petition for quashing appointment of these four persons or directing any other action against them, we refrain from passing any order with respect to their admission and leave the matter to MCI, which shall be competent to take such action as is open to it, in law, in this regard.

14. For the reasons stated hereinabove, we find no merit in the appeal as well as in the writ petition and the both are hereby dismissed.

V.K.JAIN, J

CHIEF JUSTICE

FEBRUARY 8, 2013

'raj'/BG