

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

% **Date of decision: 9th July, 2015.**

+ **W.P.(C) 8293/2014 & CM No.19238/2014 (for stay)**

MOHD. SAAD

..... Petitioner

Through: Mr. Sitab Ali Chaudhary and Mr.
Gufran Ali, Advs.

Versus

JAMIA MILLIA ISLAMIA & ORS.

..... Respondents

Through: Mr. Amit George, Mr. Alamgir and
Ms. Zeba Khair, Advs. for R-1 to 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, an applicant for admission to the Master of International Business (MIB) course in the respondents No.1 to 4 Jamia Millia Islamia (University) in the academic year 2014-2015, in the Muslim 'Other Backward Classes' (OBC) category, filed this petition on 5th November, 2014 impugning the non-grant of admission to him and grant of admission to one Mr. Ali Sher who had obtained 79.75 marks as against 80 marks scored by the petitioner, and seeking mandamus to the respondents No.1 to 4 University to admit the petitioner and allow him to attend the classes.

2. However, the said Mr. Ali Sher was not impleaded as a party to the

petition. The petition came up first before the Court on 27th November, 2014 when the said Mr. Ali Sher was impleaded as respondent No.5 and notice of the petition was issued. However, no interim relief as sought by the petitioner, granted. Since then, counter affidavit has been filed by the respondents No.1 to 4 University and to which a rejoinder has been filed by the petitioner. Notice issued to the respondent No.5 Mr. Ali Sher has by ordinary process returned with the report that he is not available at either of the two addresses given and the notice has been affixed at one of the address and the report on the notice sent *dasti* is that he has refused to accept notice and the report on the notice sent by speed post is of the same having been delivered. The respondent No.5 Mr. Ali Sher is deemed to have been served. None appears on his behalf. He is proceeded against *ex-parte*. The counsel for the petitioner and the counsel for the respondents No.1 to 4 University have been heard.

3. It has at the outset been enquired from the counsel for the petitioner, as to how the relief sought of directing the respondents No.1 to 4 University to admit the petitioner in the academic year 2014-2015, even if the petitioner were to be found entitled thereto, can be granted, inasmuch as the said academic year is since over.

4. The counsel for the petitioner states that the petitioner having approached the Court in November, 2014 itself and the petition having remained pending in this Court, the petitioner, if found entitled to the relief, must be granted the relief of admission to the same course in the current academic year 2015-2016 and cannot be left remediless.

5. It has however been enquired from the counsel for the petitioner, whether the petitioner has participated in the process for admission to the said course in the academic year 2015-2016 and if not, how can he be granted admission in the said academic year and would it not amount to allowing the petitioner to win the race for admission in the academic year 2015-2016, without the petitioner even participating in the said race. Attention of the counsel for the petitioner in this regard is invited to the dicta of the Division Benches of this Court (of which the undersigned was a member) in ***Rajat Goel Vs. Ministry of Human Resource & Development (Government of India)*** MANU/DE/7235/2011 and ***Shivam Shresthi Vs. Delhi Technological University*** MANU/DE/1757/2014. It has further been put to the counsel for the petitioner that would not the seats in the said course be limited and would not directing the petitioner to be admitted to one such seat be to the deprivation of the aspirant for admission in the

current academic year, inasmuch as they would be deprived of competing for the seat which would be so allotted to the petitioner.

6. The counsel for the petitioner in this regard relies on *Asha Vs. Pt. B.D. Sharma University of Health Sciences* (2012) 7 SCC 389 where finding the petitioner to have been wrongly denied admission in a previous year, direction for her admission in the following academic year was issued.

7. However it has been brought to the notice of the counsel for the petitioner that the said dicta of the Supreme Court was considered and dealt with by Supreme Court in *Aneesh D. Lawande Vs. St. of Goa* (2014) 1 SCC 554 and *Chandigarh Administration Vs. Jasmine Kaur* (2014) 10 SCC 521 and it was held that if a candidate is not selected during a particular academic year due to the fault of the Institution and in this process the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then the Court may consider grant of appropriate composition to offset the loss caused, if any. It was further held that when the candidate does not exercise or pursue his / her right or legal remedies against his / her non selection expeditiously and promptly, then Courts cannot grant any relief.

8. The Supreme Court, even in *Asha* supra, though issued a direction for

admission in the subsequent academic year, qualified the same with the same being permissible in the rarest of rare or in the exceptional circumstances, where no fault is attributable to the candidate and the candidate has pursued the available rights and legal remedies expeditiously, without any delay and fault is found on the part of the authorities and apparent breach of some rules and regulations and principles in the process of selection and grant of admission and where denial of admission violates the right to equality and equal treatment.

9. In this respect it may be noticed that the name of the respondent No.5 Mr. Ali Sher was in the fourth waiting list for admission published by the respondents No.1 to 4 University on 19th August, 2014. It is the case of the petitioner that in place of the name of the respondent No.5 Mr. Ali Sher, his name should have found mention. It is further the case of the petitioner that thereafter he made a query under the Right to Information Act, 2005 and subsequently made representations dated 1st , 2nd , 3rd , 5th , 10th & 16th September, 2014 and 9th October, 2014. The petition though is dated 5th November, 2014 and was filed on the same day but with defects and was re-filed repeatedly on 13th , 19th , 22nd & 24th November, 2014 and as aforesaid came up before the Court on 27th November, 2014. Though the date on

which the academic session / classes commenced is not on record but from the relief claimed in the petition, of allowing the petitioner to attend the classes, it is evident that by the time the petition was prepared on 5th November, 2014, the academic session had begun. It thus cannot be said that the petitioner was prompt or diligent or expeditious in making the challenge. As aforesaid, the cause of action, if any, accrued to the petitioner on 19th August, 2014 and the petitioner allowed more than three months to lapse before the petition was first brought before the Bench of this Court. Even then, Mr. Ali Sher in whose stead the petitioner was claiming admission, was not impleaded and was impleaded perhaps at the instance of the Court. Even after notice of the petition was issued, no expediency was shown, inasmuch as the notice on 27th November, 2014 was issued only for 11th February, 2015 and till then no steps for service of the respondent No.5 Mr. Ali Sher were taken and the case was repeatedly adjourned for the said purposes. The petitioner thus does not fulfil the criteria laid down by the Supreme Court even in *Asha* supra, for even if successful, being granted the relief of admission in subsequent year. Unfortunately, reliance is placed on *Asha* supra, without noticing the subsequent judgments of the Supreme Court.

10. Be that as it may, for the sake of completeness, the counsels have also been heard on merits.

11. The entrance to the said course was on the basis of an Entrance Examination comprising of written test, interview and / or group discussion and / or any other specific component approved by the Academic Council. It is not in dispute that the procedure to be followed by the respondents No.1 to 4 University for admission was:

- (a) preparation of a merit list on the basis of marks obtained in Written Examination, regardless of the candidate's category, treating all the candidates as 'General Candidate';
- (b) selection of three times the number of seats in General Category, from the top of the merit list, irrespective of the category of candidate, for being called for interview;
- (c) arranging the remaining candidates according to their reserve category and merit;
- (d) selection of three times the number of seats in each reserve category from the candidates of respective reserve category;
- (e) treatment of all candidates as General Candidates and only if they were not able to compete in the General Category, to treat them

in reserve category;

(f) those reserved candidates who do not get selected under the General Category being shifted to their respective category;

(g) “a candidate who qualified only in reserved category shall not be shifted to the General Category, after interview”; and,

(h) in case seats in the General Category remain vacant, the same to be filled in from the reserved category waiting list.

12. It is not in dispute that in the merit list prepared on declaration of result of the written examination, while the name of the respondent No.5 Mr. Ali Sher found mention in the merit list prepared in terms of para 11 (a) supra, the name of petitioner did not find mention therein; the name of petitioner as well as the respondent No.5 Mr. Ali Sher was shown in the list of Muslim and the Muslim OBC Category candidates.

13. The only case of the petitioner is that though the total marks scored by the petitioner in the Entrance Examination were 80, as aforesaid, the marks scored by the respondent No.5 Mr. Ali Sher were 79.75 and thus he should have preference over the respondent No.5 Mr. Ali Sher.

14. The respondents No.1 to 4 University have explained:

- (I) that the cut off marks, of the merit list of candidates prepared after the written test, were 76.50;
- (II) that while the respondent No.5 Mr. Ali Sher had scored 76.75 marks in the written test, the petitioner had scored 73 marks;
- (III) thus, while the respondent No.5 Mr. Ali Sher, though also a Muslim OBC, made it to the merit list, the petitioner did not;
- (IV) that even though the petitioner in the interview and in the group discussion thereafter scored more than the respondent No.5 Mr. Ali Sher, taking his total to 80 marks as against 79.75 of the respondent No.5 Mr. Ali Sher, but since the name of the respondent No.5 Mr. Ali Sher was in the merit list, he could secure admission in the General Category; the petitioner, though having more marks in total, competed in the category of Muslim OBC candidates and where he could not get admission.

15. The counsel for the petitioner does not dispute or controvert that the admission of the respondent No.5 Mr. Ali Sher was in the General Category. His contention however is that since in the fourth waiting list, vacancy had occurred in the General Category, the petitioner, in terms of para 11 (h) supra ought to have been admitted instead of the respondent No.5 Mr. Ali

Sher, having more marks than the respondent No.5 Mr. Ali Sher.

16. The counsel for the respondents No.1 to 4 University has contended that the rule aforesaid, of shifting of reserved category candidates to General Category in the case of vacancy (para 11(h) supra) was not attracted, since the list prepared of General Category had not exhausted itself and the respondent no.5 Mr. Ali Sher was admitted not as a reserved category but as a General Category candidate. It is further contended that the petitioner, even though in total having more marks than respondent no.5 Mr. Ali Sher, could not under para 11(g) supra be shifted to the General Category.

17. I am unable to agree with the counsel for the petitioner. The words “in case seats in the General Category remain vacant, the same to be filled in from the reserved category waiting list” in para 11(h) supra can by no stretch of imagination be read as creating a vacancy in the General Category, without the merit list prepared of three times the number of seats in the General Category being exhausted. Not only so, the said rule of admission is to be read along with the other rule aforesaid of, “a candidate who qualified only in reserved category shall not be shifted to the General Category, after interview”. The petitioner had not qualified in the General Category and even though in the interview and group discussion held after

the written test, had a total score higher than that of respondent No.5 Mr. Ali Sher, could not be shifted to the General Category, in which category the respondent No.5 Mr. Ali Sher having a higher score in the written test had found place and from which list he got admitted.

18. The petitioner thus, on merits also, has no case.

19. The counsel for the petitioner during the hearing referred to ***Andhra Pradesh Public Service Commission Vs. Baloji Badhavath*** (2009) 5 SCC 1 to contend that the petitioner having a total score higher than that of the respondent No.5 Mr. Ali Sher, ought to have been admitted. However the petitioner, in the petition, has not challenged the procedure laid down by the respondents No.1 to 4 University for admission and the said plea thus is not now open to the petitioner.

20. I have, in ***Ms. Jyoti Yadav Vs. Govt. of NCT of Delhi*** MANU/DE/2728/2010 and in ***Sagar Setia Vs. Delhi Technological University*** MANU/DE/1417/2011 held that such change of category, contrary to admission brochure, is not permitted.

21. The counsel for the respondents No.1 to 4 University, during the hearing, referred to ***Manish Kumar Shahi Vs. State of Bihar*** (2010) 12 SCC 576, ***Ramesh Chandra Shah Vs. Anil Joshi*** (2013) 11 SCC 309 and

Dhananjay Malik Vs. State of Uttaranchal (2008) 4 SCC 171 to contend that the petitioner having taken part in the selection process, cannot, on remaining unsuccessful, question the rules. He also relied on *State of Punjab Vs. Renuka Singla* (1994) 1 SCC 175 to contend that in exercise of jurisdiction under Article 226 of the Constitution, no direction in violation of rules can be issued and on *Krishna Priya Ganguly Vs. University of Lucknow* AIR 1984 SC 186 and *All India Council for Technical Education Vs. Surinder Kumar Dhawan* (2009) 11 SCC 726 to contend that the Courts cannot impose their own ideology over the method of selection devised by the educational institutions. However, need is not felt to advert thereto.

22. There is thus no merit in the petition, which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 09, 2015

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(Corrected and released on 24th July, 2015).