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

Date of decision: 7th August, 2015

+ LPA 523/2015

MOHD SAAD

..... Appellant

Through: Mr. Chetan Lokur with Mr. Sitab Ali
Chaudhary, Advs.

Versus

JAMIA MILIA ISLAMIA & ORS

..... Respondents

Through: Ms. Zeba P. Alanger, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CM No.14108/2015 (exemption)

Allowed, subject to all just exceptions.

LPA No.523/2015 & CM No.14107/2015 (stay)

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 9.7.2015 passed in W.P.(C) No.8293/2014.
2. The brief facts which led to filing of the Writ Petition are that the appellant applied for admission to the course of Master of International Business in respondent No.1/University. There were 60 seats available in the concerned year, namely, 2014-15.
3. A written test was conducted on 15.6.2014. On 24.6.2014 the result was declared. The appellant was called for a group discussion and interview

pursuant to his performance in the written test on 27.6.2014. The respondent/University declared the result on 3.7.2014. The list of waiting candidates was also later declared and the name of the appellant was mentioned at 24th rank in the Muslim category and 7th rank in Muslim OBC category.

4. The grievance of the appellant is that he had 80 marks in the selection process and has been denied admission whereas Shri Ali Sher/respondent No.5 obtained 79.75 marks and he has been selected. The appellant has also voiced grievance against another candidate Shri Suffyan Chaudhary. Admittedly the said Suffyan Chaudhary had higher marks than the appellant i.e. 80.5 and is also ranked higher in the waiting list.

5. The respondent/University filed a counter-affidavit before the learned Single Judge. In the Counter-Affidavit filed, the procedure followed in admissions has been attached and has also been explained. The admission to the respective course is granted under different categories i.e. General Category, Muslim Category, Muslim Women Category, Muslim OBC/ST category. After the entrance exam the respondent University prepares a merit list which is prepared first solely on the basis of marks obtained by the candidates. The candidates who score the qualifying marks are selected as candidates for the General Category. All the candidates are first considered for the said general category. Three times the number of seats in the General Category are selected from the top of the list irrespective of the category of the candidate. The remaining candidates if eligible are arranged in merit in their respective reserved category. Three times the number of seats in each reserved category from the candidates of respective category are also selected. Hence, the General Category list can also contain candidates

belonging to reserved categories depending upon their performance in the written test. After the interview process is over, the candidates who have qualified in the reserved category cannot be shifted to the General Category.

6. In the written exam conducted, the appellant had scored 73 marks though the cut off mark for the General Category was 76.50. As a result, the appellant did not qualify for the General Category and was placed in the Muslim and Muslim OBC/ST category. In contrast, Shri Ali Sher scored 76.75 marks in the written and was also selected for the General Category. After the interview process was over. The appellant was placed at Serial No.24 in the waiting list of Muslim category and Serial No.7 in the waiting list of Muslim OBC/ST category.

7. The name of Mr.Ali Sher appeared in the fourth list for General Category and he was granted admission. Regarding the appellant, he was placed in the respective waiting list of the Reserved Category but did not get admission. A total of 69 candidates were selected, which is as per the policy which has been explained.

8. Keeping in view the above position, the learned Single Judge dismissed the writ petition. The impugned order notes that the appellant had applied for admission in the Academic Year 2014-15. Despite the admission process being over long back, the appellant delayed and filed his writ petition only on 5th November, 2014. There were procedural delays in pursuing the writ petition. Further despite allegations against Mr.Ali Sher he was not impleaded as a party. This resulted in further delay. The impugned order relying upon earlier judgments of the Division Bench of this Court in *Rajat Goel vs. Ministry of Human Resource and Development (Government of India) & Anr., MANU/DE/7235/2011* and *Shivam*

Shresthi vs. Delhi Technological University, MANU/DE/1757/2014 held that the Academic Year in question for which admission was in dispute, namely, 2014-15 had already come to an end and the next Academic Year of 2015-16 had started, hence even if there is merit in the contention of the appellant, he could not be granted admission for the new Academic Year of 2015-16. The order holds that it would amount to allowing the appellant to win the race for admission in the Academic Year 2015-16 without the appellant even participating in the race.

9. The impugned order also notes that the appellant has relied upon the judgment of the Supreme Court in the case of ***Asha vs. Pandit B.D.Sharma University of Health Sciences, (2012) 7 SCC 389*** where the Supreme Court despite the cut-off date having expired had granted admission to the candidate in that case holding that the rule of merit cannot be completely defeated in the facts of the case as there is no fault attributable to a candidate where she is denied admission for arbitrary reasons. The impugned order notes the said judgment but notes that in the present case it cannot be said that the appellant had prosecuted his case diligently to claim to be an innocent candidate and to seek relief of admission to the concerned course despite commencement of a fresh Academic Year. The Court noted that the fourth waiting list was published by the respondent on 19.08.2014. Thereafter the appellant has made various representations in September and on 09.10.2014 and has filed the writ petition on 5.11.2014. As the petition was lying in defects, lot of time was taken to remove the defects and the matter came up before the Court only on 27.11.2014. Even at that stage, Mr.Ali Sher was not impleaded and he had to be impleaded after filing of the petition. No effective steps were taken thereafter to serve the said

Mr.Ali Sher. The service was completed only on the date when the impugned order dated 9.7.2015 was passed. Hence, the impugned order concludes that the appellant does not fulfil the criteria laid down by the Supreme Court in the case of *Asha vs. Pandit B.D.Sharma University of Health Sciences (supra)*.

10. Despite the above position the learned Single Judge examined the contentions on merit and held that there is no merit in the petition.

11. We have heard learned counsel for the parties and have perused the record.

12. The learned counsel appearing for the appellant has strenuously contended that merit has to be necessarily the sole criteria. Heavy reliance was placed on the judgment of the Supreme Court in the case of *Asha vs. Pandit B.D.Sharma University of Health Sciences (supra)* to contend that criteria for selection has to be merit alone. It was stressed that the appellant was higher in the merit list than Ali Sher, respondent No.5 and justifiably should have been given admission to the concerned course.

13. Learned counsel appearing for respondents No.1 to 4 have submitted that the present appeal is entirely futile inasmuch as admission to the Academic Session 2014-15 for the said course have already been completed and presently even for the present year i.e. 2015-16 there is no seat available.

14. We may have a look at the “Procedure to be followed for Admission” which have been filed by the respondents No.1 to 4 alongwith his counter-affidavit which is the applicable Admission Procedure being followed. The said procedure has been approved as per communication dated 26.5.2006. The relevant terms of the said procedure for conduct of the entrance

examination and for the subsequent interview/Group discussion and final selection are as follows:-

“SELECTION OF CANDIDATES FOR INTERVIEW

- . Prepare a merit list regardless of the candidate's category, treating all the candidates as 'General Candidate'.
- . Select 'Three' times the number of seats in 'General' category, from the top of the list, irrespective of the category of candidate. If there is a tie in test marks for the last position, include all those who have same marks for the last position.
- . Arrange the remaining candidates according to their reserve category and merit.
- . Select three times the number of seats in each reserve category from the candidates of respective reserve category.

Explanation :

All candidates shall be treated first as 'General' category candidate. It is only when they are not able to compete in the general category that they are treated in reserve category.

SELECTION OF CANDIDATES FOR ADMISSION

- . Qualifying marks will be entered after the interview.
- . Qualifying marks will only be entered in Percentage exact to two places of decimal.
- . Those reserved candidates who do not get selected under general category should be shifted to their respective category.
- . Arrange the remaining candidates according to merit and category.
- . Select the required number of candidates in each reserved category from the respective reserved category list.
- . All the candidates who appeared for interview but could not be selected for admission shall be placed in waiting list.
- . Only one waiting list shall be generated by the system for each category.
- . First the waiting list of 'General' category shall be

prepared. Only those candidates who had qualified for interview under 'General' category shall be placed in general category waiting list.

. Accordingly the waiting list of reserved category shall be selected.” (Emphasis Added)

15. There is no challenge to the aforesaid procedure which is being followed by the respondent University.

16. It is an admitted fact that in the written examination that took place the appellant did not qualify for the General Category as he had scored 73 marks i.e. below the cut off of 76.50. He was placed in the Muslim Category and Muslim OBC/ST category and called for Group Discussion and interview accordingly. Based on his performance in the written test, interview and group discussion he was placed in the waiting list of Muslim category at serial No.24 and Muslim OBC/ST at serial No.7. However, Mr. Ali Sher had scored higher than the appellant in the written test and he also qualified for the General category. Mr.Ali Sher scored 76.75 marks. After the interview and group discussion, he was placed in the waiting list of General category at serial No.20, Muslim category at serial No.26 and Muslim OBC/ ST category at serial No.8. As the appellant had higher overall marks than respondent No.5 Mr.Ali Sher, he was placed higher than Mr.Ali Sher in the said Muslim category and Muslim OBC/ST Category. Shri Ali Sher, however, got selected in the fourth list in the General category. Only those candidates who have qualified for interview under General Category are to be placed in the General Category waiting list. The criteria clearly provides only those candidates who have qualified for interview under General category are to be placed in the General category

waiting list. The appellant in the written test did not qualify for the General category. Later after group discussion and interview, he could not be shifted to General category.

17. In view of the said criteria as adopted by respondents it is obvious that the appellant not having qualified for interview in the General Category list could not seek to be placed or selected in the General Category.

18. We do not see any merit in the present appeal. The judgement of the Supreme Court in the case of *Asha vs. Pandit B.D. Sharma University of Health Sciences (supra)* would have no application to the facts of this case as on merits the appellant has failed to make out any case. Accordingly, the appeal is dismissed.

JAYANT NATH, J

CHIEF JUSTICE

AUGUST 07, 2015/kks/n