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

Date of decision: 03.06.2016

+ LPA No.320/2016 & CM No. 19218/2016

DR ANKITA CHODHARY

..... Appellant

Through: Mr.Tanmaya Mehta, Mr.Shubhanshu
Singh & Mr.Suman Kumar,
Advocates.

Versus

GURU GOBIND SINGH

INDERPRASTHA UNIVERSITY

..... Respondent

Through: Mr.Mukul Talwar, Sr.Advocate with
Ms.Anita Sahani, Mr.Nitin Sharma &
Ms.Leela Suman, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present appeal is filed seeking to impugn the relief granted to the appellant by the impugned judgment dated 17.05.2016 of the learned Single Judge.
2. The appellant completed her MBBS from Vardhman Mahavir Medical College & Safdarjung Hospital, Delhi affiliated to the respondent-Guru Gobind Singh Indraprastha, University. She was issued a Provisional Certificate on 01.07.2015. She is permanent resident of Bareilly, U.P. and belongs to Jat Caste which falls under Other Backward Class (*in short* 'OBC'). She has a Caste Certificate from the State Government of U.P. She

got admission in MBBS course under OBC category.

3. The respondent invited applications for Common Admission Test to the Post Graduate Medical Course (*in short 'PGMC'*) in January, 2016. As per the procedure, reservations were applicable to these seats as per policy of University as applicable from time to time for Schedule Castes (SC)/Schedule Tribes (ST) and OBC candidates. It is the contention of the appellant that she was eligible for applying under the OBC quota.

4. In the Entrance Examination held on 12.03.2016, the appellant qualified and secured a rank of 103 in the overall merit list published on 14.03.2016. In OBC category, it is stated that the appellant secured 17th rank. Her preference was for Dermatology or Ophthalmology.

5. The counselling was to start from 09.04.2016. It is averred that to the utter shock and surprise of the appellant, the respondent on 07.04.2016 issued a Notification in the evening. Under the reservation policy then prevailing, persons having a caste certificate from outside Delhi were also considered OBC candidates for the purpose of availing the benefits of reserved category. However, as per the impugned Notification, it was directed that only those students who have caste certificates issued by Delhi Government were eligible to apply under the OBC category. This Notification was issued much after start of the admission process for PGMC for the Academic Session 2016-17, just before the counselling was about to begin.

6. In the counselling that took place on 12.04.2016, the respondent did not allow the appellant to appear as an OBC candidate. The appellant was granted permission to appear only as a General Category candidate in the counselling. Hence, as a consequence of the exclusion of the appellant,

lesser meritorious OBC candidates than her got admission.

7. The learned Single Judge by the impugned judgment noted with approval the submission of the learned counsel for the appellant that 'the rules of the game have been changed after the game had begun'. The impugned judgment further noted that the impugned Notification issued by the respondent on 07.04.2016 was at a variance with its policy which was there for the Academic Session 2015-2016. It was held that there were no grounds for the respondent- University to change its policy, after the process of admissions had begun. Hence, the order concluded that the appellant had been wrongly excluded from the OBC Category while filling up seats for PGMC. The court, however, held that as the impugned Notification was issued on 07.04.2016 and the appellant filed the writ petition on 25.04.2016, she cannot get relief *setting aside* the admission granted to other OBC candidates who have been selected in the first round of counselling especially as the selected candidates were not party before this court. The court, however, directed that in future counselling for the present academic year reservation for OBC candidates for PGMC would take place without giving effect to the Notification dated 07.04.2016.

8. By the present appeal the appellants sought allotment of the seat she would have been allotted had she been considered as per her merit position in the OBC Category in the first round of counselling. The present appeal came up for hearing on 18.05.2016 and this court passed an interim order that in case any admission is made by the respondent- University in the second counselling on 19.05.2016 in the Specialisations of Dermatology or Ophthalmology, the same shall be subject to the further orders of this court. On 23.05.2016, this court noted that the appellant had been offered

admission in the Specialisation of Ophthalmology in ESI Hospital. As the appellant was not satisfied on 26.05.2016, the submissions of the learned Senior Counsel for the respondent University were noted that the students can be admitted against any vacancy arising due to any reason upto 31.05.2016 and the respondent- University is proposing to conduct an extended counselling for filling up such vacancies, if any. The appellant's candidature would also be considered against such vacant seats, if any, in accordance with law.

9. The learned counsel for the appellant has today confirmed that the appellant has not been admitted in the extended counselling in any other college. He submitted that admission granted to her in the Specialisation of Ophthalmology in ESI Hospital cannot be said to be as per the appellant's rank and that with her rank she would have got admission in Ophthalmology in Safdarjung Hospital or Ram Manohar Lohia Hospital. He submits that in ESI Hospital the appellant will have to submit a bond for Rs.25.00 lakhs to undertake to serve ESI Hospital for a minimum period of three years after completing her Specialisation in Ophthalmology. He submits that these conditions are not imposed by the other two colleges. He, hence, relies on the judgment of the Supreme Court in *Asha v. Pt.B.D. Sharma University of Health Sciences & Ors. (2012) 7 SCC 389* to contend that this court has the power to mould its relief appropriately and stated that the appellant should not be penalised for no fault of her inasmuch as the University has wrongly changed the policy and denied the appellant admission of her choice, as per her rank. It is urged that this court can direct the creation of an additional seat in any of the two Hospitals, namely, Safdarjung Hospital or Ram Manohar Lohia Hospital and that such an order would meet the ends of

justice.

10. The only issue raised in this appeal is regarding the relief granted to the appellant by the learned Single Judge in the impugned judgment. The submission of the appellant is that this court should have granted admission to the appellant in PGMC of Ophthalmology either in Safdarjung Hospital or Ram Manohar Lohia Hospital.

11. We may have a look at the judgment of the Supreme Court in ***Asha v. Pt.B.D. Sharma University of Health Sciences & Ors.***(supra). That was a case where the appellant cleared her secondary examination (medical stream) with 75% marks and was eligible for taking medical entrance examination. She was declared successful in the entrance examination. In the first counselling, the appellant was not selected and she took admission in BDS course on that very day. In the second round of counselling, the appellant again participated but her name was not declared by the respondent for the said admission. Later, it came to light that though the appellant had not been admitted to the MBBS course, candidates who had ranked below her in the merit list had been given admission to the MBBS course. The court held that it was unfortunate and unfair that the appellant had been denied admission. The court noted as follows:

“29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The Respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in *Medical Council of India v. Madhu Singh and Ors.*, *Ms. Neelu Arora and Anr. v. Union of India and Ors.*, *Aman Deep Jaswal v. State of Punjab and*

Ors. (2006) 9 SCC 597, Medical Council of India v. Naina Verma and Mridul Dhar v. Union of India.

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

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32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, Regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru and Ors. v. State of J and K and Ors.; Chavi Mehrotra v. Director General Health Services and Aravind Kumar Kankane v. State of UP and Ors.

33. We must hasten to add at this stage that even if these conditions are satisfied, still, the court would be called upon to decide whether the relief should or should not be granted and, if granted, should it be with or without compensation.”

12. It was in the above facts and circumstances, the Supreme Court directed that the appellant in that case who had applied for admission to the MBBS course for the Academic Session 2011-2012, be granted admission to

the MBBS course for the Academic Session 2012-2013. It also directed that preferably and if it is permissible, the admission of none of the other candidates to the MBBS course may be disturbed. However, if it was not possible, the court directed that the candidate last in the merit who has been granted admission to the MBBS course shall be transferred to the BDS course and the appellant shall be admitted to the MBBS course.

13. In the present case, the learned Single Judge has specifically denied any further relief to the appellant inasmuch as though the impugned Notification was issued on 07.04.2016 and the appellant had approached this court much later on 25.04.2016. The explanation that this court was closed for vacation from 09.04.2016 and reopened on 18.04.2016 was not accepted inasmuch as it was always been open to the appellant to mention the matter and get it listed.

14. We agree with the view expressed by the learned Single Judge. The appellant has got admission in the course of her choice in PGMC course of Ophthalmology. The only problem is that she will have to submit a bond for Rs.25.00 lakhs and will have to undertake to serve ESI Hospital for a minimum period of three years after completing her course. It is not as if she has been left without any relief whatsoever. We also cannot help noticing that the impugned Notification changing the policy was issued by the respondent on 07.04.2016. The registration for the first round of counselling took place on 09.04.2016, while the counselling also took place on 12.04.2016. The appellant had moved an application on 08.04.2016 itself requesting the respondent- University to allow her to attend the counselling as an OBC candidate. When she got herself registered for counselling on 09.04.2016, the respondent- University did not allow her to appear as an

OBC candidate and also did not accept her under OBC category. Hence, the appellant was aware on 09.04.2016 that she would not be considered for OBC category on 12.04.2016. Had she moved the court immediately at that time, her position could have been protected and it would not have caused prejudice or damage to any of the candidates who are selected in the counselling held on 12.04.2016. The contention that she could not have moved this court immediately merely because the court was closed for vacation can be no ground, inasmuch as urgent matters are always listed even late at night by following the appropriate procedure.

15. In our view the judgment of the Supreme Court relied upon by the learned counsel for the appellant in the case of *Asha v. Pt.B.D. Sharma University of Health Sciences & Ors.(supra)* will not be of any help to the appellant. The appellant having got admission to her desired course, though with the condition to undertake a minimum service of three years, will not fall in the category of rarest of rare cases or exceptional circumstances. Even otherwise, the delay in moving this court in the facts and circumstances of the case lead to some of the other students taking admission in the colleges for which seats the appellant is now submitting.

16. In view of the above facts and circumstances, we see no reason to interfere with the judgment of the learned Single Judge. The appeal is accordingly dismissed.

(JAYANT NATH)
JUDGE

CHIEF JUSTICE

JUNE 03, 2016/v