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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 01.11.2019

Judgement pronounced on 18.11.2019

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W.P.(C) 7854/2019 & CM APPL. 32663/2019

MS. SNEHA VATS

..... Petitioner

Through: Mr. Gurmehar Sistani, Ms. Dezy Gaur, and Mr. Ravinder Adlakha, Advocates.

versus

UNIVERSITY OF DELHI AND ORS. Respondents

Through: Mr. Mohinder J.S. Rupal, and Mr. Kousik Ghosh, Advocates for the University of Delhi.

Mr. Anil Dabas, and Mr. Praveen Kumar, Advocates for R-2.

Mr. M.K. Bhardwaj, and Mr. Shubham Gairola, Advocates for R-3.

Mr. Bhagwan Swarup Shukla, CGSC with Mr. Sarvan Kumar Shukla, and Mr. Murari Kumar Shukla, Advocates for R-4 & 5.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

1. This case, while it presents a hard set of facts, is also a case that seems straight out of Sir Arthur Conan Doyle's book. Why I say so will become apparent on noticing the facts which are set forth hereafter.

1.1. On 05.05.2019, the petitioner i.e. Ms. Sneha Vats sat for the National Eligibility Entrance exam (in short “NEET exam”) concerning academic session 2019-2020. Ms. Vats was declared successful in the NEET exam. She secured 552 marks out of the total marks of 720 and was ranked 22857 in the common merit list.

1.2. The respondent no.1, i.e. University of Delhi (hereafter referred to as “University”) *via* the Faculty of Medical Sciences, issued the notification dated 19.06.2019 requesting candidates belonging to the category defined as “Children/Widows of Officer and Men of the Armed Forces including Para-Military Personnel” (in short “CW category”) to present themselves on the given date, at the designated venue and time for verification of documents.

1.3. The aforementioned notification adverted to the fact that the invitation to present documents was open to those candidates who had been registered with the Medical Counselling Committee (MCC) for admission to MBBS/BDS courses – 2019 against 85% seats made available *qua* the Delhi quota.

1.4. It also adverted to the fact that the verification would be carried out *vis-à-vis* candidates falling in all categories as per priorities stipulated in the aforementioned notification.

1.5. Ms. Vats, as stipulated in the notification, presented herself for verification of documents on 25.06.2019 at 11:30 A.M. at the Seminar Hall, Auditorium, Vallabh Bhai Patel Chest Institute, Gate No.2, University of Delhi-110007 (in short “PCI Hall”).

1.6. In a manner of speech, the pitch got queered, at this stage, for Ms. Vats. While Ms. Vats claims that she not only registered her presence on

arrival in the PCI Hall but also presented her documents and testimonials in original before the concerned authority that was charged with the duty of verifying the same, both, the University and respondent no.5 i.e. the Kendriya Sainik Board (KSB), aver that although Ms. Vats, on reaching in the PCI Hall, had marked her attendance, she was “*absent on-call*” when her name was called out for verification of documents.

1.7. It was for this reason when the results of the second round of counselling were declared on 17.07.2019, Ms. Vats found her name missing from the provisional result uploaded on the MCC web portal.

1.8. It is pertinent to note, at this stage, that the second round of counselling took place between 11.07.2019 and 16.07.2019.

1.9. Since Ms. Vats was unable to secure a seat for herself in the first round of counselling *qua* which result was declared on 02.07.2019, she had, accordingly, made an online application for being considered in the second round of counselling and, in that behalf, had indicated that respondent no.4 i.e. Lady Hardinge College (in short “LHC”) would be her first choice for seeking admission in the MBBS course.

2. Given the fact, MCC itself had invited responses from candidates against the provisional result declared by it so that discrepancies, if any, could be corrected, Ms. Vats took the opportunity to inform MCC on the same date, as stipulated, that an error had been committed.

2.1. It was pointed out by Ms. Vats that even though, she was ranked 22857 in the common merit list, the sole seat available under the CW-cum-EWS category in LHC had been allotted to one, Ms. Pooja Dahiya i.e. respondent no.3; a less deserving candidate who was ranked 32768.

2.2. Since Ms. Vats did not get a response to her online complaint of 17.07.2019, she made oral inquiries on the next date i.e. 18.07.2019 with the Faculty of Science.

2.3. It is, at this juncture, Ms. Vats was informed that since she was absent on-call, her candidature was not considered and her seat had been allotted to Ms. Pooja Dahiya.

2.4. Being aggrieved, Ms. Vats, on that very date i.e. 18.07.2019, made a representation to the ADGME, DHGS. It is averred by Ms. Vats that a similar representation was also made to the University.

2.5. Since Ms. Vats' grievance was not redressed, she approached this court by way of the instant petition.

2.6. The petition came up for hearing, for the first time, before the court on 22.07.2019 when notice on behalf of the University and respondent no.2 i.e. Union of India, was accepted by Mr. Mohinder J.S. Rupal and Mr. Anil Dabas respectively.

2.7. Mr. Dabas, on that date, sought time to seek instructions in the matter. Accordingly, the matter was posted for hearing on the following day i.e. 23.07.2019.

2.8. On 23.07.2019, Mr. Rupal produced the minutes of meeting and other relevant papers connected with the verification of documents filed by the candidates who claimed to fall in the CW category.

2.9. On perusal of the documents, the court noted that the documents produced demonstrated that Ms. Vats' name was set out at serial no.46 and that the document indicated that she was absent on-call.

3. Since it was contended on behalf of Ms. Vats that she was present at the time of verification of documents although, though, there was no such indication on the documents produced before the court, in the interest of justice, notice was issued to Ms. Pooja Dahiya, LHC and KSB. The notice was made returnable on 26.07.2019.

3.1. On 26.07.2019, the Court recorded the submissions of one, Subedar Udham Singh (Retd.), who was one of the three members in the committee which constituted the Document Verification Board (in short “the D.V. Board”).

3.2. As much would turn on what transpired in court on 26.07.2019, it would be helpful to set out the relevant extract of the order passed on that date:

*“... Subedar Udham Singh (Retired) is present and submits that his signatures are there at Point-A on the document that was submitted by the University and further submits that the third member of the Document Verification Board i.e. Mr. Wazir Singh from the Rajya Sainik Board, Delhi had to leave urgently and thus had not signed the document in relation to the CW verification for admission to MBBS/BDS course for session 2019 on 25.06.2019 and in reply to a specific Court query states that the candidate at serial no.46 of the said list, who is shown to be the petitioner herein was '**absent on call**' and in reply to a further Court query in relation to the distinction between the words '**absent**' qua several other candidates and '**absent on call**' in relation to the petitioner and other candidates qua whom it has been mentioned '**absent on call**', the submission that has been put forth by Subedar Udham Singh is to the effect that persons who were absent totally and were not at all present had been marked as '**absent**' and those who were absent on call at the time of document verification, had been marked as '**absent on call**' and that the persons who are marked as '**absent**' and were totally absent is corroborated by*

the attendance sheet that has been put forth by the University of Delhi now today in as much as the candidate at serial no.7 of the list, which has. been submitted of CW verification for admission to MBBS/BDS course for the session on 25.06.2019 is shown to be absent and the list which has been produced by the University today also shows the absence of any signature of the candidate at serial no.7.

*Likewise in relation to the other candidates that are shown to be **absent** for instance at serial no.9, likewise there are no signatures of the candidate. The list which has been produced today on behalf of the University thus shows that the present petitioner was present at 12:39 pm and has also signed. ...”*

3.3. The record would also show that when the matter was taken up for hearing on 19.08.2019, the court noted that the University had reported that there was no CCTV footage available.

3.4. This observation was made, based on the assertion made by Ms. Vats on the previous date i.e. 26.07.2019, that the CCTV footage of the concerned area would show that she was present at the time of document verification. It is because Ms. Vats reemphasized the same, that the court on 19.08.2019 permitted her to place the same on record with an affidavit.

3.5. The next substantive hearing was held on 18.09.2019 when the counsel appearing for LHC was directed to ascertain as to whether any seats were available in the said college.

3.6. On 10.10.2019, the counsel for LHC reported that no seats were available. It was stated by the counsel that all 240 seats available in LHC which included the seat allotted to Ms. Pooja Dahiya had been filled-up. Accordingly, the learned counsel was directed to place this information on record by way of an affidavit. The LHC has since then filed an affidavit reiterating what its counsel stated in court on 10.10.2019.

3.7. Thus, as indicated right at the outset, the entire case turns on whether or not Ms. Vats was absent on-call. There is no dispute that Ms. Vats had presented herself for counselling in the PCI Hall at the designated time on 25.06.2019.

3.8. As to why she was not available at the time when her name was called out for verification of documents remains a mystery. Ordinarily one would think that there was no good reason for Ms. Vats not to present herself for verification of documents when her name was called out as she perceptibly seems to fulfil the eligibility criteria.

3.9. It is Ms. Vats' claim that she falls in the CW-EWS category. Ms. Vats, therefore, makes a claim for that one seat available in the aforesaid category in LHC which has been allotted to Ms. Pooja Dahiya.

4. There is also no dispute that Ms. Pooja Dahiya was ranked much lower than Ms. Vats in the common merit list.

4.1. It would be perhaps relevant to note, at this stage, that Ms. Vats during the course of the proceedings, perhaps on account of frustration on not being allotted the seat which she thought was hers', turned her ire on Ms. Pooja Dahiya.

4.2. It was alleged by Ms. Vats that Ms. Dahiya did not fall in the CW-EWS category and that her claim to the seat in the LHC had been trumped, by wrongly preferring Ms. Pooja Dahiya over her.

4.3. This allegation found its way in the additional affidavit which was filed by the petitioner after the hearing that was held on 10.10.2019, i.e. on 31.10.2019, *albeit*, without any permission having been granted in that behalf.

4.4. Therefore, when the matter came up for hearing on 01.11.2019, this aspect was pointed out to Mr. Gurmehar Sistani, who appeared on behalf of Ms. Vats. Mr. Sistani insisted that the matter be disposed of, though he agreed that the additional affidavit should not form part of the record.

4.5. Given this background, the Registry was directed to remove the additional affidavit filed by Ms. Vats.

4.6. The reason such a direction was passed was that if the additional affidavit was taken on record at that nth hour, an opportunity to respond to the same would have to be given to Ms. Pooja Dahiya which would have delayed the conclusion of the proceedings.

4.7. In any event, no such averment had been made either in the writ petition or in the rejoinder filed on behalf of Ms. Vats. Besides this, the hand that the fate had dealt Ms. Vats had nothing to do with Ms. Pooja Dahiya, though she stood to benefit on account of exclusion of Ms. Vats from the race.

4.8. I must, however, advert to two significant aspects which have been brought to fore in the counter-affidavit, filed on behalf of Ms. Pooja Dahiya. First, that Ms. Vats had not disclosed that on the document verification date i.e. 25.06.2019, she had appeared in the office of Tehsildar, Baghpat, U.P. for issuance of an income certificate to demonstrate that she fell in the EWS category.

4.9. The suggestion was that if Ms. Vats was present in the office of the Tehsildar, Baghpat on 25.06.2019, she could not have been present for verification of documents on the same date i.e. 25.06.2019.

5. Second, Ms. Vats had failed to disclose her correct date of birth. *Qua* this aspect, reference is made to the discharge book issued by the army to Ms. Vats' father Mr. Satyander Kumar in which her date of birth is given as 30.03.1997 whereas in the matriculation certificate and in the certificate issued by KSB, her date of birth is shown as 30.03.1998.

5.1. Besides this, Ms. Pooja Dahiya, in her affidavit, has adverted to the fact that once, results were uploaded on the MCC web portal on 17.07.2019, which revealed that she had been allotted a seat in LHC under the CW-cum-EWS category, she deposited the required fee on 23.07.2019 and, thereafter, had been attending classes since 01.08.2019.

5.2. In sum, Ms. Pooja Dahiya says that she had no role to play in Ms. Vats' candidature for admission not being considered. It is also averred by Ms. Pooja Dahiya that she has been issued an EWS certificate from the competent authority which, as required, was deposited with LHC.

5.3. It is pertinent to note that none of the other official respondents have questioned the veracity of the EWS certificate obtained by Ms. Pooja Dahiya. Therefore, as indicated right at the very beginning, I am called upon to deal with a harsh set of facts insofar as Ms. Vats is concerned.

5.4. While there is no reason as to why Ms. Vats would not make herself available at the time when her name was called out for document verification by the D.V. Board, there is equally no reason for the members of the D.V. Board to exclude Ms. Vats from the document verification process.

5.5. There are no averments of malice made against the members of the D.V. Board. That being said, there is on record, an affidavit dated 03.09.2019, filed by one Mr. Wazir Singh. The affiant i.e. Mr. Wazir Singh

avers that on the given date, i.e. 25.06.2019, Ms. Vats was not present when her name was called out for verification of documents.

5.6. This averment was sought to be corroborated by Subedar Udham Singh (Retd.) when he made a statement in court on 26.07.2019. In fact, Subedar Udham Singh's statement is suggestive of the fact that Ms. Vats was not the only candidate who was marked absent on-call on 25.06.2019.

5.7. This apart, Mr. Wazir Singh, in his affidavit, has also tried to defend the suggestion made by Ms. Vats that in a taped conversation with her father, i.e. Mr. Satyander Kumar, he had admitted that Ms. Vats had submitted her documents for verification.

5.8. Mr. Wazir Singh in paragraph 4 of his affidavit states that while it is not disputed that Ms. Vats had visited the designated venue for the purposes of verification, what was put against her was the fact that she remained absent when her name was called out for verification.

5.9. Notably, what emerges upon reading Mr. Wazir Singh's affidavit is that he was a part of the D.V. Board. Mr. Wazir Singh does not deny the fact that he had engaged in a telephonic conversation with Mr. Satyander Kumar i.e. the petitioner's father.

6. Mr. Wazir Singh also does not claim that there is an interpolation in the conversation which he had with the petitioner's father i.e. Mr. Satyander Kumar. All that Mr. Wazir Singh says is that the petitioner had misinterpreted the conversation and wants to take advantage of the same.

6.1. Mr. Wazir Singh in his affidavit seeks to emphasize that he had only made an effort to help the petitioner after her father pointed out that the petitioner's name had not been included in the final list.

6.2. I must state that apart from the conversation held between Mr. Wazir Singh and the petitioner's father, the petitioner has also placed on record, a conversation held with one Mr. Pradeep. Mr. Pradeep appears to be one of the University officials involved with the admission process.

6.3. Though the audio clip concerning the conversation that the petitioner and her father i.e. Mr. Satyander Kumar had with Mr. Pradeep has been put on record, the transcript of the same is not available on record. The audio clip was put in a sealed cover. Mr. Pradeep was not called upon to respond to the same as no such request was made by the petitioner. The petitioner filed the audio clip and left it at that. Mr. Pradeep had, therefore, no opportunity to deal with what was captured in the audio clip.

6.4. In any event, I opened the sealed cover and heard the conversation. Mr. Pradeep, broadly, took the line that he would have to go by the list that he has received concerning the CW category candidates from the D.V. Board. This perhaps explains as to why the petitioner's counsel chose not to take recourse to that part of the audio clip which contained the purported conversation held amongst the petitioner, her father and Mr. Pradeep.

6.5. Therefore, the only conversation which would have a bearing on the case is the conversation that Mr. Wazir Singh had with the petitioner's father. Both the transcript as well as the audio clip bears out the fact that documents for verification were presented by the petitioner.

6.6. He also alludes to the fact that he was only involved in fixing the priority and that Subedar Udham Singh, the other member of the D.V. Board had perhaps made a mistake in not recording the fact that the petitioner had submitted the documents.

6.7. It is pertinent to note that Subedar Udham Singh, at the hearing held on 26.07.2019, when his statement was recorded, adverted to the fact that Mr. Wazir Singh's signature on the document generated by the D.V. Board had not been appended as he had an urgent business to attend.

7. Therefore, if one were to apply the preponderance of probability test, to my mind, the version given by the petitioner that she was present both at the time of marking her attendance and thereafter at the time of verification of documents appears to be correct.

7.1. As indicated above, there appears to be no good reason, when she had everything to lose, as to why the petitioner would not have made herself available for verification of documents when she was already present in the PIC hall.

7.2. Mr. Wazir Singh affidavit clearly sidesteps this crucial aspect of the matter which he has admitted in as many words in his conversation held with Mr. Satyander Kumar i.e. the petitioner's father.

7.3. Since the factum of the conversation or the content of the conversation which the petitioner has placed on record is not denied, the version of events as given by the petitioner would have to be accepted.

7.4. It appears on a balance of probabilities and to give Mr. Udham Singh the benefit of doubt that he made a mistake, *albeit*, unintentionally in recording the fact that the petitioner was present at the time of verification of documents and had submitted the same that her version of events as they transpired on 25.06.2019 is correct.

8. The matter does not end here. The next aspect which arises for consideration is as to what relief can be provided to the petitioner. The

difficulties that one faces in fashioning the relief, in this case, are, firstly, that the cut-off date has been crossed and secondly, that there are no seats available in LHC.

8.1. In terms of facts, the closest precedent that I have found is the judgement rendered by the Supreme Court in *Asha vs. Pt. B.D. Sharma University of Health Sciences and Others*, (2012) 7 SCC 389.

8.2. This was a case where, although, the petitioner, as in the instant case, had cleared the entrance exam and fulfilled the eligibility criteria, she was denied admission on the ground that she was not present at the time of counselling.

8.3. Resultantly, the candidates below her in the merit list had been admitted to the MBBS Course. While the petitioner, in this case, had also applied under the Backward Class B and Dependents of Ex-Servicemen (ESM) category, during the pendency of the litigation, she had taken admission in the BDS course even though she was vying for a seat in the MBBS course.

8.4. As in this case, the cut-off date had been crossed and therefore the court had to consider whether an exception to the rule that no admission would be made after the cut-off date was crossed ought to be made.

8.5. The test which the court evolved for making such an exception is set out in paragraph 30 and 31 of the judgement. The observations made therein being apposite are culled out hereafter: -

“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.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.”

8.6. A perusal of the aforesaid observations of the Supreme Court in *Asha’s* case would show that before a direction is issued for admission beyond the cut-off date the court should be able to conclude that no fault is attributable to the candidate and that the candidate has been denied admission arbitrarily.

8.7. Furthermore, insofar as whether or not relief should be granted and if granted what should be the nature of the relief, the Supreme Court made the following observations in the very same judgement in paragraph 33. The observations made therein read as follows:

“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.”

8.8. Notably, in *Asha’s* case, because the petitioner did not attend the BDS course with due diligence (which except for the anatomy paper in course

content was *pari materia* with MBBS course) declined to issue a direction for her admission in the academic year in which she had been faulted i.e. 2011-2012 and went on to direct her admission in the succeeding academic year i.e. 2012-2013 having found that there was no good reason for her not to attend the counselling.

8.9. In this case, as well, applying the no-fault test evolved in *Asha's* case, I have, as indicated hereinabove, reached a conclusion based on the preponderance of probability test that the petitioner was present at the time of verification of documents. The mistake, if any, was made by the members comprising the D.V. Board in not recording this fact. Thus, in my view, the D.V. Board had acted unfairly and thereby, eroded the petitioner's chance of being admitted to LHC.

9. As to what relief ought to be granted and how it should be moulded, I would like to advert to the following observations made by the Supreme Court in *Punjab Engg. College v. Sanjay Gulati*, (1983) 3 SCC 517 and *S. Krishna Sradha v. State of A.P.*, (2017) 4 SCC 516 : 2017 SCC OnLine SC 66.

Punjab Engg. College case:

“4. ... It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But, the problem which the courts are faced with in these cases is, that it is not until a period of

six months or a year elapses after the admissions are made that the intervention of the court comes into play. Writ petitions involving a challenge to such admissions are generally taken up by the High Courts as promptly as possible but even then, students who are wrongly admitted finish one or two semesters of the course by the time the decision of the High Court is pronounced. A further appeal to this court consumes still more time, which creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul: Once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions.

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6. It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admission contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made.”

S. Krishna Sradha case:

“27. As is seen, stress has always been laid on the merit in the matters of all admissions as meritorious students should not face any impediment to get admission for some fault on the part of the institution or the persons involved with it. He/She has no other remedy but to approach the court for getting redressal of his/her

grievances. It is a grievance that pertains to fundamental right. It has to be remembered that a right is conferred on a person by rule of law and if he seeks remedy through the process meant for establishing rule of law and it is denied to him, it would never subserve the cause of real justice. When a lis of this nature comes in a constitutional court, it becomes the duty of the court to address whether the authority had acted within the powers conferred on it or deviated from the same as a consequence of which injustice has been caused to the grieved person. The redressal of a fundamental right, if one deserves to have, cannot be weighed in terms of grant of compensation only. Grant of compensation may be an additional relief. Confining it to grant of compensation as the only measure would defeat the basic purpose of the fundamental rights which the Constitution has conferred so that the said rights are sustained. It would be inapposite to recognise the right, record a finding that there is a violation of the right and deny the requisite relief.

28. A young student should not feel that his entire industry to get himself qualified in the examination becomes meaningless because of some fault or dramatic design of certain authorities and they can get away by giving some amount as compensation. It may not only be agonising but may amount to grant of premium either to laxity or evil design or incurable greed of the authorities. We are disposed to think, in such a situation, justice may be farther away and the knocking at the doors of a constitutional court, a Sisyphean endeavour, an exercise in futility. It is well known that the law intends not anything impossible; *lex non intendit aliquid impossibile*. But when it is in the realm of possibility; and denial of relief hurts the “majesty of justice”, it should not be denied. On the contrary, every effort has to be made to grant the relief. Needless to say, to get the relief, conditions precedent are to be satisfied; and that is what has precisely been stated in *Asha* [*Asha v. Pt. B.D. Sharma University of Health Sciences*, (2012) 7 SCC 389 : 4 SCEC 611] and *Harshali* [*Harshali v. State of Maharashtra*, (2005) 13 SCC 464].”

9.1. The Supreme Court in ***S. Krishna Sradha*** case has observed that its own judgement in ***Chandigarh Admn. v. Jasmine Kaur***, (2014) 10 SCC 521

: 2014 SCC OnLine SC 646 which confined the relief only to compensation where a candidate was wronged required reconsideration by a larger bench.

9.2. The question which arises is: Whether the directions which were issued by the Supreme Court in ***Punjab Engg.*** case could be issued in a given case where the candidate is found to be wronged by the High Court while exercising powers under Article 226? I may with all humility at my command *qua* this aspect can only advert to what the Supreme Court in ***B.C. Chaturvedi vs. Union of India***, (1995) 6 SCC 749 : 1996 SCC (L&S) 80 had to say as to the width and amplitude of the High Court's power under Article 226.

“23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.”

Conclusion: -

10. Therefore, in the foregoing circumstances, given the fact that no seats are available in LHC, the only direction that can be issued is to direct the

respondents to consider the petitioner for admission in the next academic session i.e. 2020-2021.

10.1. As to whether any cost should be imposed on the respondents, that question is left open in this case in view of the fact that there is no material available on record which would show that the D.V. Board acted with malicious intent in not recording the fact that the petitioner had made herself available at the time of verification of documents.

10.2. While considering the petitioners' case for admission in the succeeding academic year the respondents will verify the original documents/testimonials and satisfy themselves as to her eligibility which would include aspects concerning her EWS status and her exact date of birth. The petitioner, in turn, will fulfil the necessary prerequisites to gain admission.

10.3. The petition is disposed of in the aforesaid terms. Resultantly, CM APPL. 32663/2019 shall stand closed.

RAJIV SHAKDHER, J

NOVEMBER 18, 2019