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

+ LPA 488/2019 and CM APPL. 33649/2019 (stay)

MOHIT SHARMA

..... Appellant

Through: Mr. Puneet Jain, Mr. Harsh Jain and
Mr. Harshit Khanduja, Advocates

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ORS

..... Respondents

Through: Mr. Dushyant Parashar, Advocate for
AIIMS.

Mr. Gaurav Rohilla, Advocate for UOI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

31.07.2019

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1. The appellant/petitioner is aggrieved by an order dated 22.07.2019, passed by the learned Single Judge, dismissing a writ petition filed by him for issuing a writ of mandamus to the respondent No.1/All India Institute of Medical Sciences (AIIMS) for granting him admission in the MBBS-2019 Course under the OBC quota and for declaring Condition No.3 stipulated in the Prospectus, as redundant.

2. First, a glance at the undisputed facts of the case. On 19.2.2019, respondent No.1/AIIMS issued a Prospectus inviting applications for admission in AIIMS, New Delhi and fourteen other AIIMS for the Session-2019. The Prospectus contains detailed information relating to the

registration and submission of application forms, the eligibility criteria and the entire process of selection. The appellant/petitioner applied for admission to the MBBS-2019 Course under the OBC quota and appeared in the Entrance Examination wherein, he secured rank 12 in the OBC category and rank 91 in the General category.

3. On the appellant/petitioner being selected in the online counselling for the MBBS-2019 Course that took place on 26.6.2019, respondent No.1/AIIMS issued him an offer letter dated 29.6.2019, offering him a seat at AIIMS, New Delhi in the OBC category. He was asked to appear before the Registrar, AIIMS, New Delhi on 4.7.2019 for completion of requisite formalities. Enclosed with the offer letter dated 29.6.2019, was an *“Information Brochure for 1st Round of Online Seat Allocation/Counselling”* that lays down the procedure required to be followed by candidates who were allotted seats in the 1st Round of Online Seat Allocation/Counselling. The said Brochure required candidates to submit documents/certificates, listed at Sr. No.(i) to Sr. No.(vii), alongwith a Demand Draft, as applicable. Relevant for our consideration is Clause (vii)(b) of the Brochure that is reproduced below:-

“vii) The Candidate should also bring the following certificate, if applicable:-

a. x x x x x x

*b. OBC Certificate issued by the competent authority for central Govt. jobs/for admission in Central Govt. College/Institute. The sub-caste should tally with the Central List of OBC. OBC Candidates should not belong to Creamy Layer. OBC certificate must be in the **Central Govt. Format** as prescribed in the Prospectus.”*

4. Clause (vii) (b) is to be read in consonance with the relevant instructions forming a part of the Prospectus dated 19.2.2019. Condition 3 under the head '*Registration & Submission of Application Form*' and Condition 4.1 under the head '*Number of Seats & Reservation*' read as under:-

“3. The OBC-NCL certificate must be valid for admission for Central Government institutions. The date of validity of certificate shall be one day prior to the date of 1st Counselling/seat allocation.”

“4.1 CRITERIA FOR OTHER BACKWARD CLASSES (NON-CREAMY LAYER) [OBC]
(Common to AIIMS, New Delhi & Fourteen other AIIMS):

*Reservation for OBC (Non-Creamy Layer) shall be according to the rules of the Government of India. Applicants are required to ensure that he/she does not belong to the persons/sections (Creamy Layer) mentioned in Column 3 of the Schedule to the Government of India, Department of Personnel & Training O.M. No.36012/22/93-Estt. (SCT) dated 08/09/93 which is modified vide OM No.36033/3/2004 Estt. (Res.) dated 09/03/2004 or the latest notification of the Government of India (i.e. Central list). A format is provided at the end of the Prospectus. Certificate to be produced during counselling should **NOT** be older than **ONE year on date of First Counseling(sic).**”*

5. It is an undisputed position that till 30.6.2019, the appellant/petitioner did not take any step to obtain an OBC certificate from the competent authority as per the Central Government format. Only on 1.7.2019, did he apply to the Sub Divisional Officer, Beawar (Ajmer) for issuing an OBC

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certificate which was prepared and handed over to him on the very same day. Armed with the said OBC certificate, the appellant/petitioner appeared before the Registrar, AIIMS on 4.7.2019, but was denied admission on the ground that his OBC certificate was dated 1.7.2019 and it did not meet the requirements stipulated in the Prospectus. Aggrieved thereby, the appellant knocked at the door of the Court and filed a writ petition.

6. Learned counsel for the appellant/petitioner contended before the learned Single Judge that Condition 4.1 in the Prospectus is arbitrary and violative of Article 14 of the Constitution of India and there is no rational nexus between the cut-off date prescribed by the respondents for the production of an OBC certificate and its production at the time of the interview; that the respondent No.1/AIIMS had itself stated in the Prospectus, that the OBC certificate was not required to be uploaded at the time of filing the application online and since the appellant was in possession of the OBC certificate, when the documents were required to be submitted for verification after the first round of counselling, he had duly submitted the same. The said OBC certificate being valid at the time it was produced, it ought to have been accepted by the respondent No.1/AIIMS.

7. The stand taken by the respondent No.1/AIIMS before the learned Single Judge was that the OBC certificate required to be produced by the appellant/petitioner for the purpose of seeking admission must have the date of validity “*one day prior to the date of the first counselling/seat allocation*” or as mentioned in Condition 4.1, the OBC certificate “*should not be older than one year on the date of first counselling*”. Since the date stipulated by the respondent No.1/AIIMS for the first counselling was 26.6.2006, in terms

of the Prospectus, the period of one year reckoned backwards from 26.6.2019, would relate back to 25.6.2018. In other words, the block period for a valid OBC certificate was prescribed by the respondent No.1/AIIMS as 25.6.2018 to 25.6.2019, whereas the certificate that was produced by the appellant/petitioner was dated 1.7.2019, i.e. four days after 26.6.2019. Learned counsel further stated though the appellant did not qualify in the OBC category, his candidature was still considered in the un-reserved category where he was placed at rank 91 in the overall rank and he has been allotted AIIMS, Jodhpur on the basis of the second counselling of the online seat allocation conducted on 22.7.2019.

8. After hearing learned counsel for the parties and noticing that the Prospectus in question was published and uploaded on 19.2.2019 and the appellant/petitioner was aware of the procedure required to be followed as also the documents required to be submitted, but had failed to comply with the conditions prescribed in the Prospectus and the Information Brochure relating to the validity of the OBC certificate, the learned Single Judge held that he was not entitled to any relief. Another reason given for rejecting the petition was that vested rights had accrued in favour of other candidates. Aggrieved by the said decision, the appellant/petitioner has filed the present appeal.

9. Mr. Puneet Jain, learned counsel for the appellant/petitioner assails the impugned judgment on the ground that the cut-off date mentioned in Condition 4.1 does not have any rational nexus with the object sought to be achieved and is liable to be set aside; that once an offer letter had been issued to the appellant/petitioner for allocation of a seat at AIIMS, New

Delhi and he had presented all the requisite documents for verification on the relevant date, the respondents are estopped from denying him admission in the said Institute and lastly, that the learned Single Judge failed to appreciate that the appellant/petitioner was in possession of an OBC certificate at that point in time when he was required to submit the said documents for verification which was the first occasion when the OBC certificate was actually required to be presented before the respondent No.1/AIIMS and therefore, the cut-off date prescribed for the OBC certificate could not be taken as a ground for denying him admission in AIIMS, New Delhi.

10. Since it was contended by learned counsel for the appellant/petitioner in the course of arguments addressed before us on 26.7.2019, that the fact situation of the appellant/petitioner was not comparable with ten other candidates, who had also applied for admission to the MBBS-2019 Course in the OBC category, but they had failed to produce the OBC certificate on the required date, learned counsel for the respondent No.1/AIIMS was directed to file a brief affidavit indicating *inter alia*, as to how many candidates who had applied under the OBC category, were rejected alongwith the reasons for their rejection.

11. Pursuant thereto, a brief affidavit has been filed by the Registrar (Academics), AIIMS, New Delhi enclosing therewith a tabulated statement containing the details of 10 candidates, who had initially opted under the OBC category, but due to deficiency in furnishing the caste certificate, as prescribed in the Prospectus, their category had to be changed to Un-reserved category. On examining the said tabulated statement, it transpires

that out of a total of ten candidates, the candidature of two candidates, at Sr. Nos.1 and 2, including the appellant/petitioner herein at (Sr. No.2) was converted from OBC to Un-reserved category for the reason that their All India OBC certificates were beyond the cut-off date of counselling, i.e., 26.6.2019. The candidates listed at Sr. Nos.3, 4, 5, 7 and 9 were treated as Un-reserved category candidates because the OBC certificates produced by them were valid for the State and not for all India seats. The candidate at Sr. No.6 was erroneously treated as an Un-reserved category candidate due to a clerical error, but since his OBC certificate was found to be in order, he was allotted a seat in the OBC category. The candidate at Sr. No.8 did not produce a Non-Creamy Layer Certificate. The candidate at Sr. No.10, was rejected on the ground that the OBC certificate produced by him was dated over one year prior to the cut-off date of counselling.

12. In view of the information compiled in aforesaid tabulated statement furnished by the respondent No.1/AIIMS, the submission made on behalf of the appellant/petitioner that the candidature of other nine candidates was rejected for non-production of OBC certificates, turns out to be incorrect. Rather, the statement reveals that the candidate at Sr. No.1 who is similarly placed as the appellant/petitioner, has also been placed in the un-reserved category since the All India OBC certificate produced by him was dated 3.7.2019, which was beyond the cut-off date of counselling, i.e., 26.6.2019. It is therefore evident that the respondent No.1/AIIMS has treated all the candidates in the OBC category uniformly. There has been no discrimination or favouritism shown to any candidate in applying the procedure prescribed in the Prospectus and the Information Brochure.

13. Even otherwise, eligibility must be determined on the cut off date prescribed by the respondent No.1/AIIMS and no relaxation can be extended for the reason that any relief granted to a particular candidate, who approaches the Court, would amount to giving a benefit to him to the prejudice of others. If the validity of the OBC certificate is allowed to be determined as on the date the candidate appears before the Registrar, AIIMS with the relevant documents etc., then the same would act to the detriment and prejudice of other candidates, who assuming that they were ineligible in terms of the Prospectus and the Information Brochure, did not apply in the OBC category. [Refer: Karnataka State Road Transport Corporation vs. Ashrafulla Khan (2002) 2 SCC 560; FCI vs. Ram Kesh Yadav (2007) 9 SCC 531; Maharishi Dayanand University vs. Surjeet Kaur JT 2010 (7) SC 179; State of West Bengal vs. Subhas Kumar Chatterjee (2010) 11 SCC 694 and Delhi Subordinate Services Selection Board and Ors. vs. Ram Kumar Gijroya and Ors. 2012(128)DRJ 124]

14. This is not a case where the requirements prescribed in the Prospectus came as a bolt out of the blue for the appellant/petitioner. The Prospectus for admission to the MBBS-2019 Course was published on 19.02.2019. Condition No.3 therein had clearly stated that the OBC certificate must be valid for admission for Central Government Institutions and the date of validity of the said certificate should be one day prior to the date of first counselling/seat allocation. As per the schedule declared by the respondents, the first round of online counselling was to commence on 26.06.2019 and close on 27.06.2019. In such circumstances, there was no good reason for the appellant/petitioner to have sat back from 19.02.2019, right upto

01.06.2019, when he finally woke up to approach the Competent Authority for issuance of an OBC certificate as per the Central Government format. By then, it was too late as the validity of the OBC certificate prescribed in the Prospectus was one day prior to the date of first counselling/seat allocation and the said certificate was required to be not older than one year, on the date of first counselling.

15. The procedure prescribed in the Prospectus casts an obligation on the applicants to apply in terms thereof and they cannot be heard to state later on that their applications should have been accepted even if they did not adhere to the conditions prescribed therein. For the said reason, rejection of the OBC certificate submitted by the appellant/petitioner on the ground that it was not in order, cannot be faulted and nor can the said condition prescribed by the respondent No.1/AIIMS be diluted for the benefit of the appellant/petitioner, to the exclusion of other similarly placed candidates.

16. In view of the aforesaid discussion, the impugned judgment is upheld and the present appeal is dismissed alongwith the pending application. No orders as to costs.

HIMA KOHLI, J

ASHA MENON, J

JULY 31, 2019

NA/ap/rkb