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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 30.10.2019

+ W.P.(C) 8526/2019 & CM APPL. 35219/2019

ABDUL LATEEF NOMANI

..... Petitioner

Through: Mr. Manish K. Bishnoi with Mr.
Haridya, and Mr. Umang Raj,
Advocates.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Mohinder J.S. Rupal with Mr.
Kousik Ghosh, Advocates for
respondent no. 1.
Mr. Rajesh Gogna, Advocate for
respondent no. 2
Mr. Fuzail Ahmadayyubi, Standing
Counsel with Ms. Aditi Gupta,
Advocate for respondent no. 3 & 4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL):

Preface: -

1. The petitioner is aggrieved by the fact that he was denied admission by respondent no. 2 i.e. the Hansraj College on account of the fact that Jamia Millia Islamia Board of School Education (in short "JMIBSE") which governed the school i.e. Jamia Senior Secondary School (in short "JSSS") from which he had passed his grade-XII examination was not affiliated to the Council of Boards of School Education in India (in short "COBSE").

2. It is not disputed by the counsel for the parties that on

17.07.2019, when the 4th admission cut-off list was issued by the Hansraj College, the petitioner, given the marks he had obtained in grade-XII, he could have been admitted to the B.A. (Economics and Commerce) programme in the said college but for the fact that JMIBSE was not affiliated to COBSE.

Background: -

4. The background in which this controversy has arisen needs to be set forth hereafter: -

4.1 In and about May 2019, the petitioner passed his grade-XII from JSSS.

4.2 In the first instance, the petitioner had applied for admission to the Hindu College.

4.3 On 11.07.2019, the petitioner secured admission in the Hindu College in B.A. (Hindi and Philosophy) programme against the 3rd admission cut-off list. Consequent to the admission having been obtained, the petitioner paid the requisite fee.

4.4 As indicated above, on 17.07.2019, the University of Delhi issued the 4th admission cut-off list.

4.5 Based on this admission list, the petitioner applied for admission to the Hansraj College in B.A. (Economics and Commerce) programme.

4.6 Given the fact that the petitioner met the cut-off percentage set forth for admission to B.A. (Economics and Commerce) programme in the Hansraj college, he withdrew his admission in the Hindu College based on the advice rendered by the teacher-in-charge, Hansraj College.

4.7 This step was taken by the petitioner on 17.07.2019 i.e. the very day on which he secured admission in the Hansraj College.

4.8 Unfortunately, upon the petitioner's certificates being verified,

he was informed on 17.07.2019 itself that since JMIBSE was not registered with the COBSE, he could not be admitted to the Hansraj College.

4.9 Given this background, the petitioner had to seek the assistance of the Principal, JSSS.

5. The Principal, JSSS on the request of the petitioner, on 19.07.2019, wrote to the Principal, Hansraj College. In this letter the Principal, JSSS informed his counterpart in the Hansraj College that the petitioner had successfully passed his grade XII examination in academic session 2018-19.

5.1 The petitioner, to provide more heft to his case, got the Registrar, Jamia Millia Islamia University to also write to the OSD(Admissions), North Campus, University of Delhi. This letter was written on 22.07.2019.

5.2 *Via* this letter, it was emphasised once again that the grade-XII mark-sheet issued by Jamia Millia Islamia University was recognised and therefore valid for admission to the B.A. (Economics and Commerce) programme in the Hansraj College.

5.3 It appears that despite the aforementioned communications, there was no positive movement in favour of the petitioner.

5.4 Left with no option, the petitioner moved this Court by way of the instant writ petition.

5.5 Notice in this petition was issued on 05.08.2019.

5.6 Since then, the respondents have filed their counter-affidavits in the matter. The petitioner has also filed a rejoinder to the same.

6. A perusal of the record would show that the Jamia Millia Islamia University was established under the Jamia Millia Islamia Act, 1988 (in short “1988 Act”).

6.1. The Jamia Millia Islamia University which is a Central

University maintains JSSS.

6.2. The fact that the Jamia Millia Islamia University has the power to establish and set up a school is evident upon perusal of section 6(iii) and (xi) of the 1988 Act.

6.3 For the sake of convenience, the same is extracted hereafter: -

“6. The University shall have the following powers, namely: -

(iii) to grant, subject to such condition as the University may determine, diplomas or certificates to, and confer degrees or other academic distinction on the basis of examination, evaluation or any other method of testing, on persons, and to withdraw any such diplomas, certificate, degrees or other academic distinctions for good and sufficient cause;

(xi) to establish and maintain Schools, Institutions and such Centers, Specialized laboratories or other units for research and instructions as are, in the opinion of the University, necessarily for the furtherance of its object;”

(emphasis is mine)

6.4. JSSS takes the stand that the funds granted by UGC are also utilised for managing its affairs.

6.5 More importantly, the statute which is appended as a schedule to the 1988 Act, brings more clarity to the issue. In particular, a reference in this behalf is made to statute 23(1) (2) and (3) are set out hereafter:-

“23. JAMIA SCHOOLS:

(1) Subject to the provisions of the Jamia Millia Islamia Act, the Right of Children to Free and Compulsory Education Act 2009 and the Rules made thereunder, and these Statutes, the Schools established and maintained by the University shall function as an autonomous unit with a Board of Management to manage and supervise their working:

Provided that the Majlis-i-Muntazimah (Executive Council) may issue, from time to time, such direction on all matters, as it may consider necessary,

for the smooth functioning of the Schools and in case the Board of Management does not agree with such directions, the matter may be referred to the Visitor, whose decision thereon shall be final.

(2) The Board of Management shall consist of the following members, namely:

- (i) the Shaikh-ul-Jamia (Vice-Chancellor), who shall be the Chairman;*
- (ii) the Naib Shaikh-ul-Jamia (Pro-Vice-Chancellor);*
- (iii) the Dean, Faculty of Education;*
- (iv) the Principal, Senior Secondary School;*
- (v) the Headmaster, Middle School;*
- (vi) the Director, Nursery School;*
- (vii) the Director, Balak Mata Centres;*
- (viii) one Principal from among the Principal of the Senior Secondary Schools of Delhi, to be nominated by the Shaikh-ul-Jamia (Vice-Chancellor);*
- (ix) the Secretary, Central Board of Secondary Education, Delhi;***
- (x) the Assistant Registrar for Schools, who shall be the Secretary;*

Provided that there shall be a School Management Committee for regulating Elementary Education in the Jamia Schools as per the provisions of Section 21 and 22 of the Right of Children to Free and Compulsory Education Act 2009, and Rules 3, 4 & 5 of the Rules made thereunder.

(3) The Board of Management shall be competent to exercise the following powers, namely:-

- (i) to appoint the members of the teaching and administrative staff on the recommendation of the Selection Committees constituted for the purpose and all such appointees shall be the employees of the University and shall be governed by the Act, these Statutes, Ordinances, and Regulations;*
- (ii) to manage and regulate the finances, accounts, business and all other administrative affairs of the Schools;*
- (iii) to appoint examiners, moderators and others concerned with the conduct of examination and to fix their remuneration;***
- (iv) to institute and regulate the award of scholarships, studentships, certificates, medals, and***

prizes;

(v) to entertain and adjudicate upon any grievances of the members of the teaching and administrative staff of the Schools; and

(vi) to exercise such other powers and perform such functions as may be deemed necessary for the smooth functioning of the Schools.”

(emphasis is mine)

7. A perusal of the aforesaid provisions of the statute would show that the schools established and maintained by the Jamia Millia Islamia University are to function as an autonomous unit under the Board of Management.

7.1 The Board of Management would include, *inter alia*, the Secretary, Central Board of Secondary Education, Delhi (in short “CBSE”).

7.2 Furthermore, the Board of Management, *inter alia*, is also competent to hold examination and institute and regulate the award of scholarships, studentships, certificates, medals and prizes.

7.3 In sum, JSSS is being maintained by Jamia Millia Islamia University under an Act of Parliament, i.e. the 1988 Act and the statute appended thereto and is run and managed by the Board of Management constituted thereunder which has the Secretary, CBSE as one of its members.

8. The University of Delhi based on the Office Memorandum dated 06.03.2013 (in short “2013 O.M.”), takes the position that unless the grade-XII school leaving certificate is recognised by the COBSE, admissions cannot be granted in the Colleges run under its aegis.

8.1 In particular, Mr. Rupal who appears on behalf of the University of Delhi relies on paragraph 2 of the 2013 O.M.

8.2 For the sake of convenience, the same is extracted hereafter: -

“2. Department of School Education and Literacy, Ministry of Human Resource Development had clarified vide their O.M. No. F-2-35/2011-Sch.3 dated 07.09.2012 that Council of Boards of School Education in India

(COBSE), an Association of National and State School Education Boards, is responsible for verifying genuineness/recognition of School Education Boards in India. It grants membership to boards/Institutes that are set up by an Act of Parliament or State Legislature or an executive order of the Central/State Governments and follow the National Curriculum Framework. The certificates issued by its member Boards are equivalent to any other board across the country. It was informed that Andhra Pradesh Open schooling Society and Rajasthan State Open School, Jaipur, are its members and their courses are recognized by COBSE and all its member Boards, and are valid for further studies and appointment in the Central and State Government departments. As regards, validity of certificates issued by Rajasthan State Open School, Jaipur and Andhra Pradesh Open Schooling Society for employment purposes, it may be got verified from the respective State Open Schools, wherever, necessary.”

(emphasis is mine)

8.3 Mr. Rupal says that since the recognition has not been granted by COBSE, the grade-XII certificate issued by the Jamia Millia Islamia University cannot be taken into account for granting admission.

9. To my mind, the University of Delhi has completely misread the 2013 O.M. issued by the Government of India, Ministry of Personnel, P.G. & Pensions.

9.1. A careful perusal of the 2013 O.M. would show that the COBSE, an association of National and State School Education Boards has been charged with responsibility of verifying genuineness/recognition of the School Education Boards in India.

9.2 The 2013 O.M. goes to state that the COBSE grants membership to Boards/Institutes that are set up by an Act of Parliament or State Legislature or an executive order of the Central/State Governments and follow the national curriculum framework. It states that the certificates issued by its member-boards are equivalent to any other board across the country.

9.4 To my mind, the 2013 O.M. exemplifies that the COBSE is, at the highest, an association of the various School Education Boards and that its membership is open to only those Boards/Institutes which are set up by an Act of Parliament or State Legislature or by an executive order of the Central Government or the State Government and follow the rational curriculum framework. Under the 2013 O.M., the COBSE has not been vested with the power of recognising schools or State Education Boards.

9.5 This aspect of the matter also comes to fore if one were to peruse the response given by the Government of India, Ministry of Personnel, P.G. & Pensions *vide* communication dated 18.08.2015 to an RTI enquiry preferred by another Education Board i.e. the Urdu Education Board.

9.6 In response to the query by the Urdu Education Board as to whether Education Boards/Institutions are mandatorily required to be a member of COBSE and Whether COBSE is part of the Ministry of HRD Govt. of India? The answer received was as follows: -

“COBSE is neither a Government Body nor an authority to give recognition to any school or education Board in the country.”

9.7 Therefore, in my opinion, what comes through is that the COBSE is not vested, as indicated above, with the power to grant recognition to any school or education board in the country.

10. Mr. Rupal, on the other hand, says that this position has undergone a change, and in support of this submission, refers to communication dated 04.08.2015 addressed by Government of India, Ministry of Human Resource Development, Department of Higher Education to the Registrar, University of Delhi as also to the Registrar, Jamia Millia Islamia and the Registrar, Jawahar Lal Nehru University.

10.1 Besides this, reference is also made to another letter dated 30.09.2015, once again, addressed by Government of India, Ministry of Human Resource

Development, Department of Higher Education to the Registrar, University of Delhi as also to the Registrar, Jamia Millia Islamia University and the Registrar, Jawahar Lal Nehru University.

10.2 To be noted, both these documents have not been placed on record by the University of Delhi in the instant proceedings and therefore, the petitioner has had no chance to respond to the same.

10.3 Even so, a perusal of the letters dated 04.08.2015 and 30.09.2015 brings to fore the following if one were to allude to them chronologically:

Letter dated 04.08.2015

(i) That the Urdu Education Board, Delhi is a certified Minority Education Board that has been recognised by the National Commission for Minority Educational Institutions, a Statutory Body of Govt. of India under Act of Parliament, 2004.

(ii) That the certificates for class VII, X & XII issued by the Urdu Education Board are equivalent to certificates issued by other Central/State Education Boards.

Letter dated 30.09.2015

(iii) The stand adopted by Government of India, Ministry of Human Resource Development, Department of Higher Education in its letter dated 04.08.2015 was “withdrawn” *via* communication dated 30.09.2015.

11. There is, quite clearly, no reference to Government of India, Ministry of Human Resource Development’s response contained in the communication dated 18.08.2015 where what is articulated is that the COBSE is neither a Government Body nor an authority to give recognition to any school or education Board in the country.

11.1 Therefore, the stand of the University of Delhi that the Government of India, Ministry of Human Resource Development has retracted from the position taken on 18.08.2015 is incorrect.

11.2 As to what is the scope and ambit of the communication dated

30.09.2015 is the subject matter of a separate writ petition which is also listed on my board today as W.P. (C) 11134/2019. Mr. Rupal, to buttress his submission, fished out the letters dated 04.08.2015 and 30.09.2015 from his file relating to W.P.(C)No.11134/2019.

11.3 The only reason I have referred to these two letters is that Mr. Rupal during the arguments emphasized that letters would have a bearing on the instant proceedings as well. As discussed above, these letters have no bearing on the issue arising for consideration in the present case.

12. Continuing with the discussion, in my opinion, therefore, what comes through is that the stand of the University of Delhi that unless the concerned school or education board is recognised by the COBSE, the school leaving certificate issued by such school/education board would be invalid, is untenable.

13. The problem that arises in the matter does not end with providing an answer to this issue.

14. The other problem which arises is: What needs to be done to give effective relief to the petitioner?

14.1 The record shows that the petitioner was not at fault as he had applied, as indicated above, for admission to the Hindu College in the first instance.

14.2 Since the petitioner was eligible for admission to B.A. (Economics and Commerce) programme in the Hansraj College, which he considered was a better course, he cancelled his admission with the Hindu College and sought to obtain admission in the Hansraj College.

14.3 Hansraj college, concededly, denied the admission based on the fact that the Class XII school leaving certificate was issued by JMIBSE did not have “recognition of COBSE”.

15. Mr. Bishnoi, who, appears on behalf of the petitioner submits that under the regime for admission operable *qua* colleges run under the University of Delhi, all applicants who meet the cut-off percentage stipulated

in the concerned admission list are required to be admitted by the college irrespective of the number of vacant seats available on the date of issuance of the cut-off admission list.

15.2 For this purpose, Mr. Bishnoi has referred to the following provision in the information bulletin issued by the University of Delhi for the academic session 2019-20.

“The applicant should have passed the Class XII examination of any Board/ University examination in India or in any foreign country recognized as equivalent to the 10+2 system by the Association of Indian Universities (AIU).

All colleges shall admit all applicants who meet the announced cut-off criteria. There will not be any "first come first serve" policy.

Late arrivals outside of the prescribed duration of each cut-off will not be entertained.

Eligible Applicants of the (n-1)th Cut-Off List, if any, shall be entertained for admissions only in the last hour of the third day of current nth Cut-Off subject to the availability of vacant seats.”

(emphasis is mine)

15.3. Notably, no cavil is raised *qua* this aspect either by the University of Delhi or the Hansraj College.

15.4. Mr. Gogna bears out this aspect of the matter by referring to the assertions made in paragraph 5 (i) & (ii) of the counter-affidavit filed on behalf of the Hansraj college.

15.5. Mr. Gogna, thus, points out that against three (3) vacancies available in the OBC category at the time of issuance of the 4th admission cut-off list, eleven (11) students in the OBC category who met the cut-off percentage were admitted. Mr. Gogna, adds, as of today, no vacancy is available in the OBC category.

16. It is this aspect of the matter which presents a difficulty. In other words, what is to be done *vis-a-vis* the candidate who was not at fault when he approached the Hansraj College for admission.

17. I must also indicate that Mr. Gogna says that insofar as the Hansraj College's approach *qua* validity of the certificate issued by the Jamia Millia Islamia University was concerned, it had no choice but to fall in line with the stand taken by the University of Delhi.

17.1 I have already discussed the flaw in the approach of the University of Delhi *qua* the same at length.

17.2 The University of Delhi has misinterpreted the 2013 O.M. and thus been instrumental in denial of admission to the petitioner.

18. Thus, having regard to the entirety of the circumstances, in my opinion, the Hansraj college should admit the petitioner.

19. There is a good authority for this proposition which is found in the judgment of the Supreme Court in *Asha Vs Pt. BD. Sharma University of Health Sciences*, (2012) 7 SCC 389.

20. At this stage, Mr. Bishnoi says that the first semester exams are to take place in December 2019.

20.1. Mr. Rupal informs me that for a student to clear the first-year undergraduate examination, he is required to have a combined minimum attendance which includes the first and second semester equivalent to 66.6%.

20.2. Besides this, there is another difficulty which is that the petitioner is required to be assessed for the internal exam.

21. Given these circumstances, the University of Delhi and Hansraj college are directed to work out the mechanism which would enable the petitioner to take the first semester as also his internal exam either in December 2019 or thereafter.

21.1 Any step taken will be taken in the best interests of the petitioner.

21.2 The University of Delhi and the Hansraj college will accordingly make provision for extra classes to enable the petitioner to cover up for the classes he missed in the interregnum.

22. Needless to add, the University of Delhi and the Hansraj college will

give admission to the petitioner in the B.A. (Economics and Commerce) programme upon fulfilment of requisite formalities within two days of the receipt of the copy of the order.

23. The writ petition is disposed of in the aforesaid terms.

24. Resultantly, the pending application shall stand closed.

RAJIV SHAKDHER, J

OCTOBER 30, 2019

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