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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement reserved on 10.10.2019
Judgement pronounced on 14.10.2019

+ **W.P.(C) 9480/2019 & CM No.39036/2019**

BHUMIKA CHOUDHARY

..... Petitioner

Through: Ms. Sanjana Saddy with Mr. Sanyat
Lodha,, and Mr. Anish Chawla, Adv.

versus

**ALL INDIA INSTITUTE OF MEDICAL
SCIENCES**

..... Respondent

Through: Mr. Dushyant Parashar, Adv. for
AIIMS.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

1. The petitioner is aggrieved by the fact that she was denied a seat by the respondent i.e. All India Institute of Medical Science (hereafter referred to as 'AIIMS') even though she was eligible for being considered for allotment of a seat in the MBBS Program in the OBC (non-creamy layer) category (hereafter referred to as 'OBC category').

2. The respondent i.e. All India Institute of Medical Sciences (hereafter referred to as 'AIIMS') has defended its action by taking recourse to the fact that the certificate evidencing that the petitioner fell in the OBC category, which is dated 19.08.2019, falls outside the timeframe that is stipulated in

Prospectus for MBBS Admission 2019 (hereafter referred to as 'Prospectus'). More specifically, AIIMS relies upon Clause 4.1 of the Prospectus. For the sake of convenience, Clause 4.1 of the Prospectus is extracted hereafter: -

“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 counseling should NOT be older than ONE Year on date of First Counseling.”

2.1 It is, thus, the contention of AIIMS that the certificate issued to the petitioner, which is dated 19.08.2019 and evidences the fact that she belongs to the OBC category could not have been accepted as it did not fall within the period stipulated in Clause 4.1 of the Prospectus. In this behalf, AIIMS relies upon, in particular, the following portion of Clause 4.1:

“A format is provided at the end of the Prospectus. Certificate to be produced during counseling should NOT be older than ONE Year on date of First Counseling.”

2.2 It is the say of AIIMS that, therefore, the certificate produced by a candidate to claim the benefit of the fact that he/she belongs to the OBC category can only arise if it is issued within a period of one year preceding the date of first counseling. To buttress its stand, AIIMS has relied upon the

judgment of the Division Bench of this Court dated 31.07.2019, passed in L.P.A. No. 488/2019. titled *Mohit Sharma vs. All India Institute of Medical Sciences & Ors.*

3. Therefore, the issue which arises for adjudication is: what is that period which is contemplated in Clause 4.1 of the Prospectus? To delve into the issue, it would be necessary to note the following facts in the background of which this petition has been preferred.

3.1 In and about February 2019, AIIMS issued a Prospectus inviting applicants to appear in the MBBS Examination, 2019. On 25.02.2019, the petitioner uploaded her application on the web-portal provided for this purpose. Consequent thereto, on 15.05.2019, the petitioner was issued an admit card.

3.2 The petitioner sat for the exam on 25.05.2019. The result of the exam was declared on 12.06.2019. The petitioner obtained 98.8965173 as an overall percentile. Her overall rank was 3813 while her rank in the OBC category was 1058. The petitioner failed to secure a seat for herself in the first, second and third rounds of counseling.

3.3 Pertinently, the first round of counseling was held on 26.06.2019 while the second and third round of counseling was held on 15.07.2019 and 05.08.2019 respectively.

3.4 Concededly, AIIMS issued a notification dated 06.08.2019 initiating another round of counseling to fill up those seats which were either left vacant or became available on account of candidates having surrendered their seats or tendered resignations *qua* their seats. This round was referred to as the 'open counselling' round. The petitioner registered herself for open

counselling. The open counselling which was initially slated for 20.08.2019-21.08.2019 was postponed *via* notice dated 18.08.2019 to 26.08.2019-27.08.2019.

3.5 In the meanwhile, the petitioner secured for herself an OBC certificate dated 19.08.2019 for admittance in Central Institutions. This certificate was issued by the SDM, Girwa, Udaipur.

3.6 Resultantly, when the petitioner appeared for open counseling on 26.08.2019, she placed before the Counseling Committee, the requisite documents which included the OBC certificate dated 19.08.2019.

3.7 To the surprise of the petitioner, the Counseling Committee declined to consider her candidature only on the ground that the date on the OBC certificate issued to the petitioner did not fall within the timeframe stipulated in Clause 4.1 of the Prospectus. The petitioner claims that she protested but her protestations did not get her the desired result.

3.8 It is in this background that the instant petition was filed, which came up for hearing before this Court for the first time on 30.08.2019. The Court, after recording, particularly, the contentions of the parties, which included the counsel for AIIMS, directed AIIMS to keep one OBC category seat vacant in one of the four institutes *qua* which preference had been given by the petitioner.

3.9 The Court further observed that in the first instance endeavour would be made to reserve a seat for the petitioner in the order of preference indicated by her and in case there was no vacant seat available in those institutions, a seat would be kept reserved for her in any other medical college coming under the sway of AIIMS.

4. Four colleges referred to in the Court's order dated 30.08.2019 were (1) AIIMS, Guntur; (2) AIIMS, Deogarh; (3) AIIMS Kalyani and (4) AIMS, Rae Bareli.

4.1 I may also indicate that at the hearing held on 17.09.2019, I had asked the counsel for AIIMS to file an affidavit as to whether any vacant seat was available in terms of the order dated 30.08.2019. AIIMS, since then, has filed an affidavit dated 21.09.2019. In the affidavit filed, the following has been stated concerning vacant seats: -

“ii)As per information received two (UR) seats are lying vacant at AIIMS Raebareilly, one (OBC) seat is lying vacant at Raipur, one (UR) seat is lying vacant at Bhatinda, two (UR) seats are lying vacant at Deogarh, one (UR) seat is lying vacant at Nagpur, Two (UR) seat is lying vacant at Patna.”

4.2 Thus, insofar as the OBC category is concerned, one seat is available in AIIMS, Raipur.

4.3 AIIMS has filed a counter affidavit in the matter wherein, it has, in a nutshell, defended its position by adverting to the same ground to which I have already alluded hereinabove.

Submissions of the Counsel: -

5. Counsel for the parties have also, in effect, proceeded to argue in line with their respective pleadings.

5.1 On behalf of the petitioner, Ms. Sanjana Saddy, Advocate advanced arguments while on behalf of AIIMS, submissions were made by Mr. Dushyant Parashar, Advocate.

5.2 On behalf of the petitioner, it was argued that the Prospectus had made two provisions concerning the submission of the OBC certificate. One, in Clause 3 on page IV of the Prospectus under the heading 'Registration

and Submission of Application Form’, and the other provision, in Clause 4.1 under the heading of ‘Criteria for Other Backward Classes (Non-Creamy Layer) [OBC]’.

5.3 Learned counsel, thus, submitted that if one were to take into account Clause 3 of the Prospectus, an OBC certificate would be valid for admission to Central Government institutions, if it bore a date which was one day prior to the date of first counseling or seat allocation.

5.4 The petitioner, under the notification issued for open counseling, made an application for participation. In the open counselling which was, admittedly, held on 26.08.2019, the petitioner was to be allocated a seat but for the fact that she did not have an OBC certificate that fell within the timeframe in contemplation of AIIMS i.e. 26.06.2019 and 25.06.2019, she was not allotted the same.

5.5 Therefore, in terms of provisions of Clause 3 of the Prospectus, the Counselling Committee should have considered her candidature for allotment of a seat as the OBC certificate issued to her was dated 19.08.2019.

5.6 Assuming, without admitting, if the provisions of Clause 4.1 of the Prospectus were to be applied, even then, the petitioner’s candidature could still not have been ousted by AIIMS as the said Clause required production of an OBC certificate which should “***NOT be older than ONE Year on date of First Counselling.***”.

5.7 In other words, a candidate could have been ousted only if his/her OBC certificate was older than 25.06.2018 given the fact that the first counseling was held on 26.06.2019.

5.8 The judgment of the Division Bench in *Mohit Sharma* did not deal with the situation which arises in the instant case, that is, whether or not the OBC certificate is older than one year on the date of first counselling. Learned counsel, in this behalf, drew my attention to the facts obtaining in *Mohit Sharma's* case. Learned counsel submitted that the distinguishing feature was that the Division Bench was dealing with a case where the candidate had participated in the first round of counselling.

5.9 Learned counsel emphasized the fact that given the petitioner's rank, she was not allotted a seat in the first three rounds of counselling. According to the learned counsel, the judgment was distinguishable and that, in any case, since the petitioner, in terms of Clause 3 of the Prospectus, had produced an OBC certificate which bore the date one day prior to the date of seat allocation, she ought to have been allocated a seat.

6. On the other hand, Mr. Dushyant Parashar, Advocate on behalf of AIIMS sought to portray that the petitioner has committed a "fraud" by continuing to participate in counselling in the first three rounds when she was aware of the fact that she did not have in her possession a valid OBC certificate.

6.1 According to the learned counsel, the petitioner's fraudulent act was discovered when she participated in the open round of counselling.

6.2 It was stressed that it was only then that it got discovered that the petitioner was not eligible for being considered for allocation of a seat in the OBC category as the certificate obtained by her bore a date which was outside the timeframe as provided in Clause 4.1 of the Prospectus.

6.3 Learned counsel contended that the petitioner was not entitled to any relief as the very same issue was raised before the Division Bench which had ruled in favour of AIIMS.

Analysis and Reasons: -

7. I have heard learned counsel for the parties and perused the record.

7.1 To my mind, what emerges and *qua* which there can be no contestation are the following facts:

- (i) The petitioner sat and qualified in the MBBS entrance exam.
- (ii) The petitioner is an OBC candidate.
- (iii) The petitioner applied for allotment of a seat under the OBC category.
- (iv) The first round of counseling was held on 26.06.2019, followed by second and third rounds of counseling which were held on 15.07.2019 and 05.08.2019 respectively.
- (v) The open round of counseling was held on 26.08.2019, *albeit*, after postponement.
- (vi) The period which, according to AIIMS, was sacrosanct to enable an OBC candidate to take advantage of the quota spanned between 26.06.2019 and 25.06.2018. This timeframe is calculated by AIIMS by relying upon Clause 4.1 of the Prospectus which, *inter alia*, states that for a candidate to establish his/her eligibility for an OBC seat, he/she should possess an OBC certificate which is not older than one year from the date of the first counselling. Therefore, the period of one year has been calculated by AIIMS by going back one year in point of time from the date when it held its first counselling which was on 26.06.2019.

(vii) Besides Clause 4.1, the Prospectus also includes Clause 3 which reads as follows: -

“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 counseling/seat allocation.”

8. What comes to fore upon perusal of the facts stated in paragraph 7 above is that even according to AIIMS the petitioner met all parameters for grant of admission under the OBC quota except one, which is not having in her possession, an OBC certificate that fell within the two ends of the timeframe i.e. 26.06.2019 and 25.06.2018.

8.1 That being said, Clause 3 of the prospectus provided a different timeframe. Thus, a candidate could produce an OBC certificate, which was one day prior to the date of the first round of counselling or the seat allocation.

8.2 The record also shows that the notification dated 06.08.2019 whereby candidates were invited to participate in leftover and surrendered seats or those which became vacant on candidates resigning did state that insofar as the OBC candidates were concerned, they had to produce a certificate which was valid on 26.06.2019 and within one year prior to that date.

8.3 As would be evident, this part of the notification dated 06.08.2019 is in line with Clause 4.1 of the Prospectus. Therefore, it goes no further than that which was already provided in Clause 4.1 of the Prospectus.

9. Given this backdrop, one can only conclude that there is dissonance between Clause 3 and Clause 4.1 of the Prospectus. While Clause 3 of the Prospectus permitted the petitioner to produce an OBC certificate which

bore a date one day prior to the first round of counseling or seat allocation, Clause 4.1 restricted the period to one year preceding the date of first counselling.

9.1 I am, for the moment, not venturing into the aspect as to what would be the impact of the expression “***NOT be older than ONE Year on date of First Counselling***” (the emphasis being on the word older) which is provided in Clause 4.1 of the Prospectus. Even so, there is disharmony between the two clauses i.e. Clause 3 and Clause 4.1 of the Prospectus. Given the situation, in my opinion, the only way forward is to interpret the provisions in a manner which will subserve the interest of a candidate who is otherwise successful and had no role in drafting the provision.

10. Therefore, on a harmonious reading of Clause 3 and Clause 4.1, one would have to conclude that as long as a candidate can produce an OBC certificate which is one day prior to the seat allocation, the candidate should be able to get a seat allocated for the OBC category. It may happen in some cases that the first round of counselling and seat allocation occurs on the same date and therefore may not make much difference. There would be other cases as the instant case that the date of first round of counselling and seat allocation is different.

10.1 There is no dispute that in the instant case, the date of open counseling and seat allocation was the same i.e. 26.08.2019. There is also no dispute that the OBC certificate obtained by the petitioner bears the date 19.08.2019.

10.2 AIIMS has not found fault with the certificate. Thus, quite clearly, in my view, the petitioner’s candidature for OBC seat ought to have been accepted by the Counselling Committee.

11. The submission of Mr. Parashar that the issue arising in this petition stands covered by the Division Bench judgment, to my mind, is not tenable for the following reasons.

11.1 That was a case where the candidate took part in the first round of counselling. The first round of counselling was held on 26.06.2019. The candidate was successful and was, thus, offered a seat by AIIMS in the OBC category on 29.06.2019. The petitioner was able to obtain an OBC certificate only on 01.07.2019.

11.2 The argument advanced on behalf of the candidate was that since the OBC certificate had been produced by him on the date when the verification of documents was carried out, the cut-off date had no relevance and, therefore, could not be used as a ground to deny him admission. A careful perusal of the judgment would show that the Court was not called upon to decide the issue as to what would be the impact of expression 'not older than one year on the date of first counseling' on the production date of the OBC certificate.

11.3 Be that as it may, the candidate did not raise and therefore the Division Bench did not need to decide the issue which has been articulated by the petitioner in the instant case which is that she was within the timeframe as stipulated in Clause 3 of the Prospectus.

11.4 While Clause 3 of the Prospectus has been noticed in ***Mohit Sharma's*** case, no argument was advanced and thus no conclusion was reached *qua* Clause 3 of the Prospectus, and in my view quite rightly so as the petitioner, in that case, had been allocated a seat on 29.06.2019 whereas the OBC certificate was issued to him on 01.07.2019.

11.5 Therefore, to my mind, the judgment of the Division Bench will not help the cause of AIIMS. Thus, the submission of Mr. Parashar that the issue stands covered against the petitioner is, unmerited.

11.6 It is trite to say that a judgement is binding and authority for what it decides and not what logically follows from it. One fact, one circumstance, can make all the difference while discerning the true ratio of a judgement. The observations of Privy Council in ***Quinn vs. Leathem***, [1901] A.C. 495 in this behalf being apposite are set forth hereafter:

“... Now, before discussing the case of Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all. My Lords, I think the application of these two propositions renders the decision of this case perfectly plain, notwithstanding the decision of the case of Allen v. Flood.”

11.7 This dicta has been cited with approval in the Constitution Bench judgement of the Supreme Court rendered in ***Krishena Kumar vs. Union of India***, (1990) 4 SCC 207¹. In the more recent past, two judgements of the

¹ “**19.** The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain “propositions wider than the case itself required”. This was what Lord Selborne said in *Caledonian Railway Co. v. Walker's Trustees* [(1882) 7 App Cas 259 : 46 W.P. (C) No. 9480/2019

Supreme Court titled ***Union of India and Another vs. Meghmani Organics Limited and Others***, (2016) 10 SCC 28² and ***ITC Limited, Gurgaon vs. Commissioner of Income Tax (TDS), Delhi***, (2016) 6 SCC 652³ have also ruled on similar lines.

12. Therefore, for the foregoing reasons, I am inclined to allow the petition. As noticed hereinabove, AIIMS has filed an affidavit before this Court wherein it has stated, in as many words, that one seat is available in AIIMS, Raipur, in the OBC category.

LT 826 (HL)] and Lord Halsbury in Quinn v. Leathem [1901 AC 495, 502 : 17 TLR 749 (HL)] . Sir Frederick Pollock has also said : “Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision.””

² “19. Looking at the contents of Rule 7 and the facts and issues involved in Reliance Industries case [*Reliance Industries Ltd. v. Designated Authority*, (2006) 10 SCC 368], we agree with the submissions of Mr Patil that the fact situation in that case was entirely different and the Court was not examining the provisions of Rule 7 in any detail but made rather scathing observations against the DA because the DA claimed confidentiality not in respect of any information but in respect of its findings based upon information supplied by the same party who was aggrieved by non-supply of the findings. The observations in Reliance Industries case [*Reliance Industries Ltd. v. Designated Authority*, (2006) 10 SCC 368] must be understood in the fact situation of that case in view of the well-established proposition of law that the ratio decidendi consists in the reasons formulated by the court for resolving an issue arising for determination and not in what may logically appear to flow from observations on non-issues. Reference in this regard may be made to the law enunciated on this point by a Constitution Bench, in para 20 of the judgment in *Krishena Kumar v. Union of India* [*Krishena Kumar v. Union of India*, (1990) 4 SCC 207 : 1991 SCC (L&S) 112] . In the given facts, the observations in para 43 in Reliance Industries [*Reliance Industries Ltd. v. Designated Authority*, (2006) 10 SCC 368] are fully justified and do not require any review. We are in agreement that Rule 7 does not postulate that the DA can claim confidentiality and that too not in respect of any information supplied by a party but in respect of its reasons or findings derived from information supplied by the same very party.”

³ “27. It is well settled that a case is an authority, for what it decides, and not for what logically follows from it. This case in no manner supports Shri Kaul's submission on Section 17(3)(ii) that the moment any amount is received from an employer by an employee, without more, such amount becomes a profit in lieu of salary. In *Karamchari Union* [*Karamchari Union v. Union of India*, (2000) 3 SCC 335] judgment, CCA and HRA arose directly from the employer-employee relationship. The question the Court had to answer was whether a pecuniary advantage in the form of CCA and HRA would be covered by Section 17, which the Court answered in the affirmative. This Court's decision cannot be understood to mean that even dehors the employer-employee relationship, any amount received from the employer by an employee would become “salary” under Section 17. We are, therefore, unable to subscribe to the High Court's view in understanding this decision to mean that so long as the employer pays an amount to an employee, even in a fiduciary capacity and dehors the employer-employee relationship, the amount so paid would come within the head “salary”.”

12.1 Accordingly, the petitioner will be allotted a seat in AIIMS, Raipur as the institutes *qua* which the petitioner gave her preference, do not have, according to AIIMS, a seat available in the OBC category.

12.2 The petition is disposed of in the aforesaid terms. Accordingly, CM APPL. 39036/2019 shall also stand closed.

RAJIV SHAKDHER, J

OCTOBER 14, 2019

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