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

+ **W.P.(C) 16532/2023 & CM APPL. 66635/2023**

**HIMANSHU**

..... Petitioner

Through: Mr. Bibhuti Bhushan Mishra,  
Mr. Kamlesh Kumar Mishra, Mr. Dipak Raj,  
Ms. Tripti Juyal, Advs.

versus

**FACULTY OF MANAGEMENT STUDIES UNIVERSITY OF  
DELHI AND ORS**

..... Respondents

Through: Ms. Abha Malhora, Sr. CGC  
for UoI with Ms. Amrita Sony, Advs. for R-  
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**CORAM:**

**HON'BLE MR. JUSTICE C. HARI SHANKAR**

**J U D G M E N T ( O R A L )**

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**05.03.2024**

1. The petitioner seeks admission to one vacant seat of Masters of Business Administration (MBA) in the "Persons with Disabilities" (PwD) quota for the academic session 2023-25 in the Faculty of Management Studies (FMS), Delhi University (DU) which, according to the writ petition, is lying vacant.

2. In November to December 2022, the DU invited applications for admission to its MBA and Executive MBA programs for the academic session 2023-25. The petitioner applied for admission to the MBA full time program of the DU on 29 January 2023, in the PwD quota.



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3. He was interviewed on 21 April 2023.
4. The merit list of the candidates who had been interviewed was released by the DU in the evening of 21 April 2023. The petitioner's name figured at S. No. 45 in the waiting list of candidates in the PwD category who had applied for admission to the MBA Full Time course.
5. On 14 August 2023, the DU circulated an "Interest Form", to be filled in by the candidates who were willing to seek admission to the MBA courses against vacant seats in different categories. The forms were also required to be filled in by candidates in the waitlisted category. The petitioner filled in the aforesaid interest form on 17 August 2023, expressing his willingness to be admitted to the MBA Full Time course provided by the DU.
6. Admissions to the MBA Full Time courses were closed on 31 August 2023. At that time, one seat remained vacant. The case of the petitioner in the writ petition is that, as the petitioner figured in the waiting list of the candidates for admission to the MBA Full Time course provided by the DU, and as one seat admittedly remained vacant, the petitioner ought to have been granted admission against the said seat.
7. A representation was addressed by the petitioner to the DU, to that effect, on 6 September 2023. The DU responded on 19 October



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2023, expressing regret at being unable to accommodate the petitioner, as the last date for admission to the MBA Full Time course was 31 August 2023.

8. That the last date for admission was indeed 31 August 2023 is not disputed by the petitioner.

9. The petitioner, thereafter, obtained admission to the MBA course provided by the Indian Institute of Technology (IIT), Delhi, which he presently pursuing. He, nonetheless, presses his claim for admission to the MBA Full Time course in the DU, *inter alia*, citing the high fees and hostel charges which have to be paid to the IIT for pursuing the MBA course with it.

10. This is the basis of the writ petition instituted by the petitioner.

11. The DU has filed a counter affidavit.

12. I heard learned Counsel for the parties at some length on 23 January 2024, pursuant to which the position which emerged was thus:

(i) There were two seats for persons with disabilities (PwD) available for the MBA Full Time program in the FMS for the 2023-25 academic session.

(ii) Following counselling, both the seats were filled in by



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the 11<sup>th</sup> admission list, which was released on 26 August 2023.

(iii) A 12<sup>th</sup> round of counselling was conducted on 29 August 2023, following which a 12<sup>th</sup> admission list was released on the same day. On that date, it was noticed that one of the two candidates selected for admission in the 11<sup>th</sup> round of counselling did not turn up for admission.

**13.** The case that Mr. Mishra seeks to canvass is that, as one of the candidates who was selected in the 11<sup>th</sup> admission list did not turn up for admission, that vacancy remained unfilled, and could have been filled up through the petitioner in the 12<sup>th</sup> round of counselling, which took place on 29 August 2023.

**14.** Even if the petitioner were to be the next candidate in the waiting list entitled to admission to the MBA Full Time program, the relief sought by the petitioner would nonetheless be difficult to grant. It is well-known that admission to any course in the DU – or, for that matter, any educational institution providing higher learning – is preceded by counselling.

**15.** The 12<sup>th</sup> round of counselling took place on 29 August 2023, pursuant to which the 12<sup>th</sup> admission list was released on the same day. It was only when the 12<sup>th</sup> round of counselling took place that the failure of the candidate selected in the 11<sup>th</sup> round of counselling to take admission became known. The cut-off date for effecting



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admissions to the MBA Full Time program for the academic session 2023-25 was 31 August 2023.

**16.** The 12<sup>th</sup> round of counselling took place on 29 August 2023. Even if one of the candidate who was selected in the admission list following the 11<sup>th</sup> round of counselling on 26 August 2023 did not turn up, the vacancy that would thus arise could not have been filled up without a further round of counselling.

**17.** As the 12<sup>th</sup> round of counselling took place on 29 August 2023, and the cut-off date for effecting admission was 31 August 2023, there was no scope for any further counselling. The vacancy could not, therefore, have been filled up, even if the petitioner had been the senior most candidate in the waiting list entitled to such admission.

**18.** The counter-affidavit filed by the DU asserts, however, that the petitioner was not in fact the senior most candidate in merit in the waiting list of candidates belonging to the PwD and that there were 16 candidates above him, who could not be admitted to the MBA Full Time program.

**19.** The petitioner's rank was 45 and the last candidate who was admitted was ranked 28. As such, even on merit, it is contended that the petitioner could not have made the grade for admission to the MBA Full Time course.

**20.** Insofar as the cut-off date is concerned, Mr. Mishra, learned



Counsel for the petitioner, has placed reliance on the judgment of a Division Bench of this Court in *AIIMS v. Ashutosh Kumar*<sup>1</sup>, particularly drawing attention to para 19 of the said decision which reads thus:

“19. In the case of *Asha v. Pt. B.D. Sharma University of Health Sciences*<sup>2</sup>, the Supreme Court observed that the Courts can grant admission to a student even after the cut-off date prescribed if it comes to a finding that there is no fault on the part of the candidate, the candidate has pursued their legal remedies expeditiously and there is fault on the part of the authorities. In this regard the Court has observed as under:

“32. Though there can be the rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, *the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission.* Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate.”

(Emphasis supplied)

**21.** The aforesaid paragraph cited by Mr. Mishra, particularly, para 32 of the earlier decision of the Supreme Court in *Asha*, on which the Division Bench placed reliance, in fact defeats the case that he seeks to canvass.

**22.** It is clarified, unequivocally, by the Supreme Court that the normal rule is adherence to the cut-off date in the matter of admission

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<sup>1</sup> 2023 SCC OnLine Del 7031

<sup>2</sup> (2012) 7 SCC 389

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to courses especially in institutes of higher learning. relaxation from this rigid requirement is permissible by the Court only if there is *cumulative satisfaction* of three – or, in a manner of speaking, four – criteria.

23. They are that (i) the candidate must not be at fault, (ii) the candidate must have pursued his/her rights and legal remedies expeditiously without delay and (iii) *there must have been fault on the part of the authorities and (iv) apparent breach of rules, regulations or principles in the process of selection or grant of admission.*

24. The position from *Asha*, extracted in para 19 of the judgment of the Division Bench of this Court in *Ashutosh Kumar* makes it clear that the *sine qua non* for a court to relax the cut-off date in the matter of admission to courses in institutions or higher education is *cumulative satisfaction of the aforesaid criteria.*

25. In the present case, it is not even pleaded by the petitioner that there was any default on the part of the DU or breach, on the part of the DU, of any rules, regulations or principles in the process of selection and admission of PwD candidate to the MBA Full Time course.

26. That being so, the decision in *Asha* would operate against the petitioner and would proscribe this Court from granting relief to the petitioner by relaxing the cut-off date fixed in the matter of admission to MBA Full Time course, which was 31 August 2023.



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27. For all the aforesaid reasons, this Court regrets that it is not possible to grant relief to the petitioner as sought in the writ petition.

28. The petition is accordingly dismissed, with no orders as to costs.

**C. HARI SHANKAR, J.**

**MARCH 5, 2024**  
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*Click here to check corrigendum, if any*