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

Date of Decision: 06th July, 2022

+ **W.P.(C) 5017/2022 & CM APPL. 14941/2022**

HUDA ANSARI & ANR. Petitioners

Through: Mr. Tariq Adeeb and Mr. Shoaib Haider, Advocates.

versus

JAMIA MILLIA ISLAMIA & ANR. Respondents

Through: Mr. Ajay Digpaul, CGSC with Mr. Kamal Digpaul and Ms. Swati Kwatra, Advocates for R-UOI. Mr. Pritish Sabharwal, Standing Counsel with Mr. Sanjeet Kumar, Advocate for R-1/JMI.

+ **W.P.(C) 5329/2022 & CM APPL. 15906/2022**

SHABNAM YASMIN Petitioner

Through: Mr. Tariq Adeeb and Mr. Shoaib Haider, Advocates.

versus

JAMIA MILLIA ISLAMIA & ANR. Respondents

Through: Mr. Pritish Sabharwal, Standing Counsel with Mr. Sanjeet Kumar, Advocate for R-1/JMI. Mr. Syed Abdul Haseeb and Mr. Tanvir Zaki, Advocates for R-2/UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. Considering the fact that the above-captioned petitions raise identical grounds of challenge, arising out of similar facts, the same are being disposed of *vide* a common order. As the prayers sought are also identical, for the sake of reference, the prayer clause from W.P.(C) 5017/2022 is extracted hereinbelow:

“a) Pass an order or direction to the respondent to set aside the notice/order dated: 16.03.2022 and 17.03.2022 issued by the respondent no. 1 and 2 respectively;a

b) Pass an order or direction to stay the order/ notice dated 16.03.2022 and 17.03.2022 issued by the respondent no. 1 & 2;

c) Pass an order or direction to the respondent no. 1 & 2 to lock the seats of the petitioners in the BDS allotted to them vide provisional allotment letter dated 02.02.2022 till the pendency of the case; and

d) Pass any other and/or further relief to the Petitioner, as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. Briefly stated, Petitioners No. 1 and 2 *viz.* Huda Ansari and Noora Khalid, respectively in W.P.(C) 5017/2022, and Petitioner – Shabnam Yasmin in W.P.(C) 5329/2022 appeared for National Eligibility Entrance Test UG (“NEET-PG”) examination held in 2021. The All-India Ranks (“AIR”) of the Petitioners are: (a) Huda Ansari – 408869; (b) Noora Khalid – 352153 and (c) Shabnam Yasmin – 160367.

3. After the declaration of ranks, Petitioners applied for admission in

Bachelor of Dental Surgery ("BDS") course in Respondent No. 1 – Jamia Milia Islamia. Admittedly, all the Petitioners were declared to be successful candidates in the first round of counselling and were selected for admission in Respondent No. 1 college *vide* publication dated 1st February, 2022. Pursuant thereto, an allotment letter was also issued to all of them.

4. On the strength of such allotment, Petitioners reported for, and duly completed the admission process by submitting the academic fee. Much to their dismay, a notice *bearing* no. U-11011/09/2021-MEC dated 16th March, 2022 was issued by the Medical Counselling Committee ("MCC") for Respondent No. 1 declaring the admissions made in Round 1 and Round 2 of UG 2021 counselling for BDS course in Respondent No. 1 college, as null and void on account of technical glitch in their system. Pursuant thereto, Respondent No. 1 college also set aside the admissions made erroneously *vide* notice dated 17th March, 2022.

5. The afore-noted notice is the subject matter of challenge in the present petition, and the same is extracted hereinbelow:

"Ref. U-11011/09/2021-MEC

Dated: 16-03-2022

NOTICE

Kind Attention Candidates:

This is to inform all the candidates who have joined Faculty of Dentistry, Jamia Milia Islamia, New Delhi in NEET-UG 2021 counselling that allotments made to the candidates in Round-1 & in Round-2 of UG 2021 Counselling in Faculty of Dentistry, Jamia Milia Islamia, New Delhi is hereby declared to be null and void as the said allotment was made erroneous due to technical glitch.

The Competent Authorities decided that fresh allotment will be made for Mop-up Round of UG 2021. However, already admitted candidates in Round -1 & 2 UG counselling 2021 will be allowed for Choice filling in Mop-up Round & fees for already admitted candidates will be adjusted

during admission process by the College Authority if re-allotted. The Candidates who will be excluded as per fresh allotment fees of such candidates will be refunded by College Authority.

This notice is only in reference to the allotment made for BDS seats in Faculty of Dentistry, Jamia Milia Islamia, New Delhi UG-2021 Counselling & allotment made in other participating colleges remains the same.

*This issues with approval of competent Authority.
Notice posted on: 16-03-2022”*

6. In terms of the said notification, a Mop-up counselling round was conducted; Petitioners participated therein, but did not succeed in getting a seat in Respondent No. 1 college. Subsequently, they raised certain objections to the provisional list of selected candidates before the MCC. Mr. Tariq Adeb, counsel for Petitioners, states that these objections were not considered by the MCC before releasing the final list of selected candidates. Aggrieved thereby, Petitioners have approached the Court by way of the instant petitions seeking the afore-noted reliefs.

7. On 30th March, 2022, the Court had directed Respondent No. 2 – Director General of Health Services (“DGHS”) to file an affidavit of a responsible officer explaining as to why despite Respondent No. 1 having knowledge of the technical glitch on 4th February, 2022, no action to cancel the Petitioners’ admission was taken up till 16th March, 2022. In compliance with the said direction, an affidavit has been filed. The Respondent No. 2 in their affidavit dated 7th April, 2022, explained the technical glitch resulting in such erroneous allocation of seats. For the sake of completeness, it is considered appropriate to reproduce the relevant contents of the said affidavit explaining the technical glitch and the delay thereon. The same read as under:

“7. It pertinent to mention that the provisional results of Round I was declared on MCC portal on 27.01.2022. Since there was no merit violation the discrepancy could not be identified by either of the Respondents and NIC or any candidates participating in the counselling and hence the final result was displayed on the website on 01.02.2022 and reporting was started for candidates.

8. It was during reporting of Round I some E-mails regarding the non-availability/viewing of seats for choice filling to open candidates for "Muslim Women Quota" in Faculty of Dentistry at Jamia Millia Islamia on the online portal was received in the official mail. The same was immediately communicated to Jamia authorities and NIC authorities which was around 04.02.2022. At that period of time the reporting (i.e. 03.02.2022-09.02.2022) was an undergoing progress when the anomaly was reported to MCC any immediate changes in the software could not be possible. Since the reporting for Round-1 only concluded on 09.02.2022. MCC of DGHS was in regular communication with all the parties and to how to rectify the error. An urgent Virtual meeting was called by MCC with all the stake holders including NIC, Jamia authorities and ministry officials on 14.02.2022 to verify whether any error had occurred and steps to rectify the same. It was found in the meeting that NIC while preparing a new software for counselling for the first time for Jamia Dental Institute the "Muslim Women Seats" were not shown to open candidates. Accordingly it was decided in the meeting that the software for counselling should immediately be corrected as per the reservation of Jamia dental seats. The error in the software was rectified on 15.02.2022 and that open seats for Jamia Dentistry now could be filled in the choice list by open candidates as well. The software was rectified by NIC officers and the round-2 of counselling for Jamia dental was conducted with the help of new software and the registration and choice filling for Round-2 was commenced on 17.02.2022.

9. It is pertinent to mention that the respondent No.1 while doing the document verification at the time of Reporting of Round-I also could not find out the discrepancy. It is further mention that MCC of DGHS as a precautionary measure declares Provisional Allotment result before the final allotment status is displayed. It is done as a measure so that if at all there is any discrepancy in the seat allotment it can be rectified. It is pertinent to mention that neither the Respondent No.1, NIC nor the allotted candidates ever reported any discrepancy even though sufficient time was provided to the parties concerned. The notice for provisional allotment and reporting of any discrepancy in Round I is annexed as Annexure-2.

10. It is pertinent to mention that as once the error in the software was rectified by NIC, in the meeting held on 14.02.2022 and as per schedule declared the provisional results of Round-2 on 26.02.2022. It is again mentioned that before the final allotment result of Round-2 was declared, MCC posted a provisional allotment notice as a standard protocol to rectify any discrepancy in the result if any. It is pertinent to mention that again neither the Jamia authorities, NIC nor the candidates including the petitioners never reported any error in the seat allotment/result and final result was declared believing that there is no error. The notice for Round-2 for provisional allotment the same is annexed as **Annexure-3**.

11. During the ongoing of Mop-up Round RTI dated 15.03.2022 was filed by a candidate that a student of lower merit has been allotted seat in Jamia Dental open seat even though she was in higher merit than the allotted candidate. In response to the RTI application an Internal Audit was conducted by the MCC of DGHS to verify the claim the applicant made in the RTI application that on the open seats internal candidates were allotted. In the internal audit done at the level of MCC it was found that on BDS seats of Faculty of Dentistry, Jamia Millia Islamia there was a wide disparity between the ranks of the allotted candidates that were allotted in the last year's counselling and the ranks of allotted candidates in the counselling held this year. To scrutinize the matter an emergency meeting was called on 15.03.2022 with NIC representative and Jamia Authorities. In the meeting it was found during Round-I due to the earlier flaw in software some internal candidates had crept in the admission of Jamia dental seats meant for open seats and were illegally occupying their seats from Round-I and as such 08 internal candidates got allotted and joined on Open seats which should have been allotted to open candidates. It is important to mention that there were only 2 internal seats in Jamia dental college. This illegal occupation of internal candidates on open seats could not be identified by Jamia authorities at the time of reporting during certificate verification during round-I and round-2.

12. Hence it was decided in the meeting that in the interest of justice and to avoid any merit violation. The only way to rectify the inadvertent error of software and to flush out the illegal occupants of open seats by some internal candidates would be to make all admission done in round I and round 2 will be made null and void. Hence a fresh new round was decided to be conducted with the correct algorithm. A notice dated 16.03.2022 in this regard was published by the MCC of DGHS on the MCC website. It is pertinent to mention that a total no. of 29 candidates were allotted collectively in Round I and 2 of the UG Counselling. The list of all the admission/allotment done in the Faculty of Dentistry, Jamia Millia Islamia during Round 1 and Round 2 is attached as **Annexure-4**.

13. As per Fresh result declared by removing the excess internal candidates the last merit as per new round for the Jamia Muslim Women Quota(Open) is 28282 and last rank as per the merit for Jamia Muslim (OBC) quota is 31954 which is way higher to the AIR of the both the petitioners. The cancellation of all the allotted seats was done as a rectification measure so that no merit violation is done and internal candidates not eligible on opens seats may be removed. It is further more mentioned that the candidates are of low merit and are not eligible for the seat which was allotted to them. After the cancellation was done which included the petitioners were allowed to participate in the Mop-up Round of Counselling on sympathetic ground and all the candidates were given ample amount of time to choose the colleges and after choices the result was finally declared upon. The table below is the comparison of the last rank as per merit is explained for the better understanding of the Hon'ble Court.”

8. In light of the above-extracted affidavit, it appears that there was a genuine technical glitch resulting in erroneous allocation of the seats, of which the Petitioners were beneficiaries. Despite the above clarification, Petitioners continue to insist that they should be declared as successful candidates in terms of the original allocation and seek quashing of the notice dated 16th March, 2022. Mr. Adeeb argues that in round 1 of counselling, majority of candidates preferred to opt for admission in colleges other than Respondent No. 1 as their first choice on a hope that they would easily secure admission therein. In round 1, whoever opted for Respondent No. 1 as their first choice, was selected for admission irrespective of their ranks since higher ranking candidates chose other colleges. It was for this reason that the Petitioners were admitted to Respondent No. 1 college in the first round itself. He further states that there has not been any mistaken allotment by Respondents as the above-noted allocation was within the bounds of the eligibility criteria, seat matrix as well as database of all candidates' preferences. As Petitioners were duly admitted into Respondent No. 1 college in desired course, they did not opt for upgradation of colleges after

conclusion of round 1 of counselling. It is further averred that Petitioners have forgone other admission opportunities available to them in various applicable quotas including, Muslim Quota, Muslim Women Quota, Muslim OBC Quota or internal students of Jamia Quota based on their ranking.

9. The Court has considered the afore-noted contentions, and does not find any ground to issue a writ of mandamus, as prayed for. The Respondents have adequately demonstrated the factors which crept in the system, leading to erroneous allocation of seats to several candidates, including, Petitioners having lower ranks than the cut-off / last rank set by Respondent No. 1, in round 1 and 2 of counselling process. Therefore, the question that arises for consideration is whether a right stood vested in favour of the Petitioners, who were erroneously declared to be successful candidates on account of a technological glitch. The answer to this question has to be in negative, as no candidate can be permitted to take benefit of an inadvertent error. The impugned notice does not take away any vested right or substantive rights of the Petitioners. It was merely a step taken to correct an error whereby, an unwarranted advantage had accrued in their favour, and the same does not amount to deprivation of a vested/ substantive right. Although the Court acknowledges that this may be an unfortunate and harsh situation for Petitioners, whose hopes were unfairly raised by the allocation in the first round, nevertheless, it shall decide the matter in light of the undisputed and established facts before it. The seats could not have been allocated to Petitioners particularly when in the Mop-up/ fresh round of allotment, the last cut-off AIR rank for admission was 28282 in Jamia Muslim Women Quota (Open) and 31954 in Jamia Muslim

(OBC) Quota. Petitioners in both petitions, fall greatly short of this cut-off rank and as such, cannot be admitted in Respondent No. 1 college on the basis of merit.

10. Therefore, the cancellation of the seats allotted to the Petitioners was a rectification measure, and no violation of merit or admission standards has been done. Petitioners being candidates of lower merit, are not entitled to a seat in BDS course in Respondent No. 1 college that was inadvertently allotted to them in the first round.

11. In light of the foregoing reasons, both the petitions are dismissed. All pending applications are also disposed of.

SANJEEV NARULA, J

JULY 6, 2022

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