



2024:DHC:7051-DB



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

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Judgment reserved on: 09.09.2024

Judgment delivered on: 13.09.2024

+ LPA 887/2024, C.M.APPL.Nos. 51248-49/2024

YASHIKA MALIK

.... Appellant

versus

UNIVERSITY OF DELHI FACULTY OF MEDICAL SCIENCES
& ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. M.V.Mukanda, Advocate.

For the Respondents : Mr. Mohinder J.S. Rupal, Advocate with
Mr.Hardik Rupal, Advocate for R-1/DU. Mr.
Akhil Gupta, Advocate for Mr. Manish
Agrawal Narain, CGSC for R-2 & 3.
Mr. Ruchir Mishra, Mr.Mukesh Kr. Tiwari
and Ms. Reba Jena Mishra, Advocates for
R-4.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present appeal has been preferred under Clause X of the Letters Patent Act, 1866, assailing the judgment dated 29th August, 2024, passed by the learned Single Judge of this Court in W.P.(C) 11833/2024 titled "*Yashika Malik vs. University of Delhi & Ors.*" filed by the appellant, whereby the learned Single Judge has directed the respondent no.4/Medical



Counseling Committee to give admission to the appellant subject to the availability of seats in the first round of Undergraduate counseling list in the Children/Widows of Officer and Men of the Armed Forces category as per clause E, Priority V(VIII) and if the seats are not available in the first round, the name of the appellant be considered in the second round of the UG counseling.

2. The facts germane to the present appeal, shorn of unnecessary details and culled out from the appeal, are as under:

- a) It is the case of the appellant that her father was awarded *Sena Medal/Army Medal* (Gallantry) for the acts of exceptional courage by the Government of India on 15th August, 2015 and was published in the gazette notification on 12th December, 2015.
- b) The respondent no.1/University of Delhi, Faculty for Medical Sciences (hereinafter referred to as “DU”) published an Information Bulletin dated 16th February, 2024 for under graduates (MBBS/BDS) Admission for 2024-2025 (hereinafter referred to as “*Information Bulletin*”). It was the case of the appellant that as her father is a *Sena Medal* recipient, the appellant is eligible for reservation under clause ‘E, Priority V(VII) – Reservation of Armed Forces (CW)’.
- c) The appellant claims to have submitted her application for the NEET-24 Examination on 2nd March, 2024 and was issued an admit card dated 3rd May, 2024 by the respondent no.4/Medical Counselling Committee (hereinafter referred to as “MCC”). The



examination was conducted by the National Testing Agency (hereinafter referred to as “NTA”) on 5th May, 2024.

- d) It was the case of the appellant that the respondent no.2/Kendriya Sainik Board (hereinafter referred to as “KSB”) issued Education Concession Certificate (hereinafter referred to as “ECC”) in favour of the appellant under clause E, Priority V(VIII) of Information Bulletin on 16th May, 2024. The appellant was also issued an ECC dated 12th June, 2024 by the Officer-in-Charge of Mahanideshalaya Assam Rifles (Shillong) (hereinafter referred to as the “OIC”).
- e) The NTA published the results on 26th July, 2024 wherein the appellant secured a total of 604 out of 720 marks and was awarded a Category Rank of 26224 and All India Rank of 73045.
- f) The respondent no.1/DU, had published a tentative list dated 7th August, 2024 of candidates registered on Children/Widows of Officer and Men of the Armed Forces (hereinafter referred to as “CW”) portal for verification for their entitlement under CW category for admission to Undergraduate (hereinafter referred to as “UG”) Medical Courses (MBBS/BDS/BAMS/BUMS/BHMS) 2024-2025 under 85% Delhi quota. It is the case of the appellant that in the said tentative list her name was reflecting at Serial No.57 and her CW category/Priority was mentioned as Priority V(VIII).
- g) The respondent no.1/DU published a second tentative list dated 13th August, 2024 of candidates (Eligible/Not Eligible) under CW category for admission to UG Medical Courses



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(MBBS/BDS/BAMS/BUMS/BHMS) 2024-2025 under 85% Delhi quota. In the said list the appellant's name reflected at Serial No.9 in the said tentative list, and her CW category/Priority was indicated as Priority V(VIII) against which it was mentioned as '*Not Eligible*'.

- h) The respondent no.1/DU published a list of provisionally eligible candidates dated 14th August, 2024 under CW category for admission to UG Medical Courses (MBBS/BDS/BAMS/BUMS/BHMS) 2024-2025 under 85% Delhi quota which did not contain the name of the appellant.
- i) Upon a representation by the father of the appellant, an email was sent by the respondent no.3/Ministry of Home Affairs, Government of India (hereinafter referred to as "*MHA*"), to Assistant Registrar, DU, with the letter dated 16th August, 2024 confirming the verification of CW Category Education Concession Certificate issued by the OIC dated 12th June 2024 in respect of the appellant's admission to UG Medical Course (MBBS/BDS/BAMS/BUMS/BHMS) 2024-2025 of 85% Delhi quota.
- j) The respondent no.1/DU, published a revised list dated 16th August, 2024 of provisionally eligible candidates under CW category for admission to UG Medical Courses (MBBS/BDS/BAMS/BUMS/BHMS) 2024-2025 under 85% Delhi quota. The name of the appellant appeared in the list at Serial No.186 based on the ECC



verification letter dated 16th August, 2024 received from the respondent no.3/MHA.

- k) The respondent no.2/KBS issued a letter dated 19th August, 2024 cancelling the appellant's ECC issued by it on 16th May, 2024, for the reason that Assam Rifles is not covered under *Inter-Se-Priority* for reservation/preference to the wards to Armed Forces personnel. The appellant submitted that in the said letter it was stated that the certificate was issued in favour of the appellant erroneously.
- l) The respondent no.1/DU, published a second revised list on 23rd August, 2024 of provisionally eligible candidates under CW category for admission to UG Medical Courses (MBBS/BDS/BAMS/BUMS/BHMS) 2024-2025 under 85% Delhi quota. It is the case of the appellant that her name was deleted from the list by erroneously relying on the letter dated 19th August, 2024, received from the respondent no.2/KSB.
- m) The appellant submitted that the respondent no.2/KSB sent an email dated 24th August, 2024 stating, *inter alia*, that the cancellation of ECC was erroneous and the appellant's candidature may be considered on the basis of verification issued by the respondent no.3/MHA. It was further stated in the said email that the Assam Rifles does not fall under the purview of KSB and comes administratively under MHA.
- n) It is the case of the appellant that at her insistence, the respondent no.3/MHA issued yet another re-verification letter dated 24th



August, 2024 confirming the eligibility of the appellant herein under clause E, Priority V(VIII) of the Information Bulletin.

- o) The appellant stated that the respondent no.4/MCC published the final list dated 25th August, 2024 of counseling seat allotment wherein the appellant was not allocated any seat against the reservation under the Armed Forces Personnel quota (CW) as per clause E, Priority V(VIII) of the Information Bulletin.
- p) Aggrieved by the aforesaid, the appellant filed the underlying writ petition bearing W.P.(C) 11833/2024 seeking the appellant's candidature to be treated as per clause E, Priority V(VIII) of Information Bulletin and allot her a seat as per her preference and reservation.
- q) The learned Single Judge passed the impugned order dated 29th August, 2024 directing the appellant's admission to be considered in the first round of UG counseling list in the CW category as per clause E, Priority V(VIII) subject to the availability of seats. The learned Single Judge further directed that in case the appellant's admission in the first round of counseling is not possible, then the appellant be considered for the subsequent round of counseling. Aggrieved by the direction of the learned Single Judge to the extent that it denies her the right to reservation in the first round of counseling, the appellant filed the present appeal.

CONTENTIONS OF THE APPELLANT :-



3. Mr. M.V.Mukanda, learned counsel appearing on behalf of the appellant submitted that as per the reservation provided to the children and wards/widows of the Armed Forces Personnel, the ECC could be issued by any of the five (5) Authorities indicated stipulated in the Information Bulletin. Accordingly the appellant had submitted along with her application the ECC dated 12th June 2024 issued by the Officer-in-Charge (hereinafter referred to as the “OIC”) on 1st August, 2024 *vide* the DU portal.

4. He submitted that the name of the appellant was shown in the list of candidates seeking admission on the basis of reservation under the category of CW dated 7th August, 2024. He submitted that surprisingly though the name of the appellant was shown at Serial No.9 in the second tentative list of candidates issued by the respondent no.1/DU on 13th August, 2024, yet she was shown as “*not eligible*”. Immediately, the appellant uploaded the ECC dated 16th May, 2024 issued by the respondent no.2/KSB on 16th August, 2024 for verification purposes.

5. Learned counsel submitted that in the meanwhile on the basis of the verification conducted by respondent no.3/MHA on 16th August, 2024, the name of the appellant was shown at Serial No.186 of the revised provisional list published by the respondent no.1/DU on 16th August, 2024. He submitted that though the appellant was shown in the revised provisional list dated 16th August, 2024 as a successful candidate, yet, shockingly, in the second provisional list published by the respondent no.1/DU on 23rd August, 2024, the name of the appellant was shown to have



been deleted on the basis of cancellation of ECC dated 16th May, 2024 by the respondent no.2/KSB on 19th August, 2024.

6. He submitted that the appellant pursued the respondent no.2/KSB as well as the respondent no.3/MHA, following which both, the KSB as well as the MHA by their emails dated 24th August, 2024 verified the CW category of the appellant and asserted that she falls within clause E, Priority V(VIII). But, the respondent no.1/DU did not rectify its list constraining the appellant to approach this Court.

7. He submitted that the facts would clearly reflect that the appellant was eligible all along and it is due to the error or mistake on the part of the respondent no.1/DU and the respondent no.4/MCC that the name of the appellant was deleted from the list of successful candidates under the CW category. He stated that the appellant was in fact eligible as per the first ECC issued by the OIC dated 12th June, 2024 which was verified by the respondent no.3/MHA on 16th August, 2024 and therefore, there was no occasion for the respondent no.1/DU to delete the name of the appellant on 23rd August, 2024. He further submitted that deletion of appellant's name from the list on the basis of cancellation of ECC dated 16th May, 2024 by respondent no.2/KSB on 19th August, 2024 is irrelevant since a valid ECC issued by the OIC and verified by the respondent no.3/MHA was already available with the respondent no.1/DU based whereon, the name of the appellant was inserted in the provisional list published on 16th August, 2024.



8. Learned counsel for the appellant further submitted that even subsequently, the respondent no.3/MHA as also the respondent no.2/KSB, had re-verified and confirmed the ECC issued by the OIC on 24th August, 2024. He submitted that even on that basis, the respondent no.1/DU could have included the name of the appellant in the final list of successful candidates dated 23rd August, 2024 by issuing a supplementary list. He submitted that this error and mistake cannot be attributable to the appellant. He submitted that due to this error and mistake, candidates who were less meritorious have been allotted seats which the appellant was to occupy. He submitted that suitable directions be issued to the respondent no.1/DU and respondent no.4/MCC to allot a seat against CW category to the appellant and in case there exist no more vacancies, a supernumerary seat be created in favour of the appellant. For this proposition, learned counsel relied upon the judgement of the Supreme Court in *S. Krishna Sradha vs. State of Andhra Pradesh & Ors., (2020) 17 SCC 465*.

CONTENTIONS OF THE RESPONDENT NO.1/DU :-

9. Mr. Mohinder J S Rupal, learned counsel appearing on behalf of the respondent no.1/DU submitted that there is neither any error nor mistake on the part of the University in processing the application of the appellant.

10. Learned counsel for the respondent no.1/DU submitted that the appellant was one of the twenty-eight (28) candidates whose name was forwarded to the respondent no.3/MHA on 13th August, 2024 for verification of ECC. He submitted that respondent no.3/MHA did not verify the ECC of the appellant immediately, thus a provisional list of 185



candidates was published on the website on 14th August, 2024. He contended that upon receipt of a representation of the father of the appellant along with the ECC issued by KSB, the same was forwarded to respondent no.3/MHA for verification on 16th August, 2024. He also submitted that on receipt of the verification by the respondent no.3/MHA of the ECC issued by OIC, the name of the appellant was included at Serial.No.186 of the revised provisional list published on 16th August, 2024.

11. Learned counsel for respondent no.1/DU also submitted that subsequently on the basis that the respondent no.2/KSB had cancelled the ECC on the premise that Assam Rifles personnel do not fall within the *Inter-Se-Priority* for reservation to the wards of the Armed Forces, the name of the appellant was deleted from the list on 23rd August, 2024. He submitted that the name of the appellant was withdrawn subject to confirmation by the respondent no.3/MHA. The matter is stated to have again been put up to the respondent no.3/MHA which verified the ECC issued by the OIC only on 27th August, 2024. He submitted that consequent thereto, the name of the appellant was again included in the list and a supplementary list was forwarded to the respondent no.4/MCC on 28th August, 2024 with a request to include the name for admission to UG Medical Course (MBBS/BDS/BAMS/BUMS/BHMS) Course for the academic year 2024-25. Predicated on the above, he contended that there is neither any error nor any mistake on the part of the respondent no.1/DU.

12. He contended that in any case, as per the directions contained in the impugned judgement, the second round of counseling is under progress and it may be likely that the appellant may be allotted a seat, if available. He



candidly submitted that there is no vacant seat available as of now for unreserved or CW category candidate.

CONTENTIONS OF RESPONDENT NO.4/MCC :-

13. Mr.Ruchir Mishra, learned Counsel appearing for the respondent no.4/MCC submitted that the MCC has no role to play so far as the verification of the ECC or publication of the provisional or final list of candidates is concerned. According to him, these are functions of the respondent no.1/DU. He submitted that the respondent no.4/MCC allots seats to the candidates in accordance with the list forwarded by the respondent no.1/DU and is not in a position to authenticate or verify the claims of the appellant regarding the validity or otherwise of the ECC submitted by her. He contended that this is within the purview of the respondent no.1/DU alone.

14. He submitted that as of now there are no vacant seats available in the unreserved or CW category and unless there is any cancellation in the said category in the second round or subsequent rounds of counseling, the respondent no.4/MCC cannot allot any seat to the appellant. He also submitted that only seven (7) vacancies in the SC/ST category are available. He contended that those vacancies cannot be filled up by candidates from categories other than SC/ST as the same is proscribed. He reiterated his contention that the respondent no.4/MCC cannot allot any seat to the appellant unless some candidate in the said category cancels his/her allotment.



ANALYSIS AND CONCLUSION :-

15. This Court has heard the arguments of Mr. M.V.Mukanda, learned counsel for the appellant and Mr.Mohinder J.S. Rupal, learned counsel for the respondent no.1/DU and Mr. Ruchir Mishra, learned counsel for the respondent no.4/MCC, perused the impugned judgement and considered the documents on record.

16. At the first instance, it is pertinent to note that so far as the appellant's eligibility under CW category is concerned, the same is not disputed. It is also of great significance to note that clause E of the Information Bulletin specifies issuance of ECC by any of the following authorities:-

- i) Secretary, Kendriya Sainik Board, Delhi
- ii) Secretary, Rajya Zila Sainik Board.
- iii) Officer in Charge, Record Office.
- iv) 1st Class Stipendiary Magistrate.
- v) Ministry of Home Affairs, (for police personnel in receipt of Gallantry Awards).

17. It is clear from the language employed in clause E of the Information Bulletin, that the ECC can be issued by any one of the authorities specified therein. The respondent no.1/DU is only to verify the genuineness and authenticity of the ECC submitted by the applicants. Once the authority issuing the ECC verifies the genuineness of the said ECC, the respondent no.1/DU would process the same and after placing the name of the said



applicant in the list, forward it to the respondent no.4/MCC for allotment of seats.

18. In the present case, it is not disputed that the OIC, Record Office, who is one of the competent authorities stipulated in clause E, Information Bulletin had issued the ECC dated 12th June, 2024. The appellant had submitted the said ECC along with her application seeking allotment of seat under the CW category for reservation in the respondent no.1/DU for MBBS Course. The appellant asserted that the said certificate was uploaded on the respondent no.1/DU's portal on 1st August, 2024. On account of the appellant being shown as not eligible in the provisional list dated 13th August, 2024, she had furnished the ECC dated 16th May, 2024 issued by respondent no.2/KSB for verification on 16th August, 2024. By virtue of the respondent no.3/MHA verifying the ECC dated 12th June, 2024 issued by OIC, the name of the appellant was included at Serial No.186 of the provisional list dated 16th August, 2024. Surprisingly, though the appellant was included in the provisional list dated 16th August, 2024, yet, on 23rd August, 2024 her name was deleted from the said provisional list predicated on the cancellation of her ECC dated 16th May, 2024 issued by the respondent no.2/KSB on 19th August, 2024 on the premise that Assam Rifle Personnel do not fall under the category of *Inter-Se-Priority*. Though the respondent no.3/MHA as well as the respondent no.2/KSB both by their emails dated 24th August, 2024 re-verified and affirmed the ECC issued to the appellant by the OIC, the respondent no.1/DU did not rectify the provisional list by including the name of the appellant. It is pertinent to note



that respondent no.2/KSB in their email dated 24th August, 2024 had pointed out that the cancellation of the ECC issued by it was erroneous.

19. The aforesaid material facts as noted by us remain undisputed. Though, Mr. Rupal, learned counsel for the respondent no.1/DU stated that the action taken by the respondent no.1/DU cannot be found fault with, we find that it is not so.

20. Having regard to the fact that the ECC dated 12th June, 2024 issued by the OIC, who is the competent authority under clause E of Information Bulletin, was verified and confirmed by the respondent no.3/MHA on 16th August, 2024, there was no reason why the respondent no.1/DU removed the name of the appellant from the provisional list dated 23rd August, 2024. That too, on the basis of cancellation of ECC issued by the respondent no.2/KSB. It is not the case of the respondent no.1/DU that the ECC ought to be issued by more than one authority stipulated in clause E of the Information Bulletin nor is it the case of the respondent no.1/DU that respondent no.3/MHA was not the competent authority to verify the ECC issued by the OIC. In that view of the matter, it is unfathomable and equally untenable for the respondent no.1/DU to contend that no error occurred on its part. We are of the considered opinion, having regard to the facts as obtaining and noted above, that as on 16th August, 2024 the appellant had a legally valid and subsisting ECC as stipulated in the Information Bulletin. Therefore, the removal of the name of the appellant in the provisional list dated 23rd August, 2024 in our opinion is legally unsustainable.



21. Besides, both the respondent no.2/KSB as well as the respondent no.3/MHA *vide* their email dated 24th August, 2024 unequivocally reiterated and re-verified the ECC's issued by the OIC. Moreover, in the said email, it was stated that the cancellation of the appellant's ECC was erroneous. Though this fact, in view of the aforesaid findings, may not further the case of the appellant, yet they do strengthen the fact that the ECC issued by the respective authorities was genuine and authenticated.

22. On account of the aforesaid error/mistake committed by the respondent no.1/DU, a piquant situation has arisen. In fact, the appellant, as on 16th August, 2024 had uploaded a verified ECC by the competent authority, yet was removed from the provisional list dated 23rd August, 2024 on account of a mistake/error on the part of the respondent no.1/DU. The result being that the appellant is deprived of her rightful allocation of a seat under the CW reservation. As per the respondent no.4/MCC, there are no vacancies in the unreserved or CW category seats where the appellant could be adjusted. That apart from the above, it is not disputed that candidates lower in merit to the appellant have already been allocated seats in CW category, which in the considered opinion of this Court is unfair and unjust, given the facts obtaining on the record. It is trite that merits stands on a higher footing and such allocation of seat to other less meritorious students is actually detrimental and prejudicial to the interest of the appellant. This Court cannot countenance a situation where an individual like the appellant is fully meritorious and possesses the essential ECC can be deprived of her rightful reservation. It is trite that "*Justice should not only be done but should manifestly and undoubtedly be seen to be done*", as



observed by Lord Hewart, the then Lord Chief Justice of England in the case of *Rex vs. Sussex Justices, 1924 (1) KB 256*.

23. In such piquant and exceptional situations, the Supreme Court in *Krishna Sradha (supra)* in para 13.2 had succinctly stated that if required a direction to increase the number of seats may be passed in case of one or two seats so as to ensure complete justice. The relevant paragraph *Krishna Sradha (supra)* is reproduced hereunder:-

“13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time i.e. within one month from 30th September i.e. cut-off date and under no circumstances, the Court shall order any admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.”

24. The respondents have admitted that the second round of counseling has yet not completed and the process is still in progress even today. We are



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also of the opinion that the present case is on a much better footing than that of *Krishna Sradha* (supra).

25. In view of the above and following the dicta laid down by the Supreme Court above, we direct the respondent no.1/DU as well as the respondent no.4/MCC to take appropriate steps to either increase the number of seat by one, in the CW category or create a supernumerary seat to be allotted to the appellant in the course for which she had filed her application form. The said exercise shall be carried out within ten (10) days from today.

26. Consequently, the impugned judgement of the learned Single Judge dated 29th August, 2024 is modified to the aforesaid extent.

27. Accordingly, the aforesaid appeal is disposed of along with pending applications.

TUSHAR RAO GEDELA, J

ACTING CHIEF JUSTICE

SEPTEMBER 13, 2024/rl