$~37

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

\+ LPA 232/2024 & CM APPL. 17356/2024 CM APPL. 17358/2024

ALL INDIA INSTITUTE OF MEDICAL SCIENCES ..... Appellant

Through: Mr. Anand Varma and Mr. Ayush Gupta, Advocates

versus

RAVI KUMAR ..... Respondent

Through:

% Date of Decision: 20th March, 2024

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 17357/2024(for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

LPA 232/2024

1. The present appeal filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, impugns the judgment dated 2nd February, 2024 ('impugned judgment'), wherein the Respondent's admission in All India Institute of Medical Sciences ('AIIMS'), Guwahati has been confirmed and the Appellant's prospectus for Institute of National Importance Combined Entrance Test ('INI-CET') for the January, 2024 session, has been declared

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

as *ex-facie* arbitrary, to the extent it prescribed a particular period for issuance of OBC-NCL certificates (06th November, 2022 – 05th November, 2023) and a deadline for submission of the same. Accordingly, the W.P. (C) 15514/2023 ('writ petition') filed by the Respondent herein against the Appellant herein was allowed.

2. The facts of the case are that AIIMS i.e., the Appellant herein issued a prospectus on 15th September, 2023 thereby inviting applications towards the INI-CET exam leading to admission in AIIMS, New Delhi, JIPMER-Puducherry, NIMHANS-Bengaluru, PGIMER-Chandigarh, SCTIMST-Trivandrum and other AIIMS located in the different parts of the country in postgraduate courses [MD, MS, DM (6 years), MCh (6 years) & MDS] for January, 2024 session.

2.1 As per Note-2 of the said prospectus, an applicant seeking reservation benefits available for Other Backward Castes ('OBC') was mandatorily required to possess the requisite valid certificates in the prescribed format. In addition, it was necessary that the OBC-NCL (Non-creamy layer) certificate should have been issued between 6th November, 2022 and 5th November, 2023, both dates inclusive. The relevant part of note 2 read as under:

> *"**Note 2. Applicants seeking reservation/relaxation benefits available for SC/ST/OBC/EWS/PwBD must ensure that they are entitled to such reservation/relaxation. They should be in possession of all the requisite valid certificates in the prescribed format in support of their claim. The OBC(-NCL) certificates should have been issued between period as mentioned in Important Dates.***
>
> ***The EWS certificate must be valid as mentioned in Important Dates***
>
> ***The SC/ST/OBC(NCL)/EWS/PwBD certificates must be uploaded with online registration on or before date of examination as mentioned in the***

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

Important dates/Notice published. *The applicants will be required to upload appropriate valid certificates and, therefore must take utmost care to ensure that required valid certificates are uploaded. These uploaded certificates may be preliminarily scrutinized during the process of seat allocation for postgraduate courses, for determination of veracity of claim by the candidates for reservation/relaxation as applicable, however this preliminary scrutiny shall be subject to production and verification of original documents at the time of reporting/joining for allocated postgraduate seat and candidature is liable to be cancelled in case of discrepancies of any kind detected. Allocation of seat doesn't guarantee acceptance of eligibility which is always provisional."*

(Emphasis supplied)

Important dates

Description	***Start date***	***Close date***
Uploading of valid Certificate/Card: SC/ST/OBC(NCL)/EWS/PwBD certificate and OCI Card. *a) Date(s) of valid OBC(NCL) certificate:* *The OBC(-NCL) certificates should have* *been issued between 06.11.2022 to 05.11.2023 (date of Exam) both dates* *inclusive.* *.....*	***27.09.2023*** *(05:00 pm)*	***13.10.2023*** *(05:00 pm)*

(Emphasis supplied)

2.2 The Respondent registered for the INI-CET exam and submitted his application form on 02nd October, 2023 along with his OBC-NCL certificate dated 2nd October, 2022. The Respondent was issued an admit card for the INI-CET exam and the Respondent was permitted to appear and write the exam held on 05th November, 2023.

2.3 The result for the said exam was declared *vide* result notification bearing no. 213/2023 dated 11th November, 2023 and the Respondent was one of the candidates who was provisionally qualified for the admission.

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

2.4 The Respondent submitted an application for issuance of fresh OBC-NCL certificate to the Government of Bihar on 17th November, 2023. In the meantime, the Appellant notified the counselling schedule for the period 02nd December, 2023 till 26th December, 2023.

2.5 The Appellant issued an email dated 22nd November, 2023 to the Respondent informing the Respondent to upload the correct OBC-NCL certificate issued between 06th November, 2022 and 05th November, 2023. It is stated that the said email was issued since the certificate dated 02nd October, 2022 did not satisfy the validity period prescribed in the prospectus. In response, the Respondent herein submitted his fresh OBC-NCL certificate dated 23rd November, 2023.

2.6 In view of the above, the Appellant issued an email dated 27th November, 2023 informing the Respondent that since the OBC-NCL certificates furnished by the Respondent were not issued between 06th November, 2022 and 05th November, 2023, the Respondent's candidature would be considered in the unreserved category. Subsequently, Appellant issued another email dated 29th November, 2023 wherein the validity period for OBC-NCL certificates was reiterated.

2.7 Aggrieved by the issuance of the aforementioned emails, the Respondent filed the writ petition before this Court, thereby seeking quashing of the aforementioned emails dated 27th November, 2023 and 29th November, 2023.

2.8 It is further stated that during the pendency of the writ proceedings, the Respondent has joined at AIIMS, Guwahati, on 11th December 2023 in pursuance to the interim order dated 01st December 2023 passed in the underlying writ petition and deposited his original documents with the

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

academic section therein.

2.9 The writ petition has since been allowed by the learned Single Judge by the impugned judgment, whereby the Respondent's admission at AIIMS, Guwahati has been confirmed and the Appellant's prospectus for INI-CET exam for the January, 2024 session, has been declared as ex-facie arbitrary, to the extent it prescribed a particular period for issuance of OBC-NCL certificates (06th November, 2022 – 05th November, 2023) and a deadline for submission of the same. Aggrieved by the impugned judgment, the Appellant has filed the present appeal.

3. The learned counsel for the Appellant states that the Appellant is aggrieved by the findings returned by the learned Single Judge in the impugned judgment, more specifically at paragraph nos. 76, 77 and 89. He states that by the impugned judgment, the Respondent has been allowed to secure admission on the basis of an OBC-NCL certificate issued beyond the prescribed timeline, which the prospectus does not contemplate. He states that Appellant being a public institution cannot accept the OBC-NCL certificates issued beyond the prescribed timeline, as it would tantamount to an undue preference being given to Respondent.

3.1 He contends that the learned Single Judge has erroneously linked the purpose of the OBC-NCL certificate to the financial year in which it was issued whereas the OBC-NCL status is not only relevant for deciding the issue of non-creamy layer but also for ascertaining the fundamental facts as regards the continuing status of the applicant as an OBC in the relevant period. He states that the Appellant has rightly prescribed the period of twelve (12) months prior to the date of exam as the relevant period and there is no arbitrariness in not prescribing the financial year as the relevant period.

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

3.2 He states that the learned Single Judge failed to appreciate that the OBC-NCL certificate does not have a fixed validity period. In this regard, he relies upon the Office Memorandum ('OM') dated 25th July, 2003 issued by Department of Personnel and Training, Government of India ('DoPT'). He states that the finding returned by the learned Single Judge at paragraph no. 58 of the impugned judgment to the effect that the OBC-NCL certificate dated 02nd October, 2023 was valid till 31st March, 2023 is not justified in law.

3.3 He states that in fact notification and de-notification of the OBC status of a caste is continuously reviewed by the State Government and since the status of the applicant can change at any time during the calendar year or the financial year, the institute such as Appellant herein is well within its rights to prescribe a period during which the applicant should satisfy the twin tests of being an OBC and NCL. He states that therefore, the prescribing of fixed period of time between 5th November, 2022 and 06th November, 2023 is rational and has a nexus to the object sought to be achieved through reservation of seats.

3.4 He states that the validity criteria and deadline for submission of a certificate was in fact prescribed by the Appellant in its prospectus in view of the observations made in the judgment of this Court in ***Bhumika Choudhary v. All India Institute of Medical Sciences***[1] with respect to the prospectus for MBBS admission 2019. He states that an endeavor has been made to keep the time frame of the period of issuance of certificate consistent.

[1] (2019) SCC OnLine Del 10483

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

3.5 He states that in the matter of ***Union Public Service Commission v. Gaurav Singh & Others***[2], wherein the candidates submitted fresh/rectified certificates beyond the prescribed deadline, the Supreme Court has held that no candidate can, in such case, claim any legal right to reconsideration of his/her candidature by submission of a fresh certificate and/or rectified certificate. He states that therefore the Appellant rightly rejected the Respondent's OBC-NCL certificate dated 23rd November, 2023, as it was beyond the last date of 05th November, 2023.

3.6 He states that the law settled by the Supreme Court supports Appellant's contention that the submission of a certificate issued in the year prior to submission of application goes to the root of eligibility of a candidate and the belated submission of the said certificate/document by a candidate will render the candidate as ineligible for the admission.

3.7 He states that the legal issue with respect to acceptance of belated submission of caste certificate has been referred by the Supreme Court to a larger Bench vide judgment dated 18th May, 2023 in ***Sakshi Arha v. Rajasthan High Court***[3] He states that in the said judgment there were conflicting opinions, whereby in one of the opinions (by Bela M. Trivedi, J.) stated that candidates cannot produced caste certificate after the last date fixed in the advertisement. He states that as on the date the said reference is pending before the Supreme Court. He states that in view of the said reference, the reliance placed by the learned Single Judge on the judgments of the Supreme Court in ***Ram Kumar Gijroya v. Delhi Subordinate Services***

[2] 2022 SCC OnLine SC 2116
[3] 2023 SCC OnLine SC 662

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

Selection Board[4] and ***Karan Singh Yadav v. Govt. of NCT of Delhi & Ors.***[5] is not proper.

3.8 He further states that courts have granted relief to the candidates only when they are acting with due diligence and in terms of the admission/recruitment process. In this regard he states that in the case of ***Pushpa v. State (NCT of Delhi)***[6], this Court allowed the candidate to belatedly submit their OBC certificate since the candidate had duly applied for issuance of OBC certificate from the authorities but the same was unduly delayed by the latter. Similarly, in the case of ***Anil Kumar & Another v. Union of India***[7], this Court had granted relief to the candidate since a notification dated 01st June, 2011 was published which allowed submission of OBC certificates before the last stage of selection, which was adhered to by the candidate.

3.9 The learned counsel also relies upon the compilation of judgments filed under index dated 20th March, 2024.

4. We have heard the learned counsel for the Appellant and perused the record.

5. We may note at the outset that the entitlement of the Respondent for being considered for admission for the seat reserved for OBC-NCL category is admitted. The Respondent was eligible to apply for this category as on 02nd October, 2023, when he registered himself for the exam and also on 05th November, 2023, when he appeared for the exam. The Respondent has produced valid OBC-NCL certificates dated 02nd October, 2022 and 23rd

[4] (2016) 4 SCC 754
[5] SLP (C) No. 14948/2016
[6] 2009 SCC OnLine Del 281
[7] 2013 SCC OnLine Del 1401

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

November, 2023 issued by the concerned Government, confirming his status as an OBC-NCL. The Respondent was always eligible and there was no change in his status.

6. The sole reason for cancelling the Respondent's candidature is that the OBC-NCL category certificate(s) submitted by the Respondent have not been issued between the period stated in the prospectus i.e., 06th November, 2022-05th November, 2023 (both dates inclusive).

7. The learned Single Judge after extensively considering the judicial pronouncements of Supreme Court and this Court has held that since the caste certificate for reservation is a proof of an existing fact, the furnishing of the OBC-NCL certificate dated 23rd November, 2023 by the Respondent is bound to be considered by the Appellant for the purpose of admission. The relevant findings of the learned Single Judge read as under:

> *"56. Thus, as per the law laid down by the Hon'ble Supreme Court, if a defective certificate is submitted by the candidate at an initial stage submission of a corrected OBC-NCL certificate after the expiry of the cutoff date, where the advertisement explicitly provides for a cut-off date for such submission, shall not create a ground for disqualification by itself.*
>
> *57. In the facts of the present case, it is not in dispute that the petitioner belonged to the OBC-NCL category between the material time period. The petitioner also possessed OBC-NCL certificates dated 02.10.2022 and 23.11.2023, which cumulatively signify that his income during the Financial Years (F.Y.) 2019-20, 2020-21, 2021-22, 2022-23, were in compliance with the requirements of the GoI and made him eligible for getting OBC-NCL reservations.*
>
> *58. The OBC-NCL certificate that the petitioner had submitted along with his application was dated 02.10.2022 and was valid till 31.03.2023. It signified that his income levels in the F.Y. 2019-20, 2020-21, 2021-22 were in compliance with the GoI requirements for availing OBC-NCL reservations. However, as the respondent discovered that the date of issuance of the OBC-NCL certificate submitted by the petitioner was not in consonance with the requirement of the prospectus, the petitioner was given another chance to submit a valid OBC-NCL certificate. The second OBC-NCL certificate dated 23.11.2023 submitted by the petitioner,*

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

indicated that the petitioner's income pertaining to F.Y. 2020-21, 2021-22 and 2022-23 was in compliance with the GoI requirements and made him eligible for the OBC-NCL reservation, atleast during the F.Y. 2023-24.

59. In terms of the authoritative pronouncements in Pushpa (supra) and Ram Kumar Gijroya (SC), it is clear that the insistence by the respondent on the OBC-NCL certificate issued during the given cut-off date does not have any rational nexus with the object of reservation of seats in educational institutions. Further, applying Anil Kumar (supra), Ram Kumar Gijroya (SC) read with the order of the Division Bench of this court in Ram Kumar Gijroya (DB), it is clear that the requirement of an OBC certificate cannot be equated with that of an academic/technical qualification and thus, should correspond to a reasonable basis. For, the caste certificate for reservation is merely a proof of an existing fact. The certificate merely certifies an existing fact. Thus, the petitioner's OBCNCL certificate dated 23.11.2023, shall be considered by the respondent for the purpose of admission, subject to fulfilment of other conditions relating to the said category*."*

(Emphasis supplied)

8. The Appellant has relied upon the judgment of Supreme Court in ***Gaurav Singh*** (supra) to contend that the aforesaid findings of the learned Single Judge are contrary to the law settled therein. We are unable to agree with the Appellant. In this judgment, of ***Gaurav Singh*** (supra) the Supreme Court was considering the issue of Income and Asset certificate of a candidate who had applied for the EWS category. In the facts of that case, candidate had submitted the certificate for an incorrect financial year. The Supreme Court concluded that since the filing of the certificate for the relevant financial year by EWS candidates goes to the root of the eligibility of a candidate, the omission by the candidates in filing the certificate for their relevant financial year makes them liable for rejection. The issue arising for consideration in this appeal is with respect to validity of the period prescribed in the prospectus of AIIMS for holding a caste certificate to be valid, which was not a subject matter of the said judgment.

9. The issue of late submission of a caste certificate is squarely covered

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

by the decision of the Supreme Court in ***Ram Kumar Gijroya*** (supra) and the judgment of Division Bench of this Court in ***Anil Kumar*** (supra) which has been rightly followed by the learned Single Judge. In the said judgments, the issue directly arising for consideration was the non-submission of the caste certificate by the OBC category candidate within the time fixed in the advertisement. The Supreme Court held that delayed submission of a valid caste certificate should be accepted so as to achieve the constitutional object of giving equal opportunity to all sections of the society. The said view continues to hold the field and has been consistently followed by this Court.

10. The reliance placed by the learned counsel on the pending reference made in ***Sakshi Arha*** (supra) to a larger Bench is of no assistance to the Appellant. In ***Sakshi Arha*** (supra) the factual dispute was with respect to submission of caste certificate by the candidate beyond the last date for submission fixed in the advertisement. In the present case, the Appellant infact, is not raising a dispute with respect to belated submission of the caste certificate beyond 05th November, 2023 as the Appellant itself by its email dated 22nd November, 2023 called upon Respondent to submit the caste certificate issued between the specified period. Further, in the present case admittedly, the Respondent had initially itself on 02nd October, 2023 submitted the OBC-NCL certificate dated 02nd October, 2022 along with his application. The caste certificate therefore, stood submitted prior to 05th November, 2023 and again on 23rd November, 2023. The facts of the said case are therefore distinguishable.

11. In addition, after examining the period of 06th November, 2022 - 05th November, 2023 (both dates inclusive), the learned Single Judge has

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

concluded that the period prescribed is without rationale, arbitrary and does not have any nexus with the object sought to be achieved through reservation of seats. In this regard, the learned Single Judge has given the following reasoning:

> *"74. The OBC-NCL certificate of the petitioner dated 02.10.2022 was rejected by the respondent contending that the same would expire by the time of the exam i.e., 05.11.2023, as the same is based on the incomes of the preceding three financial years. This court does not doubt this proposition, however, what seems erroneous is the respondent accepting OBC-NCL certificates that are issued before 31.03.2023, even though they would expire on 01.04.2023.*
>
> *75. Thus, it seems that without any rationale or objectivity, the respondent has created two distinct classes of certificates within the same financial year. The first class contains certificates issued between 01.04.2022 to 05.11.2022, and the second class contains certificates issued between 06.11.2022 to 31.03.2023. The respondent has then chosen to consider as valid, all the certificates issued between 06.11.2022 to 31.03.2023, and consider as invalid, those issued between 01.04.2022 to 05.11.2022, despite certificates in both the classes expiring on 01.04.2023 and being based on incomes of the same set of financial years i.e., F.Y. 2019-20, 2020-21 and 2021-22.*
>
> ***76. It would have been understandable if the respondent had chosen to provide for conditions/qualifications relating to a particular financial year/set of financial years. However, the respondent has ingeniously provided for a timeframe for submission of OBC certificates, wherein, the requirement is considered validly fulfilled when a person applies with a certificate valid for F.Y. 2022-23 or for F.Y. 2023-24. But equally and at the same time, both these certificates may be considered invalid, if they don't fall within the timeframe of the respondent. Importantly, this is despite the certificate itself having the same legal effect.***
>
> ***77. In the considered opinion of this court, the timeframe stipulated by the respondent for the OBC-NCL certificate requiring to have been issued between 06.11.2022 to 05.11.2023, is ex-facie arbitrary, without any application of mind and does not have any rational nexus with the object sought to be achieved through the reservation of seats.***
>
> *78. This court shall now consider the judgements relied upon by the learned counsel for the respondent.*
>
> *79. The case of Ashok Kumar Sharma (supra), specifically paragraph no. 6, has been strongly relied upon. The material part of this judgement reads as under:-*
>
> > *"6. … So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment*

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

> *(rendered by Dr.T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis…."*
>
> .....
>
> *89. Thus, from the discussion above, it is clear that the petitioner's OBC-NCL certificate dated 23.11.2023 ought to have been considered by the respondent and the requirement contained in the prospectus, specifying the time-frame for the OBC-NCL certificate to be between 06.11.2022 to 05.11.2023, is arbitrary."*
>
> *(Emphasis supplied)*

12. With respect to the aforesaid findings the Appellant has assailed the same and submitted that the necessity for prescribing the period of 06th November, 2022 to 05th November, 2023 for the date of issuance of this certificate was to cure the anomaly noticed by this Court in ***Bhumika Chaudhary*** (supra) for its earlier prospectus. We are not persuaded by the said submission as the learned Single Judge has rightly pointed out, in the paragraphs noted hereinabove, that the said period prescribed [in the prospectus] has no co-relation to a financial year whereas for the purpose of satisfying the criteria of NCL, the certificate is issued by the competent authority on the basis of financial status of preceding three financial years. Therefore, the learned Single Judge was right in concluding that if the Appellant intends to prescribe a period for the issuance of the OBC-NCL certificate, the same should co-relate to a specific financial year for it to be

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

meaningful. The learned Single Judge has rightly concluded that by selecting a time frame which partially covers two financial years instead of an entire financial year, the Appellant has created a condition which is needlessly tripping eligible candidates without achieving the purpose of reservation of seats.

13. The Appellant has sought to contend that the caste certificate is required both for ascertaining the NCL status as well as the OBC status of the candidate and therefore, the test of financial year considered by the learned Single Judge was erroneous. The Appellant contended that intent of prescribing a period in the prospectus is also to enable AIIMS to verify the existing and continuing OBC status of the candidate on a relevant date. In this regard, we may note the OM dated 25th July, 2003, relied upon by the Appellant in this appeal. As per the said OM, it is open to the authority who is offering the reservation to seek a self-declaration from the candidate in the format provided in the OM confirming that the candidate continues to belong to the backward class and he/she does not belong to the creamy layer on the crucial date, such as on the date of offering of the admission by AIIMS. The said self-declaration is in addition to a OBC-NCL caste certificate already issued in favour of the candidate. The intent of this OM is also aimed at addressing the issue of verifying the validity of the OBC and NCL status of a candidate holding a pre-existing certificate as on the crucial date of the process i.e., for instance the date of filing the form in the case of AIIMS admission. Therefore, even this submission of the Appellant cannot justify its action of prescribing the period of a valid certificate to be issued between 06th November, 2022 and 05th November, 2023. We therefore, concur with the findings of the learned Single Judge that the period

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41

prescribed in the prospectus is arbitrary and has no nexus with the object sought to be achieved through the reservation of seats.

14. For all the above reasons we find no merits in the present appeal and the same is accordingly dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 20, 2024/hp/MG

Signature Not Verified
Signed By:MAHIMA SHARMA
Signing Date:28.03.2024 19:00:41