

(2002) 12 DEL CK 0098

In the Delhi High Court

Case No : CW No. 6057 and CM. 10319 of 2002

Ghazala Kausar

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:

Citation : (2003) 66 DRJ 556

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Ajay Veer Singh and Mohd. Shahid Hussain, for the Appellant; A. Mariaputham and Anurag Mathur, for the Respondent

Judgement

Manmohan Sarin, J.—Rule.

2. Petitioner, Ghazala Kausar, is an applicant for admission to the Bachelor of Unani Medicine and Surgery Course (in short BUMS), conducted by the Ayurvedic and Unani Tibbia College, affiliated to the University of Delhi. Petitioner seeks a direction to the respondents to grant her admission to the BUMS Course for the academic session 2002-03, for

3. Petitioner's case is that she had secured 59.6 per cent marks in the qualifying examination. Candidates securing less marks than her even up to 58% have been admitted, while the petitioner has been denied admission on the allegation that she did not submit the Urdu qualification certificate on or before the 20.6.2002, which was the last date for receipt of completed application forms.

One of the eligibility conditions for the BUMS Course is passing the qualifying examination with elective Urdu subject either as a MIL or High School/Matric Secondary examination or equivalent with Urdu. Keeping in view, the above eligibility condition one of the documents required to be submitted along with the application form is a certificate of Urdu qualification of atleast metric standard.

4. Petitioner applied for admission to BUMS Course on 10.6.2002. Petitioner

claims that she had enrolled herself for the Adeeb-E-Mahir course at the Jamia Urdu, Aligarh. The result of the above course had not been declared on 10.6.2002. The petitioner accordingly had submitted her application on 10.6.2002 without the Urdu qualification certificate. Petitioner's case is that her mother had gone to Aligarh personally and obtained the certificate/marksheet of the Urdu examination, which was issued on 15.6.2002 itself, which was a Saturday. Petitioner's claim is that the certificate was handed over to the Dealing Assistant across the counter at the University office on 6th Floor at Patel Chest Institute, Delhi, on Monday, 17th June, 2002. The first list of selected candidates was pasted on 8.7.2002, in which the petitioner's name did not appear since the cut off percentage was higher. Petitioner states that she was, however, dismayed when her name did not appear in the second list in which the cut off percentage was below the petitioner. Petitioner thereupon made enquiries and met the Dean Students Welfare who asked her to see the dealing assistant. The Dealing Assistant informed her that her Urdu certificate was not on the file and has been misplaced. She was asked if she could give another certificate then she would be considered for admission in the subsequent list. Petitioner thereupon supplied a copy of the certificate on 12.7.2002, which was put up in the petitioner's file. However, even on publication of the third list, her name was not there when candidates securing 58.6% marks were admitted.

5. It is urged that the petitioner has been wrongly denied admission on account of Urdu Certificate, as filed by her on 17th June, 2002 being misplaced. It was not on account of any default of the petitioner that the said certificate had been misplaced or was not traceable. As far as the petitioner is concerned, she had filed the certificate on 17th June, 2002 and a copy of the same was again supplied on 12th July, 2002, and she was entitled to be admitted.

6. Respondents have filed the counter affidavit, wherein it is denied that petitioner had submitted the Urdu Certificate initially on 17.6.2002. It is averred that the last date of receipt of application was 20.6.2002, by which the petitioner did not submit the Urdu qualification certificate and her application was, accordingly, incomplete. Learned counsel further submits that the claim of the petitioner that she had furnished the Urdu qualification certificate on 17.6.2002, was not correct and is against the natural course of events. By way of illustration, he submitted that petitioner had obtained an acknowledgment for other communications and documents submitted to the respondent. The application of 10.6.2002 was duly acknowledged. Similarly, the communications addressed by the petitioner on 3.8.2002, 14.8.2002 and 22.8.2002 were duly acknowledged. However, there was no acknowledgment for the Urdu certificate claimed to have been submitted on 17.6.2002. Learned counsel submits that in these circumstances, the plea of the petitioner that she submitted the Urdu qualification certificate on 17.6.2002, but no acknowledgment was given, lacks credibility.

7. Mr. Mariaputham, learned counsel for the respondent submitted that the

petitioner had failed to furnish the Urdu qualification certificate within stipulated time and as such she was not eligible for being considered for admission, even though she has the requisite qualifying marks and persons securing less marks than her have been admitted.

Records have also been produced. Counsel for the respondents explained the procedure for admission. An admission committee of three lecturers had been constituted. The office staff after arranging the application forms in order of merit had put up the same before the Committee. The forms were scrutinised by the Committee of three lecturers and a provisional list was prepared, which was signed by all the members of the Committee. From this provisional list, the candidates, who were selected figured in the first admission list. The individual forms of the selected candidates were signed by all the three committee members confirming the selection/admission of the candidates. In the case of the petitioner, it is seen that there is an endorsement on the top of the application form stating "subject to submission of Urdu certificate". It is the case of the respondent that the petitioner's name was not included in the provisional and admission list prepared since the Urdu certificate had not been furnished.

8. The position which emerges is that the petitioner has the requisite qualifying marks and candidates securing less marks than her have been admitted. It is also not disputed that vacancy for a seat exists. Petitioner has not been considered since the Urdu qualification certificate as per the respondents had not been furnished by her on or before 20.6.2002, and a copy was furnished only on 12.7.2002. The petitioner also has the requisite Urdu qualification as there is no dispute with regard to the recognition of the institution from which she qualified.

9. The question, which arises for consideration, Therefore, is whether the petitioner had submitted her Urdu certificate on 17.6.2002 or not?. The petitioner undoubtedly does not have an acknowledgement or other documentary proof to show that she had submitted the Urdu qualification certificate on 17.6.2002, since she does not have an acknowledgement slip. The petitioner made a number of representations to the Authorities including to the Dean Students Welfare. The Dean Students Welfare made the following endorsement on the representations:-

"Kindly consider the case sympathetically. It seems that the girl could not be faulted for non-submission of Urdu certificate on that day."

10. The petitioner during the course of hearing of the petition also produced a certificate dated 30.10.2002 issued by the Jamia Urdu Aligarh, 2002, from where she had qualified in Urdu. The Registrar of the said institute has given the following certificate:

"Certified that the Marks Sheet (Adeeb-E-Mahir-2001, Roll No.6955, En.No. 38003/D) of Ms. Ghazala Kausar was issued to her mother, Sultana Kausar, on 15th June 2002 (Saturday) from our office. As Saturday was a working day, her marks sheet as well as the date of issue of the marks sheet is genuine and

correct."

11. While it is correct that the petitioner does not have any documentary proof in terms of acknowledgement of having submitted the Urdu certificate on 17.6.2002. Further that while acknowledgement is available for other communications submitted, there is not acknowledgement for the Urdu certificate. However, a very strong circumstance, which tends to support the petitioner's case, is the issuance of the marks sheet to her mother by the Jamia Urdu, Aligarh, on 15.6.2002 as per the above certificate. There is not reason to doubt the authenticity or genuineness of the certificate as issued by the Jamia Institute. The petitioner and her mother were fully aware that the application submitted without the Urdu qualification certificate would be incomplete. Having gone to Aligarh to obtain the certificate on 15.6.2002, the natural and normal course of events would be for the party to submit the same on the next working day. This is precisely what the petitioner claims they did. It is extremely unlikely that someone who travels especially to Aligarh on 15.6.2002 to obtain the certificate and secures the same, would not submit on return the same to the Authorities on the next working day. The petitioner's version that she tendered the certificate on 17.6.2002, which was misplaced or not tagged with the file by the concerned staff, in these circumstances, appears credible and deserves to be accepted. The absence of an acknowledgement is not such a factor, which can negate the above strong circumstances. Accordingly, the petitioner's plea of having submitted Urdu qualification Certificate before the stipulated date is accepted. Moreover the petitioner having got the qualifying marks and having also set the requisite Urdu qualification, she deserves to be considered for admission.

12. Mr. Mariaputtham had also urged that whether the petitioner submitted the Urdu certificate on 17th June, 2002, or not was a disputed question of fact requiring evidence and cannot be adjudicated upon in the writ proceedings. Having come to the conclusion that strong circumstances exist, from which inference of the petitioner having submitted the certificate on 17.6.2002, i.e. before the last date, relief ought not to be denied on the ground that it is a disputed question of fact. In educational matters concerning admission to academic courses if this plea was to be accepted and parties were to be relegated to the civil forum for determination of disputed questions by leading of evidence, it would amount to making the matter infructuous and denying relief even where warranted. In such cases, a writ court is fully justified in drawing its inferences and conclusions on factual aspects on the basis of averments made on affidavits and documents produced before it.

13. Learned counsel for the respondents had also relied on Harpal Kaur Chahah (Smt) v. Director, Punjab Instructions to urge that the material date for determination of eligibility was the last date fixed for receipt of applications. The said judgment would have no application as I have reached the conclusion that petitioner's application was complete before the stipulated date for receipt of

form.

In view of the foregoing discussion, the petition is allowed. Writ of mandamus shall issue to the respondents to admit the petitioner to the BUMS Course for the current year, subject to compliance with formalities for admission.