

(2014) 09 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : LPAOW Nos. 54, 55 and 56 of 2014

Shagun Mahajan	Vs	APPELLANT
Omer Bashir Itoo		RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Citation : (2014) 09 J&K CK 0002

Hon'ble Judges : M.M. Kumar, C.J; Bansilal Bhat, J

Bench : Division Bench

Advocate : P.N. Raina, Sunil Sethi, Sr. Advocates, Sindu Sharma, J.A. Hamal and Veenu Gupta, Advocate for the Appellant; S.K. Shukla, P.N. Raina, Sr. Advocate, Sindu Sharma, J.A. Hamal and Pranav Kohli, Advocate for the Respondent

Final Decision : Allowed

Judgement

LPAOW No. 54/2014 & CMA No. 74/2014

Caveat No. 1688/2014 c/w LPAOW No. 55/2014

CMA Nos. 56/2014

Caveat No. 1689/2014

APLPA No. 56/2014

LPAOW No. 56/2014 & CMA No. 76/2014

1. The principal issue raised in three sets of appeals revolves around the seats allocated to NRI category for admission to post graduate course of MS/MD.

In LPA No. 54/2014 the appellant-Ms. Shagun Mahajan is aggrieved by the directions issued by the learned Writ Court holding that her uncle

(father's brother), who is admittedly an NRI, would not be covered by para 131 of the judgment of Hon'ble Supreme Court rendered in 2 the case

of P.A. Inamdar and Others Vs. State of Maharashtra and Others, . The operative part of the para 131 is quoted hereunder in extenso:-

A Limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the

management subject to two conditions. First, such seats should be utilized bona fide by NRIs only and for their children or wards. Secondly, within

this quota, merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for

benefiting students such as from economically weaker sections of the society, whom, on well-defined criteria, the educational institution may admit

on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or

regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic

Academy to regulate.

2. The learned Writ Court did not accept that father's brother of the appellant was qualified to confer any benefit on his niece under the NRI quota

seats. Feeling aggrieved, LPAOW No. 54/2014 by the appellant-Ms. Shagun Mahajan and LPAOW Nos. 55/2014 & 56/2014 by Acharya Shri

Chander College of Medical Sciences & Hospital, have been filed.

3. We have heard learned counsel for the parties and are of the view that para 131 in letter and spirit would not permit exclusion of uncle

sponsoring his nephew or niece. In our view, the spirit of para 131 is that nobody should be permitted to take a seat under NRI quota unless he

has such relations living abroad, who could come forward in a bona fide manner to pay the foreign exchange for admission 3 to the post graduate

course in medical science. In fact it was in the same vein that the learned Writ Court has accepted father-in-law sponsoring the daughter-in-law of

NRI seat and the admission given to Misbah Tabassum has been upheld.

4. In view of the above the appeals are admitted to hearing as many other issues have been raised.

5. Meanwhile, operation of the impugned judgment shall remain stayed.

6. List again on 20.10.2014.