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

+ W.P.(C) 16575/2023

MD DILWAR HUSSAIN

..... Petitioner

Through: Mr. Aayush Agarwala and Ms.
Bhumika Sharma, Adv.

versus

JAMIA MILLIA ISLAMIA

..... Respondent

Through: Mr. Pritish Sabharwal, Standing
Counsel with Ms. Shweta, Advocate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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06.02.2024

Facts

1. The Petitioner is a candidate who suffers from blindness/low vision. He applied for admission to the B.Ed (Urdu) course conducted by the respondent Jamia Millia Islamia (“JMI” hereinafter). The selection involved a written examination and an interview. The petitioner scored 106.75 marks in the written examination for which the cut-off marks, for persons with disabilities – to which category the petitioner belongs and in which category he had applied – were 57.75. The petitioner was called for interview. According to the petitioner, he fared well in the interview.

2. As the JMI did not communicate with the petitioner informing



him that he had been selected for admission to the B.Ed (Urdu) course, the petitioner made inquiries, upon which he came to know that his admission had been rejected by the JMI. On making further enquiries, the JMI addressed an email dated 21 November 2023 to the petitioner, stating that, though he had scored 106.75 marks in the written examination, he could not be selected as he was declared “not eligible” at the stage of interview.

3. As the petitioner was not intimated any reason as to why he was considered not eligible for admission to the B.Ed (Urdu) course, the petitioner approached this Court by means of the present writ petition, seeking issuance of a writ of certiorari quashing the decision of the JMI to reject his candidature for admission to the B.Ed (Urdu) course for the academic year 2023-2024 and, consequently, for a direction to the JMI to admit him to the said course.

Reason for rejection as per counter-affidavit filed by the JMI

4. Though the JMI had never condescended to inform the petitioner of the reason for his being regarded as ineligible for admission to the B.Ed (Urdu) programme, it has filed a detailed counter-affidavit by way of response to the writ petition. In the said counter-affidavit, the stand of the JMI is that the petitioner did not fulfil the requisite eligibility qualifications for admission to the B Ed (Urdu) course. Paras 4 and 8 of the counter-affidavit deserves to be reproduced in this regard. They read thus:

“4. It is submitted that the petitioner applied for admission to



the Program Code B22, the name of the program is B.Ed. course, in the Department of Teacher Training and Non-Formal Education (IASE) of the Respondent University. It is further pertinent to mention that *the Respondent University had prescribed the eligibilities applicable for the prospective candidates/scholar for the B.Ed. Program, that the prospective candidates should have a Bachelor's Degree in any school teaching subject with 50%, it further includes another eligibility prerequisite under the point (iii), that the prospective candidate mandatorily studied the 'main school teaching subject', for two years/four semesters in graduation. The 'main school teaching subject', is the one subject in which the candidate want to pursue the B. Ed. Course.* It is further submitted that the candidate intending to engage as the prospective scholar in the B.Ed. course of the Respondent University is mandatorily required to choose the subject for pursuing the B. Ed. course, however the candidate cannot randomly select any subject rather, they are required to select the 'main teaching subject as the subject which have been studied by the candidate in their graduation.

8. It is submitted that the Respondent University responded to the mail sent by the petitioner for consideration of revaluation process of the interview conducted by the petitioner. The concerned authority of the Respondent University stated in the mail that the marks in the written exam were 106.75 and the petitioner was 'ineligible' in the interview process. It is further submitted that *the petitioner was ineligible even after securing the score of 106.75 marks, as the petitioner at the time of filing of his application form for the Program Code: B22 i.e. for the B.Ed. Program, had stated specifically the 'main teaching subject' as 'Urdu', however the petitioner further stated that the petitioner had secured the Bachelor Degree in the subject of the History(Hons), thereby violating the condition of the eligibility under the point(iii) of the Prospectus 2023-2024, that the prospective candidate mandatorily should have studied the 'main school teaching subject', for two years/four semesters in graduation.* It is pertinent to mention that *the petitioner failed to fulfill the eligibility requirement at the point(iii) of the Prospectus 2023-2024, as the petitioner failed to study at least for the two semesters in the graduation degree as the graduation degree in History(Hons) fails to include any subject of Urdu i.e. 'main teaching subject', therefore creating deficiency of fulfillment of the basic conditions as prescribed in the Prospectus 2023-2024 to be eligible for admission in the Program Code: B22 i.e. for the B.ED. Program.* The contention of the petitioner that the marks secured by the petitioner are more than 100 is irrelevant as



the petitioner failed to exercise prudence and diligence at his level to ensure that the proper details and further such irresponsible nature of the petitioner cannot make the petitioner eligible for admission in the Program Code: B22 i.e. for the B.Ed. Program.”

(Emphasis supplied)

5. Needless to say, the petitioner in his rejoinder, has disputed this contention.

Stipulated Eligibility Conditions for B. Ed. as per JMI's Prospectus

6. In order to appreciate the objection to the petitioner's eligibility, as raised in the counter-affidavit filed by the JMI, it is necessary to reproduce the eligibility conditions for the B.Ed Programme in the JMI, thus:

“Eligibility

(i) Bachelor's Degree in any School teaching subject with not less than 50% marks.

(OR)

Bachelor's Degree in any school teaching subject with not less than 45% marks and minimum 50% marks in Master's Degree examination in the same school teaching subject in which the candidate has applied.

(ii) *The main school teaching subject in which the candidate is applying should have been studied in two years/Four Semesters in graduation. Teaching Subjects are shown in annexure-II, under the heading "Breakup of seats under different school teaching subjects for B.Ed. Programme".*

(iii) *Bachelor's (Hons.) Degree in any school teaching subject as shown in annexure-II will be considered as a main teaching subject.*

(iv) B.com (Hons.) alone are not eligible. M.com are eligible to opt. for commerce as a main teaching subject.”



7. At a plain glance, the JMI has, in its counter-affidavit, relied on eligibility condition (ii) in the conditions for eligibility to the B.Ed Course though it has repeatedly made reference to eligibility condition (iii). The stand of the JMI, in its counter affidavit, is that, while the petitioner had applied for admission to the B.Ed (Urdu) course, which would require Urdu to be treated as the “main school teaching subject”, the petitioner had not studied Urdu in two years/four semesters in Graduation. It is important to note this as the precise ground on which the JMI, in its counter-affidavit, sought to justify the decision to reject the petitioner’s candidature, as Mr. Sabharwal, learned counsel appearing for the JMI, sought to rely on eligibility condition (iii), the ingredients of which have not been invoked in the counter-affidavit as the ground for justifying the impugned decision of the JMI.

Eligibility of petitioner as per eligibility condition (ii)

8. In so far as condition (ii) is concerned, it does not stipulate that the candidate *was required to possess a Bachelors (Hons.) degree in the “main school teaching subject”* in respect of which a candidate desired admission to the B Ed course in the JMI. All that condition (ii) required was that the candidate *should have studied the main school teaching subject* in respect of which the candidate desired to pursue the B.Ed course “in two years/four semesters in Graduation”. In other words, there was no embargo on a candidate who had obtained a Bachelors (Hons) degree in another subject to apply for admission to



the B.Ed (Urdu) programme in the JMI, provided the candidate had studied Urdu for two years/four semesters in graduation.

9. The petitioner has, with the rejoinder, annexed his marksheet in his B.A. (Hons.) History Programme undertaken by him – which, incidentally, was also undertaken from the JMI itself – which indicates that the petitioner had, in fact, Urdu as one of his main subjects. This clearly indicates that the petitioner had studied Urdu during the two years/four semesters of his B.A. (Hons.) History course. Eligibility condition (ii) for admission to the B.Ed (Urdu) programme in the JMI, thereby, stood satisfied.

10. Mr. Sabharwal, learned counsel for the JMI very fairly did not contest the petitioner’s eligibility on the ground of failure to satisfy eligibility condition (ii). In fact, he candidly acknowledged that the petitioner does satisfy eligibility condition (ii) as contained in the prospectus of the JMI.

Stand of Mr. Sabharwal during oral arguments

11. Mr. Sabharwal’s contention is that the petitioner does not, in fact, satisfy eligibility condition (iii). His precise argument is that a candidate who was applying for pursuing the B.Ed programme with the JMI had necessarily to choose the main subject, in which the candidate had obtained his Bachelors (Hons.) degree, as his main teaching subject for his B.Ed course. In other words, Mr. Sabharwal’s submission is that, as the petitioner had pursued his B.A. (Hons.) degree in history, he should have chosen history as his main teaching



subject for his B.Ed course in the JMI. In this context, Mr. Sabharwal has invited my attention to Annexure II to the prospectus, which in respect of the B.Ed (Urdu) programme in the JMI, stipulates the following subjects with the seats available against each, thus :

B.ED.(Urdu Medium)	General	Muslim	Muslim Women	Muslim OBS/ST	PWD	Total
Language Group						
Arabic	04	02	01	01		08
Persian	04	02	01	01		08
Urdu	11	08	02	02		23
Group Total	19	12	04	04	02	39
Social Science Group						
Commerce	02	02				04
Economics	02	02				04
Geography	02	01	01	01		05
History	02	01	01	01		05
Islamic Studies	02	02				04
Political Science	02	01	01	01		05
Group Total	12	09	03	03	02	27
Bioscience	02	01	01	01		05
Chemistry	02	01				03
Home Science	01	01				02
Mathematics	02	01	01	01		06
Physics	02	01				03
Computer Science	02	01				03
Group Total	11	06	02	02	01	22
Grand Total	42	27	09	09	05	92
Grand Total (all medium)	88	59	21	20	11	196

12. Mr. Sabharwal points out that, in respect of the B.Ed programme in the JMI (in Urdu medium), Urdu was a distinct subject under the “language group” and History was a distinct subject under



the “social science group”. In view of condition (iii) in the eligibility conditions for the B Ed (course) as contained in the JMI prospectus, Mr. Sabharwal’s contention is that the petitioner had necessarily to choose History as his main teaching subject for the B.Ed course which he desired to pursue. In other words, Mr. Sabharwal’s contention is that the petitioner stood disqualified even for having selected Urdu as his main teaching subject for the B.Ed course which he desired to pursue, as condition (iii) necessarily required him to select history as his main teaching subject.

Deviation from stand in the counter-affidavit

13. In the first place, there is no such case made out in the counter-affidavit filed by the JMI. Though the counter-affidavit refers to condition (iii), alongside the reference, the ingredients which have been invoked are those which are specific to condition (ii), by alleging that the petitioner had not studied two years/four semesters in Graduation as he was a B.A. (Hons) History student. There is no assertion, in the counter-affidavit, that the petitioner, in view of eligibility condition (iii), ought to have selected History as his main teaching subject, or that he was ineligible to select Urdu as his main teaching subject.

14. I am not inclined, therefore, in the first place, to allow the JMI to raise, in oral arguments, a ground for justifying the rejection of the petitioner’s candidature, which is foreign to the stand taken in the counter-affidavit filed by it.



15. It must be borne in mind that, before approaching this Court, the petitioner was never informed of the grounds on which he was regarded as ineligible for admission to the B.Ed (Urdu) course. It was only in the counter-affidavit that the JMI chose to contend that the petitioner was ineligible as he had not studied Urdu for two years/four semesters in Graduation. Now, in oral arguments, the JMI cannot be allowed to raise an entirely new ground, which is that the petitioner could not have chosen Urdu as his main teaching subject for his B.Ed programme at all and was mandatorily required to choose History. The submission of Mr. Sabharwal, therefore, cannot be accepted, even for the reason that it travels beyond and is, in fact, contrary to the case that the JMI has chosen to set up against the petitioner in its counter-affidavit.

Merits of oral stand taken by the JMI in Court – Eligibility condition (iii) and its interpretation

16. I have, for satisfying myself, considered whether the petitioner's candidature for admission to the B.Ed (Urdu) course could have been rejected on the ground that he was in breach of eligibility condition (iii).

17. To my understanding, the stipulation in condition (iii) below the eligibility conditions governing admission to the B.Ed course merely stipulates that a Bachelor's (Hons) degree in a school teaching subject shown in Annexure II will be considered as *a* main teaching subject. The use of the indefinite article "a" in this clause is significant. The



clause does not say that the Bachelor's (Hons) degree in the school teaching subject shown in Annexure II would be considered as *the* main teaching subject.

18. Plainly read, therefore, eligibility condition (iii) merely entitles the subject in which the Bachelor's (Hons.) degree was obtained by the candidate to be selected by him as his main teaching subject. It does not act as a fetter to the candidate choosing any other subject as his main teaching subject. There is no stipulation, either express or implied, in the eligibility conditions for admission to the B.Ed course which states what Mr. Sabharwal would seek to contend, which is that the candidate had necessarily to select, as his main teaching subject for his B.Ed course, the subject in which he had obtained his Bachelors (Hons.) degree. Had the Prospectus so intended, it should have plainly said so. It has not, however. *There is no prescription that the candidate has to chose, as his main teaching subject for his B.Ed course, the subject in which he had obtained his graduation degree. At the cost of repetition, condition (iii) only states that the subject in which the candidate obtained his Bachelor's (Hons) degree was also eligible to be considered as a main teaching subject.* In the event that the candidate did not choose to seek admission to the B.Ed programme in the JMI in the subject in the main subject in which the candidate had pursued his Bachelor's (Hons.) Course – as in the present case – the candidate would nonetheless be entitled and eligible to apply and be admitted to the B.Ed course, subject, of course, to his satisfying eligibility condition (ii), which was that he had studied the subject in which he desired to pursue the B.Ed course in two years/



four semesters in graduation.

19. Assuming, *arguendo*, that the intention of the prospectus was to require the aspiring B.Ed candidate to necessarily select, as his main teaching subject, the main subject in which he had undertaken his graduation, there was nothing which prevented the JMI from saying so. At the very least, the eligibility conditions are ambiguous on this score. The petitioner has weathered a written examination, in which he scored much more than the cut off marks, and has also undertaken the interview. His proficiency in Urdu does not, therefore, appear to be disputable. The benefit of the ambiguity in the stipulated eligibility conditions – assuming the stand of the JMI in the Court is at all acceptable – has, in such circumstances, necessarily to enure to the benefit of the petitioner.

Eligibility of the petitioner

20. The petitioner undisputedly had studied Urdu for the 2 year/4 semesters of his B.A. (Hons) History graduation course. This is apparent from his marksheet. In these circumstances, the petitioner entirely satisfied the eligibility condition (ii) contained in the JMI prospectus for admission to the B.Ed course. As already noted, Mr. Sabharwal himself conceded this position.

21. In as much as there is no stipulation in the JMI prospectus, which required the candidate mandatorily to select only the main subject in which he had obtained his Bachelor's (Hons.) degree as his main teaching subject for his B.Ed course, the denial of admission to



the petitioner cannot be sought to be justified by resort to eligibility condition (iii) in the JMI prospectus.

22. That apart, at the cost of repetition, this is not the ground on which, the JMI has chosen, in his counter-affidavit, to justify rejection of the petitioner's candidature for admission to the B.Ed (Urdu) course.

23. The decision to reject the petitioner's candidature for admission to the B.Ed (Hons) Urdu course cannot, therefore, sustain on facts or in law.

Conclusion

24. As a result, the decision of the JMI to reject the petitioner's candidature for pursuing the B.Ed (Urdu) course for the academic year 2023-2024 is quashed and set aside. The JMI is directed to forthwith admit the petitioners to the B.Ed (Urdu) course for the academic year 2023-24.

25. Mr. Agarwala, learned counsel for the petitioner submits that he has contacted his client who is willing to join the course even at this late stage.

26. Needless to say, as the petitioner has not been able to attend the course since from the time it started owing to the pendency of this writ petition, the petitioner shall not be disqualified from undertaking the examinations at the end of the year for want of attendance or for any



other similar reason.

27. The writ petition is accordingly allowed with no orders as to costs.

C.HARI SHANKAR, J

FEBRUARY 6, 2024/yg

Click here to check corrigendum, if any