

**WIN THE HIGH COURT OF DELHI**

**Writ Petition (Civil) No. 1807/2008**

**Judgment reserved on :13<sup>th</sup> March, 2008**

**Date of decision: March 17, 2008**

Ms. Rabia ... Petitioner  
through: Mr. Arun Sukhija and Mr. S.U. Mirza,  
Advocates

VERSUS

Jamia Millia Islamia University & Ors. ....Respondents  
through: Mr. M.Atyab Siddiqui, Advocate

CORAM:

**HON'BLE MS. JUSTICE GITA MITTAL**

1. Whether reporters of local papers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

**GITA MITTAL, J**

1. By this writ petition, the petitioner assails a communication dated 1<sup>st</sup> February, 2008 whereby the respondents communicated the decision of the Dean Faculty of Education cancelling the petitioner's admission to the B.Ed.(Nursery Education) course conducted by the respondent no.1.

2. There is no dispute to the material facts essential for the purposes of effective adjudication of the subject matter of this writ petition and to the extent necessary, the same are noted hereafter. The petitioner had passed her high school and senior secondary

examination from the Jamia Millia Islamia, New Delhi. After completing her senior secondary education, she successfully completed her B.A. History (Hons.) from the respondent no. 1 University in the 2004-2005 academic session. To support her submissions in this writ petition, reliance is placed on the petitioner having pursued the compulsory subject of Islamiyat and Urdu language in the first year of her B.A. Course in which she claims to have obtained 72% marks. After completion of her graduation, the petitioner sought admission to the one year B.Ed.(Nursery Education) course for the academic session 2007-2008 in the Urdu medium category.

3. The petitioner was found eligible to undergo the entrance examination by the respondents and she was issued a role number and admit card for the same. The petitioner was declared successful in the results of the written test displayed on 24<sup>th</sup> July, 2007 and she was called for an interview on 27<sup>th</sup> July, 2007 which also she successfully undertook. The final list of successful candidates admitted to the B.Ed.(Nursery Education) course was declared on 31<sup>st</sup> July, 2007 in which the petitioner was declared successful, fees was deposited by her on 1<sup>st</sup> August, 2007 alongwith all original documents. Upon completion of all formalities the petitioner has attended classes conducted by the respondents from 8<sup>th</sup> August, 2007 till 4<sup>th</sup> February, 2008. During such period the petitioner not only

attended classes but also undertook teaching practice, as required by the course, in two schools.

4. To the shock of the petitioner, on 4<sup>th</sup> February, 2008 she received a letter dated 1<sup>st</sup> February, 2008 whereby she was informed that vide a notification no. Dean/Edu/14/2007 dated 14<sup>th</sup> December, 2007 the Dean Faculty of Education, Jamia Millia Islamia the admission of the petitioner stood cancelled with immediate effect. As per this communication, the request for cancellation of the admission as mentioned in the notification was informed as follows :-

“With reference to the notifications of the Dean, Faculty of Education, Jamia Millia Islamia vide No. Dean/Edu./A-14/2007 dated 14.12.2007 followed by discussion with Legal Advisor, JMI on January 30-31, 2008. I am directed to inform you that your admission has been cancelled with immediate effect. The reason for cancellation as mentioned in the Dean's notification is as follows:-

“A candidate in Urdu medium category should have passed high school or higher exam with Urdu as an optional subject. Easy Urdu or Elementary Urdu is not treated as a subject for consideration under this category.”

5. The petitioner is stated to have run from pillar to post to point out the error in the respondent's stand. Representations dated 5<sup>th</sup>, 6<sup>th</sup>, 12<sup>th</sup>, 15<sup>th</sup>, 25<sup>th</sup> and 27<sup>th</sup> February, 2008 did not evoke any positive response. In this background, the petitioner has assailed the cancellation of her admission primarily on three grounds. It has firstly been contended by Mr. Arun Sukhija, learned counsel for the petitioner that the petitioner having pursued the compulsory Urdu

language course in her B.A. first year programme, and having secured 72% marks, was fully eligible for admission to the B.Ed.(Nursery Education) course and that she fulfilled the eligibility requirements. Learned counsel has urged at length that the reliance placed by the respondents on Rule 9 of the Combined Prospectus 2007-08 published by the respondents which contained all guidelines, eligibility conditions and restrictions with regard to the seat availability position in the various courses, applied to the B.Ed.(Nursery Education) course and that the same is restricted in its application to the Urdu medium seats in the social science and science group courses. According to learned counsel, the B.Ed.(Nursery Education) course, does not have any social science or science category or group and consequently there is no prohibition that easy Urdu or elementary Urdu would not be treated as a subject or the consideration for admission to the B.Ed.(Nursery Education) course. In order to point out the scheme of the admission procedure and to support this submission, reliance has been placed on clause 4 and 5 of this prospectus.

6. The second ground of challenge to the order passed by the respondents is that the order violates principles of natural justice. It has been pointed out that the petitioner was validly appointed; original documents and fees were duly deposited by her and that she has attended classes as she was fully eligible and entitled to do so

from 8<sup>th</sup> of August to 4<sup>th</sup> of February, 2008. Placing reliance on the pronouncement of the Apex Court reported at AIR 1970 SC 1039 The Board of High School & Intermediate Education, U.P. & Ors. vs. Kumari Chittra Srivastava & Ors. and that of the Madhya Pradesh High Court in AIR 1976 MP 40 Dinkar Prabhakar Mahajan vs. S.L. Agrawal & Ors., it has been urged at length that the impugned order violates all rules of natural justice and that there could have been no cancellation of the admission of the petitioner without an opportunity to show cause against the same. Lastly, it has been urged that the eligibility of the petitioner for the course stands recognised by the acts of the respondents who have permitted the petitioner to join the course and pursue the same. The respondents would therefore stand estopped from cancelling the admission of the petitioner at such late stage after the petitioner has been permitted to pursue the course for a period of six months. In this behalf, reliance is placed on AIR 1990 Calcutta 253 Jaisree Pal & Ors. vs State of West Bengal & Ors. and AIR 1978 Madras 315 K.K. Jacob (Minor) vs The Madurai University & Anr. and AIR 1999 Rajasthan 280 Board of Technical Education and Anr. vs. Anupama Goyal & Anr.

7. This writ petition has been vehemently opposed by learned counsel for the respondent. Mr. M.A. Siddiqui, learned counsel has drawn my attention to the provisions of para 4.5 of the Ordinance which is titled as “Reservation Of Seats And Other Special Provisions

For Admission” which have been framed in exercise of statutory power under the Jamia Millia Islamia Act. It has been pointed out that para 4.5 of the Ordinance specifically lays down that a candidate applying for admission to the Urdu medium section of the B.Ed.(Nursery Education) should have passed high school with Urdu as an optional subject and not have pursued easy Urdu or elementary Urdu. The respondents have pointed out that such restriction is essential having regard to the scheme of the course. The categorisation into the three language mediums that is the English, Hindi and Urdu medium has been provided so as to prepare candidates who would be in a position to impart instructions in such language. Therefore the seats in the Urdu category are specially meant for preparing teachers for Urdu medium schools. It is urged that the Prospectus of the University would be subject to the provisions of the Jamia Millia Islamia Act and as well as the statutory ordinances and the regulations made thereunder. Reliance is also placed on note iii of the Propectus which deals with the 'number of seats'. It is urged that so far as the general guidelines for admission to the Institute of Advance Studies In Education are concerned, in para 9 thereof the respondents have clarified that easy Urdu or elementary Urdu would not be treated as a subject for consideration under the category. In this background, the submission is that the petitioner having pursued the Urdu language merely as a compulsory

subject, had not exercised an option in the same. The explanation rendered is that such compulsory subjects are intended only to give a bare minimum/basic knowledge about the subject and would not enable a student to acquire proficiency/expertise in the field.

8. I have heard learned counsel for the parties at length and give my considered thought to the issues raised. It would be appropriate to consider the stipulation in para 4.5 of Ordinance II which is titled "Reservation of Seats and Other Special Provisions for Admission" which has been promulgated in exercise of powers conferred under the Jamia Millia Islamia Act. Para 4.5 thereof reads thus :-

**“4.5 Urdu Medium Candidates**

(a) A specified number of seats in Urdu medium sections in B.Ed., B.Ed. Nursery, B.Ed. Special Education, Diploma in Basic Training and BFA in Art Education may be provided to prepare teachers for Urdu medium schools.

(b) The candidates applying for admissions in Urdu medium section should have passed High School with Urdu as an optional subject.”

Thus, it is apparent that the ordinance framed in exercise of statutory power clearly requires that candidates applying for the B.Ed.(Nursery Education) course in the Urdu medium section are mandatorily required to have passed high school with Urdu as an optional subject.

9. Learned counsel for the respondent has explained the difference between the contents of the optional and the compulsory subject. It has been pointed out that so far as the Urdu language as a

compulsory subject is concerned, it is intended to give the minimal selective or the mere basics about the concerned subject to the student. Such minimal education does not impart proficiency or expertise to the students in the field. Such subject is made compulsory as it is essential for every student to merely pass the same. Therefore, while petitioner during her graduation studied the discipline of history as her honours subject, psychology and persian as her subsidiary subjects, she did not exercise any option for the Urdu language and pursue the same merely as a compulsory subject. She has also not pursued the Urdu language as an option in her school course.

10. As a result of the above discussion, even if it were to be held that clause 9 of the Combined Prospectus 2007-08 was held to be not imposing the requirement of optional Urdu upon the candidates pursuing the B.Ed.(Nursery Education) course, there can be no exception to the implementation of para 4.5 of Ordinance II which mandates that the candidates applying for admission in the Urdu medium section should have passed high school with Urdu as an optional subject.

11. There is also strength in the respondent's submission that the petitioner is undertaking training for teaching children in the Urdu medium section, it has been pointed out that such schools established within the protection of articles 29 and 30 of the constitution of India

have children taking urdu as their mother tongue and consequently teachers in such institution must necessarily be required to possess an in depth knowledge of the Urdu language so that communication with such nursery school children does not pose any difficulties.

12. My attention has been drawn to the fact that apart from the petitioner, admission of other candidates who were not possessing the same eligibility qualifications as the petitioner were also cancelled by the respondents . One such student namely Ms. Arshi Rehman made a representation to the respondents for reconsideration of the order of cancellation of her admission to the B.Ed.(Nursery Education) course. This representation was placed before the Academic Council of the respondent no. 1 in its meeting held on 19<sup>th</sup> February, 2008. Copy of the minutes recorded on this date have been placed before this court. It has been pointed out that 70 eminent educationists, who are members of the Academic Council of the respondent no.1 University, examined the representation and rejected the same on the ground that as per the provisions given in the University Prospectus, a candidate in the Urdu medium category should have passed high school or higher secondary school with Urdu as an optional subject as easy Urdu or elementary Urdu is not treated as a subject for consideration under this category.

13. In this background, it has to be held that the petitioner was not eligible for seeking and being admitted to the B.Ed.(Nursery

Education) course conducted by the respondent no. 1. Consequently the admission of the petitioner was not valid and she could not have been permitted to attend the classes.

14. The plea of the petitioner that the order dated 1<sup>st</sup> February, 2008 must be set aside and quashed on grounds of violation of principles of natural justice has to be examined in this background. There can be no dispute in the principles laid down in ***AIR 1970 SC 1039 The Board of High School & Intermediate Education, U.P. & Ors. vs. Kumari Chittra Srivastava & Ors.*** and ***AIR 1976 MP 40 Dinkar Prabhakar Mahajan vs. S.L. Agrawal & Ors.***

15. In ***The Board of High School & Intermediate Education, U.P. & Ors. vs. Kumari Chittra Srivastava & Ors*** the Apex Court held as follow :-

“xxx Whether a duty arises in a particular case to issue a show cause notice before inflicting a penalty does not depend on the authority's satisfaction that the person to be penalised has no defence but on the nature of the order proposed to be passed.

9. We agree with the High Court that the impugned order imposed a penalty. The petitioner had appeared in the examination and answered all the question papers. Accordingly to her she had passed. To deny her the fruits of her labour cannot but be called a penalty. We are unable to appreciate the contention that the Board in “cancelling her examination” was not exercising quasi-judicial functions. The learned counsel urges that this would be casting a heavy burden on the Board. Principles of natural justice are to some minds burdensome but this price a small price indeed – has to be paid if we desire a society governed by the

rule of law. We should not be taken to have decided that this rule will also apply when a candidate is refused admission to an examination. We are not concerned with this question and say nothing about it.”

It is to be seen that the Apex Court has also drawn a distinction in this case between a candidate who has been permitted to take the examination and whose examination has been cancelled on the ground that she was not competent to take the exam as she was short of attendance. The court has drawn a distinction between a candidate who had taken the exam and such candidate who was refused admission to the examination.

16. In *AIR 1976 Madhya Pradesh 40 Dinkar Prabhakar Mahajan vs. S.L. Agrawal & Ors.*, the court was undoubtedly concerned with cancellation of admission to the MBBS course on the ground that the candidate was not eligible to apply and that the order cancelling his admission was really in the nature of rectification of the mistake by the respondents. In this case, the court has found that the cancellation of the petitioner's admission was on the ground that he had not pursued physics in his B.Sc. Part I course. The court found as a matter of fact that the petitioner has pursued Physics in his pre-medical which he has successfully completed. It was this fact which pursue the court to set aside the order on grounds of violation of principles of natural justice.

17. In the instant case the petitioner is clearly ineligible for grant of

admission. So far as matters relating to education are concerned, the court has repeatedly held that eligibility conditions cannot be ignored and that a person who does not possess the qualifications prescribed by the authorities cannot be permitted to pursue the course. In ***AIR 2002 SC 2642 State of Rajasthan & Ors. vs. Lata Arun***, the court has held that so far as prescription of eligibility qualifications for admission to a course are concerned, they are matters to be considered by the appropriate authority. It was further held that it is not for the courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualifications prescribed by the authority.

18. So far as the petition in terms of the brochure are concerned, as already discussed hereinabove, no interpretation which would in any manner violate the provisions of the Ordinance can be put on the regulations. In ***AIR 1966 SC 707 Principal, Patna College, Patna & Ors. vs. Kalyan Srinivas Raman***, the court had held that in interpreting a regulation framed by the academic council of University, the High Court should ordinarily be reluctant to issue a writ of certiorari where it is plain that the regulation in question is capable of two constructions, and it would generally not be expedient for the High Court to reverse a decision of the educational authorities on the ground that the construction placed by the said authorities on the relevant regulation appears to the High Court less reasonable

than the alternative construction which it is pleased to accept. The limits of the High Court's jurisdiction to issue a writ of certiorari are well recognised and, it is on the whole desirable that the requirements prescribed by judicial decisions in the exercise of writ jurisdiction in dealing with such matters should be carefully borne in mind.

19. The exercise of discretion in permitting ineligible student to undertake board and/or university examination was deprecated by the Apex Court in the order reported at (1988) 3 SCC 5 Central Board of Secondary Education vs. Nikhil Gulati & Anr. Wherein it was held that exercise of such casual discretions by the court would be nothing but an abuse of the process; more so when the court had its own level becomes conscious that the decision was wrong and was not worth repeating as a precedent. The Apex Court had observed that unless the court can justify its decision on principle and precept, it should better desist from passing such orders for it puts the “rule of law” to a mockery and promotes rather the “rule of man.”

20. The plea of Mr. Sukhija, learned counsel on behalf of the petitioner that she must be permitted to continue the course as she has pursued the course for a long period on principles of promissory estoppel cannot be accepted. The instant case relates to a matter of education. The petitioner is pursuing a course which would enable her to undertake the job of a teacher whereby she would be teaching children of a tender age at the nursery level. Certainly the

applicability of the requirement that she was possessed all the eligibility requirements is rendered even more stringent.

21. In **(1984) 3 SCC 465 Liberty Oilman etc. vs UOI**, the Apex Court has held that if the action of the authority is of an emergent nature, a person aggrieved can make a representation. Then, if pre-decisional hearing/or compliance of principles of natural justices was not possible, the purpose can be achieved by giving a post-decisional hearing.

22. In the light of the above discussion, I find that the petitioner has been unable to make out any statutory violation or legal right which would justify issuance of a writ in her favour. Even if the order dated 1<sup>st</sup> February, 2008 was to be set aside for want of a notice to show cause, the same would not render the petitioner eligible to admission to the course. It has been held by the Apex Court that satisfaction of the eligibility requirement in matters of education is essential. The same would be more so in the course which the petitioner was to pursue. Undoubtedly the respondents have taken action which is belated. The petitioner has been permitted to pursue the course for which she was not eligible for a long period. However, having regard to the nature of the course and the purpose for which it is intended, the eligibility requirement cannot be ignored in the instant case.

23. In the instant case, the manner in which the clause 9 of the

Combined Prospectus has been provided, it has been read to suggest that the requirement of Urdu language as an option is restricted to candidates pursuing science or social science courses. This would not be in consonance with para 4.5 of Ordinance II noticed hereinabove. The respondents therefore shall examine the provisions and the declaration contained in the Prospectus and to ensure that they are in strict conformity with the applicable statute, ordinances and any regulations from therein so that no confusion results therefrom.

For all the foregoing reasons, I find no merit in this writ petition which is hereby dismissed.

**(GITA MITTAL)**  
**JUDGE**

March 17, 2008  
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