

Delhi High Court

Tahzeeb Ahmed vs Jamia Hamdard And Ors. on 1 October, 2004

Equivalent citations: 114 (2004) DLT 317, 2004 (77) DRJ 324

Author: T Thakur

Bench: T Thakur

JUDGMENT T.S. Thakur, J.

1. In this petition for a Writ of Mandamus, the petitioner calls in question the constitutional validity of the conditions of eligibility stipulated by the respondent university for admission to the Bachelors course in Unani System of Medicine (BUMS) and for a direction to the university to admit him to the said course for the session 2003-04.

2. The petitioner has passed his intermediate examination from the Board of High School and Intermediate Education of Uttar Pradesh. He appears to have applied for admission to Bachelors course in Unani System of Medicine (BUMS) in the year 2000 for the session 2000-01 but failed to earn a seat for himself on the basis of his performance in the entrance test. For the session 2003-04, the respondent which happens to be a deemed university once again announced the admission process in response to which the petitioner also submitted an application and appeared in the entrance examination. He was, on the basis of his rank in the merit list prepared by the university, invited for admission to the course pursuant to which he appears to have submitted his requisite papers and offered the fee prescribed for the purpose. The university did not, however, grant admission to the petitioner on the ground that he was as on 1st October, 2003, more than 23 years old. Aggrieved by the said refusal to admission, the petitioner has filed the present writ petition assailing the validity of the conditions of eligibility prescribed by the university in so far as the same require the candidate to be less than 23 years of age as on 1st October, 2003.

3. I have heard learned counsel for the parties and perused the record. The prospectus issued by the respondent deemed university stipulates the courses of study offered by it and the conditions of eligibility for the same. For a 5 1/2 years degree course in Unani Medicine described as Kamil-e-Tibb-O-Jarahat (BUMS) to which the petitioner sought admission, the brochure prescribes the following conditions of eligibility:-

" A candidate seeking admission to B.U.M.S. Programme must have -

1. passed Senior Secondary (12th Standard/Intermediate examination with Physics, Chemistry and Biology from Central Board of Secondary Education or any other examination recognised by Jamia Hamdard as equivalent thereto, securing at least 50% marks in the aggregate of Physics, Chemistry and Biology.

2. Appeared in the Entrance Test of Jamia Hamdard

3. proficiency in Urdu comparable to High School (Class X) standard in addition to knowledge of English. Medium of instruction of this programme is Urdu.

4. Not more than 23 years of age on October 1, 2003."

4. It is not in dispute that as on October 1, 2003, the petitioner was more than 23 years of age and was, therefore, ineligible for admission. The petitioner's case, however, is that the condition of eligibility stipulating the maximum age for admission to the course is contrary to the Regulations framed by the Central Council of Indian Medicine under the Indian Medicine Central Council Act, 1970 as amended from time to time. It was argued that the said Regulations prescribe only the minimum age for admission thereby implying that the Regulations did not envisage disqualifying a candidate from appearance in the entrance examination or admission to the course on the basis of any upper age limit. It is alternatively submitted that the stipulation regarding the maximum age prescribed for BUMS programme was discriminatory having regard to the fact that a higher age limit was prescribed for a lower qualification like Pre-Tibb.

5. The Central Council of Indian Medicines has in exercise of the powers conferred upon it by Section 36 of the Indian Medicine Central Council Act, 1970 made regulations inter alia providing for the minimum standards for the course of Kamil-e-Tib-o-Jarahat. Regulation VII of the said Regulations prescribes that the minimum standards for the course of Kamil-e-Tib-o-Jarahat shall be as specified in Schedule III to the said Regulations. A perusal of Schedule III would show that the same did not stipulate any upper age limit for admission to the course although a lower age limit was stipulated in the same. The Regulations aforementioned were amended in terms of Indian Medicines Central Council (Minimum Standards of Education in Indian Medicine) Amendment (Regulations) 1995. The said amending regulations replaced the existing Schedule III by Schedule II. Para 2 and 3 of Schedule II so added may at this stage be extracted :-

"2 (1) QUALIFICATIONS FOR ADMISSION A candidate seeking admission to main Kamil-e-Tib-o-Jarahat (Bachelor of Unani Medicine and Surgery) Course must have passed Senior Secondary (12th Standard)/Intermediate examination with Science (Physics, Chemistry and Biology or its equivalent examination). OR has passed the Pretib Examination of one year duration.

(2) QUALIFICATION FOR ADMISSION TO PRE- TIB COURSE A candidate seeking admission to one year Pre-tib Course must have passed the Oriental qualification equivalent to Intermediate Examination, as specified in the list attached to this schedule, recognised by the Central Council of Indian Medicine leading to main Unani Course.

NOTE : For Kamil-e-Tib-o-Jarahat Main Course (Urdu Medium) the candidate should have also passed the qualifying examination with Urdu either MIL examination with Urdu.

(3) MINIMUM AGE FOR ADMISSION :

(a) 17 years on 1st October in the year of admission for admission to main Kamil-e-Tib-o-Jarahat (Bachelor of Unani Medicine and Surgery ) Course.

(b) 16 years on 1st October in the year of admission for admission to Pre-tib Course of one year duration.

6. It is evident that even Schedule II did not stipulate any upper age limit for purposes of admission to the course of Kamil-e-Tib-o-Jarahat. The minimum age for admission to the said course, however, was 17 years as on 1st October in the year of admission for admission to the said course.

7. The absence of an upper age limit in the Regulations framed by the Council for admission to Kamil-e-Tib-o-Jarahat is, according to the petitioner, suggestive of the fact that the apex body does not favor any upper age limit for admission to such courses. That being so, respondent no. 1 university could not prescribe any such age limit and thereby render ineligible for admission persons who are according to the spirit of the Regulations framed by the Council eligible for admission. The respondent university, however, justifies the fixation of an upper age limit on the ground that it is a policy matter for the university and also on the ground that the prescription of an upper age limit has a definite purpose to achieve in terms of standard of education to be imparted to the candidates.

8. The university has in its reply sought to justify the upper age limit of 23 years in the following words :-

"As far as the Course of BUMS is concerned it is a professional course relating to Unani Medicine. It is expected that a candidate who seeks admission and who seek the Degree of BUMS should have basic knowledge of Physics, Chemistry and Biology. It is expected that a person passing Sr. Secondary generally continue to possess the basic element of these subjects for a particular period of time, after passing the Senior Secondary. According to the Academic Council of the university, since a student passes out 12 standard in or about 17 years, six years would be an appropriate period where a student/candidate is expected to retain/possess the basic knowledge of the subject which he studies in Sr. Secondary. This is in order to limit the gap between the period a candidate has passed out Senior Secondary and the year/period in which a candidate is seeking admission to the course, the university decided to put a limit as 23 years.

9. It has also referred to the brochures of a few other universities offering different courses in support of the contention that upper age limit to a professional course is not unknown in the realm of academics.

10. The Central Council of Indian Medicines, New Delhi respondent no. 4, on the other hand, struck a somewhat discordant note. It has in reply to paras 7 and 8 of the writ petition expressed the Central Council's view that there should be no upper age limit in the field of Indian medicine. It has, at the same time, added that the university is competent to make rules to that effect. To be precise, the counter makes the following somewhat contradictory assertions in the counter affidavit :-

" However Central Council is of the view that there should be no upper age limit in the field of Indian Medicine. It is also not ruled out that university is competent to make rules to that effect."

11. The scheme of Indian Medicines Central Council Act, as it now appears in the Statute Book after the amendments made to the same by Act No. 58 of 2003, brings the role of the Central Council of Indian Medicine to the centre stage in regard to establishment of institutions and imparting of

education and maintenance of standards of such education in Ayurvedic, Siddha and Unani systems of medicines. The position of the Council under the Act aforementioned is now akin to that of the Medical and Dental councils of India established under the respective central enactments. The decisions of the Supreme Court in Council of Homoeopathic System of Medicine, Punjab and others, v. Suchintan and others and Dr. Preeti Srivastava and Anr. v. The State of Madhya Pradesh and Ors. JT 1999 (5) SC 498 authoritatively declare that the Councils under the central enactments are the apex bodies whose decisions in relation to the standards required to be fulfilled for establishment of institutions, award of degrees, admissions, etc. hold primacy. That being the position, one would have expected the respondent Council to take an unequivocal stand whether or not it intends to permit fixation of any upper age limit for admission to the Kamil-e-Tib-o-Jarahat course offered countrywide by different institutions affiliated to different universities or by the deemed universities themselves. This, the Council has not obviously been able to do. It has, on the contrary, suggested a dichotomy in that while the council does not favor an upper age limit, it has not disputed the right of the university to prescribe such a limit. If the opinion of the Council that there should be no upper age limit for admission to the course is based on a thorough consideration of the content and the requirements of the course, there is no reason why the Regulations framed by it could not make that explicit to avoid any confusion. The absence of any statutory provision or administrative instruction forbidding or discouraging the stipulation of an upper age limit for the course clearly implies that the Council has not taken any firm decision on the subject. That is precisely why it has while expressing its opinion left it open to the university to stipulate an upper age limit for admission. It follows that in the absence of any specific stipulation in the Regulations framed by the Council to the contrary, there is no reason why the university which offers the course, should not be empowered to stipulate an upper age limit for purposes of admission. In as much as the brochure published by the respondent university stipulate such an age limit, it does not in my opinion result in any infringement of the provisions of the Indian Medicine Central Council Act 1970 for the Regulations framed there under. The first limb of the argument advanced by the petitioner, therefore, fails and is accordingly rejected.

12. That brings me to the alternative submission urged on behalf of the petitioner that the stipulation of an upper age limit for admission to the BUMS programme was discriminatory having regard to the fact that the university had stipulated a higher age limit for a lower qualification like Pre-Tib. It was contended that for admission to Pre-Tib, the maximum age limit of the candidate as stipulated by the university was 25 years as on October 1, 2003. In contrast, for admission to the BUMS Course which is a degree course and higher than Pre-Tibb, the maximum age limit stipulated is only 23 years. The provisions contained in the brochure were to that extent anomalous and discriminatory.

13. The respondent university has, as noticed earlier, justified the fixation of the upper age limit on the ground that students who pass the 12th Standard examination can for a period of nearly 6 years retain the basic knowledge of the subjects which they have studied in the senior secondary classes. The 12th Standard examination is usually passed by candidates when they are around 17 years of age. That is the rationale underlying fixation of 23 years as the upper age limit. The university has not, however, advanced any logical explanation for fixing the upper age limit at 25 years in the case of admission to Pre-Tib course. That Pre-Tib is a lower qualification in comparison to BUMS is also

not denied. The net effect, therefore, is that the rules framed by the university stipulate a higher age limit for a lower qualification and a lower age limit for the higher qualification. Such a position is totally anomalous, irrational and discriminatory in nature. Assuming that the rationale underlying stipulation of an upper age limit for admission to Unani Courses is sound yet the situation where such age limits are fixed arbitrarily and without any rational basis cannot be countenanced. What the university has done in plain terms amounts to prescribing a higher age limit for admission to a degree course in Arts and a lower limit for admission to a post-graduate course in the same stream.

14. The anomaly of the situation has been noticed even by the Central Council as is evident from the following paragraph appearing in its counter affidavit :-

"However it is strange to note that the age limit for admission to Pre-Tib is 25 years as prescribed in its prospectus by the Respondent University. Pre-Tib is a one year course which is done prior to I-BUMS and is meant for those students who have passed Fazil from Institutions recognized by Jamia Hamdard. Therefore if the age limit for admission to I-BUMS course should be one year more that is 26 years, and in no case less than that, otherwise it shall amount to discrimination of students passing from Institutions other than that recognized by Jamia Hamdard."

15. A plain reading of the above would show that even the Central Council does not find the fixation of the upper age limit to be based on any sound or rational basis and that the Council favors the upper age limit in the case of admission to first year BUMS course to be 26 years instead of 23 years as stipulated by the university. I am acutely conscious of the fact that prescription of conditions of eligibility for admission to various professional courses is a matter which is left by the courts to the academicians but in cases where the conditions of eligibility prescribed are found on judicial review to be wholly irrational or discriminatory as in the present case, the court would be justified nay obliged to interfere and set the anomaly right.

16. In the result, this petition succeeds and is hereby allowed. The prescribed condition of eligibility stipulating an upper age limit of 23 years for admission to BUMS shall stand quashed. As considerable time has elapsed since the admissions to the course for the year 2003-04 were finalised and the course started, I direct that the respondent university shall admit the petitioner to the course for the academic session 2004-2005.

17. No costs.