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2018 eGLR\_HC 10006063

Before the Hon'ble MR. R. SUBHASH REDDY, Chief Justice the Hon'ble MR. VIPUL M. PANCHOLI,  
JUSTICE

TEJASVI ATUL NAHATA Vs. INDIAN INSTITUTE OF MANAGEMENT

**LETTERS PATENT APPEAL No: 206 of 2018 , Decided On: 20/02/2018**

**(A) [ Head Notes Incorporated when Published in GUJARAT LAW REPORTER ]**

Referred to:

1. Prathamkumar v/s. Indian Institute of Management, 2005 (2) GLH 438
2. S. Seshachalam and Ors. v/s. Chairman, Bar Council of Tamil Nadu and Ors., 2014 (16) SCC 72
3. Virendra Krishna Mishra v/s. Union of India and Ors., 2015 (2) SCC 712
4. Union of India and Ors. v/s. N.S.Rathnam and Sons, 2015 (10) SCC 681

**MR RITURAJ M MEENA, for the Appellant(s) No. 1 MS MEENA CHAPHEKAR, WITH MS DIMPLE A THAKER, for the Appellant(s) No. 1 MR NANDISH CHUDGAR, WITH MR RAHEEL PATEL, FOR NANAVATI ASSOCIATES, for the Respondent(s) No. 1**

**R. SUBHASH REDDY, CJ.** [1] The original petitioner in Special Civil Application No.2009 of 2018 has filed this Letters Patent Appeal under clause 15 of Letters Patent, aggrieved the order dated 12.02.2018 passed by the learned Single Judge. By the aforesaid order, the learned Single Judge dismissed the petition filed by the appellant - original petitioner in limine.

[2] The original petitioner has filed Special Civil Application under Article 226 of the Constitution of India with the prayers which reads as under :

"16 (A) That this Honble Court be pleased to direct the Respondent to consider the case of the petitioner and to correct the Category AC 3 in which the petitioner is wrongly included to right category AC 6 and allow the petitioner to participate in the admission process of said course of Post Graduate Programme in Management (PGP 201820) as she possesses the requisite qualification as prescribed by the Respondent in its eligibility criteria for shortlisting and selection for admission to the said course especially in the background that equally situated students having less percentile than petitioner are being called for Academic Writing Test (AWT) and Personal Interview (PI)."

(B) That pending admission, hearing and final disposal of the present petition, this Honble Court be pleased to direct the respondent to permit the petitioner to appear in the upcoming Academic Writing Test (AWT) and Personal Interview (PI) to be held from 06.02.2018 till the final outcome of the present petition.

(C) That this Honble Court be pleased to pass such other and further relief as the facts of the case may warrant."

[3] The appellant herein - original petitioner has completed her degree in Bachelor of Arts (Programme) from Delhi University. Her subjects were Economics, Computer Application, English Literature, Hindi, Human Rights Gender and Environment. The appellant was desirous of taking admission in Post Graduate Programme in management. She applied and appeared for Common Entrance Test ("CAT 2017" for short), which is conducted on all India basis. The appellant herein has filled in online form and on the basis of information furnished by the appellant, admit card was provided and examination was held on 26.11.2017. The appellant appeared at Delhi Center. Results were declared in the month of January, 2018, wherein, the appellant has secured 89.21 percentile.

[3.1] It is the case of the appellant that having come to know that the applicants having less percentile were called for Academic Writing Test (AWT) as well as personal interview, and as the appellant was not called for the same, she communicated with IIM Lucknow through email as well as telephonically. Such communications are part of the record.

[3.2] It is the case of the appellant that as per categories which are prescribed by the respondent, the appellant falls in category AC6. However, the respondent institute has considered the case of the appellant by placing her in category AC3.

[3.3] It is allegation of the appellant that categorization made by the respondent institute is erroneous and in spite of making requests to change the category from AC3 to AC6, her request was turned down by non speaking order and pleading that her case should not be considered as falling under category AC6, the petitioner approached this Court by filing the petition.

[3.4] It is allegation of the appellant that the appellant has obtained Bachelor of Arts Degree with Economics as one of the subjects, as such, same should not have been treated as discipline for the purpose of categorization. However, it is fairly submitted that while filling up the form, the appellant has made mistake by mentioning Economics in tabular form against column discipline while submitting the online application.

[3.5] The learned Single Judge by impugned order dismissed the petition in limine by recording detailed reasons and by observing that though the petitioner deserves sympathy but in exercise of jurisdiction under Article 226 of the Constitution of India, this Court cannot rewrite the rules. The learned Single Judge has recorded plea of the appellant herein and submissions made on behalf of the respondent institute in detail.

[4] We have heard learned counsel Ms. Meena Chaphekar with learned counsel Ms. Dimple Thaker for the appellant and learned counsel Mr. Nadish Chudgar for Nanavati Associates for the respondent.

[5] In this appeal, following submissions are made by the learned counsel for the appellant :

[5.1] It is submitted that when entire information relating to degree obtained by the appellant is on record, the respondent ought to have classified the appellant under AC6 but not in AC3. It is submitted that merely because in the online application submitted by the appellant, the appellant has stated Economics against column in discipline in tabular form, that by itself could not have been considered for categorizing the appellant in AC3 instead of AC6. It is submitted that as appellant is graduate in Bachelor of Arts (Programme) with subjects of Economics, Computer Application, English Literature, Hindi, Human Rights Gender and Environment, her claim would fit in AC6 but not in AC3.

[5.2] It is submitted by learned counsel for the appellant that very classification is arbitrary and illegal. There is no reason to exclude discipline of Economics from AC6 category. There is no reasonable and intelligible differentia for classification adopted by the respondent. It is contended that in spite of bringing to the notice of the respondent, by way of representation, the respondent has rejected the claim of the appellant - original petitioner by non speaking order, without assigning any valid reasons. It is submitted that the appellant has secured 89.21 percentile, as such, by allowing the appellant to appear in Academic Writing Test as well as Personal Interview, no prejudice will be caused to the respondent or any other candidates.

[5.2] To buttress above submissions, learned Counsel for the appellant has placed reliance on the judgment of the learned Single Judge in the case of Prathamkumar v/s. Indian Institute of Management reported in 2005(2) GLH 438, which is confirmed in part in Letters Patent Appeal No.565 of 2005, by judgment dated 03.05.2005 passed by Division Bench of this Court. Learned Counsel has also relied on judgment in the case of Reliance Industries Ltd. v/s. Gujarat State Information Commission and Ors. Reported in AIR 2007 Gujarat 203(1), judgment in the case of S. Seshachalam and Ors. v/s. Chairman, Bar Council of Tamil Nadu and Ors. reported in (2014) 16 SCC 72, judgment in the case of Virendra Krishna Mishra v/s. Union of India and Ors. reported in (2015) 2 SCC 712 and judgment in the case of Union of India and Ors. v/s. N.S.Rathnam and Sons reported in (2015) 10 SCC 681.

[6] On the other hand, Mr. Nandish Chudgar, learned counsel appearing for the respondent on instructions from the respondent submitted that 1,99,632 applicants appeared in CAT last year, of whom 1,87,677 applicants applied to the IIM Ahmedabad. It is submitted that out of 1,87,677 applicants, respondent institute shortlisted only 1186 applicants for Academic Writing Test and Personal Interview. It is submitted that such selection is by transparent and objective procedure. It is submitted that categorization was made based on the information obtained from CAT registration form filled up by the applicant, on which the respondent has no control. It is submitted that CAT examination was conducted by IIM, Lucknow and they have supplied necessary information.

[6.1] It is submitted by learned Counsel for the respondent that every year, the respondent institute receives representations to correct incorrect information supplied by the applicants during CAT registration and none of them are entertained in view of strict admission procedure adopted by the respondent. It is submitted that once such representations are considered, same would be never ending process and if one representation is considered, the respondent will be required to entertain each and every application for revision / corrections of mistakes during admission process. It is submitted that even for same examination, different types of representations were received, but none of such representations were entertained.

[6.3] It is submitted by learned Counsel for the respondent that as much as categorization is based on the information furnished by the applicant itself, there is no illegality in the process adopted by the respondent. It is further submitted that the judgments relied by learned Counsel for the appellant would not render any assistance having regard to facts and circumstances of the case. Further, it is submitted that as learned Single Judge has considered various submissions and recorded detailed reasons rejecting the claim of the appellant, as such, there are no grounds in this appeal for grant of any relief to the appellant.

[7] Before we consider various submissions made by the learned Counsel for the appellant, categories for bachelors degree / integrated masters degree (as per CAT application) are provided as under :

Categories for bachelors degree/integrated masters degree (as per CAT Application)

AC1 (Medicine and Surgery based subjects): MBBS, MD(USA).

AC2 (Selected Professional Degrees): Chartered Accountancy (CA), Cost and Works Accountancy (ICWA), Company Secretaryship (CS).

AC3 (All Commerce, Economics, Finance and Management Related Degrees): Including BAF, BBA, BBE, BBI, BBM, BBS, BCAF, BCCA, BCOM, BFIA, BFM, BHM, BHMCT, BIBF, BMS (Bachelor of Management studies) and BSBA degrees.

In particular, including

- 1.Economics/ Economic Development and Planning
- 2.Hotel & Tourism Management/Catering Technology
- 3.Commerce (Accountancy, Auditing, Banking, Business Mathematics, Business Organisation, Finance, Insurance, Investment Analysis, Public Finance, Secretarial Practices etc.)
- 4.Management (Business Administration, Business Management, Business Studies, Management Studies etc.)
- 5.Any vocational degree in commerce (BCOM)

AC4 (All Engineering, Technology and Architecture related Areas): Including BARCH, BE, BIT, BINFTECH, BS (ENG)/ BSC (ENG), BTECH and integrated MTECH degrees (Excluding all degrees in Fashion Technology, and BS/BSC degrees in Information Technology). In particular, including

- 1.Agricultural Engineering/ Dairy Technology/ Food Technology
- 2.Architecture
- 3.BE/BS (ENG)/BSC (ENG)/BTECH/integrated MTECH degrees in Biosciences, Geological Sciences, Information Technology, Mathematical Sciences and Natural Sciences
- 4.BE/BS (ENG)/BSC (ENG)/BTECH/integrated MTECH in all Engineering/Technology and related areas, including subjects like Chemical Technology, Electronics, Engineering Physics etc.
- 5.Textile Engineering/Technology
- 6.Others: All other fields where BE/BS (ENG)/BSC (ENG)/BTECH/integrated MTECH degrees are awarded, not explicitly included or excluded elsewhere in the list

AC5 (All Science and Agriculture related Areas, other than Agricultural Engineering, Medicine and Surgery): Including all BS/BSC and integrated MS/MS (excluding Economics, Fashion Design, Journalism, Leather Design and all BS(ENG)/BSC(ENG)), BCH, BDS, BFSC, BMATH, BN (Bachelor of Nursing), BPHARMA, BPT, BSTAT, BVSC degrees. Also including degrees in dentistry, paramedical, veterinary degrees; all non engineering/ nontechnical degrees in Geography, Mathematics, Statistics and related areas. Excluding any

BE/BS(ENG)/BSC(ENG)/BTECH/MTECH degree. In particular, including

1. Actuarial Science
2. Agriculture (Agronomy, Soil Science, Agricultural Biochemistry, Agricultural Economics, Plant Breeding and Genetics, Plant Pathology, Soil Science etc.) Excluding Agricultural Engineering
3. Biosciences (Biology, Biochemistry, Biotechnology, Botany, Life Science, Zoology etc.): all bachelors/integrated masters degrees other than BE/BS(ENG)/BSC(ENG)/ BTECH/MTECH degrees
4. Dentistry
5. Fisheries
6. Forestry
7. Geological Sciences (Geography, Geology and Geophysics): all bachelors/integrated masters degrees other than BE/BS(ENG)/BSC(ENG)/ BTECH/MTECH degrees
8. Horticulture
9. Information Technology. Excluding any BE/BS(ENG)/BSC(ENG)/ BTECH/MTECH degree.
10. Mathematical Sciences (Computer Science, Mathematics, Statistics etc.): all bachelors/integrated masters degrees other than BE/BS(ENG)/BSC(ENG)/ BTECH/MTECH degrees
11. Natural Sciences (Chemistry, Physics etc.): all bachelors/integrated masters degrees other than BE/BS(ENG)/BSC(ENG)/ BTECH/MTECH degrees
12. Paramedical/Physiotherapy
13. Pharmacology/Pharmacy
14. Planning
15. Veterinary Science/ Animal Husbandry
16. Any vocational degree in science (BS/BSC)
17. Science (Others): Home Science, Nursing and all other branches of Science not explicitly included or excluded elsewhere in this list

AC6 (All Arts/Humanities Related Degrees, Design, Education, Fashion Design/Technology, Law and Rural Studies): Including any BA (excluding Economics, Geography and Geological Sciences, Mathematics and Statistics), BAA, BAJM, BCJ, BDES, BED, BFTECH, BJ, BJMC, BL, BM (Bachelor of Music), BMC, BMM, BMS (Bachelor of Media Science), BMus, BSW and LLB. Also including any degree in Journalism/Media Studies/Mass Communication.

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In particular, including

1. Accessories Design/Apparel Production/Design/Fashion Communication/Fashion Design/Fashion Technology/ Interior Design/Knit Wear Design/Leather Design
2. Arts/Humanities (Archaeology, Education, Fine Arts (Dance, Drama, Film, Music, Painting etc.), History, Languages, Library Science, Literature, Mass Communication, Media Studies, Philosophy, Political Science, Public Administration, Social Work/Welfare, Sociology, etc.)
3. Education (including Physical Education and Sports)
4. Journalism (all degrees)
5. Law
6. Psychology (all degrees)
7. Rural Studies/Rural Sociology/Rural Cooperatives/Rural Banking
8. Any vocational degree in arts/education/humanities (BA) AC7: Any other discipline not mentioned in AC1 to AC6.

[8] It is not in dispute that while filling online form, with regard to first bachelor degree details, the appellant has mentioned Degree of Bachelor of Arts and discipline as Economics. If the discipline is Economics, it would fit in category of AC3 as per categorization for the CAT application. It is also to be noticed that the appellant herein has appeared for CAT, 2016 and the appellant was categorized in AC3 category. However, appearance of appellant in CAT, 2016 is not disclosed at all in the petition. Even ignoring such lapse on the part of the appellant, if same is considered independently, it is not in dispute that appellant has mentioned discipline as Economics for CAT, 2017 examination. Only after appearing in the examination and results are announced, the appellant started correspondence with IIM, Lucknow and IIM, Ahmedabad. When the representation was made by the parents of the appellant herein, they were communicated vide order dated 18.01.2018 by the Chair Person of PGP Admissions, IIM, Ahmedabad. Said communication reads as under :

"Shortlisting for interviews for IIMA PGP is done solely based on information provided during CAT registration. We do not allow any subsequent representation to modify any data. It is not possible for us to allow your daughter to appear for interviews."

[9] It is the case of the appellant that memorandum of marks and documents relating to degree were on record, as such, the respondent should have taken care by looking such documents for placing in proper category. It is the plea of the appellant that in view of degree of Bachelor of Arts (Programme), the respondent should have categorized the appellant in AC6 but not AC3. The fact remains that if graduation is with Economics, it is to be classified in AC3 only. As much as, the

appellant herein has mentioned her degree as Bachelor of Arts with discipline as Economics, the respondent has categorized the appellant in AC3 and not AC6. If there is mistake on the part of the appellant in filling up the online application, the appellant is to be blamed for the lapse, and not the respondent. While classifying / categorizing, the respondent has taken information furnished by the appellant. When lakhs of students are appearing, it may not be possible to look into all the documents of every applicant for categorization. It is true that the degree of the appellant is Bachelor of Arts (Programee) with subjects of Economics, Computer Application, English Literature, Hindi, Human Rights Gender and Environment, but at the same time, having mentioned discipline as Economics in the online application form, it is too late for the appellant to claim that her case should have been classified in AC6 and not AC3.

[10] As rightly submitted by learned counsel for the respondent that in view of the fact that lakhs of students appear for CAT examination, there are representations of various kind every year and if the respondent accepts one representation, they are required to consider all representations. In that view of the matter, the contention advanced by learned counsel for the appellant that without reference to information furnished by the appellant in online application form, the respondent should have looked into documents relating to degree for proper classification, cannot be accepted. However, it is pleaded that very classification is arbitrary and illegal. Such plea cannot be allowed at this point of time. If such classification is arbitrary and violative of Article 14 of the Constitution of India, the appellant should have questioned at first instance. Having applied and appeared for the examination and after results are announced, the appellant cannot turn around and question the classification. Further, plea of the appellant that order passed by the respondent is non speaking order cannot be accepted. In the matters of this nature, reasons cannot be elaborate as that of judicial and quasi judicial bodies. Though reasons are brief, they are germane and relevant in the communication which was sent in response to the representation made by the parents of the appellant through e mail. In that view of the matter, plea of the appellant that order passed by the respondent is non speaking order, will not hold good.

[11] In the case of Prathamkumar reported in 2005 (2) GLH 438, it was a case where the applicant therein, after securing 98.99% of marks in CAT examination was not permitted to participate in the admission process, group discussion and personal interview on the ground that he obtained degree from University not recognized by Association of Indian Universities. In those circumstances, learned Single Judge of this Court has held that Association of Indian Universities is not having authority to accord any recognition and condition of eligibility has no nexus with the admission process. When the said judgment was carried in appeal by IIM, Ahmedabad in Letters Patent Appeal No.565 of 2005, Division Bench of this Court has confirmed the order passed by the learned Single Judge declaring that condition of eligibility as unconstitutional. However, further directions given for organizing group discussion and interview for the writ petitioners therein was set aside.

[12] In the case of Reliance Industries Ltd. reported in AIR 2007 Gujarat 203 (1), while interpreting sections 11(1) and 19(2) of the Right to Information Act, the learned Single Judge of this Court has held that while disclosing information relating to third party, Public Information Officer is required to pass reasoned order before disclosing of information to the applicant therein.

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It is also held that if order is not a speaking order, the appellate authority cannot read the mind of the Public Information Officer.

[13] In the case of S.Seshachalam and Ors. reported in (2014) 16 SCC 72, while considering the provisions of Advocates Welfare Fund Act, 1987, the Honble Supreme Court upheld the provision of denial of lump sum benefit of welfare fund to nominee / legal heir of advocates who joined the profession after retirement from government service / organization. In the aforesaid case, drawing distinction between the employee advocates who had joined practice after retirement and drawing pension and the advocates who set up practice straight from law college was held to be rational and reasonable.

[14] In the case of Virendra Krishna Mishra reported in (2015) 2 SCC 712, the matter relate to service. When Cadre Review Committee recommended encadrement of only Deputy Resident Commissioner, leaving Information Officer and Tourist Information Officer which were similar posts, the Honble Supreme Court has found no justification for distinguishing between the three posts. In the aforesaid judgment, the Honble Supreme Court has discussed principles of reasonableness, fairness and equity.

[15] In the case of Union of India and Ors. v/s. N.S.Rathnam and Sons reported in (2015) 10 SCC 681, notification issued for exemption under Central Excise Rules were subject matter of challenge. In the aforesaid case, the Honble Supreme Court has held that in order to pass the test of reasonableness, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved.

[16] By placing reliance on aforesaid judgments, though it is pleaded by learned Counsel for the appellant that classification itself is arbitrary and illegal, but as we have held above that without questioning such classification at the inception and when the appellant could not find name in the shortlisted candidates, now the appellant cannot question the classification at this stage when examination is over and results are declared. Law is well settled on this proposition.

[17] Further, when classification is made based on the opinion of experts, this Court cannot substitute the views of academic experts. When classification / categorization is made for the purpose of making application, based on the decision taken by the academic experts, it is not open for the appellant to plead vaguely that classification / categorization is irrational and illegal. In absence of any justifiable grounds to attack such classification, and in absence of placing any material to demonstrate that such classification is irrational and illegal, such plea cannot be accepted.

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[18] Though it is the case of the appellant that the appellant has secured 89.21 percentile and the candidates securing less percentile were called for Academic Writing Test as well as personal interview, but at the same time, having regard to number of candidates appearing in such examination and in view of plea of the respondent that every year they receive number of such kind of representations, we are of the view that no interference is called for.

[19] For the aforesaid reasons, and further in view of detailed reasons recorded by the learned Single Judge, we are of the view that learned Single Judge has not committed any error so as to interfere with such order. Letters Patent Appeal is required to be rejected and same is accordingly dismissed. Consequently, Civil Application stands disposed of.

*Appeal dismissed*

