

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

Date of decision: 26th October, 2010.

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W.P.(C) No.1886/2010

RENU SHARMA

..... PETITIONER

Through: Mr. Keshav Kaushik, Advocate.

Versus

UNION OF INDIA & ORS.

..... RESPONDENTS

Through: Mr. Jatan Singh & Mr. Ashok Singh,
Advocates for R-1 & R-2.
Mr. Atul Kumar, Advocate for R-3.
Mr. J.P. Karunakaran & Mr. Jaspreet
Singh Kapoor, Advocates for R-5.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the Clause 8(iii) in the Information Bulletin /Admission Brochure of the All India Pre-Medical / Pre-Dental Entrance Examination - 2010 conducted by the respondent No.3 Central Board of Secondary Education (CBSE) for admission to 15% seats of the All India Quota in Medical / Dental Colleges and which clause limits the number of attempts at qualifying the Entrance Exam to three. It is the case of the petitioner that there is no such restriction with respect to the 85% of the

remaining seats filled up through the State / other quotas and / or for entrance examination to other professional courses and the said Clause is arbitrary. Notice of the petition was issued.

2. The petitioner having already availed of her three attempts, also sought interim relief of permitting her to appear in the preliminary examination scheduled for 3rd April, 2010. However, the said interim relief was declined to the petitioner vide a detailed order dated 26th March, 2010 after the counter affidavit had been filed by the respondent No.3 CBSE. The petitioner preferred an intra court appeal being LPA No.214/2010 which was also dismissed on merits giving reasons, vide order dated 30th March, 2010.

3. It was *inter alia* held in the said two orders that the condition imposed of limiting the number of attempts a candidate could take was incorporated after due deliberation, was placed before the Advisory Committee for consideration, was thereafter sent to the respondent No.4 Medical Council of India (MCI) and introduced in the prospectus by the Governing Body of the respondent No.3 CBSE only thereafter and there was thus no need for interference in the same. It was further held that the petition was belated, the petitioner having known of the said condition since the time she took the first attempt. The Division Bench while approving the reasoning of the Single Bench also found merit in the reasoning to restrict three opportunities as the maximum to every candidate and held that this

ensures homogeneity and similarity of mindset in the classroom and it is desirable that students should, by and large, belong to a common age group. It was further held that policy decisions are within the domain of policy makers and unless manifestly arbitrary, Courts would be slow to interfere with the same.

4. The decisions aforesaid though on interim application but post filing of counter affidavit ought to have in fact disposed of the writ petition itself. Since then the respondent No.2 Assistant Director General (Medical Education), Directorate General of Health Services, Government of India has filed a counter affidavit but nothing new is stated therein. I may however record that it is the plea of the respondent No.3 CBSE as well as the Government of India that the Scheme of the All India Quota Entrance Examination was devised by the Supreme Court of India and approved by the Supreme Court of India.

5. The counsel for the petitioner during the hearing had stated that a rejoinder to the counter affidavit of the respondent No.3 CBSE had been filed. Not finding the same on record a photocopy of the same was taken on record.

6. None has appeared for the respondent No.4 MCI or the respondent No.5 Dental Council of India (DCI) though impleaded. It is the plea as

aforesaid of the respondent No.3 CBSE that the number of attempts was restricted after approval of the respondent No.4 MCI.

7. The counsel for the petitioner during the hearing has handed over copies of “Regulations on Graduate Medical Education, 1997” to demonstrate that the same do not provide for restricting the number of attempts or the maximum age of the student for admission in the course. Else, it is argued that there was no such restriction prior to the year 2006 and there is likely to be no such restriction with effect from the year 2011. The absence of any such restriction for admission to the remaining 85% seats forms the anchor of the argument of the petitioner.

8. The counsel for the respondent No.3 CBSE has handed over copies of the following judgments:

- (i) ***Dr. Dinesh Kumar Vs. Motilal Nehru Medical College*** (1986)
3 SCC 727.
- (ii) ***Dr. Dinesh Kumar Vs. Motilal Nehru Medical College*** (1987)
4 SCC 122.
- (iii) ***Sharwan Kumar Vs. Director General Health Services*** (1993)
3 SCC 332.

to show as to how the scheme of All India Entrance Examination was mooted and formulated by the Supreme Court of India and under the approval of the Supreme Court of India and to contend that the same ought

not to be tinkered with. On the aspect of no such restriction being there for the remaining 85% seats, it is contended that since the number of seats available for all India Quota competition is limited, a need for capping the number of attempts was felt.

9. There is no new material available since the detailed orders aforesaid of this Bench and of the Division Bench on all the aforesaid pleas. Accordingly, there is no reason to take a different view. The petition is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

26th October, 2010

‘gsr’

(corrected and released on 7th December, 2010)