

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

Date of decision: 28th September, 2010.

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W.P.(C) No.6436/2010

DR. MUNDHE KAILAS MAHARUDRA PETITIONER

Through: Mr. Nitin K. Gupta & Mr. Arvind S.
Avhad, Advocates

Versus

AIIMS, NEW DELHI & ORS. RESPONDENTS

Through: Mr. Sunil Fernandes, Advocate for R-1
/AIIMS.
Mr. Deepak Vohra, Advocate for Mr.
L. Kumar, Advocate for R-2.
Mr. Rajal Rai Dua, Advocate for R-3.

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? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported
in the Digest? | Yes |

RAJIV SAHAI ENDLAW, J.

1. The petitioner impugns action of the respondent no.1 AIIMS of, while conducting admissions for the course of Post Graduate / Post Doctoral / MDS pursuant to Entrance Test held in May, 2010, not considering the petitioner, belonging to OBC, in the General category. With respect to the same examination this Court had in WP(C) No.4230/2010 titled ***Dr. Jagveer Singh Vs. The Chairperson, Counselling Committee, Academic Section, AIIMS*** decided on 19th August, 2010 held the action of the respondent no.1 AIIMS to be bad and issued direction to respondent no.1 AIIMS to with effect from the next admissions allow candidates belonging to the reserved

category to compete in the General (unreserved) category also.

2. The counsel for the petitioner contends that the petitioner who had applied for admission in MDS course was No.2 in the merit list drawn up for OBC category and was not given admission because of there being only one seat for the said reserved category. He however contends that as per the overall merit list belatedly disclosed on 6th September, 2010, his position on the merit list in the General category is at No.3 and he would have been entitled to admission in the General Category if had been considered and from which he has been illegally deprived. Upon it being put to the counsel for the petitioner as to how the relief can be given to the petitioner, the session having already started on 1st July, 2010 (the petition was filed only on 20th September, 2010), the counsel states that the petitioner should be granted admission in the next session beginning January, 2011. In fact the argument has been confined to this relief only. Reliance in this regard is placed on judgment dated 10th December, 2009 in LPA No.622/2009 titled ***Dr. Manish Patnecha Vs. Chairperson Counseling Committee AIIMS*** where the Division Bench in a similar situation had reserved a seat for the petitioner in that case in the session beginning in January, 2010.

3. I have considered the aforesaid claim of the petitioner. The respondent no.1 AIIMS holds a fresh examination for admission to the January session also. Besides the candidates who could not get admission in the last session, several other new candidates would also be entitled to apply for admission in the January session. The number of seats being few, it is felt that no advantage can be given to the petitioner by reserving a seat for him in the next session and which would be to the detriment of the applicants in the next session and who are not before this Court.

4. The petitioner in the entrance test held in May, 2010 had competed with those who had appeared in the same exam. He could have claimed the

seat secured by him against others who had participated in that exam only; but the petitioner did not act promptly; he filed this petition only after judgment in ***Dr. Jagveer Singh*** (supra). The reward of success in one competition cannot be given in another competition in which the petitioner has not participated/competed till now. It is not a matter between petitioner and respondent AIIMS only. The others who participate in the competition are also concerned. Such others cannot be made to suffer for the folly of AIIMS in not admitting the petitioner pursuant to the test in May, 2010. The relief claimed by the petitioner is in no way detrimental to AIIMS, but as aforesaid will be detrimental to the admission seekers in the test to be held in December, 2010. The medallion won in one race, if not awarded for whatever reasons, cannot be awarded in another race without participating in the same.

5. The Division Bench in ***Dr. Manish Patnecha*** (supra), while granting the relief of admission in next session, referred to similar directions issued by Supreme Court in ***Vijay Jaimni Vs. Medical Council of India*** (2005) 13 SCC 461 and in ***Harshali Vs. State of Maharashtra*** (2005) 13 SCC 464. I have perused the said two judgments. Such directions in those cases were issued on consent. The said two judgments of Supreme Court cannot thus be said to be laying down the law that such direction has to follow.

6. I have wondered whether I am bound by the Division Bench in ***Dr. Manish Patnecha***. However, I do not find that to be the “ratio” of the judgment. It is only the “ratio” which forms the precedent and would be binding. Relief granted in the facts of a particular case is generally not the “ratio” of a judgment which is to be followed by Courts on which the said judgment is binding. The relief can vary depending on the facts. I also do not find any discussion in the judgment of the Division Bench on the aspect of whether such direction for admission in subsequent session without

participating in the same, can be given or not and the impact thereof on others. I am therefore humbly of the view that the Division Bench did not intend to or lay down the same as a precedent.

7. The petitioner has also claimed damages from the respondents 1 & 2. Though the respondent no.1 AIIMS is clearly found at fault, however considering its constitution and the work which it is doing in the field of medicine, I refrain from awarding any damages against it. However, it is made clear to the counsel for the respondent no.1 AIIMS that if respondent no.1 AIIMS continues to act in contravention of law, thereby depriving the meritorious candidates from admission, the Court in future may be compelled to award damages also against it.

The writ petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

28th September, 2010
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