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HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 11th November, 2010

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Judgment Pronounced on: November 29, 2010

Corrected copy

+ **LPA No. 726/2010**

DR. MUNDHE KAILAS MAHARUDRA Appellant

Through: Mr. Nitin Kumar Gupta with Mr. Arvind
S. Avhad, Advocates

Versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES & ORS.

..... Respondents

Through: Mr. Sunil Fernandes with Mr. Deepak
Pathak, Advocates for Resp. 1
Mr. Ravinder Agarwal, CGSC for UOI

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether reporters of the local papers 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 |

DIPAK MISRA, CJ

The present appeal is directed against the order dated 28th September, 2010 passed by the learned Single Judge in WP (C) No. 6436/2010.

2. The facts which are requisite to be exposited are that the first respondent, namely, All India Institute of Medical Sciences (for short 'AIIMS') while conducting admission for the post of Post-Graduate / Post Doctoral / MDS pursuant to entrance test held in May, 2010 did not consider the case of the appellant in the general category on the base and foundation that he belongs to OBC category.

3. The learned Single Judge referred to his own order dated 19th August, 2010 passed in WP (C) No. 4230/2010 (***Dr. Jagveer Singh v. The Chairperson, Counselling Committee, Academic Section, AIIMS***) and opined that the action taken by the AIIMS was unsustainable and issued directions to the said respondent to allow candidates belonging to the reserved category to compete in the general / unreserved category from the next academic session.

4. Be it noted, though the learned Single Judge came to hold that there was illegality in the process of admission and injustice had been caused to the petitioner, distinguished the decisions in ***Vijay Jaimni vs. Medical Council of India, (2005) 13 SCC 461***, ***Harshali v. State of Maharashtra, (2005) 13 SCC 464*** and ***Dr. Manish Patnecha v. Chairperson Counseling Committee AIIMS*** rendered on 10th December, 2009 in LPA No. 622/2009 on the ground that in the first two decisions, the directions were given on consent and, therefore, were not precedents and as far as the decision in ***Dr. Manish Patnecha*** (supra) is concerned, he opined that it did not lay down any ratio. Eventually, the learned Single Judge expressed the view as follows: -

“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.”

5. It is submitted by Mr. Nitin Kumar Gupta, learned counsel for the appellant that when learned Single Judge had expressed the view in categorical terms that the practice adopted by the AIIMS was defective, reliefs should not have been denied to him and he should have issued affirmative directions. It is also urged by him that in the case at hand, the AIIMS had delayed the declaration of marks from 25th May, 2010 till 6th September, 2010 to make the case of the appellant infructuous and hence, for no fault of his he should suffer. It is highlighted by him that the appellant had admittedly obtained more marks than the last selected candidate in the general category but he was not conferred the benefit of admission.

6. Learned counsel for the respondents submitted that the seats are few and the appellant cannot be accommodated in the ensuing academic session.

7. This Court in LPA No.611/2010 (*Tej Pal Yadav v. Union of India & Ors.* decided on 29.11.2010) while dealing with a similar situation wherein a meritorious candidate was not given admission due to the fault of the authorities has held as follows:

“21. In *Punjab Engineering College, Chandigarh v. Sanjay Gulati*, AIR 1983 SC 580, the Apex Court has categorically held that the authority which makes admission by ignoring the

rules of admission must pay for its own lapse and wrong caused and injustice meted to the deserving candidates. In the said case, their Lordships directed for increase of strength as a course of solution. It is worth noting that in the said case, a contention was propounded that the Medical Council of India would not sanction additional seats but the said proponement was repelled. We think it apt to reproduce the relevant paragraph from the said decision:

“It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admission contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to medical colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admission made.”

22. In *Anil Kumar Gupta v. State of UP*, (1995) 5 SCC 173, the Apex Court, after coming to hold that there were errors in the rule of reservation and its implementation, dwelled upon the relief to be granted when the admissions had already been finalized. In that context, their Lordships held thus:

“At the same time, we have to rectify the injustice done to the open competition candidates in the admissions in question, to the extent feasible. Accordingly, we direct that in the matter of admissions made pursuant to C.P.M.T. 1994, while the admissions already finalised shall not be disturbed, the Uttar Pradesh Government shall create thirty-four additional seats in the M.B.B.S. course and admit thirty-four students from the O.C. category against those seats. If any seats are vacant as on today, they shall also be filled from the O.C. category alone.”

23. In *Dolly Chhanda v. Chairman, JEE & Ors.*, (2005) 9 SCC 779, while finding that the appellant was unjustly denied admission to an educational course, their Lordships ruled thus:

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29.6.2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.

24. In *Vijay Jaimni v. Medical Council of India & Ors.*, (2005) 13 SCC 461, while noticing the mistake in the determination of category, the Apex Court directed as follows:

“5. Under these circumstances, we direct Respondent 5 college to give admission to the petitioner out of the said intake and under the category to which the petitioner was entitled as per the position in the last Academic Year 2004-2005. The said college is further directed to charge from the petitioner the fee which would have been charged if admission had been granted in Academic Year 2004-2005. The admission shall be granted before 30.9.2005. The petitioner shall comply with all the requirements.”

8. At this stage, it is pertinent to refer to the case of *Dr. Manish Patnecha* (supra), wherein the Division Bench had directed as follows: -

“On the question of consequential relief that can be granted to the appellant we find that there is no denial by

the respondent that the second session is to commence in January, 2010 and that admissions are to be made to the post graduate courses in that session. The appellant, having succeeded in showing that the denial of admission to him in Nuclear Medicine in OBC category is unjustified is in our view entitled to a direction to the respondent to admit him to the said course in the next session. This is held to be permissible by the Supreme Court in both *Vijay Jaimni* and *Harshali*.

Accordingly we issue a direction to the respondent that the appellant will be granted admission to the post graduate course in Nuclear Medicine in one of the UR seats in the next session commencing in the year January, 2010. He will be permitted to participate in the counselling that is to take place tomorrow i.e. 11th December, 2009.”

9. In view of the aforesaid decision, we are disposed to think that the appellant cannot be denied his right which was lawfully due to him and, therefore, we direct that he should be permitted to participate in the counselling for the purpose of subsequent examination i.e. the examination held after May 2010 and be allotted a seat in the Post-Graduate course in AIIMS in the general category.

10. Resultantly, the appeal is allowed and the order passed by the learned Single Judge is set aside. The directions issued by us be carried out forthwith. There shall be no order as to costs.

CHIEF JUSTICE

NOVEMBER 29, 2010
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MANMOHAN, J