

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

Date of decision: 15th June, 2011.

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LPA No. 545/2011

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DR. MUVEEN KUMAR

..... Petitioner/Appellant

Through: Mr. Sushil S. Salwan with Mr. Aditya Garg, Advocate.

Versus

**GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY
& ORS. Respon**

..... Respondents

Through: Mr. Sradhananda Mohapatra for Mr.
Mukul Talwar, Advocate for R-1.
Mr. Rajesh Katyal, Adv. for R-2
Mr. Ritesh Ratman & Ms. Rekha
Bakshi, Adv. for R-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE G.P.MITTAL

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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 challenge is to the judgment dated 3rd June, 2011 of the Ld. Single Judge dismissing W.P.(C)2508/2011 preferred by the petitioner along with W.P.(C)2796/2011 preferred by one Dr. Nidhi Ahuja and which petition entailed similar controversy as in the petition preferred by the appellant herein.

2. The challenge by the appellant in the writ petition preferred by him was to the refusal of the respondent no.1 University to grant admission to the petitioner in the Post Graduate Degree Courses in the field of Medicine in the Academic Year 2011-2012 inspite of the appellant securing 28th rank in the Entrance Test held and thus being eligible for admission, for the reason of the appellant having withdrawn from admission secured by him to the Post Graduation Degree course in the field of ENT in the respondent no.1 University in the previous Academic Year 2010-2011.

3. The Ld. Single Judge in the judgment impugned in this appeal held-

A. On analysis of the terms, clauses and conditions, contained in the Admission Brochure of the said course (and which are

stated to be same for the Academic Year 2010-2011 and Academic Year 2011-2012) that the objective and spirit thereof was to discourage the students from surrendering their seat in midstream and if they want any change then they have to wait for the duration of the course to be completed and such an embargo is in the larger public interest so that the precious seat in the Post Graduate Medical Course does not go waste;

B. That though a student has a right of preference/selection of the stream in which he/she wants to do Post Graduation but such choice has to be exercised before seeking admission in the course and if the student once takes admission and thereafter withdraws from the course after the stipulated date (and which has the effect of not allowing any other student to take admission in his/her place and resultant waste of the seat in that academic year) then the student cannot escape from the consequences recited in the Admission Brochure i.e. of forfeiture of the amount of the bond money and prohibition to

appear in the subsequent Entrance Test till the duration of the course;

- C. Though such a restriction is undoubtedly harsh but cannot be viewed in isolation, as through this restriction a greater objective in the larger public interest is being achieved i.e. to see that the precious medical seats do not go waste.
- D. Substantial public funds are spent by the Govt. for each and every seat in a professional course and squandering of any seat not only deprives and defeats the valuable right of the student next in queue but also results in large public monies spent by the institution in the creation of such a seat going down the drain. Thus, viewed from the prism of larger public interest, such a restriction placed on a student cannot be considered as unreasonable, that too when the student is fully conscious and well-versed with the consequences;
- E. Each and every seat in such course is to be treated like a treasure and cannot be allowed to be abandoned, marring not

only the fate of the next deserving and righteous candidate but also plundering of the public funds invested in the seat;

F. Reliance was placed on *Mabel v. State of Haryana* (2002) 6 SCC 318.

4. The counsel for the appellant opened his arguments by contending that one of us (Rajiv Sahai Endlaw, J) in judgment dated 9th August, 2010 in W.P.(C)4272/2010 titled *Dr. Varun Kumar Agarwal v. Union of India* (and which was not referred to before the Ld. Judge) has held that to be ineligible for admission, the candidate must be “pursuing” the Post Graduation course elsewhere. It is urged that the appellant having withdrawn from the Post Graduation course in which he was admitted in the previous year and having not pursued the same, cannot be deprived of admission in the subsequent year. It is further contended that the judgment of this Court in *Dr. Varun Kumar Agarwal* (supra) was also followed by the Division Bench of the Rajasthan High Court in judgment dated 5th October, 2010 in D.B. (Civil) Special Appeal (Writ) No.509/2010 titled *Dr. (Miss) Aditi Mittal v. Dr. Subham Joshi*.

5. ***Dr. Varun Kumar Agarwal*** was concerned with the Entrance Examination held by the All India Institute of Medical Sciences (AIIMS) for admission to Post Graduate courses. On an interpretation of the terms & conditions of Admission Brochure of AIIMS, *inter alia* providing that the candidates “who have already done/are pursuing MD/MS/MDS in any subject at the time of counseling shall not be considered for admission”, it was held that the same did not bar those candidates who had taken admission to Post Graduation course in other colleges but preferred to take admission in AIIMS, as long as they were on the date of admission to AIIMS not pursuing the Post Graduation courses anywhere else.

6. Thus the present case, which has been adjudicated by the Ld. Single Judge on an interpretation of the terms & conditions of the Admission Brochure of the respondent no.1 University and on the basis of which alone the counsel for the appellant has made his contentions in appeal also, cannot be said to be covered by the judgment in ***Dr. Varun Kumar Agarwal***. I may also mention that the Division Bench of this Court vide judgment dated 3rd

March, 2011 in intra court appeal being LPA No.599/2010 preferred against the judgment aforesaid in ***Dr. Varun Kumar Agarwal***, though on an aspect different from “pursuing”, had allowed the appeal. The counsel for the appellant also, upon being so informed, has not based his case on the judgment in ***Dr. Varun Kumar Agarwal***.

7. The argument of the counsel for the appellant is that in Clause 15 r/w Clause 20 of the Admission Brochure of the respondent no.1 University, the only consequence provided of withdrawal of admission is of forfeiture of the bond required to be submitted of ₹3 lacs and it is nowhere provided that such withdrawal of admission would also debar admission in the next academic year. It is contended, i) that such debarment is contained in the Form of “Declaration” required to be submitted by the candidates as per Clause 6.2.4 of the Admission Brochure; ii) that Clause 6.2.4 makes the candidates “who are already admitted to any Post Graduate Medical Degree/Diploma Course in any University/Institution as on the date of counseling” ineligible for admission and requires the candidates to give an undertaking in the Form aforesaid; iii) that the appellant herein as on the date of counseling in the

Academic Year 2011-2012 was not admitted to any Post Graduate Medical Degree/Diploma Course having withdrawn from the admission secured in the previous academic year prior thereto; iv) that the undertaking contained in the Form that “in the event of my resigning the course concerned to which I am admitted, I will not appear in the next and subsequent Entrance Tests, till the duration of the course concerned is over” and which is sought to be enforced against the appellant is beyond the terms of the Admission Brochure; and, v) that the appellant at the time of admission in the previous academic year in fact had not even furnished any such Declaration/Undertaking.

8. The Ld. Single Judge has in the judgment impugned in this appeal held that Clause 6.2.4. does not require that the admission should subsist till the date of counseling and once an admission has been obtained, even if subsequently surrendered before the date of appearing for counseling, would make the candidate ineligible.

9. We are unable to agree with the said interpretation. Clause 6.2.4 uses the expression “already admitted” and not merely “admitted”; the expression “already admitted” coupled with “as on the date of counseling” does connote that the admission secured should be continuing till the date of counseling. Moreover Clause 14.3 providing for the procedure for “Counseling for Admission” further provides that candidates who have already been offered a seat at any Institution/College by any admission authority other than Guru Gobind Singh Indraprastha (GGSIP) University will be required to submit a “Surrender Certificate” and in case the same is not submitted the request for attending the counseling would be rejected. Thus a distinction has been made between candidates “already admitted” to any Post Graduation Medical Degree/Diploma Course in any University/Institution as on the date of counseling and candidates “who had already been offered a seat by any admission authority other than GGSIP University”. While the former i.e. those who till the date of counseling are pursuing the course have been made ineligible for admission, the latter i.e. those who had already been offered a

seat and have surrendered the same are eligible for admission subject to submission of a Surrender Certificate.

10. However our aforesaid view would still not entitle the appellant to succeed in the appeal. The appellant was admitted in the previous Academic Year 2010-2011 on the terms and conditions contained in the Admission Brochure and which required him to undertake that in the event of his resigning from the course concerned to which he was admitted, he will not appear in the next and subsequent Entrance Tests till the duration of the course concerned is over. It is immaterial whether the appellant submitted such an undertaking or not. His admission was on the said terms. The appellant admittedly resigned from the course to which he was admitted in the previous academic year. As per his undertaking, he was not entitled to appear in the Entrance Test held in the Academic Year 2011-2012 and in which he secured the high rank of 28. Thus the bar imposed/enforced by the respondent no.1 University by refusing admission to the appellant in the current academic year emanated not from any of the terms & conditions of the Admission Brochure for the academic year 2011-2012 but from the terms

& conditions on which the appellant had secured admission in the previous academic year and as per which he had agreed to the consequence of not appearing in the Entrance Test in the subsequent years till the duration of the course concerned was over. The high rank of 28 was secured by the appellant in a Entrance Test in which he had undertaken not to appear. The appellant having appeared in the Entrance Test in breach of his undertaking, cannot benefit from the result thereof. Thus the reference by the counsel for the appellant to the procedure of admission in the current academic year is immaterial in as much as, as aforesaid the bar/prohibition emanates from the resignation from the course to which the appellant was admitted in the previous year.

11. We also do not find any merit in the contention of the counsel for the appellant that non mention of such a condition in the eligibility criteria for admission laid down in Clause 6 of the Admission Brochure and mention thereof in the Form Annexure-I, has any consequences. Clause 6.2.4 deals with two categories of candidates i.e. those already admitted as on the date of counseling (and in which we have held the appellant not to fall) and

candidates who had secured admission in the respondent no.1 University in the Post Graduation Diploma/Degree Course in the previous years and resigned therefrom. Merely because the detailed terms & conditions instead of being mentioned in Clause 6.2.4 itself, are mentioned in the Annexure mentioned therein would be immaterial. The Admission Brochure is not to be read and interpreted as statute. It is in the nature of the contract which a student enters into with the University for admission and as per which contract entered into by the appellant with the respondent no.1 University in the previous Academic year 2010-2011, the appellant was not eligible for even appearing in the Entrance Test in the Academic Year 2011-2012.

12. The counsel for the appellant has faintly also suggested that the appellant was issued the Admit Card for the written test and was allowed to appear in the written test and had thus been held to be eligible for admission in the year 2011-2012. We do not find any merit in the said contention. There is nothing to show that the respondent no.1 University was empowered to waive the undertaking obtained from the students or that the said undertaking was so waived. In fact there is nothing to show that the

appellant had made any such disclosure in applying for appearing in the written test for the current academic year.

13. The counsel for the appellant has also urged that the appellant in the previous Academic Year 2010-2011 was admitted on the very last date and thus there was no possibility of his withdrawal from the admission so as to enable the seat to be filled up by any other candidate. It is thus contended that the wastage of the seat to which the appellant was admitted in the previous year is not attributable to the appellant.

14. We do not find any merit in the said contention also. If the stream offered to the appellant was not acceptable to the appellant, the appellant ought not to have accepted the same, even if on the last date and in which case it would have been offered to the next willing meritorious candidate. It is further the case of the appellant himself that he had taken admission to the Post Graduation course in the ENT stream in the Academic Year 2010-2011 during the pendency of W.P.(C) 4283/2010 then preferred by him. The said writ petition was dismissed vide judgment dated 31st August, 2010. Thus the admission was taken by the appellant prior to the said date. Rather

it appears that admission was taken prior to 25th June, 2010. The appellant as per his own averment withdrew from the said course only on 10th January, 2011. It is thus found that it was not as if the appellant resigned/withdrew from the course to which he was admitted in the previous year immediately after securing admission; he continued to pursue the said course for at least six months. The appellant is thus squarely covered by the undertaking aforesaid subject to which he had taken admission.

15. The counsel for the appellant has also contended that the appellant would not be bound by the undertaking aforesaid since even the bond of ₹3 lacs furnished by him in the previous year was not enforced against him and his educational certificates of eligibility for admission were also returned to him. It is contended that had the respondent no.1 University intended to bind the appellant with the undertaking aforesaid, the certificates would not have been returned to the appellant.

16. The appellant had preferred an intra court appeal being LPA No.802/2010 against the judgment dated 31st August, 2010 dismissing W.P.(C) 4283/2010 (supra) earlier preferred by him. A perusal of the orders

in the said LPA shows that the respondent no.1 University had agreed to return the certificates aforesaid without prejudice to its entitlement to invoke the bond and the Division Bench of this Court had expressly permitted the University to enforce the bond against the petitioner and allowed the petitioner to defend the same. It thus cannot be said that for the reason of the orders in LPA or for the reason of return of certificates, the appellant stands relieved from the undertaking deemed to have been given by him while securing admission in the previous year.

17. The other terms and conditions in the Admission Brochure relied upon by the counsel for the appellant are of no avail, the bar against admission invoked/enforced by the respondent no.1 University in the current academic year emanating as aforesaid from the terms on which the appellant had secured admission in the previous year. In fact the appellant was ineligible to even apply or appear in the Admission Test in the current year and the terms of the Admission Brochure of the current year are thus irrelevant. We otherwise concur with the judgment appealed against.

18. We therefore do not find any reason for interfering with the order of the Ld. Single Judge. The appeal is dismissed with no order as to costs.

**RAJIV SAHAI ENDLAW
VACATION JUDGE**

**G.P.MITTAL
VACATION JUDGE**

15th June, 2011/pp..