

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

Date of decision: 10th February, 2011.

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W.P.(C) No.13011/2009

% **PAWAN KUMAR & ORS**

..... Petitioners

Through: Mr. Sanjeev Kumar Dubey & Mr.
Rahul Trivedi, Advocate

Versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Anju Bhattacharya, Adv. for R-1.
Mr. Mukul Talwar & Mr.
Sradhananda Mohapatra, Advocates
for R-2.
Mr. V. Shekhar, Sr. Advocate with
Col. R. Balasubramaniam, Mr.
Zangpo Sherpa & Mr. Jatin Rajput,
Advocates for R-4.

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 16 petitioners, being the students of the respondent No.4 Army College of Medical Sciences, have preferred this petition *inter alia* for a

declaration that they are not liable to pay the annual fee of ₹3,00,000/- demanded from them but are liable to pay the same fee as being paid by the wards of Armed Forces Personnel i.e. ₹1,50,000/- per annum. Notice of the petition was issued and vide interim order dated 10th November, 2009 which continues to be in force, the petitioners were permitted to pay the fee of ₹1,50,000/- only. The pleadings have been completed. The counsels have been heard.

2. What emerges is, that it was the stand of the respondent No.4 College that it was meant only for imparting education only to wards of Armed Forces Personnel. However, certain writ petitions came to be filed in this Court including by one of the petitioners herein claiming that the respondent No.4 College was not entitled to restrict admission only to wards of Armed Forces Personnel and the General Category candidates were also entitled to admission in the respondent No.4 College. The said writ petitions, the lead one being W.P.(C) No.2763/2008 titled ***Krishna Adit Agarwal Vs. Guru Gobind Singh Indraprastha University & Anr.***, came to be decided by a Single Judge of this Court on 26th September,

2008. The petitions were allowed and the reservation / allocation of seats in the respondent No.4 College for the wards of Armed Forces personnel was directed to be restricted to 79 out of 100 seats and the remaining 21 seats were directed to be filled up by the general category candidates on the basis of merit in the Common Entrance Test 2008. In pursuance to the said judgment, the petitioners gained admission into the respondent No.4 College. The respondent No.4 College preferred intra court appeals and which were allowed by the Division Bench of this Court vide judgment dated 25th February, 2009. It was held that the respondent No.4 College was entitled to fill up 100% seats from wards of Armed Forces personnel. However, it was provided that students already admitted in the respondent No.4 College in terms of the order of the Single Judge (supra) will be allowed to continue their studies and complete the course. It is informed that Special Leave Petitions were preferred to the Supreme Court which were granted and hearing on the appeals stands concluded and judgment awaited.

3. The counsel for the petitioner at the outset contended that the hearing of this writ petition should be adjourned awaiting the judgment of

the Apex Court. The said request was opposed by the senior counsel for the respondent No.4 College. After hearing the counsels, it was felt that the question which arises in the present petition is unlikely to be affected by the outcome of the proceedings aforesaid and as such hearing has been proceeded with.

4. The petitioner contends that the fee in the respondent No.4 College is to be fixed in accordance with and under the provisions of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensures Equity and Excellence) Act, 2007. Attention is invited to the Preamble of the said Act which provides one of the purposes of the Act as “fixation of non-exploitative fee”. Section 3(h) defines “fee” and Section 3(i) defines the “Fee Regulatory Committee” constituted under Section 6 of the Act. It may be mentioned that Section 6 of the Act though provides for hearing by the Fee Regulatory Committee to be given to the Institution concerned, does not provide for any hearing to the students. Section 6(13) provides that the fee notified by the Government in

accordance with the recommendations of the Fee Regulatory Committee shall be valid for three years; though it permits extension of the said period for more than three years but does not permit a lesser period than three years. Section 7 of the Act lays down the factors to be taken into consideration for determination of the fee.

5. The counsel for the petitioners has then invited attention to the letter dated 2nd April, 2009 of the Directorate of Higher Education of the Government of NCT of Delhi to the respondent No.2 Guru Gobind Singh Indraprastha University (GGSIPU) intimating that the Fee Regulatory Committee for the academic year 2008-2009 had provided fee of ₹1,50,000/- per annum for the MBBS course in the respondent No.4 College. It is shown that in accordance therewith the respondent University on 21st April, 2009 notified ₹1,50,000/- as the fee for the MBBS course in the respondent No.4 College. It is contended that however on 7th July, 2009 the Directorate of Higher Education, “in continuation” of the letter dated 2nd April, 2009 informed that the fee for general category candidates in the respondent No.4 College shall be ₹3,00,000/- per annum

with effect from the academic session 2008-09 instead of ₹1,50,000/- per annum though the fee of ₹1,50,000/- was to continue for wards of Defence Personnel.

6. The contention of the petitioners is two fold. Firstly, it is contended that the fee having been fixed by the Fee Regulatory Committee on 2nd April, 2009 as ₹1,50,000/- per annum could not have been changed before three years to ₹3,00,000/- per annum. Secondly, it is contended that the general category students could not be discriminated against from the other students being the wards of Armed Forces Personnel. Though the counsel for the petitioners states that he has also challenged the Circular dated 7th July, 2009 on the grounds of retrospectivity but he fairly admits that fixation of fee at ₹1,50,000/- has not been challenged. Since the Circular dated 7th July, 2009 was only a couple of months after the Circular dated 2nd April, 2009 and which also is retrospective in the sense of fixing the fee of ₹1,50,000/- with effect from the academic year 2008-09, I am of the view that the petitioners are not entitled to challenge the Circular dated 7th July, 2009 on the ground of retrospectivity, having agreed to the fee of

₹1,50,000/- retrospectively, with effect from 2008.

7. I may at the outset state that the admission of the petitioners in the respondent No.4 College is on the basis of the aforesaid judgment of the Single Judge of this Court. The counsel for the respondent No.1 GNCTD invited attention to para 44 of the said judgment where the Single Judge, in view of the contention of the respondent No.4 College that the respondent No.4 College was entitled to restrict admission only to wards of personnel of Armed Forces inasmuch as the respondent No.4 College was investing its regimental funds and the setting up of the respondent No.4 College was a welfare measure and it was not charging fee like any other private Institute from the students, held that the respondent No.4 College would be entitled to charge from the general category candidates allowed to be admitted by the said judgment, the fee which may be fixed in accordance with the Act aforesaid and not the concessional fee as being charged from the wards of Armed Forces Personnel. I am of the view that the petitioners having gained admission under the said order of the learned Singled Judge are bound to accept the said order in toto and cannot choose one part and

not opt for the other. The petitioners having gained admission through the said order are in accordance with the same required to pay the different fee.

8. The argument raised by the counsel for the petitioners of discrimination also disappears for the same reason and the only argument which remains for consideration is, whether the fixation of fee of ₹3,00,000/- is in violation of Section 6 (supra) of the Act.

9. The contention of the senior counsel for the respondent No.4 College is that the fee of ₹1,50,000/- per annum fixed on 2nd April, 2009 was an interim / tentative fee. However, there are no documents to demonstrate the same. What is however relevant is that the Circular dated 7th July, 2009 providing for the fee of ₹3,00,000/- for the General Category candidates is “in continuation of the Circular dated 2nd April, 2009”.

10. The aforesaid fixation of fee has to be seen in the light of the contemporaneous events. As aforesaid, the fee fixed in the respondent

No.4 College was on the premise of the admittees thereto being wards of Armed Forces Personnel and concessional fee being required to be charged from them. Though the Single Judge had allowed the admission but the intra court appeals were pending. The counsel for the GNTCD has filed before this Court a copy of the representation received from the respondent No.4 College for fixation of fee for the general category candidates who had been admitted under the directions of this Court. It was in response to the said representation that the Fee Regulatory Committee fixed the fee of ₹3,00,000/- per annum for the general category candidates while retaining the fee of ₹1,50,000/- per annum for the wards of Armed Forces personnel. It is thus not a case where the fee has been changed prior to three years. The fee insofar as the general category candidates are concerned was fixed for the first time vide Circular dated 7th July, 2009 only inasmuch as prior thereto the fee was being fixed in accordance with the factors earlier prevailing.

11. I therefore do not find any merit in the petition. The same is dismissed. The senior counsel for the respondent No.4 College states that

most of the petitioners have already paid the fee of ₹3,00,000/- for the academic year 2008-09 but have not paid the said fee for the year 2009-10 or for the year 2010-11. The petitioners are granted six weeks time to make up the deficiency in fee failing which the respondent No.4 College would be entitled to proceed against them in accordance with the rules.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

FEBRUARY 10, 2011

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