

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

Date of decision: 30th May, 2012

+ **LPA No.430/2012**

% **DR. AFZAL HUSSAIN & ORS.** **....Appellants**
Through: Mr. Sunil Malhotra with Mr.
Abhishek Puri & Mr. S. Khan, Adv.

Versus

UNION OF INDIA & ORS. **.... Respondents**
Through: Mr. B.V. Niren, Adv. for UOI.
Mr. Nidhesh Gupta, Sr. Adv. with
Mr. Amit Kumar, Mr. Ashish Kumar
& Mr. A. Tripathi, Adv. for R-2.
Mr. Anish Dayal & Mr. Siddharth
Vaid, Adv. for R-3&4.

AND

+ **W.P.(C) No.2779/2012**

% **DR. AFZAL HUSSAIN & ORS.** **....Appellants**
Through: Mr. Sunil Malhotra with Mr.
Abhishek Puri & Mr. S. Khan, Adv.

Versus

UNION OF INDIA & ORS. **.... Respondents**
Through: Mr. B.V. Niren, Adv. for UOI.
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Mr. Anish Dayal & Mr. Siddharth
Vaid, Adv. for R-3&4.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The intra-court appeal was preferred impugning the order dated 14.05.2012 of the learned Single Judge dismissing the application for interim relief in W.P.(C) No.2779/2012 preferred by the appellants. The nine appellants are the aspirants for admission to the Post Graduate Medical Courses in the respondent No.3 Jawahar Lal Nehru Medical College (JLNMC) affiliated to the respondent No.4 Aligarh Muslim University (AMU) and had filed the writ petition seeking a mandamus to the Medical Council of India (which Council has been superseded by the Board of Governors and hereinafter referred to as MCI) and the Union of India (UOI) to increase the number of seats in the Post Graduate Courses in the JLNMC in terms of policy of UOI and amendment brought about to the Post Graduate Medical Education Regulations, 2000 vide Notification dated 24.07.2009 and for a further direction to the MCI to consider the appellants against the enhanced seats for the academic year 2012-13. The appellants had sought the interim relief of provisional admission in JLNMC. The

learned Single Judge though issued notice of the writ petition, declined interim relief holding that the same could not be granted without examining the merits of the claim of the appellants and which claim was opposed by the counsel for the MCI appearing on advance notice before the learned Single Judge.

2. We heard the counsel for the appellants at length yesterday when the appeal first came up before us and on the plea of the counsel for the appellants, supported by the counsel for JLNMC that MCI was not processing the case of JLNMC for enhancement of seats, had asked the counsel for MCI to produce the records before us. The counsel for MCI has produced the records and which disclose that the case of JLNMC was considered in the meeting of Board of Governors held on 16.01.2012. It was noted that the request dated 16.12.2009 of JLNMC for enhancement of Post Graduate seats in various courses could not be considered in view of the show cause notice issued to JLNMC for deficiencies prevailing in teaching faculty, clinical material and infrastructure in the college. It is thus not as if MCI is sleeping over the matter or has not taken any decision. It is for JLNMC to pursue the matter with the MCI and if aggrieved from the decision aforesaid of the Board of Governors, to take appropriate remedies

thereagainst.

3. On the statement of the counsel for the appellants that the writ petition be also taken up for hearing inasmuch as non denial of interim relief would make it infructuous, we have also requisitioned the writ petition bearing No.2779/2012 and take the same on board.

4. The counsel for the appellants/petitioners has argued that the UOI with an intent to ramp up the country's skilled medical manpower vide Notification dated 24.07.2009 amended the Post Graduate Medical Education Regulations, 2000 by changing the ratio of recognized post-graduate teachers to the number of students to be admitted from that earlier existing; that in pursuance thereto, the MCI also vide its letter dated 26.11.2009 directed JLNMC to send the requisite information about the faculty; that notwithstanding JLNMC in compliance thereof furnishing the information, the seats for the post graduate medical courses offered by JLNMC was not increased; that the appellants/petitioners have qualified the requisite eligibility examinations and though not entitled to admission on the basis of their position in the merit list, would be so entitled if the seats are enhanced. It is urged that the academic year of the appellants / petitioners should not be allowed to be wasted when the increase in seats is

owing to the shift in the policy decision but which is not being given effect to.

5. Needless to state that the counsel for the MCI opposes. We have drawn the attention of the counsel for the appellants / petitioners to THE ESTABLISHMENT OF NEW MEDICAL COLLEGES, OPENING OF HIGHER COURSES OF STUDY AND INCREASE OF ADMISSION CAPACITY IN MEDICAL COLLEGES REGULATIONS, 1993 and particularly to the Chapter therein “Application for permission of the Central Government to increase the admission capacity in MBBS / Higher courses (including Diploma/Degree/Higher Specialities) in the existing medical colleges / institutions.” The same prescribe that the application for such permission is to be made to the Central Government along with State Government’s permission, university’s affiliation and documentary evidence to show the additional financial allocation, provision for additional equipment and other infrastructural facilities and provision for recruitment of additional staff as per MCI norms. As per the said Regulations, permission is to be granted only after the respondent No.2 MCI evaluates the application for increasing the admission strength. It is thus not as if merely because of Notification dated 24.07.2009 (supra) increasing the

number of students which a teacher in the medical college can teach, JLNMC becomes entitled to increase in admission strength. Notwithstanding our inviting attention of the counsel for the appellants / petitioners to these Regulations, the counsel is unable to satisfy us as to the fulfillment of the requirements contained therein. On the contrary, reliance is placed on *Deoraj Vs. State of Maharashtra* (2004) 4 SCC 697 to contend that mandamus can be issued at the interim stage also.

6. Without however the appellants / petitioners satisfying us that JLNMC satisfies all the other requirements, the question of issuing mandamus increasing the admission strength of JLNMC even at the final stage, least at the interim stage does not arise. Moreover these proceedings are at the instance of the students aspiring for admission and not at the instance of JLNMC.

7. The senior counsel for MCI, per contra has invited our attention to:

- (i) *Medical Council of India Vs. JSS Medical College* AIR 2012 SC 726 where the Supreme Court set aside the interim order of the Karnataka High Court permitting the medical college in that case to increase the seats for the MBBS course. It was held that in normal circumstances, the High Court should not

issue interim order granting permission for increase of seats inasmuch as granting such permission by an interim order has a cascading effect. It was yet further held that the Courts by their fiat cannot increase the seats, that too by an interim order, since that task had been entrusted to the Board of Governors;

- (ii) ***Priya Gupta Vs. State of Chhatishgarh*** MANU/SC/0437/2012 where also the Supreme Court has advised all the High Courts to ensure strict adherence to the rules in the matter of admission to medical colleges.

8. We are of the view that when the MCI has not even evaluated the JLNMC from the aspect of increase in admission strength, no interim relief can be granted to the appellants / petitioners and the learned Single Judge has correctly declined the same.

9. We are also of the view that the correctness of the stand of the MCI in refusing to even evaluate JLNMC for increase in strength owing to the show cause notice having been issued to it, cannot be gone into in a writ petition filed by the students aspiring for admission. It is for JLNMC to challenge the said decision of the MCI. No purpose will therefore be served in keeping the writ petition pending and we accordingly dismiss the writ

petition also.

10. Before parting with the case, we however express our anguish at the attitude of JLNMC. Notwithstanding the Notification dated 24.07.2009 (supra) issued to enable the Medical Colleges to increase their admission strength, no effective steps in that direction appear to have been taken for the last three years. The said Notification as aforesaid was issued to enhance the country's skilled medical manpower and of which there is acute dearth. However, if the Medical Colleges do not avail of the benefit intended to be given thereby, the same will be wasted. We therefore impress upon JLNMC to take up the said matter in right earnest and to ensure increase in its admission strength in terms of the Notification supra at the earliest.

11. The appeal as well as the writ petition are accordingly dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 30, 2012

‘gsr’..