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

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Judgment dated 10.10.2012

+ W.P.(C) 3948/2012 & CM No.8267-68/2012

ANURAG GUPTA AND ORS Petitioners

Through : Mr. Rakesh Upadhyay, Adv.

versus

UNION OF INDIA AND ORS Respondent

Through : Ms.Sweety Manchanda, Adv. for
respondents no.1-3.

Mr.Ashish Kumar and Mr.Ankit

Rajgarhia, Advs. for respondent MCI.

Mr.Mukul Talwar and Mr.S.Mohapatra,
Adv. for GGSIPU.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Six petitioners have approached this court, inter alia, seeking a direction in the nature of certiorari to quash the decision of the Guru Gobind Singh Indraprastha University dated 30th June, 2012 in regard to scraping two seats in DM Nephrology and reducing the intake capacity of DM Cardiology Course from six to three in PGIMER Dr.Ram Manohar Lohia Hospital.
2. During the pendency of this writ petition petitioners 1,2 & 4 have been deleted from the array of parties. Counsel for the petitioners submits that two seats in DM Nephrology have been restored. The present petition is now only directed against reduction of seats in the Department of Cardiology from six to three seats.

3. The necessary facts relevant for the disposal of the present writ petition are that the petitioners are stated to be well qualified brilliant doctors in their respective fields. They have completed the Post Graduation Course in the field of Medicine (MD) from different well recognized Universities /Institutions in India. The petitioners applied for the Super Specialty Courses in Dr.Ram Manohar Lohia Hospital and College, which is affiliated to Guru Gobind Singh Indraprastha University.
4. Petitioners applied for admission into DM (Cardiology) course in Dr.Ram Manohal Lal Hospital and College in Delhi. Petitioners no.2-5 secured equal marks and were within the merit position of 3 to 6 in the merit list. Petitioner no.6 stood at position no.8 in the merit list. Since the candidates placed at Sl. Nos.1 and 2 are stated to have sought admission elsewhere the effective position of petitioner no.6 stands at merit no.6.
5. It is the case of the petitioners that the GGSIP University (hereinafter referred to as 'the University') advertised six seats for DM (Cardiology) in Dr.Ram Manohal Lal Hospital and College and, thus, the petitioners no.3 to 6 were sure to get admission in DM (Cardiology) seat in RML Hospital, New Delhi. It is the grievance of the petitioners that the University vide notification dated 30.6.2012 reduced the number of seats to three and thereby denied the justified legal right of petitioners no.3 to 6.
6. It is contended by learned counsel for the petitioners that the decision of the University is illegal and arbitrary for the reason that no inspection committee, as per the Rules and Regulations, was constituted by the Medical Council of India. There was no recommendation of MCI Committee to reduce the intake of seats from 6 to 3. It is further submitted that as per the brochure the number of seats for the DM (Cardiology) was six and having regard to the position of the petitioners, the petitioners were sure that a seat in DM (Cardiology) was secure.

7. Learned counsel for the petitioners submits that the petitioners were shocked to learn that the numbers of seat have been reduced from six to three. The petitioners approached the University and submitted two representations dated 2.7.2012 to the Vice-Chancellor pointing out that the injustice meted out to them. Counsel further submits that it is the case of the petitioners that there was no recommendation by the MCI to the Government of India in regard to the reduction of seats. Counsel also submits that the petitioners learnt that the University after issuance of brochure and after declining of results of examination constituted a Local Affiliation Committee (LAC) and it is solely on the basis of recommendation of the said Committee that the University took a drastic, arbitrary and illegal action.
8. It is further submitted by counsel for the petitioners that the reduction of seats did not have approval from the MCI or the Ministry of Health and Family Welfare Department. It is further submitted that there is no reduction of facilities of number of beds, strength of out-patient department or any other facility at the RML Hospital for many years. It is next submitted that due to reduction of seats the petitioners would suffer academic loss and having regard to the terms of the prospectus the petitioners did not appear for interviews in other colleges. It is next contended that the decision of the University is not sustainable in law more so after the prospectus showed that the number of seats available in DM (Cardiology) was six and the number of seats could not have been reduced after the declaration of results and announcement of schedule. It is also contended that only the MCI has the power to reduce the number of seats.
9. Mr.Upadhyay, learned counsel appearing on behalf of the petitioners, has also drawn the attention of the court to the report of Joint Inspection

Team, Department of Higher Education (Government of NCT OF DELHI/GGSIP UNIVERSITY), Academic session 2012-2013, in support of his contention that the report does not state that there is lack of infrastructure in the institute. Mr.Upadhyay next contends that the inspection report would show that all the facilities are in place, which includes the status of the Faculty, Computer Centre, Laboratory, Library, Workshops and further the University has recommended intake of seats for the Cardiology and thus there is no basis for the University to reduce the number of seats from six to three. It is submitted that the institute has been granted 90.7% marks by the University on inspection. Thus, the order of reduction of seats is arbitrary, without any application of mind and, thus, the same is liable to be set aside.

10. It is also submitted by Mr.Upadhyay, counsel for the petitioners, that in the short affidavit filed by respondents 1 & 3 it has been stated that respondent No.2/University, on the basis of the inspection report dated 29.3.2012 of the joint inspection team, curtailed the seats from six to three in the DM (Cardiology). It is reiterated that the institute has requested for six seats and, thus, if the inspection report is considered there is nothing to show that the University was dissatisfied with the infrastructure in relation to the number of seats applied for. Mr.Upadhyay further submits that the joint inspection team proceeded on the basis of a written proposal made by the University under Clause 5 (i) and 5 (ii) of the report of the joint inspection team, which shows that the proposal had been made for revalidation of NOC/continuation of provisional affiliation. It is, thus, contended that in case the institute had sought variation of the number of seats, the inspection team would have considered the case as per Clause 5 (ii) of the inspection report which deals with variation of seats. Mr.Upadhyay also contends that even in the previous years, respondent

no.2 had sought approval of six seats and accordingly the infrastructure is already in place to cater to the needs of six seats and no useful purpose would be achieved by decreasing the number of the seats except that meritorious candidates would be denied admission to the super specialty course which is already facing shortage in this country.

11. A short affidavit has been filed by the University wherein a preliminary objection has been raised that the petitioners do not have any *locus standi* to file the present petition as it is only respondent no.3 institute who could have raised objections having regard to the report of the Joint Assessment Committee in recommending only three seats for DM (Cardiology) in respondent no.3 institute for the academic year 2012-2013.
12. Mr.Mukul Talwar, learned counsel for respondent no.2, submits that respondent no.3 has not raised any objection whatsoever to the reduction of seats or to the recommendations of the Joint Assessment Committee (JAC). Mr.Talwar further submits that this is borne out from the fact that respondent no.3 institute vide its letter dated 3.7.2012 to the University had sought a copy of the report of the Joint Assessment Committee dated 29.3.2012. A copy of this report was supplied to the Institute on 6.7.2012. Thereafter the institute neither submitted any representation to the University against the recommendations made in the status report nor has it approached the Board of Affiliation of the University against the said report.
13. Mr.Talwar has drawn the attention of the Court to the additional reply filed to the short affidavit filed by respondents no.1 and 3. It has been stated on affidavit that the respondents no.1 and 3 have concealed the fact that for the academic year 2012-2013 the concerned institute, namely, Post Graduate Institute for Medical Institution and Research, had applied *inter alia* only for three seats for DM (Cardiology), whereas the

respondents had sought to convey the impression that the institute had applied for six seats and it is the University who had reduced it to three. Mr.Talwar further submits that the entire process of affiliation for the academic session 2012-2013 began sometimes in the year 2011. The University started accepting forms w.e.f. 9.12.2011 with respect to proposals for affiliation of colleges and institutions. Initially the last date fixed for submission of proposal was 27.12.2011, however, this date was extended to 12.1.2012. Respondent no.3 vide their application dated 10.1.2012 applied to the respondent University for continuation of the provisional affiliation for the academic session 2012-2013. The Institute had applied only for three seats. Mr.Talwar has drawn the attention of the Court to the application form, which is duly signed by Dr.T.S. Sidhu, Director and Medical Superintendent, which has been filed, to buttress his argument that only three seats were applied. Pursuant to their application an inspection of its faculty and academic infrastructure were conducted by JAC especially constituted for this purpose keeping in view that only three seats were applied for. The JAC found that the institute was entitled to the three seats of DM (Cardiology) and duly recommended the same. Attention of the Court is drawn to the report of the Joint Assessment Committee to show that since the Committee found that the entire infrastructure was in order and with respect to three seats there was no reason for the JAC to include any adverse remark.

14. Mr.Talwar submits that by a letter dated 16.8.2012 the institute has now applied for an additional seat. This request has been made on the basis of a notification dated 28.3.2012 published by MCI in the gazette on 24.4.2012 in which it has been mentioned that the strength of 20 beds per unit should be considered adequate upto a total of 5 Post Graduate seats. Since the request for an additional seat was made as late as on 16.8.2012

i.e. four months after the publication of notification and a request which could only have been considered by the JAC, which is the expert body or by the Appeal Committee constituted to hear appeals the University could not consider the request for the fourth seat, especially, at this late stage, and thus rejected the same on 14.9.2012.

15. In the reply filed by respondents no.1 to 3 although an impression has been given that the request was made for six seats on the ground of lack of adequate infrastructure but it has been clearly stated that the entire infrastructure was not ready at the time of inspection. Paras 4 and 5 read as under:

“4.Since the required infrastructure was not ready at the time of inspection the answering Respondent did not press for increase in intake of students in DM (Cardiology) course.

5.That while all efforts are being made to complete the construction of the block and to equip it with necessary infrastructure it could not fructify till date. However, it is submitted that the progress of the work is now being closely monitored by the respondents no.1 &3 and it is expected that the construction of the building will be completed by December, 2012 and the infrastructure is likely to become operational by March, 2013.”

16. I have heard learned counsel for the parties and carefully considered their rival contentions. The first submission of counsel for the petitioner is that the University could not have decreased the number of seats in DM (Cardiology) from six to three. Counsel for the petitioner has drawn the attention of the Court to the prospectus to show that six seats were available in the DM (Cardiology) and, thus, the number of seats could not have been reduced. I have examined the terms of the prospectus wherein it has also been stated that the seat allocation is provisional and the Super-speciality Medical Courses/Institution seats are likely to change depending upon the approval of Medical Council of India/Government of

India/University for the academic session 2012-2013. Thus, the submission of learned counsel for the petitioner is unacceptable. The prospectus has duly clarified that the number of seats allotted are provisional and likely to change depending on the approval of the medical college, Government of India, and also the University.

17. The second contention of learned counsel for the petitioner is that the inspection report does not show that the institute lacks any infrastructure facility and, thus, there was no occasion for the University to reduce the number of seats from six to three. It has been submitted that the JAC awarded 90.7 % marks to the institute and after finding everything in order the number of seats could not have been reduced. The attention of the Court was drawn to Clauses 5.1 and 5.2 to the format in support of his plea that in case the institute had sought any variation in the number of seats the institute would have filled up Column 5.2 which is lying blank.
18. In my view the petitioner cannot derive any benefit in case Column no.5.2 has been wrongly filled for the reasons that the application form, a copy of which has been placed on record, clearly shows that respondent no.3 institute had applied for only three seats and, thus, the report of the JAC is on the basis of request for three seats and not six seats.
19. On account of anomaly between the affidavit of the University and respondents no.1 and 3 it was deemed appropriate to record the statement of Registrar of respondent no.3 institute who was present in Court when the matter was taken up for hearing on 26.9.2012. The statement of Registrar reads as under:

“26.09.2012

W.P.(C) 3948/2012

**Statement of Mr.P.C. Pratihari, s/o late Mr.M.C.Pratihari, r/o
A-182, Pandara Road, New Delhi, Aged 58 yrs. On S.A.**

I state that I am working as a Registrar in the Post Graduate Institute of Medical Education and Research (PGIMER), Dr.R.M.L. Hospital, New Delhi. I further state that on 12.1.2012 the PGIMER requested for three seats in DM, Cardiology course. Subsequently, at the time of inspection on 29.3.2012 the PGIMER requested for six seats instead of three seats, as the PGIMER expected the infrastructure to come up. Subsequently, on the basis of existing infrastructure the University granted affiliation for three seats only and by that time the PGIMER did not insist for three more seats as the PGIMER was convinced that the PGIMER would not get the infrastructure by that time and, thus, PGIMER did not press for three more seats.

R.O.A.C.

G.S.SISTANI,J

SEPTEMBER 26, 2012”

20. Reading of the statement made by Registrar of respondent no.3 institute leaves no room for doubt that an application was only made for three seats. Although it has also been stated in the statement that during inspection a request was made for six seats as the infrastructure was expected to come up but on the basis of existing infrastructure the University granted affiliation for three seats and thereafter as they were convinced that they could not get the infrastructure by that time and, thus, they did not press for further three seats.
21. In a catena of judgment the Supreme Court of India has laid great stress on the importance of minimum infrastructure and proportionate intake of students. The principles laid down by the Apex Court are to ensure that the medical college and hospital attached is well equipped and not found wanting in any way. In the case of *Medical Council of India v. State of Karnataka*, (1998) 6 SCC 131, it was observed by the Apex Court as under:

“.... Standards have been laid by the Medical Council, an expert body, for the purpose of imparting proper medical education and for maintaining uniform standards of medical education through out the country. Seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council.

A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and hospital attached to it has to be well equipped and teaching faculty and doctors have to be competent enough that when a medical student comes out he is perfect in the science of treatment of human being and is not found wanting in any way. Country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study.

28 Seats in medical colleges cannot be increased indiscriminately without regard to proper infrastructure as per the Regulations of the Medical Council.”

22. In view of the fact that respondent no.3 had made an application for three seats the University cannot be faulted in granting permission for three seats. In view of the categorical statement made by the Registrar of respondent no.3 that the infrastructure is only available for three seats no relief can be granted to the petitioners. Writ petition and application are accordingly dismissed.

G.S.SISTANI, J

OCTOBER 10, 2012
SJS/MSR