

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

Date of decision: 30th July, 2012

+ W.P.(C) NO.4206/2012 & CM.No.8742/2012

% DINESH KUMAR CHOPRA Petitioner

**Through: Mr. R.K. Saini and Mr. Vikram
Saini Advs.**

Versus

**ALL INDIA INSTITUTE OF MEDICAL
SCIENCES AND ANR Respondents**

**Through: Mr. Mehmood Pracha with
Ms. Sneha Singh, Adv for AIIMS.**

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a Bachelor of Dental Surgery from Maulana Azad Institute of Dental Science of the November, 2007 Batch, claims to have been attempting admission to the Master of Dental Surgery Course of the respondent All India Institute of Medical Sciences (AIIMS) since the year 2008, improving his rank in the successive selection tests held for admission to the said Course; while he had a rank of 28 in the year 2008, his rank improved to 15 in the selection test held in May, 2010 and to 7 in

the selection test held in November, 2010. However, since the number of seats available in the unreserved category have been few in all these years, the petitioner could not get admission. In the selection test held for the July, 2012 Session however, there were 5 seats available. The petitioner, this time secured rank No. 6 and could not again secure admission.

2. This petition has been filed stating that though one Dr. Devashish, having rank No.4, who had been admitted, having also secured admission elsewhere got his admission to AIIMS cancelled, but the respondent AIIMS is still not admitting the petitioner to the seat so vacated, for the reason of the following clause in the prospectus issued for the July, 2012 Session.

“ii) The candidates who opt confirmed PG seats in the 1st Counselling or 2nd Counselling or joined in July, 2012 session and leave the PG seat, the same will be notified in the next session i.e., July, 2012.”

3. Notice of the petition was issued and the presence of a responsible officer of the respondent AIIMS also directed. A counter affidavit has been filed stating that, the first counselling was conducted on 14th June, 2012 in which of the 5 seats in the unreserved category, 3 candidates ahead of the petitioner in rank opted for confirmed seats and other 2 for provisional seats; that the second counselling was conducted on 21st June, 2012 when the two candidates who had opted for provisional

seats in the first counselling confirmed their seats; that since the 5 candidates ahead of the petitioner in rank had opted for confirmed seats in the first and second round of the counselling, there were no seats left over for the petitioner having rank no.6; that Dr. Devashish who had opted for a confirmed seats in the second round of counselling on 21st June, 2012 however on 3rd July, 2012 surrendered his seat and paid the penalty in terms of the prospectus. It is further stated in the counter affidavit as under:

“Now it may be noted that most of the top ranking candidates had opted confirmed seats in the subject of either their choice/or available at their rank. Now mostly those who have lower rank are left for open selection. Now if the seats vacated after 1st and 2nd counselling are put in open selection, then these relatively lower rankers in merit are likely to get a seat which otherwise would have gone to high ranker but could not get the same as at his/her turn it was not available in 1st /2nd counselling. Thus lower ranker will get unfair advantage and meritorious student will be disadvantaged as he/she can not participate in open selection as per terms of prospectus. To prevent such a scenario, the provision of not including vacated seat in open selection has been included in the prospectus.”

4. Though an official of the respondent AIIMS also appeared but could not explain anything more than what is stated in the counter affidavit.

5. The counsel for the petitioner invited our attention to the clause in the prospectus, for holding of open selection on 27th July, 2012 if any of the seats had remained vacant during the second counselling. He thus contends that it is not as if the date for selection /admission is over and for that reason the petitioner cannot be admitted.

6. We had during the hearing inquired from the counsel for the respondent AIIMS as to whether the petitioner notwithstanding his rank would not have been admitted in the second counselling or in the open selection scheduled for 27th July, 2012 if any of the rank holders ahead of him had not opted for a confirmed seat. The counsel under instructions replied in the affirmative. In view of the said reply, the plea aforesaid in the counter affidavit of not wanting to give the seat to relatively lower ranker in merit, disappears. The prospectus nowhere provides that admission will not be given beyond a certain rank, if the admission were to devolve till there. Thus, technically it is possible that a candidate having rank, say 20, is admitted if all the rank holders ahead of him / her do not avail of admission in first and second round of counselling. However the prospectus bars the candidate with rank 20 from admission if candidate ahead of him / her take admission but relinquish such admission and which relinquishment is permissible on payment of penalty. The counsel for

AIIMS is unable to satisfy us as to how the action of a candidate ahead in rank of first opting for admission and then relinquishing the same can change the fate of a candidate having a lower rank. If the petitioner in spite of his lower rank was entitled to admission, had the candidate ahead of him not opted for a confirmed seat in the second round of counselling, we fail to see as to how his lower rank can come in the way of his admission if the candidate ahead of him has relinquished the admission after having confirmed the same.

7. Though the reasoning of AIIMS of not wanting to admit to such Post Graduate Specialized Courses Candidates with relatively lower rank, who owing to fortuitous circumstances may become eligible for admission and wanting to reserve the seat for a more meritorious student in the next session is understandable and laudatory and the Courts have also held that ineligible candidates cannot be admitted merely because the seats remain vacant but we find that the respondent AIIMS in the present case to have not laid down any such criteria. It did not provide that candidates below a certain rank will not be admitted even if the seats fall/remain vacant. On the contrary, as aforesaid, AIIMS admits that the petitioner would have been admitted had any of the 5 candidates ahead of him not taken admission. If the petitioner was eligible to secure admission we fail to see as to how the action of the candidates ahead of him first taking admission and then vacating the seat can make the petitioner ineligible. Though Courts are always reluctant to interfere

in the selection procedure / eligibility criteria prescribed by experts but in the present case we are unable to find the clause aforesaid serving the purpose stated. The Supreme Court recently in ***Sanchit Bansal Vs. The Joint Admission Board (JAB)*** (2012)1SCC157 has also held that the courts will interfere where the procedure adopted is arbitrary and capricious i.e., illogical & whimsical and without any reasonable explanation. The petitioner else has a right to be admitted when a seat is available.

8. We therefore find the clause aforesaid in the prospectus of AIIMS, to be arbitrary and irrational and set aside/quash the same and axiomatically direct the respondent AIIMS to, subject to the petitioner satisfying the other criteria admit the petitioner who admittedly is next rank holder to the said course. We clarify that it will be open to the respondent AIIMS to in future prescribe the rank below which admission will not be granted even if seats remain available.

No costs. Copy of this order be given dasti to the counsel for the parties.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

JULY 30, 2012/M