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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 4521/2012

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Judgment dated 17.08.2012

VIDUSHI GUPTA

..... Petitioner

Through : Mr.Ashok Aggarwal, Mr.K hagesh Jha
and Ms.Kusum Sharma, Advs.

versus

ARMED FORCES MEDICAL COLLEGE & ORS. Respondents

Through : Ms.Barkha Babbar and Mr.Asit Tiwari,
Advs. for respondents no.1 and 3.
Mr.Amit Kumar, Mr.Ashish Kumar and
Mr.Ankit, Advs. for MCI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. This is a petition filed by petitioner under Article 226 of the Constitution of India against the impugned action of respondent no.1, Armed Forces Medical College, by which the candidature of the petitioner was rejected and the petitioner was disqualified by respondent no.1, for admission to the MBBS Course, 2012, on the ground that the petitioner was medically unfit as a solid ovarian mass in the left ovary was detected.
2. In this case, the petitioner succeeded in the written entrance examination for MBBS Course conducted by respondent no.1 on 6.5.2012. The petitioner was called for an interview on 8.6.2012 by respondent no.1. The petitioner secured rank 30 in the waiting list. As per the petition, by a letter dated 27.5.2012 respondent no.1 College requested the petitioner to

report to the Officer Incharge (Admission), Office of Dean, Armed Forces Medical College, at 9.00 hours on 26.7.2012. The offer made to the petitioner for admission to MBBS course was provisional and subject to fulfillment of eligibility criteria and medical standards, as applicable in the armed forces. In the medical examination of the petitioner, which was carried out on 26.7.2012, at Armed Forces Medical College, the Gynaecologist verbally informed the father of the petitioner that a solid ovarian mass in the left ovary was detected during medical examination of the petitioner and therefore she was declared unfit/disqualified for admission to the MBBS Course in respondent no.1 college. As the Medical Board which conducted the medical examination of the petitioner declared the petitioner unfit, led to the filing of an appeal by the petitioner. The decision of the Medical Board was upheld in appeal as well.

3. Mr. Aggarwal, learned counsel for the petitioner, submits that the action of respondent no.1 in rejecting the candidature of the petitioner for admission to the MBBS course, 2012, is arbitrary as the petitioner did not incur any disqualification as specified in the list of disqualifications. Mr. Aggarwal, submits that petitioner fulfils the eligibility criteria and the necessary medical standards as applicable in the armed forces. Counsel further submits that presence of the mass in the left ovary was dormant, which would have neither any adverse effect, disability or deformity in the petitioner. Counsel also submits that the petitioner should have been examined by an advanced medical diagnostic technique like CT Scan and MRI, which would have given the precise finding with respect to the presence, if any, of the mass in the left ovary. Counsel also submits that even otherwise a minor surgery would have removed the cyst from the ovary and, thus, have made the petitioner eligible for admission to MBBS

course. Mr. Agarwal contends that the aim and object of the medical examination and the nature of illness is not which would disqualify the petitioner for admission or cause any impediment in any of the activities of the petitioner in future. Elaborating his argument further, Mr. Aggarwal, next submits that the medical examination of the petitioner was carried out by the Armed Forces Medical College on 26.07.2012. In the medical examination the petitioner was examined by different doctors but, however, the Gynecologist verbally informed the father of the petitioner that the petitioner was having a solid ovarian mass in the left ovary and, therefore, she was unfit / disqualified for admission to the MBBS Course. Immediately, thereafter, the father of the petitioner met a Senior Doctor of the said college in order to comprehend as to how such a finding could be a disqualification. It is submitted that since the father of the petitioner did not get a satisfactory answer, he offered to get the C.T. Scan done at his own cost in order to evaluate the exact nature of the mass as found in the ovary. However, his request was also declined and it appeared that the college was in a haste to select the next candidate in place of the petitioner. It may be noted that the father of the petitioner requested the authorities to furnish in writing the basis/ reason for rejecting the candidature of the petitioner for admission to the MBBS Course, 2012. It is submitted that the father of the petitioner waited till 5:00 p.m. for the written rejection letter but, however, the same was not furnished to him. Being aggrieved by the impugned illegality on the part of the Respondent no.1 in rejecting the candidature of the petitioner for admission to MBBS Course, 2012 on flimsy and untenable grounds, the father of the petitioner immediately thereafter, sent a request letter dated 28.07.2012 to the Officer Incharge, MBBS Admissions, 2012, Armed Forces Medical College requesting therein to allow the petitioner to

undergo an independent medical board opinion or in alternative give her grace about 2 weeks’ time so that the petitioner can get the same surgically removed. It is pertinent to mention herein that the said mass in the ovary is not a disqualification or any other kind of medical ailment, as specified in the Brochure / Prospectus which could disqualify a candidate for admission to the MBBS Course.

- 4. Learned counsel for the petitioner has handed over in Court a copy of the certificate issued by a Professor, Department of Obstetrician and Gynaecologist, AIIMS, dated 8.8.2012, who has performed the surgery on the petitioner and has opined that the petitioner is fit to undergo any medical education, physical exercise, outdoor sports activities and military training. Counsel for the petitioner has also handed over reports of the diagnostic laboratories, prescription from AIIMS, Medical examination reports from Doctor Lal Path Lab and a report from Imaging Institute in support of his plea that after detailed examination and investigation, a surgery was performed on the petitioner and now she is medically fit in all respects.
- 5. Learned counsel for the petitioner contends that the petitioner should be subjected to a fresh medical examination and in case she is found fit she should be granted admission as she is a meritorious candidate.
- 6. Ms.Barkha Babbar, learned counsel for respondent no.1, has produced a copy of medical examination report of the petitioner in Court. The findings of the Medical Board shows the medical condition of the petitioner which is reproduced below:

Adnexa	Normal appearances	R. Ovary – NAD
	No RPLN	L. Ovary – Solid with no vascularity.
	No ascities	5.8 x 4.5 x 7.2 cms.

7. Ms.Babbar further submits that the action of respondent no.1 is not arbitrary but based on the guidelines of Medical Fitness and Medical Standards. Ms.Babbar has also drawn the attention of the Court to Appendix to DGAfMS/DG-3A letter No.9450/USG/ Abd/DGAfMS/Dg-3A dated 22 October, 2009, in support of her plea that the illness of the petitioner falls in the category of female cadets who are to be treated as unfit, with respect to category of illness of the petitioner and more particularly pertaining to women candidates in support of her plea that the petitioner was disqualified as she did not meet the fitness standard as prescribed. Relevant portion reads as under:

“FEMALE CADETS

(a) FIT

- (i) Candidates with minimal fluid in Pouch of Douglas without internal echoes.
- (ii) Fibroids up to 02 in number and size <15mm not causing distortion of endometrial cavity.
- (iii) Simple ovarian cyst up to 6 cm.

(b) UNFIT

- (i) Candidates with fluid in Pouch of Douglas with internal echoes.
- (ii) Uterus: Absence of uterus or any congenital structural abnormality except Arcuate Uterus
- (iii) Fibroids
 - a. Multiple Fibroids of any size more than 02 in number.
 - b. Single Fibroid 15 mm or more in size.
 - c. Any fibroid causing distortion of endometrial cavity
- (iv) Adenomyosis
- (v) Pregnancy
- (vi) Adnexa
 - a. Simple ovarian cyst 06 cm or more in size.
 - b. Complex Ovarian cyst of any size.
 - c. Endometriosis
 - d. Hydrosalpinx.

8. Ms.Babbar next submits that in view of the specific terms of the prospectus the request of the petitioner for re-examination by the Board and after her surgery cannot be permitted on account of the specific terms of the prospectus. Paras 68-72, which deal with the medical fitness and medical standard, read as under:

“68. All the medical cadets admitted to AFMC for MBBS Course have service liability to serve in the Armed Forces Medical Services after completing the course. The Armed Forces have prescribed medical standards and fitness criteria for deciding medical fitness of candidate for grant of commission. All candidates will be examined as per standards applicable for commission in the Armed Forces.

69. The Medical Board will be held as per the instructions of the Office of DGAFMS.

70. The candidates called for admission will be first subject to a pre-admission Medical Board constituted by the Commandant AFMC. The candidate found unfit by this Medical Board will have the option for Appeal Medical Board constituted by the Commandant AFMC. If he/she wishes to appeal, he/she should apply to the Commandant, AFMC, Pune within 48 hr of the Initial Medical Board (excluding holidays/Sundays). The decision of the Appeal Medical Board will be final. There is no provision for medical examination/board of any other nature after a candidate has been declared unfit by the Appeal Medical Board.

71. There is no provision for declaring a candidate temporary unfit. Candidates finally declared unfit, will not be considered again and the seat will be offered to the next candidate in waiting list. No seat will be kept pending on account of the candidate wishing to undergo treatment (Medical/Surgical) for a disease/disability for which he/she is made unfit.

72. There is no provision for any medical board being held in civil/private hospital. Fitness of the candidates is decided as per the medical fitness standards and criteria prescribed for commission in the Army Medical Corps and decision of Commandant AFMC will

be final in this regard.”

9. Ms. Babbar submits that the decision of the Medical Board is final and there is no provision for taking into account the medical examination of a candidate by the private civil hospital in case a candidate has been declared unfit by the Appellate Medical Board. Counsel also contends that as per the prospectus it has categorically been laid down that no candidate can be declared temporarily unfit and a candidate, who has been finally declared unfit, would not be considered again and the seat will be offered to the next candidate in waiting list. Ms.Babbar submits that based on the terms of the prospectus the next candidate has been offered the seat and all seats stand filled up as of now.
10. I have heard learned counsel for the parties and carefully considered their rival submissions. The petitioner was declined admission to the Armed Forces Medical College on the ground that she was medically unfit. As per the report of the Medical Board, the petitioner was declared unfit for the following reasons:

Adnexa	Normal appearances No RPLN	R. Ovary – NAD L. Ovary – Solid with no vascularity.
	No ascities	5.8 x 4.5 x 7.2 cms.

11. Learned counsel for the petitioner has raised two basic arguments. Firstly, the petitioner should have been examined through an advance medical diagnostic technique like CT Scan and MRI, as the nature of finding of the Medical Board and the detection of a mass in the left ovary would not disentitle the petitioner to admission in Armed Forces Medical College. This submission of learned counsel for the petitioner is without any force in view of the fact that the result of the medical examination conducted upon the petitioner are not disputed and in fact fortified by the fact that

the petitioner has gone through private medical examinations and the medical examination carried out at the instance of the petitioner has confirmed the diagnosis of the Medical Board of respondent no.1 and thereafter petitioner was operated upon at All India Institute of Medical Sciences on 4.8.2012.

12. The second submission of learned counsel for the petitioner is that the petitioner should be subject to a second medical examination post her surgery and admission should be granted as the head of the Gynaecology at AIIMS has opined that the petitioner is fit for medical education, physical activities, outdoor sports and military training.
13. Appendix to DGAFMS/DG-3A letter No.9450/USG/ Abd/DGAFMS/Dg-3A dated 22 October, 2009, with respect to category of illness of a candidate more particularly woman candidate, has been handed over in Court today. This document clearly shows that in case (a) there is ovarian cyst 06 cm or more in size; (b) complex ovarian of any size; (c) Endometriosis; and (d) Hydrosalpinx, it would disentitle a candidate for admission to armed forces medical college. Neither the petitioner has challenged the appendix, which has laid down the guidelines for declaring a candidate unfit nor there is any occasion for this Court to examine whether this illness would disentitle a candidate or not as this aspect lies specifically in the domain of the Armed Forces Medical College, which has laid down the guidelines, keeping in mind the male and female cadets and the disease in question.
14. The second submission made by counsel for the petitioner that the petitioner should be reexamined by the Medical Board, post her surgery, is also not acceptable in view of paras 71 and 72 of the prospectus which reads as under:

“71. There is no provision for declaring a candidate temporary unfit. Candidates finally declared unfit, will not be considered again and the seat will be offered to the next candidate in waiting list. No seat will be kept pending on account of the candidate wishing to undergo treatment (Medical/Surgical) for a disease/disability for which he/she is made unfit.

72. There is no provision for any medical board being held in civil/private hospital. Fitness of the candidates is decided as per the medical fitness standards and criteria prescribed for commission in the Army Medical Corps and decision of Commandant AFMC will be final in this regard.”

15. On careful examination of the terms of the prospectus as also the fitness certificate produced by counsel for respondent no.1 and the medical examination conducted by respondent, which is fortified by the examination conducted at the instance of the petitioner, it is clear that there was a cyst in the left ovary of the petitioner. Thus, as per the standards laid down by respondent no.1 for female candidates, the petitioner could not have been considered for a seat in respondent no.1 college as at the time of medical examination the Gynaecologist at Armed Forces Medical College had found a solid ovarian mass in the left ovary. Although the petitioner has now been declared fit by a Doctor-Professor at AIIMS but in terms of Para 71 of the prospectus respondent no.1 could not have waited on account of the fact that the petitioner is to undergo treatment or medical surgery for a disease.

16. In the case of *Varun Kumar Agarwal v. Union of India & ors.*, reported at 179 (2011) DLT 24, it has been held that the terms of the prospectus are binding and are strictly construed. Para 14 reads as under:

“14. Presently we shall refer to certain authorities in the field that have dealt with sanctity of a prospectus or brochure and the legal impact when it is changed in the midstream. In *Dr.M. Vannila v. Tamil Nadu Public Services Commission*, 2008 (3) CTC 69, a

Division Bench of the High Court of Madras has opined thus:

19. The principle that the prospectus is binding on all persons concerned has been laid by the Supreme Court in *Punjab Engineering College, Chandigarh v. Sanjay Gulati*, AIR 1983 SC 580. Following the same, a Division Bench of this Court has also observed in *Rathnaswamy, Dr. A. v. Director of Medical Education* (1986 WLR 207) that the rules and norms of the prospectus are to be strictly and solemnly adhered to. The same view is also taken by another Division Bench of this Court in *Nithiyan P. and S.P. Prasanna v. State of Tamil Nadu* (1994 WLR 624). The same principle is reiterated in the case of *Dr.M. Ashiq Nihmathullah v. The Government of Tamil Nadu and Ors.* reported in 2005 WLR 697. It is clear that the prospectus is a piece of information and it is binding on the candidates as well as on the State including the machinery appointed by it for identifying the candidates for selection and admission.”

17. Having regard to the terms of the prospectus and the opinion of the Medical Board, which is in conformity with the Appendix to DGAFMS/DG-3A letter No.9450/USG/ Abd/DGAFMS/Dg-3A dated 22 October, 2009, I find no infirmity in the stand taken by respondent no.1 in declining the admission to the petitioner on her being declared medically unfit.

18. Accordingly, present writ petition is dismissed.

CM 9396/2012.

19. In view of the order passed in the writ petition, application stands dismissed.

G.S.SISTANI, J

AUGUST 17, 2012

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