

44.

\$~

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

+ W.P.(C) 5530/2012, CM 11292/2012 & CM APPL. 11885-11887/2012

% **Judgment dated 14.09.2012**

POOJA MOHAN AND ANR

..... Petitioner

Through : Mr.G.Umapathy and Ms.R.Mekhala,
Adv.

versus

HAMDARD INSTITUTE OF MEDICAL
SCIENCES AND RESEARCH JAMIA
HAMDARD AND ORS

..... Respondents

Through : Mr.Amit Kumar and Mr.Ankit Rajgarhia,
Adv. for MCI.
Mr.V.K. Rao, Sr. Adv. with Ms.Ekta
Sikri, Adv. for respondents no.1 and 2
Mr.J.P. Sengh, Sr. Adv. with Ms.Neelam
Rathore and Ms.Sandhya Kohli, Adv.
for the applicants in CM No.11889/2012

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

CM APPL. 11885/2012

1. This is an application filed by the applicants, Ms.Mansha Grover and Mr.Shreshth Tyagi, for being impleaded as a party to the present proceedings.
2. Notice. Learned counsel for the non-applicants accept notice and have no objection if the present application is allowed and the applicants are impleaded as respondents in the present proceedings.
3. Heard counsel for the parties and for the reasons stated in the application,

the same is allowed. Applicants are impleaded as respondents in the present proceedings. Let an amended memo of parties be filed by the petitioners.

4. Application stands disposed of.

W.P.(C) 5530/2012 and CM 11292/2012 (STAY)

5. With the consent of counsel for the parties the date of 4.10.2012 is cancelled and the matter is taken up today for final hearing and disposal. Since the amended memo of parties is yet to be filed, the newly added respondents shall be referred to as the applicants.

6. Present petition has been filed by petitioner under Article 226 of the Constitution of India seeking the following prayers:

- i) Issue a writ of Certiorari or any other appropriate writ order or direction calling for the records from 1st respondent pertaining to admission for the year 2012-2013 and quash the impugned notification dated 31.08.2012 issued by the 1st Respondent;
- ii) consequently direct the 1st respondent to grant admission to the petitioners who have fulfilled all the requirements as required under the Prospectus and have completed all the formalities for admission: and
- iii) pass such further or other orders as this Hon'ble court may deem fit and proper in the circumstances of the case and thus render justice.

7. It may be noticed that CM 11886/2012 has been filed by applicants, Ms.Mansha Grover and Mr.Shreshth Tyagi, for interim relief; and CM 11887/2012 has been filed by the applicants for clarification of the orders dated 3.9.2012 and 10.9.2012. Arguments have been addressed on these applications as well.

8. As per the petition, the petitioners have completed their Senior Secondary School Examinations from the Central Board of Secondary Education and

applied to respondent no.1 University for MBBS Course. The petitioners submitted their application to respondent no.1 and appeared in the entrance examination held on 15.7.2012. As per the merit list, which was published by respondent no.1 in its website and pasted on the Notice Board, the names of the petitioners were shown at Sl.Nos.144 and 143 respectively. Vide notice dated 17.7.2012 respondent no.1 informed the candidates to appear for the first round of counselling in General Category at Dean's Office from 20.7.2012 to 25.7.2012 between 10.00 a.m. to 2.00 p.m. Candidates were also requested to submit their documents in original at the time of counselling. By another notice dated 26.7.2012 respondent no.1 informed the candidates to appear for the second round of counselling in the General Category at Dean's Office, which was scheduled to be held from 27.7.2012 to 30.7.2012 between 10.00 a.m. to 2.00 p.m. Vide another notice dated 31.7.2012, respondent no.1 informed the candidates to appear for the third round of counselling in the General category at Dean's office, which was scheduled to be held from 1.8.2012 to 4.8.2012 and vide notice dated 4.8.2012 respondent no.1 informed the candidates to appear for the fourth round of counselling in the General Category, which was scheduled to be held from 5.8.2012 to 7.8.2012 between 10.00 a.m. to 2.00 p.m. Vide notice dated 4.8.2012, respondent no.1 also informed the candidates to bring a draft in the sum of Rs.6.00 lakhs payable to the Jamia Hamdard. The petitioners appeared in the Office of the Dean of respondent no.1 on 6.8.2012 and 7.8.2012 and produced all the requisite documents along with demand draft of Rs.6.00 lakhs. The respondent no.1 thereafter directed the petitioners to appear for the medical examination, which was conducted on 7.8.2012. Respondent no.1 informed the petitioners that their names are being shown at Sl.Nos.2 and 3 in the waiting list.

9. It is the case of the petitioners that since 8.8.2012 till 31.8.2012 they have been regularly following up with the college and have also visited the College with regard to the status of their admission. The petitioners were assured by respondent no.1 that in case any seat falls vacant the petitioners would be offered seats in the General category. On 30.8.2012 respondent no.1 informed the petitioners that respondent no.3 MCI had published a notification dated 10.7.2012 and in view of the said notification the earlier waiting list has become redundant and the candidates will be called afresh from rank no.1 including those who never appeared for counselling, when they were called.
10. Learned counsel for the petitioners submits that the petitioners were shocked to learn that respondent no.1 had issued a notification dated 31.8.2012 informing that three seats of the MBBS course – two from General Category and one from the Reserved category – are vacant and desirous candidates were advised to apply in writing for the same on or before 3.9.2012 till 5.00 p.m., which has led to the filing of the present writ petition. Counsel further submits that since the names of the petitioners are at Sl.Nos.2 and 3 in the waiting list there was no occasion for respondent no.1 to publish the notification dated 31.8.2012 and reopen the counselling. Counsel also submits that it is only after the fourth round of counselling a waiting list was prepared; and having regard to the serial numbers of the petitioners in the merit list, the petitioners were asked to produce their original documents, prepare the bank drafts and were also directed to undergo medical examination, which was a pre-requisite before grant of admission. Counsel further contends that the petitioners had prepared their bank drafts and also handed over photocopies of the same to respondent no.1.
11. Learned counsel for the petitioners submits that the notification dated

31.8.2012 issued by respondent no.1 is contrary to the prospectus and the law laid down by the Supreme Court of India in the case of ***Mridul Dhar (Minor) and Anr. v. Union of India and Others***, reported at 2005 (2) SCC 65 and the notifications issued by the MCI from time to time. Learned counsel for the petitioner submits that in the case of ***Mridul Dhar*** (supra) the Apex Court has categorically held that the time schedule for completion of admission to the MBBS Course is of paramount importance and the same should be strictly complied with. Counsel further submits that the notification dated 31.8.2012 issued by respondent no.1 would seriously affect the rights guaranteed to the petitioner under Article 14 of the Constitution of India, which entitles a person to fair treatment and non-discriminatory selection process in admission to higher education. Counsel for the petitioners has relied upon Clause nos.10 and 15 of the Prospectus in the General Information and Guidelines for Admission and Clause 2 under the heading ‘Declaration of Selection List’, which read as under :

“10. A vacancy, created due to the cancellation of admission in a manner mentioned above or due to name removal or any other reason, shall be filled up by the candidate on merit basis and as per rules of the University. However, after closing date of admission no vacancy shall be filled.

15. A candidate, not reporting for admission on the date and time as stipulated, shall forfeit his/her claim for admission and no further correspondence in this regard will be entertained.

DECLARATION OF SELECTION LIST

2. A candidate who does not report for admission on the given date and time as mentioned in the selection lists, will forfeit his/her chance and the offer of admission will be given to the next candidate in the merit.”

12. Learned counsel for the petitioners submits that terms of the prospectus

makes it clear that those students who do not report for admission on the stipulated time and date would forfeit his/her claim for admission. Counsel further submits that in view of the terms of the prospectus, the respondent no.1 had prepared a waiting list and no other candidate can be considered for admission who had forfeited his/her right by not participating in the counselling. In these circumstances, the petitioners pray for quashing of the notification dated 31.8.2012 issued by respondent no.1 and a direction to respondent no.1 to grant admission to the petitioners.

13.Mr.J.P. Sengh, learned senior counsel appearing on behalf of the applicants, Ms.Mansha Grover and Mr.Shreshth Tyagi, submits that the applicants are higher in merit being at Sl.Nos.49 and 73, respectively, as against the ranking of the petitioners, who are at Sl.Nos.156 and 159 respectively. Senior counsel further submits that since the applicants are higher in merit the applicants should be granted admission and the case of the petitioners should be rejected. Mr.Sengh has drawn the attention of the Court to the notification dated 10.7.2012, a copy of which has been filed along with CM 11886/2012, issued by respondent no.2 to all the Medical Colleges bringing to their notice the observations made by the Apex Court in the case of *Priya Gupta v. State of Chhattisgarh & Ors.*, reported at (2012) 7 SCC 433, and the time schedule laid down in the MCI Regulations should be strictly adhered to. Senior counsel has relied upon paras (vi) to (viii) of the communication dated 10.7.2012, which read as under:

“(vi) All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed

selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counseling should be the final counseling, as this Court has already held in the case of *Ms. Neelu Arora and Anr. v. UOI and Ors.* [(2003) 3 SCC 366] and third counseling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

(vii) If any seats remain vacant or are surrendered from All India Quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counseling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

(viii) No college may grant admissions without duly advertising the vacancies available and by publicizing the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is *ex facie* arbitrary and casts the shadow of favouritism.”

14. Mr.J.P. Sengh, learned senior counsel for the applicants, has further relied upon para 2 (f) of the communication dated 10.7.2012, which reads as under:

“f) Upon the expiry of one week after holding of the second counseling, the unfilled seats from all quotas shall be deemed to have been surrendered in favour of the respective States and shall be filled thereafter strictly on the basis of merit obtained in the competitive entrance

15. While relying on the aforesaid observations Mr.J.P. Sengh submits that the candidates in the waiting list cannot be accommodated as admission in the medical course is only to be carried out on the basis of merit and since the applicants are higher in merit than the petitioners in the writ petition

the seats should be granted to the applicants. Mr.J.P. Sengh also submits that the respondent no.1 closed the admission on 7.8.2012 and thereafter uploaded the entire merit list on the internet, which they should have uploaded at the time of First counselling itself. Mr.Sengh further submits that it is only thereafter the applicants came to know that they are placed at nos.49 and 73 in the merit list. Mr.Sengh, also submits that the applicants were called for counselling only after 31.8.2012 and before that they never appeared in the counselling and in fact they were not aware of the merit list prepared by respondent no.1.

16. Learned counsel for the petitioners refutes the submissions made by counsel for the applicants and submits that it is no longer *res integra* that the terms of the prospectus have to be respected and followed. In support of this submission counsel has relied upon a decision rendered by a Division Bench of this court in the Case ***Varun Kumar Agarwal v. Union of India & ors.***, reported at 179 (2011) DLT 24, more particularly para 14, which 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. Mr.V.K.Rao, learned senior counsel for respondents no.1 and 2, submits that receipt of communication dated 10.7.2012 from respondent no.3 prompted the respondents no.1 and 2 to publish notification dated 31.8.2012. Mr.Rao further submits that as per the communication dated 10.7.2012 it was brought to the notice of the Medical Colleges including respondent no.1, wherein the respondent no.3, extracted para 30 of the judgment in the case of *Priya Gupta* (supra) that the vacant seats shall be filled up strictly on merit basis. Mr.Rao also contends that the respondents no.1 and 2 with a view to fill up the three vacant seats issued a notice dated 31.8.2012, in terms of the communication of respondent no.3 dated 10.7.2012, when it was received by the respondents no.1 and 2, and offered admission strictly in terms thereof.
18. Mr.Amit Kumar, learned counsel for respondent no.3 MCI, submits that the stand of the college for issuing the notification of 31.8.2012 is a complete misreading of the observations made by the Supreme Court of India in the case of *Priya Gupta* (supra) in para 30 (vii), which has also been relied upon by learned senior counsel for the applicants. Counsel further submits that the observations made by the Apex Court in the case of *Priya Gupta* (supra) were general in nature and particularly with respect to All India Quota seats. It is further submitted that as per the MCI Regulations only two rounds of counseling are permitted and in case such an interpretation is to be given then the administrative process would never come to an end as all the candidates would stake their claim to improve their chances of seeking admission in a better college or a college of their choice. Counsel further submits that the waiting list and the terms

of the prospectus are to be respected and, thus, respondent no.3 MCI supports the case of the petitioners. Counsel next submits that the direction contained in para (vii) of the communication dated 10.7.2012 does not apply to the private colleges. Counsel next contends that the purpose of issuing the communication dated 10.7.2012 by respondent no.3 was to inform all the medical colleges with respect to the directions issued by the Supreme Court of India and the medical colleges were requested that the directions with regard to time schedule and the Regulations laid down by the MCI should be strictly adhered to and not that a fresh round of counselling should begin.

19. Mr.Amit Kumar, learned counsel for the MCI, also contends that the Apex Court has passed the directions with regard to grant of admission strictly as per merit and after proper advertisement in order to curb the menace of arbitrary filling of seats and to put an end to favouritism.
20. I have heard learned counsel for the parties, considered their rival submission and also gone through the relevant material placed on record including the communication dated 10.7.2012 issued by respondent no.3 MCI and the Notification dated 31.8.2012 issued by respondents no.1 and 2. The basic facts of this case are not in dispute that the petitioners applied for medical course and appeared for the entrance examination held on 15.7.2012. The petitioners were declared successful and their names appeared at Serial Nos.144 and 143 in the list. Vide notice dated 17.7.2012 respondent no.1 informed the candidates to appear for the first round of counselling in General Category at Dean's Office. Candidates were also requested to submit their documents in original at the time of counselling. By notice dated 26.7.2012 respondent no.1 informed the candidates to appear for the second round of counselling in the General Category at Dean's Office. Vide notice dated 31.7.2012, respondent no.1

informed the candidates to appear for the third round of counselling in the General category at Dean's office. Vide notice dated 4.8.2012 respondent no.1 informed the candidates to appear for the fourth round of counselling in the General Category and also informed the candidates to bring a draft in the sum of Rs.6.00 lakhs payable to the Jamia Hamdard. The petitioners appeared in the Office of the Dean of respondent no.1 on 6.8.2012 and 7.8.2012 and produced all the requisite documents along with demand draft of Rs.6.00 lakhs. It is also not in dispute that the original documents were scrutinized and petitioner were directed to appear for medical examination, which was conducted on 7.8.2012. Respondent no.1 informed the petitioners that they stand at Sl.Nos.2 and 3 in the waiting list. Various notices published by the respondent no.1 would show that due publicity was given by the respondent no.1 during the entire admission process and thus fulfilled the directions of the Apex Court that due publicity should be given. The waiting list has been prepared after following the due procedure as per the MCI Guidelines and as per the terms of the prospectus. Thus, there was no occasion for the respondent no.1 to issue notice dated 31.8.2012 and it cannot be said that the respondent no.1 has violated the directions of the Supreme Court of India or that it was necessary to give due publicity all over again or to include candidates, who have not participated in the counselling and lost the right over the seat, as per Clause 15 of the Prospectus in the General Information and Guidelines for Admission and Clause 2 under the heading 'Declaration of Selection List'. The Court can also not lose track of the fact that the applicants, Ms.Mansha Grover and Mr.Shreshth Tyagi, never approached the respondent no.1 for admission or approached this Court, or rendered any satisfactory explanation for not appearing for the counselling. It is also not in dispute that the applicants, Ms.Mansha

Grover and Mr.Shreshth Tyagi, did not appear for any of the round of counselling and that the applicants at any point of time approached the Court seeking a direction that they should be included in the counselling; nor at any stage they explained the reasons for not participating in the counselling except that they were not aware of the same.

21. There is no quarrel to the proposition that all admissions in colleges are strictly to be made as per the merit and the person with lesser rank cannot be granted admission in comparison to a person who is higher in rank. But the short question which comes up for consideration is that in case a person does not appear for any of the counselling, then obviously he/she would lose his/her seat and the next person would be granted admission which has been uniformly followed not in the case of respondent no.1 but in all other Universities including Delhi University. This aspect was made clear in terms of the prospectus, relevant portion of which has been extracted above.
22. The aim and purpose of the directions issued by the Apex Court in the case of *Priya Gupta* (supra) was to ensure that there are no backdoor entries and there are no admissions by favouritism. It is in this light that various directions were issued to streamline the process of admission.
23. In this case, respondent no.1 has granted admission to the candidates as per their merit. Since the applicants, Ms.Mansha Grover and Mr.Shreshth Tyagi, did not participate in the counselling at this stage they cannot gain any benefit over the two wait listed candidates who had diligently participated in all the counselling and found place in the waiting list. Having regard to the submissions made and the stand taken more particularly by learned counsel for respondent no.3 MCI the writ petition is allowed. The petitioners shall be granted admission being at Serial Nos.2 and 3 in the waiting list.

24. Accordingly, petition and application for stay [CM 11292/2012] stand disposed of.

CM APPL. 11886/2012 11887/2012

25. Applications stand dismissed in view of the order passed in the writ petition.

26. DASTI.

G.S.SISTANI, J

SEPTEMBER 14, 2012

msr