

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

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Judgment reserved on: 27.09.2013

Date of Decision: 30.09.2013

+ W.P.(C) 5087/2013 and CMs No.11454/2013 and 11463/2013

ANUREET MALHOTRA & ORS

..... Petitioner

Through: Mr Aman Hingorani, Adv.

versus

UNIVERSITY OF DELHI & ORS

..... Respondent

Through: Mr Mohinder J.S. Rupal, Adv for
DU

Mr Ashish Kumar, Adv for MCI

Ms Zubeda Begum and Sana
Ansari, Adv for R-3

Mr Rajeev Mehra, ASG with Ms
Afshan and Mr Sube Singh,
Director (M.E.) for UOI (R-5)

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

The petitioners before this Court appeared in the National Eligibility Entrance Test (NEET-UG)-2013-2014, conducted by the Central Board of Secondary Education for admission to various medical colleges. The petitioners no.1 and 2 qualified the aforesaid entrance test, securing overall rank of 3265 and 3357 respectively. The respondent-University of Delhi, Faculty of Medical Sciences, came out with a Bulletin of Information for making admissions to the MBBS/BDS courses on the basis of the NEET-UG-2013. Clause 2.1.1 of the Bulletin

provided for filling up 23 seats for MBBS Course by Nominees of Government of India (NGOI) in terms of clause 2.1.6 of the said Bulletin. Out of 23 seats, 17 are in Lady Harding Medical College (LHMC) and the remaining 6 seats are in Maulana Azad Medical College (MAMC). The application under NGOI Category must reach the university on or before 30.9.2013. The candidates belonged to the following categories are entitled to apply for admission under NGOI Quota:

1.	Students belonging to States/Union Territories with no Medical College
2.	Wards of Defence Personnel.
3	Children of Para-military Personnel
	(i) For CRPF/BSF etc. Personnel.
	(ii) For SSB/R & AW/SFF/ARC
4.	Children of India based staff serving in Indian Mission abroad.
5.	For meeting diplomatic/bilateral commitments.
6	Tibetan Refugees.
7.	National Bravery Award
8	Civilians affected by Terrorism

2. The petitioners before this Court are challenging the proposed admissions under NGOI Quota, primarily on the ground that (i) the respondents had given an undertaking to the Hon'ble Supreme Court in *Bhawna Garg and another versus University of Delhi and others* [AIR 2012 SC 3299] that the candidates seeking admission from the academic year 2013-2014 would be required to obtain minimum 50% marks in the NEET Test (ii) since now there are medical colleges set up in almost every State/ UTs except few inaccessible tribal areas, the admission under the category "*Students Belonging To State/ Union Territories With No Medical colleges*" are not justified (iii) since the admission in

all the three colleges affiliated to Delhi University are made on the basis of same entrance test, with the same syllabi, it is irrational to fill 17 out of 200 seats in LHMC under NGOI Quota while filling only 6 seats in MAMC, under the said quota and not filling even a single seat in the university colleges of medical sciences under the said quota, (iv) there is excessive horizontal reservation for wards of defence personnel. The petitioners are accordingly seeking the following reliefs:

(a) Issue an appropriate Writ, Order and Direction, and in particular,

(i) a Direction quashing the Bulletin of Information dated nil for the Session 2013-2014 of the Faculty of Medical Sciences of the Respondent University (Annexure P-3) as being unconstitutional and illegal, insofar as it relates to nomination of candidates for admission to the MBBS course in the Respondent University and its colleges under the Nominees of Government of India/Central Pool Scheme

(ii) A Direction to the Respondents to fill the 23 MBBS seats earmarked for NGOI candidates in the Session 2013-14 in the Respondent Colleges from General category candidates who have declared the NEET-UG-2013;

(iii) A Direction to the respondents to consider the admission of the Petitioner Nos. 1 and 2 to the MBBS course at the Respondent Colleges against such General Category seats in the Session 2013-14

3. In its short affidavit, the respondent no.7-Union of India has stated that pursuant to the decision of the Apex Court in *Bhawna Garg and another (supra)*, the Central Government revised the seats which are allocated under NGOI Quota and the contribution from the Central

Government was decreased to 225 for the academic year 2013-2014 as against 260 in the academic year 2011-2012 and 238 for the academic year 2012-2013. The said contribution will be further brought down to 218 for the academic year 2014-2015. It is further stated in the counter affidavit that neither any new medical college has been established in the beneficiary States/ Union Territories nor is there any increase in the intake capacity of under-graduate medical course in medical colleges already established in any of the beneficiary States/ Union Territories and, therefore, the total number of seats allocated to such State/UTs could not be reduced.

4. A perusal of *Bhawna Garg and another (supra)* would show that the appeals filed before the Apex Court were disposed of with the following directions:

18. In the result, we:

(i) hold that the Bulletin insofar as it reserves 30 seats in the MBBS course in LHMC for NGOI is not ultra vires the Constitution and in so far it exempts candidates to be admitted to these 30 seats from taking the DUMET is not ultra vires the MCI Regulations.

(ii) hold that the provisions of Regulation 5 of the MCI Regulations for selection for admission to the MBBS course solely on the basis of merit have to be followed by the beneficiary States/Union Territories/Ministries /Agencies while selecting the students who apply for the seats reserved or allocated for the concerned State/Union Territory/Ministry/Agency.

(iii) hold that even if merit of the applicants may not have been determined strictly in accordance with Regulation 5 of the MCI Regulations by the beneficiary States/Union Territories/Ministries/Agencies while selecting some of the students for the seats reserved for NGOI for the academic session 2011-2012, we are not inclined to

disturb their admissions in exercise of our powers under Article 142 of the Constitution.

(iv) direct that with effect from the academic year 2012-2013, no admission will be made to any of the seats reserved for NGOI in LHMC, MAMC and UCMS of any student who has failed in the DUMET.

(v) direct that for the academic year 2013-2014 onwards, the candidate applying for seats reserved for NGOI have to obtain the minimum marks in the All India National Eligibility-cum-Entrance Test for admission to the MBBS course as provided in the amended MCI Regulations and the admissions will be made on merit after calling for applicants through advertisement in the newspapers having wide circulation.

(vi) direct that the Central Government will make a review of the government and private medical colleges which have been established in the meanwhile in the States/Union Territories to which seats are being allocated under the quota for NGOI and if they find that additional intake capacity for the MBBS course has been created in these States/Union Territories, the Central Government will take a fresh decision on the number of seats in the MBBS course to be reserved for NGOI for these States with effect from the academic year 2013-2014.

(vii) direct that if there are vacant seats in the quota for NGOI in the LHMC and MAMC for the academic year 2011-2012, the petitioners will be given admission to these vacant seats on the basis of their merit in DUMET 2011-2012 during the academic year 2012-2013.

5. In the course of the judgement, the Apex Court, *inter alia*, observed and held as under:

15. ...Nonetheless, if the candidates who have failed in the DUMET are admitted through a separate source of admission, as in the present case, this may result in lot of

heart burn amongst the students who have cleared the DUMET but have not got the admission to a seat in the MBBS course on account of their lower rank in the merit list. Hence, in future the Delhi University must stipulate in the Bulletin and the Government of India must issue instructions that candidates who opt to take the DUMET but do not qualify will not be eligible for admission to the quota reserved for NGOI. This anomaly, however, has been addressed by the MCI by making amendments to the MCI Regulations and by providing therein that from the academic year 2013-2014 every candidate seeking admission to the MBBS course must obtain a minimum marks of 50% in the National Eligibility-cum-Entrance Test in the MBBS course if he is a general category candidate and must secure a minimum marks of 40% in the National Eligibility-cum-Entrance Test if he is a candidate belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes. From the academic year 2013-2014, therefore, NGOI applying for the reserved seats will have to secure the aforesaid minimum marks in the National Eligibility-cum-Entrance Test for MBBS course

6. It would thus be seen that the anxiety of the Apex Court was that only those who qualify in the entrance test such as DU-NEET/NEET should be eligible for admission under NGOI Quota. The Apex Court took note of the fact that as per MCI Regulations, the candidates seeking admission to the MBBS Course from the academic year 2013-2014 would be required to obtain minimum marks of 50% in case of a general category candidate and 40% in case of candidates belong to SC/ST/OBC and that is why the Apex court, while incorporating directions in para 18 of the judgment directed that for the academic year 2013-2014 onwards only those candidates who obtained minimum marks in NEET Test for admission to the MBBS Course would be eligible for admission against

NGOI Quota, after all the applicants are called through advertisements in newspapers. The Regulations framed by MCI, however, were amended later so as to substitute 50% marks by 50% percentile for the candidates belong to general category and 40% percentile for the candidates belong to SC/ST/OBC categories. By virtue of the said amendment in the Regulations, no one can qualify NEET-UG, 2013 unless he/she secures 50% or higher percentile in the said entrance test. The percentage of marks became absolutely irrelevant in view of the aforesaid amendment to MCI Regulations. Since the emphasis of the Apex Court was to ensure that those who did not qualify the All India Entrance Test are not able to get admission under NGOI Quota and the qualifying criteria for the Entrance Test for admission to the MBBS Course itself underwent a change on account of replacement of marks by percentile, the respondents could not have adopted any other criteria for admission against NGOI Quota. Therefore, admission on the basis of received percentile of the eligible candidates cannot be said to be in contravention of the directions issued by the Apex Court in Bhawna Garg and another (supra).

7. As regards the contention that now there are medical colleges and hospitals in almost every State/UT and, therefore, no admission against the said category is justified, a perusal of the judgment in Bhawna Garg and another would show that this argument was raised before the Apex Court in the said case. The following view taken by the Apex Court in para 17 of the judgment is pertinent in this regard:

“17. We, however, find that in para 31 of the impugned judgment, the High Court has held that even if there was a justification as offered by the Government of India that

many States/Union Territories did not have medical institutions of their own, particularly in North-Eastern States, there has been an overall economic development in the country and a number of State-funded and private medical and other institutions have been established in the meanwhile in the country and, therefore, a re-look by the Government of India at the extent of the seats reserved for the NGOI was necessary. We agree with this view of the High Court in the impugned judgment and we are of the considered opinion that the Central Government should review and find out the number of seats in MBBS course available in the State-funded and the private medical colleges in the States/Union Territories for which seats are being allocated from the quota for NGOI and decide afresh as to how many seats should be allocated to these States/Union Territories.”

The Apex Court in its wisdom did not direct exclusion of the category of “*Students Belonging To State/ Union Territories With No Medical Colleges*” from the purview of the NGOI Quota. It is not as if the Central Government did not re-consider the matter in terms of the decision of the Apex Court. As noted earlier, the Central Government, on review, found that there was no increase in the intake capacity in the under-graduate medical course of any medical college already established in any of the beneficiary State/UT and no new medical college has been established in the beneficiary States/UTs. Therefore, the respondent – Union of India was not required to exclude the aforesaid category out of the categories eligible for admission under NGOI Quota. More importantly, in case no admission or lesser admissions are given to the students belong to States /UTs with no medical college, the petitioners would get no benefit from such an exclusion since in that case seats earmarked for the students belonging to such categories would go to the students belong to other categories eligible for admission under

NGOI Quota. Since the petitioners are not at all eligible for admission under NGOI Quota, against any of the specified categories, they have no right to challenge continuous inclusion of the “*Students Belonging To State/ Union Territories With No Medical colleges*”. The following view taken by the Apex Court in para 14 of the judgment is relevant in this regard:

“14....Unless a candidate who had applied to any of the allocated seats and who had not been selected for nomination comes to Court and places materials before the Court to show that the selection has not been made in accordance with Regulation 5 of the MCI Regulations or that his merit has been by-passed while making the selection, the Court cannot disturb the selection. In this case, the candidates who had applied for the seats allocated to the beneficiary States/Union Territories/Ministries/Agencies have not approached the Court with their grievance that their merit has been bypassed or that the selection has not been made in accordance with Regulation 5 of the MCI Regulations. Instead the appellants who had not applied for the 30 seats reserved in LHMC for the NGOI have come before this Court with their grievance that they ought to have been selected and admitted to some of those 30 seats. The appellants, who have not applied for the 30 seats reserved for the NGOI, could not challenge the selection of the candidates to the 30 seats reserved for the NGOI on the ground that merit as provided in Regulation 5 of the MCI Regulations or as laid down in T.M.A. Pai Foundation has not been considered while making selection for nomination of these reserved seats. In taking this view, we are supported by the judgment of the Constitution Bench of this Court in Kumari Chitra Ghosh (supra), wherein it has been observed:

“.....It seems to us that the appellants do not have any right to challenge the nominations made by the Central

Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. ...”

8. As regards the contention that in view of 5% horizontal reservation for candidates belong to Children, Widows and Wives of Armed and Para-Military Personnel and, inclusion of the aforesaid category under NGOI Quota is illegal, the challenge in my view cannot be examined at the instance of the petitioners since in the event of the aforesaid categories being excluded from NGOI Quota, the seats earmarked for them will go to the other categories under NGOI Quota and will not come to the general candidates who are not at all eligible for admission against NGOI Quota. Since the petitioners admittedly are not eligible to be considered under NGOI Quota, they have no locus standi to challenge the inclusion of the aforesaid category in the said quota.

9. As regards the contention that distribution of seats amongst respondents no.2,3 and 4 colleges, is arbitrary and inequitable, I find no merit in the contention of the petitioners. It is for the Government to decide, taking into consideration various factors such as availability and demand of seats from NGOI in such colleges, to decide what should be the allocation in a particular college. In the absence of the adequate material in this regard, the Court is not in a position to go into the said issue. Moreover, the petitioners have failed to show how higher number of NGOI seats in respondent no.2- Lady Hardinge Medical College coupled with lower number of seats in respondent no.3 – Maulana Azad Medical College and not allocating any seat at all in respondent no.4 – University College of Medical Sciences has prejudicially affected their

prospects for admission to the MBBS Course of University of Delhi. This is not their case that a different distribution of NGOI seats amongst respondent no.2 to 4 colleges will brighten their prospects for admission in Delhi University. Therefore, they would have no locus standi to challenge the distribution of seats under NGOI Quota as noted hereinabove amongst the three colleges.

10. For the reasons stated hereinabove, I find no merit in the petition and the same is hereby dismissed. There shall be no orders as to costs.

SEPTEMBER 30, 2013/*rd*

V.K. JAIN, J.