

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

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Date of Decision: 30.09.2013

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W.P.(C) 6278 of 2013 & CM Nos.13725-26/2013

BHAWANA KUMARI MALLICK & ANR.

..... Petitioners

Through: Mr. Saket Sikri, Ms. Ekta K. Sikri, Mr.  
Sudeep Dey and Mr. Vikalp Mudgal,  
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Neeraj Chaudhari, CGSC, Mr.  
Ravjyot Singh with Mr. Alok Dixit,  
Section Officer for R-1 and 5  
Mr. Mohinder J.S. Rupal, Adv. for R-3-  
University of Delhi  
Mr. Ashish Kumar, Adv. for MCI

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

**JUDGMENT**

V.K.JAIN, J. (ORAL)

The petitioners before this Court are the citizens of Nepal, who qualified COMPEX-NEPAL, 2013 EXAMINATION conducted for selection of Nepalese students for admission in Indian Educational Institutions and who have been nominated by respondent no.1 – Union of India, for admission to MBBS course of Lady Harding Medical College (LHMC) of Delhi University, against Nominees of Government of India (NGOI) Quota. A communication dated 18.9.2013 in this regard

was sent to the Principal of the aforesaid medical college requesting him to confirm their eligibility and admission. It was also stated in the said communication that if for any reason the nominees are found to be ineligible for admission, the position may be brought to the notice of the Ministry of External Affairs so that substitute candidates can be nominated to fill up the vacancies. Vide OM dated 19.9.2013, the Ministry of Health and Family Welfare informed the Ministry of External Affairs that the provision of admitting any Nepalese-UG-PG is not applicable to such nominees. The papers of the petitioners were forwarded by the medical college to the Faculty of Medical Sciences, University of Delhi for confirming their eligibility for admission to the MBBS course.

2. Vide communication dated 25.9.2013 sent to Ministry of External Affairs, the respondent- University of Delhi informed the government that the candidates belonging to NGOI Quota are required to obtain the minimum qualifying marks in all India National-cum-Entrance Test for admission to MBBS course, in terms of the order of the Hon'ble Supreme Court dated 5.9.2012 in Bhawna Garg & Anr.versus University of Delhi & Ors. and Kopal Rohtagi versus University of Delhi & Ors. S.P.P Nos.8408-8409 of 2012 and SLP (C) No.13194 of 2012 and accordingly the said requirement was included in the Bulletin of Information for admission to the MBBS/BDS course of the University of Delhi. It was stated in the said letter that in the order of the Apex Court, the petitioners cannot be given admission to the MBBS course during the session 2013-2014. Being aggrieved from the said communication, the petitioners are before this Court seeking the following reliefs:

- (i) Issue a writ of mandamus or any other appropriate writ(s), order(s) and directions declaring that the denial of admission to the petitioners in the MBBS course in the respondent no.4 medical college under the Faculty of Medical Sciences, University of Delhi for the academic session 2013-2014 to be bad in law despite having been declared as selected candidates in view of the order/ letter dated 19.9.2013 bearing number CP/233/09/2013 issued by respondent no.1; and/ or
- (ii) Issue a writ of mandamus or any other appropriate writ(s), order(s) and directions to admit the petitioners in the MBBS course in the respondent no.4 Medical College under the Faculty of Medical Sciences, University of Delhi for the academic session 2013-2014; and/ or
- (iii) Issue a writ of certiorari/ or appropriate writ(s), order(s) and directions thereby quash the impugned communication dated 25.9.2013 issued by the respondent no.3 – University of Delhi.

3. The learned counsel for the respondent – University of Delhi, who appear on advance notice states that in view of the decision of the Hon'ble Supreme Court in *Bhawna Garg (supra)*, the petitioners are not eligible for admission to the MBBS Course. The learned counsel appearing for the Union of India, however, states that since NEET-UG, 2013 was quashed by the Hon'ble Supreme Court in TC(C) 98 of 2012,

Christian Medical College, Vellore & Others, the petitioners are eligible for the admission to the MBBS Course of Delhi University.

4. In Bhawna Garg and another versus University of Delhi and others [AiR 2012 SC 3299], the Hon'ble Supreme Court in para 97 of the judgment, *inter alia*, observed 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.”

While disposing of the appeals, the Apex Court, *inter alia*, directed as under:

18. In the result, we:

(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.

(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.

5. It would thus be seen that only those who qualified in the national entrance test such as DU-MET/NEET are eligible for admission under NGOI Quota. The requirement to obtain minimum 50% marks in case of a general category candidate and 40% in case of a SC/ST/OBC candidate was substituted by the MCI by the requirement to obtain minimum 50 percentile and 40 percentile respectively. Thus, in view of the undertaking given to the Apex Court and the directives given by the said Court while disposing of the appeals, the respondent – University of Delhi cannot make any admission to its MBBS course unless the person nominated by NGOI Quota has appeared in All India Entrance Test held for making admission to the MBBS course and duly qualified in the said entrance test, which for the academic year 2013-2014 was NEET-UG-2013. The communication dated 18.9.2012 having been issued in violation of the specific directions of the Apex Court cannot be given effect to and the petitioners who admittedly did not appear in the said entrance test have rightly been held to be ineligible for the said

admission. No exception, therefore, can be taken to the view taken by the respondent- University of Delhi

6. In Christian Medical College (supra), the Apex Court while allowing the transfer cases and the writ petitions and quashing the notification issued by the Medical Council of India on 21.12.2010 and the notification dated 31.5.2012 by Dental Council of India, held that this would not affect the action so far taken under the amended Regulation including admission already given on the basis of NEET conducted by MCI, Dental Council of India and other medical institutions and the same shall be valid for other purposes.

It is not in dispute that the admissions for the MBBS Course for the academic session 2013-2014 have been made on the basis of the rank obtained in NEET-UG, 2013. The petitioners were, therefore, required to appear and qualify in NEET-UG-2013 before they could be considered for admission under NGOI Quota. In any case, no other All India Entrance Test was held for admission to MBBS course. The respondents, in any case, cannot make admission under NGOI Quota except from amongst the candidates who appeared in one or the other All India Entrance Test for making such admissions in terms of the Regulations framed by Medical Council of India.

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.