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

+ WP(C) 7194/2012

% **Judgment dated 01 May, 2013**

JIBIN VIJAY

..... Petitioner

Through : Mr.Aditya Sharma, Advocate.

versus

MAULANA AZAD MEDICAL COLLEGE & ORS. Respondents

Through : Ms.Zubeda Begum and Ms.Sana Ansari,
Advocates for R-1.

Mr.Mohinder J.S.Rupal, Advocate for R-2.

Mr.Amrit Pal Singh, Advocate for R-3 to R-5.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. With the consent of the parties the writ petition is taken up for final hearing and disposal.
2. The petitioner after qualifying the All India Pre Medical Test (AIPMT) preliminary examination also qualified the AIPMT main examination held on 13th May 2012. Petitioner was ranked 10,832 at the all India level merit list.
3. Petitioner appeared for the Common Entrance Test (CET) conducted by the I.P.University, Delhi and secured a rank of 960 at the All India level. Petitioner is stated to be pursuing MBBS course as a first year student with a private medical college. After the result was declared, the father of the petitioner filed an application for admission in the MBBS course under the Cabinet Secretariat (ARC) quota for the petitioner in the academic session 2012-2013 as 4 seats are allotted to different

departments of the Cabinet Secretariat. It has been further stated that the respondent No.4 on 17th August 2012 issued a statement indicating the allotment of MBBS/BDS seats from the Central Pool quota to the beneficiary Central Ministries/Departments during 2012-2013 session. On 13th September, 2012 the Joint Deputy Director issued a letter on behalf of respondent No.5 asking the father of the petitioner as to whether the petitioner had cleared the entrance test or not. In response to this letter respondent No.5 was informed that petitioner had qualified the AIPMT preliminary and main examination. On 4th October 2012, one Aditya Behera, whose father is also an employee of the Cabinet Secretariat expressed his unwillingness to seek admission in the first year MBBS course by 30th September 2012 with respondent No.1 college. It is the case of the petitioner that Aditya Behera failed to take admission and the seat was offered to the petitioner as per merit and the waiting list. Counsel submits that petitioner is unaware as to why and on what basis the first preference was given to Aditya Behera by respondent No.5 and also whether Aditya Behera qualified the AIPMT examination or not.

4. On 15th October, 2012 the father of the petitioner received a letter dated 12th October 2012 issued on behalf of respondent No.3. The father of the petitioner immediately rushed to respondent No.1 college with the said letter and met the Dean for admission of the petitioner in the MBBS course for the academic session 2012-2013. As per the confirmation letter dated 12th October 2012 petitioner was informed that admission cannot be granted to the petitioner in the MBBS course as the last date for admission was 30th September 2012 as per the judgment of the Hon'ble Supreme Court. The Dean was informed that the petitioner had received a letter dated 12th October 2012 only on 15th October 2012 i.e. much after 30th September 2012 and thus the petitioner should not be made to suffer due

to irregularity on the part of the respondents.

5. It is contended by counsel for the petitioner that petitioner is a meritorious candidate and he could not have been denied admission when a seat under the ARC quota was available. It is submitted that once the other candidates, namely, Aditya Behera and R.Aishwarya expressed their unwillingness to take admission in MBBS course there was no reason as to why the petitioner has been declined admission. Counsel contends that grave and irreparable prejudice would be caused to the rights of the petitioner. In these circumstances, the petitioner has prayed that he may be granted admission at this stage.
6. Counter affidavit has been filed by the college wherein it has been stated that admission to various courses including MBBS is made by the University of Delhi through the AIPMT examination, and the maintenance of reservation roster, allotment of category-wise seats to the eligible students is purely within the ambit of Delhi University. It is submitted that it is settled law that no admissions can be granted to the MBBS course after 30th September 2012. The college only caters to and imparts teaching to the students admitted by the Delhi University and thus the college has no role to play in the admission process in the MBBS course. It is further contended that the nomination of the petitioner was forwarded to the University of Delhi for confirmation and necessary direction vide office letter dated 16th October 2012. In reply to the aforesaid letter the University of Delhi vide letter dated 8th November 2012 conveyed its decision to the college. It is submitted that the nomination dated 12th October 2012 was received which was forwarded to the Delhi University on 15th October 2012. However, the Delhi University informed the college that based on MCI regulations, directives of the Hon'ble Supreme Court and High Court and ordinances of the

University, the admission stood closed on 30th September, 2012 and since the petitioner had been nominated by the Government on 12th October 2012 he cannot be considered for admission. In an additional affidavit filed, the College has categorically stated that in the academic year 2012-2013, the nomination of 7 students was received under the Central Pool scheme for admission to the MBBS course in college. On receipt of nominations the same was forwarded to University of Delhi for confirmation. Name of Aditya Behera was mentioned at serial No.6 of the list. However, he did not report on or before the stipulated date i.e. 30th September, 2012 and the Delhi University was apprised of the same. It is further stated that the bulletin of information for undergraduate degree courses issued by the Delhi University (Faculty of Medical Sciences) mentions the date of close of admission as 30th September 2012 thus it is submitted that no relief can be granted to the petitioner.

7. The respondent No.4 has filed a short affidavit which does not deal with the factual aspect of the matter. However, as per this short affidavit in view of the law laid down by the Supreme Court no relief can be granted to the petitioner as he seeks admission after the cut off date i.e. 30th September, 2012.
8. In the reply filed by respondent No.3 and 5, it has been stated that a seat was offered to Aditya Behera on the basis of his merit for admission to MBBS course vide letter dated 21.9.2012. It is further stated that it is only on 4th October, 2012 after expiry of last date for admission i.e. 30.9.2012, father of Aditya Behera informed that after seeing the condition of the hostel which is in a pathetic and dilapidated condition his son has refused to accept the admission. It is submitted that by the time this communication was received the last date for admissions was over and thus the respondents No.3 and 5 cannot be faulted. It is further submitted

that Ministry of Health had selected Aditya Behera for admission in the MBBS course under the Central Pool quota of Cabinet Secretariat and accordingly a letter was issued to him on 21st September 2012 with a direction to report to the college positively by 30th September 2012. Since Aditya Behera did not report the next candidate, which is the petitioner herein, was informed by letter of 10.10.2012.

9. Mr.Rupal, learned counsel appearing for the University submits that as per the judgments passed by the Apex Court in Mridul Dhar v. Union of India reported as (2005) 2 SCC 65 and Priya Gupta v. State of Chattisgarh & Ors. reported as (2012) 7 SCC 433, it has been held that admission cannot be carried further than 30th September 2012 hence admission was declined to the petitioner. Mr.Rupal submits that it is not in dispute that the petitioner was nominated by the Government on 12th October 2012 which is beyond 30th September 2012 under the Government of India nominee quota. It is submitted that admission cannot be granted to the petitioner on account of various directions issued by the Courts, MCI and the bulletin of information which categorically states that admissions would be closed by 30th September 2012.
10. I have heard learned counsel for the parties and considered their rival submissions. The contention of the counsel for the petitioner is that since the petitioner was eligible for admission and the earlier candidate nominated by the ARC did not seek admission, the petitioner should be granted admission as he cannot be made to suffer on account of the faults of the respondents. The stand of the college is that the college has no role to play in the grant of admissions. The stand of the University is that based on the regulations of the MCI, decisions of the Supreme Court and the High Court and the bulletin of information, no admission can be granted to any student beyond 30th September 2012. It is also the stand of

the respondents that since the petitioner did not approach the college or the University prior to the cut off date, he cannot be granted admission nor can the university be faulted for the same. The respondents No.3 and 5 have failed to accept any lapse on their part. According to respondents No.3 and 5, name of Aditya Behera was forwarded. Aditya Behera was informed that he should seek admission before 30th September 2012 and since he declined admission and informed respondents No.3 and 5 only on 4th October 2012, the respondents No.3 and 5 immediately informed the petitioner who was the next candidate in line.

11. I find force in the submissions of counsel for the college and the University that since the list of eligible candidate to be nominated under the ARC quota lies purely in the domain of respondent No.3 and 5, neither the college nor the university are at fault for declining admission to the petitioner as he approached the university beyond the cut off date which is 30th September 2012. It would be useful to reproduce the observations of the Supreme Court in Mridul Dhar's case (supra):-

“Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges, new or old, students, Boards, universities, examining authorities etc. are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admission; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether Stare or Management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.....”

12. It would also be useful to reproduce the observations made by the Supreme Court in Priya Gupta's case (supra):-

“37. What is of greater significance is that this Court has not so far considered or stated as a principle, what consequences should follow

where the Central Government, or the State Government or Medical Council of India or the College itself, with impunity, violate the time schedule, Regulations and order of merit to give admission to students in an arbitrary and nepotistic manner. Also, we must consider what preventive steps can be taken to avoid such repetitive and intentional defaults, as well as undue exploitation of the class of students. Admissions based on favouritism necessarily breach the rule of merit on the one hand, while on the other, they create frustration in the minds of the students who have attained higher rank in the competitive entrance examinations, but have not been admitted. We propose to specifically address this concern in this judgment.

38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.

39. Now, let us examine the adverse consequences of non-adherence to the prescribed schedules.

40. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be

so blatantly compromised. This was also affirmed by this Court in the case of *Muskan Dogra and Ors. v. State of Punjab and Ors.* (2005) 9 SCC 186.

(2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses etc., encourage lowering of the standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit.

42. The Medical and Dental Councils of India, the Governments and the Universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time frame declared by this Court and the Regulations. *It has come to the notice of this Court that despite warnings having been issued by this Court and despite the*

observations made by this Court, that default and non adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court. In the case of Arvind Kumar Kankane v. State of U.P. and Ors. (2001) 8 SCC 355, the Court observed that the process of counseling cannot go on continuously for a long period and the resultant chain reaction should be checked. Some seats may have to be left vacant per compulsion, but, the process of admission should stand the test of rationality. There should be exceptional and fortuitous circumstances to justify late admission. In the case of *Chhavi Mehrotra (Miss) v. DGHS* (1994) 2 SCC 370, the Court was even compelled to issue notice of contempt to the Director General of Health Services as to why proceedings under the Contempt of Courts Act, 1971 be not taken for non-compliance with the scheme framed by the Court for consideration of applications for transfer of students between colleges and they be not punished accordingly. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the concerned authorities, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

29. The maxim *Boni judicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country.

30. Thus, the need of the hour is that binding dicta be prescribed and statutory Regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above-stated principles. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary

to ameliorate the process of selection. Thus, we issue the following directions

(Emphasis supplied)

13. The facts of the present case are to be considered on the touchstone of the law laid down by the Supreme Court. No relief can be granted to the petitioner in the facts of the present case as the name of the petitioner was nominated by the ARC after the cut off date i.e. 30th September 2012. Counsel for the petitioner has placed reliance on Bhawna Garg v. University of Delhi & Ors. reported at 2012 (8) SCALE 504 in support of his plea that admission to the MBBS course must be solely on the basis of merit. Reliance is also placed on Asha v. Pt. B.D.Sharma University of Health Sciences & Ors. (2012) reported at 7 SCC 389 in support of his plea that in deserving cases admission can be granted after the cut off date. In my view both the judgments relied upon by counsel for the petitioner are not applicable to the facts of the present case. In Asha's case (supra) the Supreme Court has carved out an exception. While the petitioner may not be at fault for the delay in his name being forwarded but since the petitioner was aware that he was eligible under the ARC quota, the petitioner should have been vigilant and should have approached the University and the College before 30th September 2012 to ascertain whether Aditya Behera had filled the seat or not. The case of the petitioner does not fall in the rare exception which has been carved out by the Supreme Court of India. The respondent No.3 and 5 as well as the Delhi University are directed to ensure that a procedure is adopted so that if the first person nominated does not accept the admission within the time prescribed, the next person in line should be offered admission so that neither the seat is wasted nor the second candidate loses the opportunity or is deprived of admission. A little care and caution on behalf of the respondents could have averted this

situation where Aditya Behera did not accept the seat and the petitioner was not informed of the same before 30th September 2012.

14. With these observations the writ petition is dismissed.

G.S.SISTANI, J.

MAY 01, 2013

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