

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

+ **LPA 922/2013**

**TUSHAR SHARMA**

..... Appellant

Through:

Mr. K.C. Mittal with Ms. Ruchika  
Mittal, Advocates

versus

**UNION OF INDIA & ORS.**

..... Respondents

Through:

Mr. B.V. Niren, Advocate for R-1.  
Mr. Atul Kumar, Advocate for R-2.  
Mr. Harsh Kaushik, Advocate for  
R-3.

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Reserved on : 6<sup>th</sup> December, 2013

Date of Decision: 16<sup>th</sup> December, 2013

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

**MANMOHAN, J:**

**CM APPL. 19354/2013 in LPA 922/2013**

Allowed, subject to just exceptions.

**LPA 922/2013**

1. Present Letters Patent Appeal has been filed challenging the judgment and order dated 22<sup>nd</sup> November, 2013 passed by learned Single Judge whereby appellant's writ petition being W.P.(C) 6268/2011 was dismissed. The relevant portion of the impugned order is reproduced hereinbelow:-

"6. The All India Quota which was fixed at 30% of the total seats in Pradeep Jain (supra), was later on changed to 15% of the total seats in Dr. Dinesh Kumar and others versus Motilal Nehru Medical College, Allahabad and others [(1986) 3 SCC 727] (hereinafter referred to as Dinesh Kumar-II). What is important to note here is that the All India Quota fixed at 30% of the unreserved seats in Pradeep Jain (supra) and later changed to 15% of the total seats in Dr.Dinesh Kumar –II (supra) was not the outer limit for such quota, but was rather the minimum quota for admission on All India basis..... Therefore, if concerned government so decides, it would be eminently justified in increasing the All India Quota to more than 15%. It appears that the petitioner is under the misconception that the All India Quota fixed by the Hon''ble Supreme Court in Dr. Pradeep Jain(supra) and Dinesh Kumar-II (supra) was the maximum quota. In fact, it was the minimum quota for admission on All India basis.

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8. Moreover, as noted earlier, in the Prospectus/ Admission Brochure issued by GGSIPU, it was clearly stated that in VMCC, the allocation of seats would be 39 to All India region, 80 to Delhi region, 23 to All India Quota and 8 to Central Pool of Allocation. The petitioner, instead of challenging the aforesaid allocation contained in the prospectus, participated in the admission process including the counseling conducted by GGSIPU in terms of the aforesaid stipulations contained in the prospectus/ admission brochure. Having taken a chance to get admission on the basis of aforesaid allocation notified in the Prospectus/ Admission Brochure issued by GGSIPU, the petitioner is now stopped from challenging the aforesaid allocation. This is yet another reason for which the petition must necessarily fail.

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10.....It is only the admission against seats allocated to Delhi region that the candidates who had passed the qualifying examination from a school/ college located in Delhi alone were to be considered. It is only logical to say that if the candidates passing out from any school/ college in the country are eligible for admission against the seats allocated to the All India Region, the OBCs list of Delhi Government cannot be applied for the purpose of determining the eligibility of OBCs candidates and it is only the OBCs list issued by the Central Government which can be used for the purpose. The OBC list issued by Delhi Government can be used only for making admission against the seats allocated to Delhi region. I, therefore, find no merit in the

*aforesaid contention of the petitioner."*

2. Mr. K.C. Mittal, learned counsel for appellant contended that learned Single Judge failed to appreciate that only fifteen percent of the total number of MBBS seats in Vardhman Medical College could have been allocated to All India quota. According to him, the remaining eighty-five percent seats had to be allocated to the State quota out of which twenty-seven percent seats had to be allocated to Delhi OBC students. In support of his contention, Mr. Mittal relied upon Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitative Fee and Other Measures to Ensure Equity and Excellence) Act, 2007 [for short "Act, 2007"]. Section 12 (1) of the said Act reads as under:-

*"12(1) In every institution, except the minority institution*

- (a) subject to the provisions of this Act, ten percent of the total seats in an unaided institution shall be allocated as management seats;*
- (b) eighty five percent of the total seats, except the management seats, shall be allocated for Delhi students and the remaining fifteen percent seats for the outside Delhi students or such other allocation as the Government may by notification in the official Gazette, direct;*
- (c) supernumerary seats for non-resident Indians and any other category shall be as may be prescribed."*

3. According to Mr. Mittal, Vardhman Medical College had illegally curtailed the OBC quota by creating sub-classes such as All India region and Delhi region out of remaining eighty-five percent seats. Mr. Mittal pointed out that respondents had, in fact, illegally distributed 150 MBBS seats in Vardhman Medical College into the following four categories:-

- "(I) 15% i.e. 22 seats - on account of All India quota in terms of the Apex Court decision.
- (II) 10 seats - on account of Central Pool allocation which in the present year was confined to 6 seats.
- (III) 41 seats - again to All India Region in addition to the 15% All India quota.
- (IV) Only 81 seats for Delhi Region in place of 128 seats (85% State quota)"

4. Consequently, according to Mr. Mittal, twenty-seven percent reservation had been confined to 81 seats instead of 128 seats.

5. Mr. Mittal submitted that since the aforesaid seat division/distribution had not been followed by respondent no. 1 in Vardhman Medical College, it had led to deprivation of seats to the Delhi students in general and Delhi OBC students, such as appellant in particular. In support of his submission, Mr. Mittal relied upon the Division Bench's judgment in ***Vished through Legal Guardian Sushil Kumar Vs. Directorate of Higher Education and Ors., 2012 (131) DRJ 604 (DB)*** which in turn referred to ***Dr. Parag Gupta Vs. University of Delhi and Others, (2000) 5 SCC 684*** wherein it has been held as under:-

*"8. There are 32 States and Union Territories which provide for medical education. At the graduate level (M.B.B.S.), except Jammu & Kashmir and Andhra Pradesh, all the States and Union Territories pool 15% seats to be filled from common entrance examination on all-India basis, rest of the 85% of seats are filled by holding entrance examination at the State level. In 15% seats filled on All-India basis students from one State have to migrate to other States allotted to them for pursuing MBBS course....."*

6. On the other hand, Mr. Harsh Kaushik, learned counsel for respondent no. 3 stated that the appellant had earlier filed a writ petition being W.P.(C)

5901/2013 before this Court challenging the admission made in the OBC category on incorrect grounds and, therefore, the same had been withdrawn on 27<sup>th</sup> September, 2013. According to him, though the appellant was fully aware of the impugned seat matrix since March, 2013, yet he had chosen to participate in the admission process and had now challenged the same as he had not been able to secure admission. Consequently, according to him, the challenge by the appellant was miserably delayed. He pointed out that the entire admission process had concluded on 30<sup>th</sup> September, 2013. As according to him, the appellant himself was unable to explain the delay as well as voluntary participation by him in the admission process, the present appeal should not be entertained.

7. Having heard learned counsel for the parties, this Court is of the view that it is for the appellant to demonstrate violation of a right or policy in not allocating eighty-five percent seats in Vardhman Medical College to Delhi region. The appellant in the present case has failed to show any policy or judgment that mandates that eighty-five percent seats have to be allocated to the State of Delhi in an institute which is owned, funded and controlled by the Central Government.

8. The Act, 2007 relied upon by learned counsel for the appellant is clearly inapplicable to Vardhman Medical College as the said Act, 2007 applies only to unaided institutions. Section 2 of the Act, 2007 which deals with its applicability reads as under:-

*"2. The provisions of this Act shall apply to-*

*(a) Unaided institutions affiliated to a University imparting education in degree, diploma and certificate courses."*

9. The Supreme Court in *Vished through Legal Guardian Sushil Kumar* (supra) and *Dr. Parag Gupta* (supra) only reaffirmed the statement of law that if a college/university were to give university or domicile-wise preference upto seventy to eighty percent, it would be legal and valid. However, the aforesaid judgments do not mandate that eighty-five percent seats in every medical college have to be reserved for its own university students or students belonging to that State.

10. In our opinion, the appellant has failed to demonstrate any bar which prohibits the Central Government from distributing the seats in a particular manner. We are of the view that respondent in accordance with its wisdom and its policy has devised the seat matrix which cannot be said to be illegal or arbitrary.

11. The rationale of fixing minimum fifteen percent All India quota by the Supreme Court in the judgment referred by learned Single Judge was to ensure that at least fifteen percent of the total seats are filled on the basis of merits and reservation based on residential requirement does not cross seventy percent of the total seats. The Supreme Court in its judgment repeatedly emphasised that an endeavour should be made to reduce the domicile quota to the minimum.

12. The appellant's argument that maximum limit for All India quota is fifteen percent runs contrary to the very basis on which All India quota was culled out. The appellant has failed to appreciate that All India quota though termed as 'quota' has actually been devised to ensure that merit, as opposed to reservation of different kinds, prevails.

13. The argument that respondent no. 1 had substantially curtailed the OBC quota by creating a sub-classification of All India region and Delhi

region, is contrary to facts. This Court is of the view that twenty-seven percent seats have been allocated to the OBC category both in the All India category and Delhi category. In fact, the appellant's grievance is that ten OBC seats in Central quota should have been allocated to Delhi OBC students. Consequently, even according to the appellant, the reservation policy of twenty-seven percent has been strictly adhered to by respondent no. 1.

14. We are also in agreement with the submission of learned counsel for respondent no. 3 that the appellant is estopped from challenging the seat matrix in the present writ petition as he had chosen to participate in the admission process despite being fully aware of the allocation of seats. It is pertinent to mention that seat matrix which is impugned in the present proceeding was a part of the Prospectus which had been issued for the Session 2013-14 to all the students in March, 2013. Consequently, appellant being fully aware about the seat matrix cannot now be permitted to challenge the same just because he had failed to secure admission based on his rank.

15. Accordingly, present appeal and application being bereft of merit are dismissed but with no order as to costs.

**MANMOHAN, J**

**CHIEF JUSTICE**

**DECEMBER 16, 2013**

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