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

+ W.P.(C) 6251/2014 & CM APPLs. 15101-15102/2014, 15744/2014

GABY LALMUANPUUI & ORS Petitioners

Through Ms. Indu Malhotra, Senior Advocate
with Mr. Vikram Mehta, Ms. Suman
Yadav and Mr. Gaurang Panandiker,
Advocates

versus

UNIVERSITY OF DELHI, FACULTY OF
MEDICAL SCIENCES & ORS Respondents

Through Mr. Mohinder J.S. Rupal with
Ms. Yanmi Phazang, Advocates for
R-1/DU.
Ms. Zubeda Begum, Standing
Counsel (GNCTD) for R-3/MAMC.
Mr. Manish Mohan, CGSC with
Ms. Puja Sarkar, Advocate for R-
4/UOI.
Mr. T. Singhdev with Ms. Manpreet
Kaur and Mr. Manan Khera,
Advocates for R-5/MCI.

WITH

+ W.P.(C) 6257/2014 & CM APPLs. 15125-15126/2014, 15717/2014

SHERRY ARBELL D MARAK & ANR Petitioners

Through Mr. Nidhesh Gupta, Senior Advocate
with Ms. R.S. Bobde and
Ms. Mrinalini Sen Gupta, Advocates

versus

UNIVERSITY OF DELHI & ORS Respondents

Through Mr. Mohinder J.S. Rupal with
Ms. Yanmi Phazang, Advocates for
R-1/DU.

Mr. Anil Soni, CGSC with
Ms. Saakshi Agarwal, Advocate for
R-3/UOI.

Mr. T. Singhdev with Ms. Manpreet
Kaur and Mr. Manan Khera,
Advocates for R-4/MCI.

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Date of Decision : 29th September, 2014

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petitions have been filed challenging the condition imposed by respondent no. 1-Delhi University that students in the Nominee of Government of India (for short “NGOI”) quota must also qualify in the All India Pre-Medical Entrance Test, 2014 (for short “AIPMT, 2014”) to be eligible for admission to the MBBS Course in the Lady Hardinge Medical College (LHMC) and Maulana Azad Medical College (MAMC). Petitioners also seek a direction to respondent-Ministry to admit the petitioners to MBBS course under NGOI quota in LHMC/MAMC for Academic Year 2014-2015.

2. This Court on 17th September, 2014 had issued notices to respondents and had permitted them to file their counter-affidavits within a week. However, no counter-affidavit has been filed till date. As the last date for admission is 30th September, 2014, this Court has no other option but to proceed ahead with the hearing.

3. The relevant facts of the present cases are that petitioners are girl students belonging to the North-Eastern States of Mizoram, Nagaland, Meghalaya and Sikkim, who have been allotted seats in the aforesaid two Colleges under NGOI quota. It is stated that petitioners are toppers in the entrance examination conducted by the respective State Governments.

4. In the writ petitions, it is averred that as a policy decision, the Central Government reserves certain number of seats in Government colleges all over the country, which is referred to as the 'Central Pool Scheme' for NGOI in order to meet the requirement of States/Union Territories which do not have medical/dental colleges of their own, most of which are in the North-Eastern Region as well as for some Central Government ministries/agencies and to fulfil some national and international obligations.

5. Learned senior counsel for petitioners state that in accordance with the Office Memorandum dated 27th February, 2014 issued by the Central Government, it was specifically stipulated that for the Academic Year 2014-15 the students would be recommended by the beneficiary States/Union Territories on the basis of the marks obtained by the students in the entrance test conducted by the beneficiary States. They point out that the aforesaid Memorandum was reiterated by a further Office Memorandum dated 2nd September, 2014. The relevant portion of the aforesaid Memorandums are reproduced hereinbelow:-

A) Office Memorandum dated 27th February, 2014:-

"2. The matter has been considered in this Ministry in light of judgment/directions passed by Apex Court in various cases, it has been decided with the approval of competent authority that for this academic year i.e. 2014-15, the selection of students will be made by the beneficiary State/UTs/Govt. Departments on the basis of marks obtained by the students in the Entrance Tests

conducted by the beneficiary State/UT/Govt. Department. If the beneficiary State/UT/Govt. Department is not conducting any examination, the selection will be made on the basis of marks, obtained by the students in All India Pre-Medical Entrance Test (AIPMT) conducted by CBSE. In any circumstances, the selection of students will not be made merely on academic merit of 10+2 marks.”

B) Office Memorandum dated 2nd September, 2014:-

“2. The admission of candidates to various medical/dental colleges will depend on their fulfilling the eligibility criteria and other conditions of admission as laid down by the concerned State Govt. which may be ascertained from the concerned colleges.

3. The selection of eligible candidates will be made as per clarification conveyed vide this Ministry’s O.M. of even number dated 27.2.2014 (copy enclosed). The copy of the merit list together with copies of allotment letters may be sent to this Ministry.”

6. Learned senior counsel for petitioners further state that 15% of the MBBS/BDS seats of the country are reserved for the All India Category students, whereas 85% seats are filled under the State quota. They contend that AIPMT examination is for filling up of All India quota seats, and the State quota seats are filled in accordance with the State entrance examinations conducted by the respective States.

7. According to them, petitioners-students who are permanent residents of the North-Eastern States claiming under the NGOI quota, were never informed that they were also required to qualify the AIPMT examination. They point out that Delhi University had issued its Information Bulletin on 2nd June, 2014 wherein a condition was stipulated for the first time that in order to be eligible for admission to MBBS/BDS course under NGOI quota,

it shall be necessary for a General candidate to obtain a minimum of 50% marks in AIPMT, 2014. The relevant portion of the Bulletin of Information is reproduced hereinbelow:-

"D. Govt. of India Nomination (Central Pool Scheme):

(a) In order to be eligible for admission to MBBS/BDS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% marks in AIPMT-2014 held for the said academic year. However, in respect of candidates belonging to Scheduled Caste, Scheduled Tribe, Other Backward Classes, the minimum marks shall be at 40%."

8. Learned senior counsel for petitioners state that as AIPMT, 2014 had already been conducted on 4th May, 2014, it was impossible for the petitioners to fulfil the said condition.

9. On the other hand, Mr. Mohinder J.S. Rupal, learned counsel for respondent no.1-Delhi University submits that petitioners cannot be admitted under NGOI quota in MBBS courses in LHMC and MAMC as they have not secured minimum stipulated marks in AIPMT examination which had been adopted by the Delhi University for admissions to seats in State quota. In support of his submission, he relies upon a judgment of Supreme Court in ***Bhawna Garg & Anr. Vs. University of Delhi & Ors., Civil Appeal Nos. 6304-6305/2012***, decided on 5th September, 2012 and of this Court in ***Bhawana Kumari Mallick & Anr. Vs. Union of India & Ors., W.P.(C) 6278/2013*** decided on 30th September, 2013. The relevant observations of the Supreme Court in ***Bhawna Garg & Anr.*** (supra) are reproduced hereinbelow:-

"15. The appellants, however, have contended that 4 candidates, who have been given admission in the seats reserved for NGOI in LHMC and MAMC during the academic year 2011-2012, have

been failed in the DUMET and to grant admission to such failed candidates is making a mockery of the entire system of medical admissions. As we have already held, the candidates who have applied for the quota for the seats reserved for NGOI constitute separate sources from which admissions are to be made and the selection on the basis of merit is to be confined to each separate source from which the admissions are to be made and they are not required to take the DUMET. Hence, even if they have failed in DUMET, they are still entitled to be admitted to the seats reserved for NGOI, if they are selected on the basis of merit from amongst all the candidates who have applied from the aforesaid separate sources for admission. 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."

18. In the result, we :

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- (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.

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- (iv) *direct that with effect from the academic year 2012-13, 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. ”*

10. Mr. Rupal points out that direction no. (iv) was subsequently clarified by the Supreme Court in ***Bhawna Garg & Anr.*** (supra) to refer to any other competitive or entrance examination for admission in LHMC instead of DUMET.

11. Mr. Rupal emphasizes that if the University had granted admission to the petitioners, its officers could have been hauled up for contempt of judgment of this Court in ***Bhawana Kumari Mallick*** (supra). The relevant portion of ***Bhawana Kumari Mallick*** (supra) is reproduced hereinbelow:-

“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."

12. Mr. T. Singhdev, learned counsel for respondent-MCI clarifies that as of today there is no All India Entrance test (NEET) for granting admission in terms of Regulations framed by respondent-MCI in the present Academic Year, since NEET was set aside in ***Christian Medical College, Vellore and Others Vs. Union of India and Others, (2014) 2 SCC 305*** and a review is pending.

13. Mr. Anil Soni and Mr. Manish Mohan, learned standing counsel for respondent-UOI state that respondent no.1-Delhi University has already

been communicated vide Ministry of Health & Family Welfare's letters dated 11th September, 2014 and 16th September, 2014 that if the selection of candidates has been made by concerned State/Union Territory as per entrance examination conducted by it, they cannot be denied admission by University. Consequently, according to them, the condition for appearing and qualifying the AIPMT, 2014 is not applicable to the petitioners and they should be given admission in the allotted colleges, if they fulfil the eligibility criteria as per MCI Regulations and the fixed intake.

14. In rejoinder, learned senior counsel for petitioners state that the judgment of a Coordinate Bench of this Court in *Bhawana Kumari Mallick* (supra) has been set aside by the Supreme Court on 26th September, 2014.

15. Having heard learned counsel for parties, this Court is of the view that petitioners are not seeking admission in the 15% All India Quota and consequently, they do not have to appear in AIPMT. The petitioners are seeking admission in their respective State quotas according to the rank obtained by them in their respective State Entrance Examinations. As their States do not have Medical Colleges, they are being accommodated in Central Government Medical Colleges under NGOI quota. If the condition incorporated in Bulletin of Information by Delhi University is upheld, it would mean that General category students belonging to aforesaid North-Eastern States would have to not only secure a high rank in their own State examination, but would also have to pass the State examination of the State in which Central Government would allocate them a seat. Since it would be known only at the last stage which Medical college in which State had been allocated by the Central Government to the North-Eastern students, they could only comply with this requirement if they also appeared in all States

Entrance Exams where Central Government had a Medical College!

16. It is pertinent to mention that the Constitutional validity of NGOI Quota was upheld by the Constitution Bench of the Supreme Court in the case of ***Kumari Chitra Ghosh & Anr. vs. Union of India & Ors., (1969) 2 SCC 228***. In this judgment, the Court held that as it is the Central Government which bears the financial burden of running a Medical College, it is for it to lay down the criteria for eligibility. It was further held that the Government cannot be denied the right to decide from what sources the admission would be made. The relevant portion of the aforesaid judgment is reproduced hereinbelow:-

“9. It is the Central Government which bears the financial burden of running the medical college. It is for it to lay down the criteria for eligibility. From the very nature of things it is not possible to throw the admission open to students from all over the country. The Government cannot be denied the right to decide from what sources the admission will be made. That essentially is a question of policy and depends inter alia on an overall assessment and survey of the requirements of residents of particular territories and other categories of persons for whom it is essential to provide facilities for medical education. If the sources are properly classified whether on territorial, geographical or other reasonable basis it is not for the courts to interfere with the manner and method of making the classification.”

17. The aforesaid judgment was followed in the case of ***Bhawna Garg*** (supra). The Supreme Court held that the candidates who have applied for seats reserved for the NGOI Quota, constitute a separate source from which admissions are to be made and the selection on the basis of merit is to be confined to each separate source from which admissions are to be made and are not required to take the State exam. The Supreme Court in Para 12 of the aforesaid judgment has held as follows:-

“Accordingly, the seats which are reserved for a particular source i.e. the beneficiary State/UT/Ministry/Agency are to be filled up by selection on the basis of merit of candidates who have applied as candidates of that particular source i.e. the beneficiary State/UT/Ministry/Agency. Thus, these candidates who constitute separate sources from which admission are to be made to the seats allocated to the sources are not required to take the DUMET. They must go through the selection on the basis of merit as laid down in T.M.A. Pai Foundation and as provided in Regulation 5 of the MCI Regulations but such selection has to be confined to the candidates of the respective sources.”

18. In ***Bhawna Garg*** (supra), the Supreme Court directed that from the Academic Year 2013-14 onwards, the candidates applying for the NGOI Quota would have to obtain the minimum marks in NEET for admission to the MBBS Course, as in 2012 the Medical Council of India had amended the MCI Regulations on Graduate Medical Education 1997 whereby NEET was introduced. NEET was to be a common All India Entrance Test for all Medical/Dental colleges of the country including unaided non-minority as well as minority colleges. As a result, the individual entrance examinations to medical/Dental colleges conducted by various State Governments and Private Medical Colleges were replaced by a common entrance test, i.e., NEET.

19. However, subsequently the aforesaid procedure of conducting one single Examination, i.e., NEET was held unconstitutional by the Supreme Court in the case of ***Christian Medical College, Vellore & Ors.*** (supra). The relevant portion of said judgment is reproduced hereinbelow:-

“177. In the light of our aforesaid discussions and the views expressed in the various decisions cited, we have no hesitation in holding that the Regulations on Graduate Medical Education (Amendment), 2010 (Part II) and the Postgraduate Medical

Education (Amendment) Regulation, 2010 (Part II), whereby the Medical Council of India introduced the single National Eligibility-cum-Entrance Test and the corresponding amendments in the Dentists Act, 1948, are ultra vires the provisions of Articles 19(1)(g), 25, 26(a), 29(1) and 30(1) of the Constitution, since they have the effect of denuding the States, State-run universities and all medical colleges and institutions, including those enjoying the protection of the above provisions, from admitting students to their MBBS, BDS and postgraduate courses, according to their own procedures, beliefs and dispensations, which has been found by this Court in T.M.A.Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481] , to be an integral facet of the right to administer. In our view, the role attributed to and the powers conferred on MCI and DCI under the provisions of the Indian Medical Council Act, 1956, and the Dentists Act, 1948, do not contemplate anything different and are restricted to laying down standards which are uniformly applicable to all medical colleges and institutions in India to ensure the excellence of medical education in India. The role assigned to MCI under Sections 10-A and 19-A(1) of the 1956 Act vindicates such a conclusion."

20. Consequently, once NEET was struck off, the regime of State examinations has been reverted to.

21. This Court is further of the view that merely because Delhi University in 2014 chose to adopt AIPMT as its state exam, it cannot prejudice the rights of the petitioners. The students claiming under the NGOI quota were never informed that they were required to also qualify in the AIPMT, 2014 examination to secure admission in the medical colleges of the Delhi University. It is to be noted that the AIPMT, 2014 was held on 4th May, 2014, whereas the Delhi University's bulletin which specified for the first time AIPMT as a pre-condition for NGOI quota was issued only on 2nd June, 2014. Thus, it was impossible for the petitioners to have complied with the pre-condition in the Delhi University's Bulletin.

22. It is also pertinent to mention that students who had secured lesser marks than the petitioners in their respective State entrance examinations have been allotted colleges in different states and have already been granted admission in the Academic Year 2014-15 as the respective Universities of those colleges have not raised any such objection and required the NGOI students to take any further examination.

23. For the present Academic Year 2014-15 even the Union of India vide Office Memorandums dated 27th February, 2014 and 02nd September, 2014 as well as letters dated 11th September, 2014 and 16th September, 2014 has stipulated that selection of students will be made by the beneficiary States/UTs/Government Departments on the basis of marks obtained by the students in the entrance tests conducted by the Beneficiary States/UTs/Government Departments and only if the beneficiary State did not conduct a State entrance examination, then the selection will be made on the basis of marks obtained by the students in AIPMT.

24. Also there is no question of any Delhi University officials being hauled up for contempt of judgment of ***Bhawana Kumari Mallick*** (supra) as the said judgment has been set aside by the Supreme Court in ***Civil Appeal Nos. 9268-9269/2014*** on 26th September, 2014. The relevant portion of the Supreme Court's order dated 26th September, 2014 is reproduced hereinbelow:-

“Subsequent to the three-Judge Bench decision of this Court, in Christian Medical College (supra) the Government of India came forward with an Office Memo dated 19.9.2013 to the effect that the provision of appearing in NEET UG/PG is not applicable for a Nominee made by the Government of India. The said Office Memorandum continue to remain in force even as on date.

In the light of the said development of law, which is prevalent even as on date, we are of the view that impugned judgment cannot be sustained. These appeals are, therefore, allowed. The appellant-Bhawana Kumari Mallick and respondent No.6, namely, Anshika Dwivedi, in C.A. No.9272/2014 who are also respondent Nos.1 and 2 in C.A. No.9268-9269/2014 as well as now impleaded Respondent Nos.7 & 8, namely, Nagina Wardak and Madhiha respectively shall be admitted as Nominees of the Government of India in the MBBS Course for the Academic Year 2014-15 before the last date for admission i.e. 30.9.2014.”

25. Consequently, present writ petitions and applications are allowed, but with no orders as to costs. Delhi University is directed to forthwith implement the order passed by this Court and grant admission to petitioners as 30th September, 2014 is the last date for admissions.

Order dasti under the signature of Court Master.

MANMOHAN, J

SEPTEMBER 29, 2014

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