

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 17.04.2015

+ **W.P.(C) 5700/2014 & CM 20077/2014**

MUKESH KUMAR TIWARI

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Rajiv Bakshi and Mr Shekhar Prasad Gupta.

For the Respondents : Mr Sanjeev Narula, CGSC with Mr Ajay Kalra for UOI. Mr T. Singhdev, Mr Manan Khera and Mr Vishu Agarwal for R5/MCI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Issue writ, order or direction in the nature of certiorari to quash the decision/communication/notice F.No.IPU-7/Counselling/Admission/01/SSMC/2014/ 5802 dated 10.07.2014 regarding the reduction of intake capacity of DM Cardiology Course from 6 to 4 in DM (Cardiology) in Respondent No.3 i.e. PGIMER Dr. RML Hospital;”

2. Essentially, the petitioner is aggrieved as the number of seats for post graduate medical degree course in the Super Specialty Medical Course of

DM (Cardiology) at Dr. Ram Manohar Lohia Hospital (hereinafter 'RML Hospital') has been fixed at 4 instead of 6.

3. Briefly stated, the relevant facts are as under:-

3.1 Respondent no.2 (hereafter 'GGSIU') is a University established under the Indraprastha Vishwavidyalaya Act, 1998 and respondent nos.3 & 4 are Central Government Medical Institutions which are affiliated to GGSIU in respect of various educational courses.

3.2 The petitioner qualified his post graduate course in General Medicine from Ranchi University in 2012.

3.3 The petitioner appeared and was successful in the Common Entrance Test (CET) conducted by GGSIU for the academic session 2014-15; he was placed at serial number 6 in the order of merit.

3.4 However, the petitioner has been denied admission to the Super Speciality Medical Course of DM (Cardiology) as only four candidates have been accepted in the said programme.

4. It is contended that the previous year's intake pertaining to RML Hospital in respect of the said Super Speciality Medical Course was six and, therefore, the petitioner has a legitimate expectation that six seats would be available for the current academic session, i.e. 2014-15, also. It is contended that RML Hospital has the requisite infrastructure for intake of six students and, therefore, it is prayed that a direction be issued for admission of the petitioner to the Super Speciality Medical Course of DM (Cardiology) at RML Hospital.

5. The petitioner impugns a notification dated 10.07.2014, which according to the petitioner, had arbitrarily reduced the number of seats in DM (Cardiology) to four.

6. The petitioner had participated in the first round of counselling held on 13.07.2014 and, thereafter, also participated in the second round of counselling that was conducted thereafter. However, the petitioner could not secure an admission to the course as he was placed at serial no.1 on the waiting list.

7. The learned counsel for the Medical Council of India (hereinafter 'MCI') states that neither GGSIU nor RML Hospital has assailed the advice of MCI to restrict the number of seats in the course of DM (Cardiology) to four. Thus, the petitioner's claim that he was entitled to admission to the course in question is liable to be rejected.

8. I have heard the learned counsel for the parties.

9. At the outset, it is relevant to note that the admission brochure issued by GGSIU had clearly indicated that the seat intake of six in the course of DM (Cardiology) was tentative and it was clearly indicates that number of seats were likely to change depending on the approval of MCI. The relevant note appearing in the brochure reads as under:-

“Note:

The above seats allocation is provisional and Super Speciality Medical Courses/Institutions seats are likely to change depending upon the approval of Medical Council of India/Government of India/University for the academic

session 2014-2015. The Final Super Specialty Medical Courses/Institutions seats will be notified before the commencement of the Counselling.”

10. Thus, the petitioner was made aware that the number of seats could be varied and were subject to the approval of MCI. It is not disputed that intake in the Super Speciality Medical Course of DM (Cardiology) has been reduced on the advice of MCI. In the circumstances, the contention that the petitioner had a legitimate expectation that six candidates would be admitted to the course of DM (Cardiology) in RML Hospital is not sustainable.

11. It was also contended by the petitioner that RML Hospital had the infrastructure and capacity to admit six students. This is disputed by MCI. The learned counsel appearing for MCI has referred to a letter dated 24.10.2013 sent by the Board of Governors of MCI to respondent no.1. The said letter indicates that the Board of Governors at its meeting held on 03.09.2013 had decided to direct that RML Hospital reduce the seats in the course in question from six to four prospectively in view of the available Post Graduate Teachers.

12. It was pointed out that, as per the norms, the teacher student ratio has to be maintained at 1:2. Undisputedly, at the material time, there were only two eligible Post Graduate Teachers and, therefore the intake of students had to be reduced to four.

13. The fact that there were only two Post Graduate Teachers is also evident from the letter dated 12.03.2014 addressed by respondent no.1 to the Secretary, MCI. The relevant extract of which is quoted below:-

“2. It is mentioned that in Cardiology Department, there are two PG teachers viz. Dr. Dr. Neeraj Pandit and Dr. Ranjit Kumar Nath (entitled 4 students) for the course. Dr. Ajay Kumar Sharma has not been recognized as PG teacher by the GGSIP University in view of the fact that his post DM (Cardiology) experience is less than 5 years. It is prescribed in Post Graduate Medical Regulations, 2000 that the faculty members who possess eight years teaching experience out of which at least five years teaching experience as Assistant Professor gained after obtaining the higher speciality degree shall be recognized as PG teacher. Dr. Ajay Kumar Sharma had passed DM (Cardiology) only in December, 2009 and would thus complete 5 years only in December, 2014. In December, 2014 he will be entitled for 2 students and the Department of Cardiology, PGIMER entitled 6 seats.”

14. In view of the admitted position that at the time of admission there were only 2 Post Graduate teachers, the contention that MCI's decision to direct reduction in the seats was arbitrary or unreasonable cannot be accepted.

15. It is also relevant to note that the petitioner was fully aware that there were only four seats available in the Super Speciality Medical Course of DM (Cardiology) prior to participating in the counselling sessions. The number of seats had been notified by GGSIU on 10.07.2014 which was prior to the petitioner undertaking the first round of counselling. The petitioner participated in the counselling sessions being fully aware of the number of seats and, therefore, having participated in the process cannot be permitted to challenge the same.

16. It is well settled that a student who willingly participates in the

admission process cannot challenge the conditions after he is unsuccessful in securing the admission.

17. The Supreme Court in *Madam Lal & Ors. v. State of J & K & Ors.*: (1995) 3 SCC 486 had stated the above principle in the following words:-

“9. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful.”

18. I am also of the view that issue with regard to the number of seats in a particular course is a matter to be considered by the experts. MCI being the expert body had restricted the intake in the course in question to four instead of six. GGSIU and RML Hospital had accepted the said decision. In the circumstances, the petitioner would have no right to insist that the number of seats be enhanced. In my view, no interference by this Court is warranted.

19. It is also relevant to note that the academic session 2014-15 is almost over and, in any event no relief can be granted to the petitioner.

20. The petition is, accordingly, dismissed. Pending application stands disposed of. No order as to cost.

VIBHU BAKHRU, J

APRIL 17, 2015

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