

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

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Date of decision: 10th April, 2015

+ LPA No.204/2015, CM No.6452/2015 (for stay), CM No.6453/2015 (for filing additional documents) & CM No.6454/2015 (for exemption).

DR. NARESH GUPTA & ORS.

..... Appellants

Through: Ms. Rekha Palli, Ms. Punam Singh,
Ms. Ankita Patnaik, Ms. Garima
Sachdeva & Ms. Shruti Munjal, Advs.

Versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Rajesh Gogna (CGSC) with Mr.
Sameer Sharma & Ms. L. Gangmei,
Advs. for R-1 to 3.
Mr. T. Singhdev & Mr. Vishu
Agrawal, Advs. for R-4.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 24th March, 2015 in W.P.(C) No.3007/2015 filed by the four appellants along with the respondents no.5 to 9 herein. The said order disposes of the writ petition on the statement of the counsel for the respondents no.1 to 3 (i.e. Union of India through Ministry of Health & Family Welfare, Union of India through Ministry of Defence and the Director General, Armed Forces Medical

Services) and recording that in view of the said statements of the counsel for the respondent no.1 to 3, the apprehension expressed by the writ petitioners stood addressed and no further order need be passed in this petition.

2. Though the aforesaid order of the learned Single Judge suggests that the same is in the nature of a consent order and there is nothing therein to show that the writ petitioners / appellants contended anything further. However the counsel for the appellants before us contends that the learned Single Judge disposed of the writ petition without considering the basic issue raised.

3. The writ petition was filed, seeking a direction to the respondents no.1 to 3, (a) to fill all the permitted / recognized seats in MD / MS in Armed Forces Medical Services (AFMS) for the year 2015 as approved by the respondent no.4 Medical Council of India (MCI) and displayed on the MCI's website; and, (b) offer all permitted / recognized postgraduate seats in the 8 AFMS to Priority-IV candidates, before starting counselling of Priority-V category.

4. As per the Information Bulletin published for admission to Postgraduate Courses in AFMS Institutions through AIPGMEE – 2015:-

- (a) Priority-I for admission was to be given to AFMS Officers detailed on advance specialist course / other courses;
- (b) Priority-II was for foreign students sponsored by Government;
- (c) Priority-III was for Medical Officers sponsored by Para Military Organization / Government Organization;
- (d) Priority-IV was of Ex-Servicemen (Ex-SSC AMC Officers) released from service after completion of contractual service and;
- (e) Priority-V was civilian candidates willing to serve in the AFMS.

5. The learned Single Judge was informed that in the 8 AFMS Institutes, there are 370 seats in aggregate and that of the 370 seats, 128 seats were filled up by candidates belonging to Priority-I category; 22 seats were filled up by candidates belonging to Priority-II category; 16 seats were filled up by candidates belonging to Priority-III category and 82 seats had been offered to candidates belonging to Priority-IV category.

6. It was the apprehension of the writ petitioners, all of whom belong to Priority-IV category, that the remaining seats shall be released to other candidates, without offering the same to candidates of Priority-IV category.

7. The counsel for the respondents no.1 to 3, before the learned Single Judge, stated, (i) that as far as the AFMS at Lucknow and Chandimandir were concerned, no seats could be offered to any candidate as there is embargo by the affiliating University; (ii) in so far as other / remaining seats are concerned, the same shall not be offered to candidates other than from Priority-IV category (except one seat to SC / ST candidate in IAM Bangalore); (iii) that in case certain seats become available due to further recognition / affiliation being granted or extended, the said seats would then be offered to candidates of Priority-IV who have not been offered seats earlier; and, (iv) that a seat will not be offered to any other civil candidate so long as any candidate from category-IV remains who has not been offered any seat.

8. This appeal has been filed for 'setting aside of the impugned order dated 24th March, 2015' and 'for allowing the writ petition'. Though it is not so clearly spelled out in the pleadings but after having heard the counsel for the appellants, the counsel for the respondents no.1 to 3 and the counsel

for the respondent no.4 in *extenso*, what emerges is, (i) that in the counselling underway, 3 of the 4 appellants have already been allotted a seat in some or the other stream of post graduation; (ii) the counselling is still underway and the fourth appellant also is participating therein and if eligible would get a seat; (iii) however besides the 370 seats supra, recommendation has been made for granting permission for addition of three seats in MS (General Surgery), two seats in MD (General Medicine) and one seat in MS (Ophthalmology); (iv) that as per the statement of the counsel for the respondents no.1 to 3 before the learned Single Judge, if the permission for addition of the said six seats is received before the last date prescribed for counselling and admission (though the counsel for the respondents no.1 to 3 states that there is only 1% chance thereof) the said six seats will be offered to those candidates from category-IV 'who have not been offered any seat'; (v) the appellants (according to whom there is all likelihood of permission for addition of the said six seats being received prior to the last date of 30th May, 2015 prescribed for counselling by the Supreme Court vide order dated 24th March, 2015 in W.P.(C) No.76/2015 titled ***Ashish Ranjan Vs. Union of India***) want that the said six seats should be offered, not only to candidates from category-IV 'who have not been offered any seat' but also to

candidates in category-IV who have in the counselling been already allotted a seat but are desirous of a change; and, (vi) that the three of the four appellants who have already been offered / allotted a seat in counselling have been allotted the seat in a stream which was not their first / preferred stream and are hopeful that if permitted to participate in the counselling for the six new seats if sanctioned and which are in preferred / prestigious streams of General Surgery, General Medicine and Ophthalmology, would stand a good chance to change.

9. We have enquired from the counsels whether the Information Bulletin supra permits such a change.

10. Our attention has been invited to Clause 7(h) thereof which is as under:-

“All candidates, irrespective of Priority, once admitted to a particular degree course on conclusion of counselling process of that priority will not be permitted to change over to another subject.”

11. The counsel for the appellant on enquiry states that though the appellants till date have not been admitted but since the respondents no.1 to 3, after tomorrow are closing the counselling for Priority-IV, the appellants

will be forced to take admission to a stream in which they have already been offered / allotted a seat and whereupon they, under the clause aforesaid, would be disentitled from participating in the counselling even if held for Priority-IV candidates for the six additional seats.

12. It is argued that the respondents no.1 to 3 should be directed to keep the counselling for Priority-IV candidates open till 30th May, 2015, being the last date laid down by the Supreme Court in the order dated 24th March, 2015 supra and by which time the six additional seats aforesaid are likely to be sanctioned and which will make the appellants eligible for trying therefor.

13. That is the real reason for filing this appeal and we are constrained to observe that the appellants have failed to spell out the same in the Memorandum of Appeal. Though we suspect that the appellants, without disclosing the said real reason, have sought to obtain an order for use of the same to secure admission to their preferred stream but since we are disposing of this appeal on the very first day when it has come before us, we refrain from returning any categorical finding thereon.

14. We may notice that the appellants, neither before the Single Judge nor in this appeal have controverted the statement of the counsel for the

respondents no.1 to 3 that in AFMS Institute at Lucknow and Chandimandir seats cannot be offered to all candidate as there is embargo by the affiliating University.

15. The appellants, neither in the writ petition nor in the appeal, have sought the relief of directing the respondents no.1 to 3 to keep the counselling open till 30th May, 2015. In our view, merely because the last date prescribed for counselling may be 30th May, 2015, cannot be a bar to any medical college / institute to close the counselling earlier. It is our further view that in the absence of a specific provision requiring admissions to be kept open till a particular date, a mere prescription of the last date for admission is not a bar to closing the admissions earlier.

16. The counsel for the appellants has of course urged that the appellants being ex-servicemen, should have priority over civilians who form Priority-V.

17. However as per the statement of the counsel for the respondents no.1 to 3 before the learned Single Judge and reiterated before us the additional seats are to be offered to Priority-IV candidates only who are also ex-

servicemen but have not been offered / allotted any seat in counselling and who have thus not got admission.

18. The counsel for the appellant has also raised the argument of, the new seats, if sanctioned, in this manner being offered to a less meritorious candidate in category-IV and a candidate higher in merit being denied the said seats.

19. It has been held by this Court in *Rajeev Kumar Vs. Union of India* MANU/DE/1752/2014 (DB), *Aditya Institute of Technology Vs. Government of National Capital Territory of Delhi* MANU/DE/2842/2013 and in *Rajat Goel Vs. Ministry of Human Resource and Development* MANU/DE/7235/2011 (DB) that such an argument of merit cannot be a ground for keeping counseling and admissions open endlessly.

20. Rather, what we find strange is the stand of the respondents no.1 to 3 that the six additional seats even if sanctioned will be offered only to Priority-IV candidates who had not been offered / allotted any seat. We have enquired whether not the priority which was followed for admission to 370 seats, should also be followed for the said six additional seats which may be released. We have enquired as to on what basis the respondents no.1 to 3 are

depriving the Priority-I, Priority-II and Priority-III candidates from admission to the said six additional seats if become available.

21. The counsel for the respondents no.1 to 3 appears to agree.

22. However since the said question is not in issue before us, we refrain from delving into it any further. We only observe that if the respondents no.1 to 3 deem it appropriate, may to consider the said aspect and take appropriate steps.

The appeal therefore fails and is dismissed. We refrain from imposing costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

APRIL 10, 2015

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