

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

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Date of decision: 19th March, 2015

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W.P.(C) 7160/2014

DR. NIDHI GOYAL

..... Petitioner

Through: Mr. J.P. Sengh, Sr. Adv. with Mr.
Sagar Saxena, Ms. Vannessa Singh &
Ms. Himanshi Saini, Advs.

Versus

FACULTY OF MEDICAL SCIENCES

UNIVERSITY OF DELHI

..... Respondent

Through: Mr. Mohinder J.S. Rupal, Adv. for
University of Delhi.
Mr. T. Singhdev & Mr. Vishu
Aggarwal, Advs. for MCI.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petitioner passed her final year MBBS Examination in November, 2012 from Maulana Azad Medical College and being desirous of pursuing post graduation, appeared in the All India Post Graduate Medical Entrance Examination (AIPGMEE) held in the year 2014 and secured 122nd rank in the General Category and was in the last round of counselling held provisionally admitted to MS (Ophthalmology) under the 50% Delhi University Quota, at University College of Medical Sciences, Guru Teg

Bahadur Hospital, Shahdara. It is the case of the petitioner that after attending the classes of MS (Ophthalmology) for 6-7 days, she realized that she had made a wrong choice and approached the concerned officers of the respondent in this regard and was advised that if deposits the bond amount of Rs.5,00,000/- and resigns her seat, she would be allowed to appear in the next examination and counselling. The petitioner accordingly vide letter dated 17th July, 2014 resigned from her seat in MS (Ophthalmology) and sought permission to appear in the next counselling. Along with the said letter, a demand draft of Rs.5,00,000/- was enclosed. The respondent vide its letter dated 25th July, 2014 accepted the resignation of the petitioner and returned the original certificates of the petitioner as she had deposited the bond money of Rs.5,00,000/-. However nothing was said in the said letter with respect to the permission sought by the petitioner to appear in the next counselling. The petitioner vide letter dated 10th September, 2014 sought permission to appear in the next counselling and upon not receiving any reply, filed this writ petition impugning Clause 9.11 of the Bulletin of Information of the respondent for PG courses whereby restriction has been put on the candidates to appear in the subsequent Post Graduate Medical Examination Merit (PGMEM) till the duration of the course is over, if the

candidate has surrendered the seat allotted in the last counselling. It is contended that such a condition is *ultra vires* Articles 13,14,16 & 21 of the Constitution of India.

2. Clause 9.11 impugned in this petition is as under:

“9.11 A candidate who selects/is allotted a seat in the last counselling shall have no right to surrender the seat. If he / she does so, he / she shall be debarred from appearing in the subsequent PGMEM till the duration of the course concerned is over.”

3. The petition was entertained and a counter affidavit has been filed by the respondent and to which rejoinder has been filed by the petitioner.

4. We heard the counsels at length yesterday. The senior counsel for the petitioner contended:

- i) that officials of the respondent had assured the petitioner that upon her paying the bond amount of Rs.5,00,000/- she would be entitled to appear in the AIPGMEE for the year 2015 and entitled to participate in counselling;

- ii) that the petitioner left the course within seven days of the commencement thereof upon realizing that she had made a wrong choice;
- iii) that the aforesaid Clause barring the petitioner from appearing in PGMEM for the duration of MS (Ophthalmology) which is of three years causes a lot of hardship to the petitioner and is violative of Article 14 of the Constitution of India and imposes disproportionate punishment on the petitioner; and,
- iv) that such a stipulation is at the cost of merit; if the petitioner is meritorious, she should be permitted to pursue post graduation in some other stream and most of the other universities do not impose such a condition and it is only a few universities including Delhi University which are placing such restriction on the students.

5. Per contra, the counsel for the respondent contended that:

- a) there is acute scarcity of seats in the highly specialized post graduate courses involving state of art infrastructure, medical equipment and reputed faculty;
- b) that the University cannot afford any seat remaining vacant due to any student leaving in midst of the course, more particularly when the vacant seat cannot be filled up after the cut-off date as per the law laid down by the Supreme Court;
- c) that the country cannot afford the loss / wastage of precious resources for providing such advance and specialized education by seat going vacant throughout the entire duration of course due to withdrawal from study of the course by any student – hence penal condition for such withdrawal is strictly enforced;
- d) that the Government spends crores of rupees in establishment / imparting of post graduate medical courses;
- e) that besides the petitioner, three others also admitted to post graduate courses in the year 2014 left / resigned and

they also have been debarred for admission in PG medical course of Delhi University till the duration of the course which they had joined;

- f) that the petitioner cannot seek another opportunity to apply with the University of Delhi till the entire duration of the MS (Ophthalmology) course though is at liberty to try in some other University / medical college not affiliated to University of Delhi.

6. The senior counsel for the petitioner in rejoinder contended that the seat vacated by the petitioner would in any case be wasted and would not be utilized in any manner whatsoever even if the petitioner were to remain debarred for three years as per the Clause aforesaid in the Bulletin of Information and the petitioner having paid the bond money should not be debarred.

7. The senior counsel for the petitioner has also contended that right to education has now been conferred the status of fundamental right and the condition aforesaid is violative of the said fundamental right of the petitioner to education. Reliance in this regard was placed on:

- i) ***Miss Mohini Jain Vs. State of Karnataka*** AIR 1992 SC 1858, paras 12,13 & 17.
- ii) ***J.P. Unni Krishnan Vs. State of Andhra Pradesh*** AIR 1993 SC 2178, paras 142, 144 & 145.
- iii) ***E.P. Royappa Vs. State of Tamil Nadu*** (1974) 2 SCR 348.
- iv) ***Chintaman Rao Vs. State of Madhya Pradesh*** AIR 1951 SC 118, paras 6&7.
- v) ***Mohd. Hanif Quareshi Vs. State of Bihar*** AIR 1958 SC 731, para 21.

8. Per contra, the counsel for the respondent relied on ***Dr. Muveen Kumar Vs. Guru Gobind Singh Indraprastha University*** 2011 V AD (Delhi) 767 where a Division Bench of this Court and of which one of us (Rajiv Sahai Endlaw, J.) was a member negated a similar challenge. Reliance was also placed on ***Dr. Reema Chawla Vs. University of Delhi*** 104 (2003) DLT 868 (DB) where a Rule disentitling a student who had been allotted a seat in the initial counselling and had accepted the offer but had not surrendered the seat in writing before the stipulated date, from being

placed on the waitlist and debarring her from the subsequent screening examinations till the duration of the course concerned was over, was held to be in accordance with reason and standing the test of rationality.

9. We have considered the rival contentions. The hard fact of the matter is that the petitioner took admission in the MS (Ophthalmology) course in the year 2014 knowing fully well of Clause 9.11 aforesaid. The question is, whether she can now be relieved therefrom. We are of the opinion that the petitioner, after applying for appearing in AIPGMEE on the terms and conditions contained in the Bulletin of Information (supra) and after appearing in the examination and securing admission, cannot be heard to contend otherwise. The allegation, of some officials of the respondent having assured the petitioner that upon paying the bond amount she would be entitled to take the examination in the next year, is not only vague as particulars of any official(s) have not been given but unbelievable too. In fact, if the petitioner had been so assured, she would in her letter dated 17th July, 2014 of resigning from the seat would not have sought the permission of the respondent to appear in the next round of counselling. Admittedly, no such permission was granted to the petitioner.

10. As far as the challenge to the aforesaid Clause is concerned, the senior counsel for the petitioner agrees that the same can only be in the event of finding the same to be unreasonable. Besides the averments of the respondent in the counter affidavit, judicial notice can be taken of the large number of students who appear in AIPGMEE which has a very few seats. We have no reason to also doubt that much infrastructure and other resources go into providing post graduate education and which is all subsidized. The respondent in its counter affidavit has detailed the strict parameters which a university / medical college is required to fulfil for being entitled to impart post graduate education in Medicine. The number of students permitted is also linked to the number of beds / patients in the hospital attached to the medical college. Certainly, all this would suffer and be wasted, if a student leaves the course in between. It matters not whether the student leaves after seven days as the petitioner claims to have done or after one year or two years. The fact of the matter remains that the seat and the resources are thereby wasted.

11. One of us (Rajiv Sahai Endlaw, J.) in ***Jyoti Yadav Vs. Government of NCT of Delhi*** MANU/DE/2728/2010 relying on ***Gorak Nath Balu Shinde Vs. State of Maharashtra*** MANU/MH/0393/2009 and ***Amlan Jyoti***

Borooah Vs. State of Assam (2009) 3 SCC 227 held that the terms and conditions of a brochure of admission are binding on all persons in the conduct of examination and all are expected to adhere thereto strictly in order to avoid prejudice to any person and that candidates who take part in selection process knowing fully well the procedure laid down therein, cannot be permitted to turn back and assail the same after having been declared unsuccessful. Mention may also be made of ***Madan Lal Vs. State of Jammu & Kashmir*** (1995) 3 SCC 486 also laying down that if a candidate takes a calculated chance and appears at the interview, then only because the result of interview is not palatable, he cannot turn around and subsequently contend that process of interview was unfair or the Selection Committee was not properly constituted; when the petitioner appears at the examination without protest and when he finds that he would not succeed at the examination, he files a petition challenging the examination, the Court should not grant relief to the petitioner. Reference in this regard may also be made to ***Manish Kumar Shahi Vs. State of Bihar*** (2010) 12 SCC 576. Recently also in ***Chandigarh Administration Vs. Jasmine Kaur*** (2014) 10 SCC 521 it was reiterated that if the candidate takes a calculated risk / chance by subjecting himself / herself to the selection process, after knowing

his / her non-selection cannot turn around and contend that the process of selection was unfair. It was further held that once the candidate is aware that he / she does not fulfil the criteria of the prospectus, he / she cannot be heard to say that he / she chose to challenge the same only after preferring the application and after the same was refused on the ground of eligibility.

12. The Supreme Court in *Mabel Vs. State of Haryana* (2002) 6 SCC 318 was concerned with a clause which barred a student who had taken admission in any Medical / Dental College from seeking admission in another course during the period of the course in which the candidate had taken admission. It was held that though such a condition may appear to operate harshly but is meant to ensure that a candidate who has already secured admission should not abandon the studies to seek admission in another course and that such a condition is in public interest for otherwise it would result in the wastage of the seat in the course in which the candidate had taken admission and that further such a change would deprive another eligible candidate from seeking admission to other courses. It was also held that such a condition could not be held unreasonable since the bar was with respect to that university / college only and that too only for the duration of the course in which the admission had been taken.

13. The said logic squarely applies to the present situation also and thus the challenge by the petitioner has no merit. The condition which is impugned, is meant to be a deterrent and has been imposed by educational experts and it is even otherwise not proper for the Courts to interfere therewith.

14. We may also notice that **Dr. Muveen Kumar** (supra) pertained to the Guru Gobind Singh Indraprastha University of the Government of NCT of Delhi and it is thus not as if it is the University of Delhi only which has imposed such a condition.

15. However, Clause 9.11 of the Bulletin of Information is preceded by Clauses 9.9 and 9.10 and which are as under:

“9.9 As soon as a candidate is allotted his / her selected seat, he / she will be provisionally admitted in that course and will be required to submit the following immediately:

(i) Original certificates as specified in clause 6.2

(ii) Fee as mentioned below:

<i>(a) Tuition Fee (Annual)</i>	<i>Rs.13000.00</i>
<i>Library Fee (Annual)</i>	<i>Rs. 500.00</i>
<i>Athletic Fee</i>	<i>Rs. 10.00</i>
<i>Cultural Council Fee (Annual)</i>	<i>Rs. 5.00</i>
<i>N.S.S. Fee (Annual)</i>	<i>Rs. 20.00</i>

University Development Fund Rs. 600.00

Total (Draft number one) Rs. 14135.00

(b) *Faculty Management Fee (Annual)* Rs. 1465.00
(*Draft number two*)

TOTAL Fee = Rs.15600.00

(iii) *The candidates are required to submit two Demand Drafts:-*

(a) *One amounting to Rs.14135/- in favour of the **Registrar, University of Delhi.***

(b) *The other amounting to Rs.1465/- in favour of **the Registrar, University of Delhi.***

Note: *Candidates admitted in DTCD shall be required to pay transportation charges of Rs.180/- (subject to revision) in advance, at the time of joining the V.P. Chest Institute.*

*For mode of payment please see **Clause 1.2***

(iii) ***Bond:*** *A bond worth Rs.5.0 lacs with two sureties should be submitted by the candidates at the time of their counselling and admission. The admission will not be valid unless and until the Bond is submitted by the candidate.*

The student shall have to pay the Bond money of Rs.5.0 lacs to the Institution / University in the following circumstances:-

a. ***If the student does not join the course at the allotted institution on or before the stipulated date (except the***

person from the first counselling who intimates the university of not joining and applies to remain in the waiting list).

- b. If the student leaves the course before its completion.*
- c. If the admission / registration of the student is cancelled / terminated by the University on account of unsatisfactory performance / misconduct / indiscipline.*

(iv) The Original Certificates of the student would be kept in the custody of the admitting institution and would be returned only after completion of the course or on payment of Bond money, as the case may be.

*9.10 Any candidate who fails to fulfil the requirements as mentioned in **Clause 9.9** will forfeit his / her claim to the allotted seat and the candidature shall stand cancelled.”*

(Emphasis added)

16. Though the petitioner / her counsel have not pleaded or argued but on a reading of Clauses 9.9 to 9.11 it appeared to us that the same provide for, (i) a candidate who is provisionally admitted and who has by complying with the prescribed formalities including of furnishing a bond, taken admission, if does not join the course or leaves the course before its completion, incurring the liability of paying the bond money of Rs.5,00,000/-; and, (ii) a candidate who though is allotted a seat in the last

counselling, does not comply with the formalities including of furnishing the bond of Rs.5,00,000/- for taking admission and thereby surrenders the seat, incurring the liability of being debarred from appearing in the subsequent PGMEM till the duration of course concerned is over. It was felt that the liability of being so debarred would be incurred only by the student who though had wasted the seat but from whom owing to the bond having not been furnished, the bond amount could not be recovered. We thus enquired from the counsel for the respondent University as to why the Bulletin of Information should not be so read and in which case the writ petitioner could not be barred.

17. The counsel for the respondent University controverted and contended that the clauses aforesaid of the Bulletin of Information have always been understood as contended by him and the petitioner also had understood them so, else would not have sought permission to appear in the subsequent PGMEM. He also again referred to ***Dr. Muveen Kumar*** (supra).

18. However in ***Dr. Muveen Kumar*** the student had submitted a declaration in which the student had undertaken that in the event of resigning the course concerned to which he / she was admitted, he / she will not appear in the subsequent entrance test till the duration of the course

concerned was over. We thus asked the counsel for the respondent whether the petitioner also had submitted such a declaration.

19. The counsel for the respondent sought time to take instructions.

20. Since the petitioner had not taken such a plea in the petition and the respondent thus had no occasion to reply thereto, we adjourned the matter to today.

21. The counsel for the petitioner has today in Court handed over a form of the declaration which a student seeking admission to the post graduate course is required to submit and stated that the declaration signed by the petitioner is being traced. Clause 3 of the said declaration is as under:

“3. *I undertake that in the event of my admission to any Degree / Diploma course I will not apply for or accept admission to any course in any University / Institution till I complete the course to which I am admitted on the basis of this application. I further undertake that in the event of my resigning from the course concerned to which I am admitted, I will not appear in the next and subsequent Entrance Tests, till the duration of the course concerned is over.*”

22. The senior counsel for the petitioner could not deny the aforesaid.

23. The doubt which had thus arisen in our mind on a reading of the Clauses 9.9 to 9.11 of the Bulletin of Information, no longer survives.

24. We also find that a Division Bench of this Court in judgment dated 2nd March, 1990 in W.P.(C) No.642/1990 titled ***Dr. A.K. Bhardwaj Vs. University of Delhi*** was concerned with an undertaking to not apply for or accept admission to any course in the Faculty of Medical Sciences till the completion of the course in which admission was being sought. The student in that case also did not complete the post graduate course in which he had taken admission after furnishing such an undertaking and again appeared in the entrance examination for admission to postgraduate courses in Medicine and upon being denied such right had filed the writ petition. The Division Bench of this Court held that there is a great shortage of number of seats available for postgraduate courses and if the candidates after gaining admission are allowed to abandon the same midstream and join some other courses, the effect would be of the seats so abandoned being completely lost and some others also being deprived of the seats which such students subsequently want to occupy. We also find the question to have again arisen in ***Dr. Bhawna Sharma Vs. University of Delhi*** 96 (2002) DLT 850 and the

same view having been taken. This, thus has been the consistent view of this Court.

25. Accordingly, there is no merit in the appeal which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MARCH 19, 2015
'gsr'..