

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

+ **LPA 322/2016 & CM No.19416/2016**

Pronounced on: 27th May, 2016

EX MAJOR ROHIT SHIVHARE Petitioner

Through: Mr. Shyam Moorjhani and
Mr. Siddharth Joshi, Advs.

versus

MEDICAL COUNCIL OF INDIA & ORS. Respondents

Through: Mr. T. Singhdev, Adv. for MCI/R-1.
Mr. Kirtiman Singh, CGSC with Mr. Waize Ali
Noor, Adv. for UOI/R-2 to R-4
Mr. Amit Bansal with Mr. Akhil Kulshrestha and
Ms. Seema Dolo, Advs. for R-5.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

J U D G M E N T

: Ms. G. ROHINI (CHIEF JUSTICE)

1. The petitioner in W.P.(C) No.4249/2016 is the appellant before us.
2. The appellant/writ petitioner is a Medical Graduate and served in Army during 2009-2016 as Short Commissioned Officer-Doctor. Having appeared for All India Post Graduate Medical Entrance Exam, 2016 held by the National Board of Examinations for admission at institutions of the Armed Forces Medical Services (AFMS), he secured 12th Rank in the Merit List for Priority IV. In the online counselling held on 08.04.2016 for Priority IV, he opted for admission in "General Medicine" in Army Hospital (R&R) Delhi Cantt. By letter dated 13.04.2016, the appellant/petitioner was

informed that he has been provisionally selected as per his merit-cum-choice for admission to pursue post-graduate course in "General Medicine" (Army Hospital (R&R) Delhi Cantt.) and he was asked to report at the allotted institution. Later, by letter dated 19.04.2016, the appellant/petitioner was asked to give an undertaking admitting that the seat allotted to him was against 'recommended for increased intake seat' and that he will not hold the institute responsible in case of adverse decision by MCI for recognition of the seat. In the said letter, it was explained that the inspection for the recommended seats has been carried out by MCI and compliance report is being submitted by the Hospital on the observations made by MCI.

3. Though the appellant/petitioner gave an undertaking as required and joined PG Course against a 'permitted seat' in MD, General Medicine in Army Hospital (R&R) Delhi Cantt. after depositing the prescribed fees, he filed W.P.(C)No.4249/2016 seeking a direction to the respondents to allot a recognised seat in PG Course 2016 in institutions under AFMS as per his merit and choice in Priority IV or in the alternative to direct the respondents to conduct fresh counselling and fresh allotment of PG Medical seats to candidates in Priority IV.

4. It was contended in the writ petition that he was misled by the respondents and was made to opt for MD General Medicine in Army Hospital (R&R) Delhi Cantt. against a 'permitted seat' by concealing the fact that the seats available in the said college are only permitted seats but not recognized seats.

5. The learned Single Judge dismissed the writ petition by order dated 12.05.2016 holding that in view of the undertaking that has already been given by the petitioner on 19.04.2016 that he is accepting the permitted seat allotted to him in the subject of General Medicine at his own risk and that he will not hold the institute responsible in case of adverse decision by MCI, he cannot be allowed to wriggle out of his own admission and that in the absence of a declaration by a Civil Court that the undertaking given by him was either under a mistake or vitiated by fraud and/or coercion, he is not entitled to any relief in writ proceedings.

6. Aggrieved by the said order, the present appeal is filed.

7. We have heard the learned counsel for both the parties. We have also perused the short affidavits filed on behalf of the respondent No.1/Medical Council of India and the respondent Nos.2 to 4/Union of India, Ministry of Defence explaining the purport of 'permitted seats' against which the appellant/petitioner was given admission.

8. Referring to the various documents annexed to this Appeal, it is pointed out by the learned counsel appearing for the appellant that in the online counselling held on 12.04.2016, the appellant had opted for (i) Command Hospital (AF) Bangalore (for the subject "Radiodiagnosis"); (ii) INHS Asvini, Mumbai (for the subject "Radiodiagnosis") and (iii) Army Hospital (R&R) Delhi Cantt. (for the subject "General Medicine") as the first three colleges in the Preference Order. It is also pointed out by the learned counsel that in the notice dated 08.04.2016 issued for PG Online Counselling - Priority IV, the 3 available seats in General Medicine in Army

Hospital (R&R) Delhi Cantt. were not indicated as 'permitted seats' and thus the appellant was made to believe that all the 3 seats available were recognised seats. It is also contended that in fact by the date of counselling on 12.04.2016, recognised seats in General Medicine were available in many other colleges against which 7 candidates who secured lower merit rank than the appellant were given admission. It is contended that had it been correctly displayed in the website that the seats available in Army Hospital (R&R) Delhi Cantt. are 'permitted seats', the appellant would have opted for some other college where 'recognized seats' are available as on that date.

9. While submitting that a PG seat has fallen vacant in IMHS, Asvini, Mumbai in the subject of 'Radiodiagnosis' due to withdrawal of Priority - IV candidate on 30.04.2016, it is further contended by the learned counsel that it is necessary in the interest of justice to direct the respondents to accommodate the appellant in the said seat.

10. On the other hand, it is contended by the learned counsel appearing for the Medical Council of India that the distinction sought to be drawn by the appellant between the 'recognised' and 'permitted' seats is misconceived.

11. It is explained in the short affidavit filed on behalf of MCI that the Army Hospital (R&R) Delhi Cantt. submitted an application under Section 10A of the IMC Act for increase in Post Graduate seats in General Medicine from 5 to 11 and that the Central Government has already granted Letter of Permission on 18.03.2010 for increase of seats on the basis of the recommendation of MCI. Subsequently, by letter dated 16.03.2016 the Central Government had forwarded the application received from the Army

College for appropriate action by MCI under Section 11(2) of the IMC Act for recognition of the said Post Graduate qualification of MD (General Medicine) against increased intake from 5 to 11. Pursuant thereto, MCI conducted the inspection on 28.04.2015 and by letter dated 27.01.2016, the Army Hospital (R&R) Delhi Cantt. was asked to rectify the deficiencies mentioned therein and to submit its compliance for further consideration of the matter.

12. The learned counsel for Medical Council of India would, therefore, submit that once the deficiencies are rectified by the institution, the recognition for the increased intake upto 11 seats would be granted and there is no basis for the apprehension of the appellant that the seat against which he was given admission would remain unrecognised. Reiterating the same, the learned counsel appearing for the respondents No.2 to 4 further contended that the writ petition is nothing but an afterthought to claim admission in a better subject.

13. As could be seen from the material available on record, it was specifically mentioned in the Information Bulletin for All India PG Medical Entrance Exam, 2016 that out of the total 8 seats available in Army Hospital (R&R) Delhi Cantt., 5 are 'recognised' and 3 are 'permitted' seats. Again in the status of counselling of AFMS PG seats displayed on the website on 14.03.2016, it was shown that total available seats in General Medicine in Army Hospital (R&R) Delhi Cantt. are 8 and out of the same, 4 seats were allotted to Priority-I and out of the 4 balance seats available for Priority-III, IV and V, one is 'recognised' and three seats are "recommended by MCI for recognition to Government". Again in the status of counselling for AFMS

PG seats displayed on 02.04.2016, it was shown that balance seats in General Medicine in Army Hospital (R&R) Delhi Cantt. available for Priority-IV and V are 3 and all the 3 are seats "recommended by MCI for recognition to Government", i.e. permitted seats. Coming to the seat matrix displayed in the notice dated 08.04.2016, it is no doubt true that it was not specifically mentioned that the 3 available seats are permitted seats, however, there is no reason for anyone to believe that the said 3 seats are recognised seats in view of the fact that in the earlier notice dated 02.04.2016, it was clearly mentioned that they are only permitted seats.

14. It is also relevant to note that in the mock counselling held on 06.04.2016, i.e., even before the issuance of the notice dated 08.04.2016, the appellant had opted for MD, General Medicine in Army Hospital (R&R) Delhi Cantt. in spite of the fact that it was clearly displayed that it was only a permitted seat. As rightly pointed out by the learned counsel for the Respondents No.2 to 4, this goes to show that the appellant had knowingly opted for MD General Medicine in Army Hospital (R&R) Delhi Cantt.

15. Therefore, we do not find any substance in the appellant's claim that he was mislead by the respondents and he was made to believe that the three seats available for counselling on 12.04.2016 are recognised seats. It appears to us in the facts and circumstances of the case that though the appellant had willingly opted for MD General Medicine in Army Hospital (R&R) Delhi Cantt. in the online counselling held on 12.04.2016, having realized later that some of the candidates who secured lower merit rank have got admission in other colleges against recognized seats he has now been trying to get the counselling reopened taking advantage of the omission on

the part of the respondents in specifically mentioning in the notice dated 08.04.2016 that the seats available in Army Hospital (R&R) Delhi Cantt. College are 'permitted seats'.

16. For the aforesaid reasons, the learned Single Judge cannot be held to have committed any error in declining to entertain the writ petition. Having accepted the seat offered to him and having giving the undertaking, it is not open to the appellant to now seek a mandamus to direct the respondents to allot some other seat in a different institution or to conduct a fresh counselling claiming that the undertaking was vitiated by fraud or coercion.

17. The order under appeal therefore warrants no interference and the appeal is accordingly dismissed.

No costs.

A copy of the Judgement be given dasti under the signatures of the Court Master.

CHIEF JUSTICE

JAYANT NATH, J

MAY 27, 2016/pmc