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

+ LPA 413/2016

DEEPAK KUMAR

..... Appellant

Through : Mr. R.K Saini, Advocate.

Versus

ALL INDIA INSTITUTE OF MEDICAL
SCIENCES & ORS.

....Respondents

Through : Nemo

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

25.07.2016

CM No. 26370/2016 (*exemption*)

Allowed subject to all just exceptions.

LPA 413/2016

1. The unsuccessful petitioner in W.P.(C) No.5678/2016 is the appellant before us.
2. The said writ petition was filed aggrieved by the action of the Respondent/All India Institute of Medical Sciences in declining to consider the Writ Petitioner/Appellant herein for admission in Post Graduate courses in the post lunch session of the second counselling consequent to which the Petitioner/Appellant could not opt for the available seat in the discipline of Nuclear Medicine.
3. The learned Single Judge dismissed the writ petition by the order under appeal dated 22.07.2016 holding as under:

“32. In the present case, there is no irregularity in the admission process. The respondents have conducted the

counseling in a fair manner. The petitioner, who himself was not present, when his rank was called for counseling, cannot now pass the blame on the respondents, the petitioner should have been vigilant. Further, it is not a case that the petitioner was prevented on account of circumstances beyond his control from reaching the Hall for Counseling on time. The petitioner is stated to have gone for lunch and over-stayed. The delay in reaching on time is solely attributable to the petitioner himself.

33. Vested rights have accrued in favour of Respondent No. 4. Even the teaching has commenced since 01.07.2016. If respondent No. 4 were to be unseated, then he would demand unseating of the candidate next in rank and so on which would then have a rippling effect on the entire admission process. This cannot be permitted to happen.

34. In view of the above, I find no merit in the petition. The petition is accordingly dismissed leaving the parties to bear their own costs."

4. We have heard the learned counsel for the appellant and perused the material available on record. The writ petitioner/appellant applied for the admission in Post Graduate Course in Medicine for Session July, 2016 and on being found eligible, was allowed to appear in the Entrance Examination for admission. The appellant appeared in the said examination and secured rank 1835 in order of merit in the category of SC candidates. In the first counselling, the appellant did not get a seat in his preferred course, i.e., Nuclear Medicine, therefore, opted to take his chance against the seats in the said discipline which might become available in the second counselling. The second counselling was held on 13.06.2016 and commenced at 9.00 a.m. It is the case of the appellant that he was present on 13.06.2016 and as required, marked his attendance

prior to the commencement of the counselling. It was also claimed that the post-lunch session was scheduled to commence at 2.00 p.m. but in fact commenced at 2.10 p.m. The petitioner reached the Hall at 2:19 p.m. and on inquiry, it was revealed that counselling of a student (respondent No. 4 herein) was being held whose ranking was 1880, i.e., lower to the rank of the petitioner and he later opted for the only available seat in Nuclear Medicine. The appellant protested but his request was not acceded to and he was asked by Dr. V.K Bansal (Sub-Dean) to wait for his turn behind respondent No.4.

5. Being aggrieved by the action of the respondent in declining counselling to the appellant as per his rank and merit and rather giving him counselling after a candidate below him in merit (i.e respondent No. 4) who opted for the only available seat in the discipline of Nuclear Medicine, the appellant filed W.P.(C) No.5678/2016 which was dismissed by the order under appeal.

6. Mr. R.K Saini, learned counsel for the appellant submitted that the impugned order was illegal, unjust and based on non-appreciation of the relevant facts and circumstances of the case and the same was liable to be set aside. He further submitted that the respondent Nos.1 to 3 have not conducted the counselling in a fair manner and the appellant was not given sufficient opportunity to appear before the counselling committee. Learned counsel vehemently urged that the respondent No.4 placed at Rank No.1880 was lower in rank and could not have been offered the seat in Nuclear Medicine without the same being offered to the appellant first.

7. It is not disputed before us that the post lunch counselling session was to commence at 2 p.m. As per the own version of the Appellant, he was late by 19 minutes and when he reached the counselling hall, the

counselling had begun. The candidates were called in the order of their ranking and since the appellant was not present on call, Respondent No.4 was asked to exercise his option to choose his subjects. Since he opted for Nuclear Medicine which was the only seat available in that discipline, the Appellant lost the opportunity to opt for the said subject.

8. Having regard to the admitted fact that the Appellant failed to act diligently and promptly and reached late for the counselling session, the Respondents cannot be found fault with for the consequences. The Respondent No.4 who had already opted for the said subject and has been admitted, cannot be made to suffer for no fault of his. As of now, the entire process of selection is over and the classes have begun. Even otherwise, no irregularity can be said to have been committed by the Respondents in conducting the counselling. We, therefore, find no reasons to interfere with the order under appeal and the appeal is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J.

JULY 25,2016

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