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

+ W.P.(C) 7589/2016

ANKIT SINGHAI AND ANR Petitioners

Through: Ms Neha Rathi, Advocate.

versus

UNION PUBLIC SERVICE COMMISSION
AND ANR

..... Respondents

Through: Mr Naresh Kaushik and Ms Anjali
Sharma, Advocates for UPSC.
Mr Dev P. Bhardwaj, CGSC for
UOI/R-1 with Mr Sachin Kumar ASO
(DOPT).

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
18.09.2017

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1. The petitioner has filed the present petition, *inter alia*, praying that the petitioner be permitted to write paper no. VI and VII of Medical Sciences in the Civil Services (Main) Examination in English and, the rest of the papers in Hindi in this year's UPSC (Main Examination).
2. It is the petitioners' case that they are proficient in Hindi as they have studied in Hindi Medium schools till 12th standards. However, as far as the MBBS course is concerned, the medium of instruction was in English. The petitioners contended that a paper of medical sciences is necessarily to be given in English as there is no other medium of instruction.
3. Ms Rathi, the learned counsel for the petitioners contended that the jurisdiction in regard to the subject matter of dispute would be the Central

Administrative Tribunal (CAT) - as is also canvassed by the respondents - however, the petition filed by the petitioners before the CAT (OA No. 3610 of 2015) in respect of the exam conducted in the previous year was disposed of by, *inter alia*, observing that the relief claimed was in the nature of public interest and outside the jurisdiction of CAT. The petitioners had preferred a writ petition (W.P.(C) 248/2016) challenging the order dated 06.11.2015, passed by CAT, but the same was withdrawn.

4. The learned counsel appearing for the petitioner earnestly contended that no purpose would be served by approaching CAT once again, as CAT had already expressed its view regarding the subject. She also referred to the decision of the Constitution Bench of the Supreme Court in ***L. Chandra Kumar v. Union of India and Ors.: (1997) 3 SCC 261*** and, on the strength of the said decision contended that the jurisdiction of this Court under Article 226 of the Constitution of India is not ousted.

5. Mr Kaushik, learned counsel appearing for the respondents opposed the present petition on several grounds. First, he submitted that there is no provision to directly approach this Court under Article 226, given that the subject matter is squarely within the jurisdiction of CAT. Second, he submitted that even if the petitioner's contention was accepted that the jurisdiction of this Court is not ousted, the writ petition would necessarily have to be filed before a Division Bench of this Court and, a Single Judge would have no jurisdiction against the order passed by the Tribunal. He further submits that the candidates are given the option of choosing any language for taking the Civil Services (Main) Examination. This is pursuant to the rules framed by Union of India in this regard. He referred to the

notification dated 22.02.2017, issued in this regard and submitted that the said notification is statutory and expressly provides that all papers are necessarily to be written in one language chosen by the candidates. He submits that the relief that is sought by the petitioner, in effect, is to strike down the said statutory rules; but no such prayer has been sought in this petition.

6. It is *ex facie* clear that the present petition is not maintainable before this Court on the grounds as canvassed by Mr Kaushik. First of all, the petitioners were required to approach the CAT as the subject matter is plainly within the jurisdiction of the CAT and none of the parties disputes the same.

7. Secondly, even if it is accepted that the CAT has already expressed its view, the recourse open to the petitioner was to challenge that order. Having withdrawn the writ petition preferred against the said decision, the petitioners cannot be permitted to re-agitate the matter by way of this petition. This would, obviously, not preclude the petitioner from approaching the CAT once again in respect of the notification for the current year, which provides them with a separate cause of action.

8. Thirdly, it is apparent that the requirement for the examination to be taken in one language is in terms of the statutory notification and, in the event the petitioner is aggrieved by the same, it would have been necessary for the petitioner to challenge the notification in accordance with law; which the petitioner has failed to do. It is also relevant to mention that such challenge would have to be placed before a Division Bench of this Court

and, cannot be considered by a Single Judge.

9. In this view, this Court is not inclined to entertain this writ petition leaving it open for the petitioners to take an appropriate remedy including a Public Interest Litigation (in view of the observations that CAT in the order dated 06.11.2015 passed in OA No. 3610/2015), if otherwise permissible in law.

10. In the event the petitioners prefer a writ petition before CAT, it is expected that CAT shall consider the same on an urgent basis.

VIBHU BAKHRU, J

SEPTEMBER 18, 2017
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