

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: May 18, 2017

Judgment delivered on: May 24, 2017

+ W.P.(C) 8964/2016, CM Nos. 36427/2016 & 38478/2016

AKANKSHA SIROHI

..... Petitioner

Through: Ms. Anshu Priyanka, Adv. with
Mr. Utkarsh, Adv.

versus

UNIVERSITY OF DELHI & ORS

..... Respondents

Through: Mr. Mohinder J.S. Rupal, Adv. with Ms.
Disha Malhotra, Adv. for University of
Delhi
Mr. Kavindra Gill, Adv. for UOI/R-3

CORAM:

HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:

“In view of the aforesaid facts and circumstances it is, therefore, humbly prayed to:

a. Issue appropriate writ/order/direction to the respondents to set aside the notification dated 28.09.2016 issued by the respondents for second counseling scheduled to be held on 29.09.2016

b. Issue appropriate writ/order/direction to the respondents declaring any action taken by them in furtherance of the notification dated 28.09.2016 issued by the respondents for second counseling scheduled to be held on 29.09.2016

c. Issue appropriate writ/order/direction to the respondent in order to make way for the petitioner to participate in the counseling.

d. Issue appropriate writ/order/direction to the respondent for declaring the merit list of the candidates falling in the category of CW appearing in NEET exams.

e. Any other writ/order/direction to the respondent as would be deemed fit and necessary in the facts and circumstances of the instant petition.”

2. Some of the facts are that the petitioner falls under the category of Children / Widows of the eligible Armed Force Personnel (CW) and had appeared in NEET Examination and secured 94.571423 percentile. It is her case that the respondents had issued a bulletin of information informing eligible candidates for counseling and admission to medical colleges. It is averred that an open merit list of 608 candidates was published wherein 12 ranks were left blank without any mention of name or roll number which were to be filled by candidates belonging to C.W. category. On 24th September, 2016 a notification was issued by the respondents for first counseling wherein 9 candidates from C.W (Delhi) category were called for counseling. On the conclusion of the first counseling against 12 seats, 9 seats of C.W category from Delhi candidates were filled. On 27th September, 2016, a notification was issued by the respondents for the second counseling to be held on 29th September, 2016. It is averred that in the evening of 28th September, 2016, when the impugned notification was uploaded on the website of the respondents, one candidate in the category of C.W. (Delhi) was called for counseling to be held on 29th September, 2016 at 2PM. It is stated that the said candidate was falling in the list of discrepancy. A discrepancy list was floated by the respondent and the discrepancy ought to have been removed by 30th August, 2016. It is her case that had the said candidate removed her discrepancy, she

would have been called for counseling in the first round itself.

3. Respondents filed a short affidavit stating that the Faculty of Medical Sciences has preferred an Institutional eligibility conditions for admission to MBBS/BDS Course against 85% DU quota, i.e., a candidate is required to attend the regular classes from a recognized School situated within the National Capital Territory of Delhi. The 15% All India quota seats are filled up by the Government of India, Ministry of Health and Family Welfare (DGHS). The total seats to be filled against 85% quota seats for the session 2016-17 in General Category were 246. It is stated by the respondents that in terms of the eligibility condition 2(b)(ii) (Page 18 of the paper book), it is stipulated as under:

“2. Eligibility Conditions / Requirement for admission to MBBS/BDS Course under 85% Delhi University quota:-

*(a) ******

(b) Qualifying examination:

*(i) ******

(ii) Eligible Female candidates from outside Delhi belonging to SC/ST/C.W. category, who have passed the qualifying examination from Indian Universities / Boards or Foreign Universities / Boards are eligible for admission to Lady Harding Medical College only against the seats reserved for these categories, subject to their fulfilling the prescribed conditions.

Note: *(a) Merit list of SC, ST, C.W. categories of NCT of Delhi (who have passed qualifying examination from NCT of Delhi) shall be operated first for allotment of MBBS seats strictly accordingly to merit in terms of clause 2(b)(i) of BOI-2016-2017.*

(b) In case some seats remain unfilled after operating the merit list of SC, ST, CW categories of NCT Delhi, the same will be filled up by operating the merit list of the candidates who have passed qualifying examination from outside NCT Delhi in terms of clause 2(b)(ii).

4. As per the reservation norms, seats of SC/ST/OBC comes to 50% and the rest of 50% seats are open to general category, exclusively for 85% Delhi quota. The candidates belonging to 85% quota have the first right over said quota seats, i.e. General (Open) – 246, SC-73, ST-38 and OBC-133. Accordingly, the merit list of SC/ST/C.W. categories was operated first for allotment of MBBS Seats and all the seats of DU quota were filled up. The female candidates from outside Delhi belonging to SC/ST/C.W. Category who have passed the qualifying the examination from Indian Universities / Boards or Foreign Universities / Boards were eligible for admission to Lady Hardinge Medical College only against the seats reserved for these categories subject to their fulfilling the prescribed conditions were also invited to apply for admission in MBBS Course in LHMC with a condition that in case some seats remained unfilled after operating the merit list for SC/ST/C.W. categories of NCT, Delhi, the same will be filled up by operating the merit list of the candidates who have passed qualifying examination from outside NCT of Delhi in terms of Clause 2(b)(ii). It is stated that none of the candidates (outside C.W., SC, ST, PWD) have been given MBBS seat in LHMC since all these were filled up by the eligible 85% DU quota candidates. It is also stated that in the absence of C.W. category candidates under the Delhi Quota, the seats ought to be offered to other candidates under the Delhi quota if available. It is the case of the respondents that the petitioner could not have been given admission when candidates were available in the Delhi quota. The admission to MBBS/BDS course was closed on 30th September, 2016.

5. During the course of submissions, learned counsel for the petitioner would submit

that the writ petition concerns admission under the C.W. / General category from amongst candidates in Lady Hardinge Medical College. Since, there were 78 seats in general category reserved for LHMC hence 4 seats were available to C.W. category from amongst the General Category candidates. Learned counsel for the petitioner would concede that the admissions were to be carried under 85% DU quota. I may state here the petitioner is seeking a claim as an outside Delhi candidate. Further, out of 4 C.W. general category seats, two seats were filled up when Prabhleen Singh was allotted one seat in C.W. General Category (from Delhi) during the counseling on 25th September, 2016. The second seat under C.W. general category was allotted to Vaishnavi on 29th September, 2016 (also from Delhi). Learned counsel for the petitioner raised an issue on the admission of Vaishnavi against the second seat under C.W. general category on the ground that her C.W. certificate was improper. Respondents tried to justify the admission of Vaishnavi on the ground that she also belongs to Priority-IV in C.W. category and in terms of the judgment in ***W.P.(C) 7813/2016, Ananya M.S. and Ors. V. Union of India and Ors.*** Vaishnavi was unable to submit proper certificate before the counseling was held on 29th September, 2016. On a specific query to the learned counsel for the petitioner in the absence of Vaishnavi being a party in these proceedings can her admission be gone into by this Court. The learned counsel for the petitioner after considering this aspect gave up the plea. The other submission made by the learned counsel for the petitioner is that in view of stipulation 2(b)(ii) as reproduced as above, in case any seat remained unfilled after operating the merit least of SC, ST, C.W. category candidates of NCT of Delhi, the

same needs to be filled by the candidates belonging to CW category, who have qualified from outside Delhi in terms of Clause 2(b)(ii). In other words, it is her plea that the stand of respondents that the balance two seats have been filled by Delhi candidates belonging to the general category (open) by operating the merit list is not proper. She states the stipulation 2(b)(ii) of the prospectus needs to be given effect to in letter and spirit.

6. On the other hand, Mr. Mohinder J.S. Rupal, learned counsel appearing for the respondent no.1 / University would submit that there is no dispute that this petition relates to admission against 85% of the Delhi quota seats. He states if within the Delhi quota no SC/ST/C.W. category candidates are available, but candidates belonging to general category on merit are available, then the vacant seat(s) need to be filled up by such candidates. He qualifies his submission to state that admission of an outside candidate belonging to C.W. (in this case) can be made if no General Category candidate is available, which is not case herein. That apart, he states that the last date for making admission was 30th September, 2016 and the mandate of the law as laid down by the Supreme Court in the case reported as **(2005) 2 SCC 65 Mridul Dhar (Minor and Anr. v. Union of India and Ors)** is very clear that no relief can be given at this stage after the cut-off date has expired.

7. Having considered the submissions made by the learned counsel for the parties, the only issue which arises for consideration is whether the petitioner can lay a claim against one of the two CW vacancies in LHMC. First of all, I may note the stand of the respondents that two seats which were lying vacant under C.W. category were offered

to general category candidates as per their merit under the 85% DU quota. In other words, the seats having been offered to general category candidates and they not being parties in these proceedings and the claim of the petitioner can only be granted by dislodging one of the candidates, no relief can be given to the petitioner in these proceedings. That apart, in so far as the submission of Mr. Rupal that the admission to the petitioner being a candidate from outside Delhi belonging to C.W. category can only be given if no candidate is available from within Delhi, is appealing for more than one reason; (i) the Delhi candidate has a first right, being part of the merit and the seat belongs to Delhi quota; (ii) If the plea of the petitioner is accepted, it would amount to filling up the seat from All India quota, which shall have the effect of increasing the All India quota and simultaneously decreasing Delhi quota. Additionally, the submission of Mr. Rupal relying upon *Mridul Dhar (Minor) and Anr (supra)* wherein the Supreme Court has held that no relief can be granted after cut-off date of 30th September, 2016 is also appealing.

I do not see any merit in the petition. Same is dismissed.

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In view of above discussion, the present applications are dismissed as infructuous

V. KAMESWAR RAO, J

MAY 24, 2017/jg