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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on:13.09.2017

Judgment delivered on:19.09.2017

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W.P.(C) 7505/2017 and C.M Nos. 30972/2017 and 30973/2017

DIGANT JAIN

..... Petitioner

Through: Mr Anshu Bhanot and Mr Anuj
Mindha, Advs

Versus

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY & ORS

..... Respondents

Through Ms. Ekta Sikri and Mr. Jasbir Bidhuri,
Advs for R-1 & R-2..
Mr.T. Singhdev, Ms. Puja Sarkar,
Ms. Biakthansangi Das and Mr.Tarun
Verma, Advs for MCI/R-3.
Mr KirtimanSingh, CGSC with
Mr Prateek Dhanda and Mr.
Vikramaditya Singh, Advs for R- 4,
R-6 & R-7
Mr. Siddharth Dutta, Adv for R-8.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 The petitioner is a thalassaemia patient. He is entitled to a reservation under the Rights of Persons with Disabilities Act, 2016 (hereinafter referred to as the Act of 2016). This Act was promulgated on 28.12.2016 and it was

notified on 19.04.2017. The earlier Act dealing with disabilities had been repealed. Under the new Act, the earlier disabilities which were 7 in number were increased and enlarged to 21. Thalassemia was one such disability which was recognized by the new Act. This Act also increased the reservation of such category of persons (persons with disabilities –PWD) from 3% to 5%.

2 In March, 2017, the petitioner had filled in his form for appearing in the National Eligibility-cum-Entrance Test, 2017 (NEET) under the general category conducted at all India level. On 24.04.2017, petitioner was issued an admit card. His result was announced on 23.06.2017. On the petitioner learning about this new Act (notified in April, 2017), the petitioner on 05.07.2017 filed an appropriate application before the Competent Authorities/respondents to change his category from general to PWD which was accepted by the respondents on 06.07.2017 and his status from general category was converted to PWD category. He was accordingly put in the list of PWD category on the website of the respondent university. The petitioner had admittedly participated in the first round of counseling which had taken place on 23.07.2017. Since his name did not appear after the first round of counseling, he had been permitted to appear in the second round of

counseling which was conducted on 12.08.2017. The fact that the petitioner had appeared on 12.08.2017 before respondent No.1 for a session of counseling is admitted. Even after the second round of counseling, his name did not appear. Contention of the petitioner is that thereafter the third round of counseling which was the Mop Up round of counseling took place on 27.08.2014 wherein the petitioner again appeared before the respondent No.1. This was during the pendency of the writ petition which had been filed before this Court on 26.08.2017.

3 Learned counsel for the petitioner submits that the very fact that respondent No.1 had granted permission to the petitioner to participate in all the aforementioned counselings, the petitioner was under the bonafide impression that his case was being considered favourably by respondent No.1 for admission in the PWD category. He was shocked to learn that his name had not figured in the PWD category at all. Submission being that it was well within the knowledge of respondent No.1 that the status of the petitioner from original the general category to PWD category had been changed on 16.07.2017. This fact was well known to respondent No.1. Respondent No.1 thereafter not considering the case of the petitioner under the PWD quota when the petitioner had a good case on merits was all for the fault of the

respondent. The petitioner being a thalassaemia patient which is a disability covered by the Act of 2016, cannot be denied an admission.

4 Respondent No.1 has filed a counter affidavit. Pursuant to the directions of this Court on 07.09.2017, an additional affidavit has also been filed by respondent No.1. The stand of respondent No.1 is that the original 3% quota in the PWD category has been enhanced to 5% quota and the details of the same have been annexed along with the additional affidavit. These details have been perused. Additional submission of respondent No.1 is that although thalassaemia is now recognized as a disability under the new Act of 2016 yet in the absence of the MCI (respondent No.3) giving a go-ahead signal to respondent No.1 to treat a thalassaemia patient as being entitled for admission to the MBBS course, the hands of respondent No.1 are tied. Respondent No.1 had written several emails to respondent No.3/MCI dated 30.07.2017, 04.08.2017, 10.08.2017, 14.08.2017 & 22.08.2017 seeking guidance of respondent No.3 qua the status of the petitioner but no response having been received from respondent No.3 on this count, respondent No.1 had no other option but to convert the unfilled seats in the PWD category to the general category. Submission is that as on date, all seats stand filled. The petitioner has even otherwise come very late to the

Court. Attention has been drawn to the circular of respondent No.1 dated 09.08.2017. It is pointed out that on 09.08.2017, it was notified that all seats which remained vacant in the PWD category were reverted back to the parent category. This was after the first round of counseling. This fact was well known to the petitioner and the petitioner admits that on 13.08.2017 he was aware of this status; he has chosen to file this writ petition only on 26.08.2017 which is after a huge delay as a back to back fight the fight for these seats is always on and the moment they are notified to be vacant, they are filled in by those students who are already in queue. It is reiterated that as on date, no seat is available with the respondent university. The case of the petitioner must fail.

5 On behalf of respondent No.3/MCI it is pointed out that the timeline/schedule which has been laid down by the Supreme Court for admission to an MBBS course has to be adhered to; the last date was 31.08.2017; case of no person for the purpose of admission in the MBBS course can be extended after the due date of 31.08.2017. Respondent No.3 adopts the arguments of respondent No.1; it is pointed out that the petitioner has come to the Court late; he was well aware of the fact that the unfilled PWD seats had been reverted to the parent cadre; this was notified on

09.08.2017 on the website of respondent No.1. Respondent No.1 rightly could not admit a person with a disability of thalassaemia as Regulations of respondent No.3 were yet to come into force. It is respondent No.3 alone which would be in a position to decide as to which particular disability is eligible admission to an MBBS course. Additionally, it is pointed out that the Committee of respondent No.2 to regulate these admissions has been set up in May, 2017 (pursuant to the notification of the Act of 2016 in April 2017) and two meetings of the said Committee have been held in the month of June, 2017 and July, 2017. Admittedly after July, 2017, no meeting of the Committee has been held. A specific query on this count has been put to learned counsel for respondent No.3 who has answered this submission in the positive.

6 This Court notes that the petitioner has placed on record a judgment of the Apex Court delivered on 18.08.2017 W.P. (C) No. 620/2017 titled Sruchi Rathore Vs. Union of India & Others wherein a candidate suffering from a thalassaemic disability had been held entitled to admission in the MBBS course. This was a case where the candidate had not been subjected to counseling; the Apex Court while directing admission of the candidates with a thalassaemic disability in the MBBS course had directed the respondent

University to complete the counseling within a week from that date. Learned counsel for the petitioner points out that the case of the petitioner stands on a better footing as in his case, counseling already stands completed.

7 Arguments have been heard.

8 The petitioner had filled in his form for appearing in the NEET examination in the general category. This application had been filled in March, 2017. The Act of 2016 although promulgated in December, 2016 had been notified only on 19.04.2017. On the petitioner learning about the same, he had made an application to the respondent university on 05.07.2017; his status of a general category had been converted to a PWD category on 16.07.2017. This is a matter of record. The fact that respondent No.1/Guru Gobind Singh Indraprastha University/Delhi University had a joint counseling session for admission to their respective colleges is also not in dispute. Respondent No.1 has four colleges with MBBS seats and Delhi University has three colleges with MBBS seats. The additional affidavit filed by respondent No.1 reflects the status of the seats available with respondent No.1.

9 This Court is really concerned with the status of Respondent No. 1 as the prayer made by the petitioner is qua the unfilled seats in respondent No.1

university. A perusal of this additional affidavit shows that respondent No. 1 has increased the initial reservation from 3% to 5%. Seats in the four colleges are as under:-

(I)	In the Vardhman Mahavir Medical College and Safdarjung Hospital, the total PH seat was 1; it remained unfilled,	1
(II)	In the North Delhi Municipal Corporation Medical College and Hindu Rao Hospital, there was 1 seat which remain unfilled,	1
(III)	In the Dr. Baba Saheb Ambedkar Medical College and Hospital, there were two seats of which one remain unfilled;	1

10 The status of Army College of Medical Science need not be gone into as that College has reservation status for Army candidates; the petitioner is not one such candidate.

11 Thus as on 24.07.2017, there were three seats which were yet to be filled in the PWD/PH category which was after the first round of counseling. The petitioner had admittedly participated in this first round of counseling on

23.07.2017.

12 On 09.08.2017, a Notification was issued by respondent No.1 wherein it was notified as under:-

“If the seats of sub-categories (i.e. Defence and PWD/PH) remain vacant, then they shall first be reverted to the parent category.”

13 This Notification states that if the seats of PWD/PH/Defence categories are vacant they shall be reverted to the parent category. A reading of this Notification shows that as on 09.08.2017, these seats were yet not reverted from the PWD/PH category to the parent category.

14 The second round of counseling was effected on 12.08.2017. The petitioner had admittedly participated. The status of the MBBS seats on 12.08.2017 (as per the additional affidavit of respondent No.1) is also reflected in the said additional affidavit. In all of the aforementioned 3 colleges i.e. (a) Vardhman Mahavir Medical College and Safdarjung Hospital, (b) North Delhi Municipal Corporation Medical College and (c) Dr. Baba Saheb Ambedkar Medical College and Hospital, no seats were shown in the PWD/PH category. The submission of respondent No.1 being reiterated that the unfilled PWD/PH category had reverted to the parent category in terms of the Notification dated 09.08.2017 on 09.08.2017 itself.

15 The Admitted fact however is that the petitioner had participated not only in the first round of counseling but also in the second round of counseling. He had appeared before respondent No.1 on 12.08.2017. He rightly points out that he was under the bonafide impression that his case was being considered favourably and that is why he was permitted to appear in the second round of counseling. If there were no seats available in the PWD/PH category on 12.08.2017 and these seats had already stood reverted to the general category on 09.08.2017 itself, then why the petitioner (a PWD/PH candidate) was permitted to participate on 12.08.2017 in the second round of counseling is a submission which carries force, for which this Court is of the view that respondent No.1 has no answer.

16 Submission of respondent No.1 is that respondent No.1 was writing to respondent No.3/MCI repeatedly asking them to communicate and inform them whether a thalassaemia patient was covered as a disability entitling such a candidate to admission in the MBBS course. The letters written by respondent No.1 to respondent No.3 on this count are dated 30.07.2017, 04.08.2017, 10.08.2017, 14.08.2017 & 22.08.2017. It is thus clear that even after the second round of counseling (12.08.2017), respondent No.1 was not clear about the status of the petitioner and that is why even after the

participation of the petitioner in the second round of counseling on 12.08.2017, he continued to communicate with respondent No.3 (emails dated 14.08.2017 & 22.08.2017) seeking information about the status of the present petitioner. Petitioner is absolutely right in his submission had all along he was given the impression by respondent No.1 that his case was being considered for the purpose of admission in University.

17 Record also shows that after the Act of 2016 had been notified in April, 2017, the Regulatory Committee of respondent No.3 had been set up in May, 2017 for the purpose of those disabilities which would entitle a candidate having the same disabilities to be qualified/eligible for admission to an MBBS course. The fact that this Committee has met two times after its creation i.e. in the month of June and July, 2017 and no meeting had taken place after that is also noted. This Court also notes that in the case of Sruchi Rathore a similarly placed candidate who was suffering from thalassaemia and seeking admission in the PWD quota (pursuant to his NEET examination) had been granted this permission; this was a case where the said candidate had not even participated in the counseling but the Court had directed that the counseling shall be carried out within 1 week and the petitioner candidate would be allotted a seat. The defence of the MCI raised

before this Court was obviously the same defence which was raised before the Apex Court; as has been pointed out before this Court, the MCI was yet to come up the Regulations as to whether a thalassaemic patient can be considered for admission to an MBBS course or not. This Court notes that a candidate with the same disability as that of the petitioner already having been granted permission to be admitted in the MBBS course; this defence of the respondent has no force.

18 The Petitioner was permitted to participate in the second round of counseling on 12.08.2017 and again in the mop up counseling on 26.08.2017 he was given permission for participation. Respondent No.1 was duly aware that the petitioner candidate was a PWD category; submission now made before this Court that these seats of the PWD category stood converted to the general category on 09.08.2017 is a submission which is not correct. The Notification of 09.08.2017 states that the seats if vacant in the PWD/PH category would revert back to their parent category. The status of the PWD/PH category had not changed. The additional affidavit of respondent No.1 reflecting the status of seats in their medical colleges on 12.08.2017 reflected no category of PWD/PH. Why and how the petitioner was permitted participation in this counseling when there was no such category

available with them, is not answered. This stand of Respondent No. 1 also appears to be incorrect for the reason that even after 12.08.2017, respondent No.1 was constantly writing to respondent No.3/MCI (emails dated 14.08.2017 & 22.08.2017) asking them about the status of the present candidate. The judgment of the Apex Court Sruchi Rathore had also been brought to the notice of respondent No.3. At the cost of repetition, the Supreme Court had thought it fit that a candidate suffering from thalassaemia is eligible to get admitted in the MBBS course. A Notification dated 23.08.2017 has been placed on record by the petitioner which shows the schedule of mop up counseling which again in para 11 reflects the status as under:-

“If the seats of sub-categories (i.e. Defence and PWD/PH) remain vacant, then they shall first be reverted to the parent category.”

19 The fact that the petitioner had participated in the mop up counseling is also admitted.

20 If there were no seats available in the PWD/PH category, the question of putting up this Notification on 23.08.2017 by respondent No.1 again did not arise. There is no explanation by respondent No.1 on this count.

21 Another objection raised by respondent No.1 is qua the timeline and

the schedule permitted by the Apex Court for admission to an MBBS course; last date being 31.08.2017; additional submission being that this date has crossed over. This Court notes this submission. This Court also notes that the present petition has been filed on 26.08.2017. The matter being lis-pendens, the submission of the petitioner that the cut-off date of 31.08.2017 would apply is not the correct position; the petitioner already having been approached this Court before 31.08.2017 i.e. on 26.08.2017 and if he is successful in showing Court a rightful right in his favour, he would, in the view of this Court be entitled to a favourable order. The judgment relied upon by the learned counsel for respondents on this score reported as (2014) 10 SCC 521 Chandigarh Administration and Another Vs. Jasmine Kaur and Others would not apply to the instant case. That was a case where the candidate having knowledge about the contents of the prospectus in April, 2013 had sought a clarification qua the same three months later i.e. July 2013. She had taken no steps in that three month period. The facts of the instant case are different. Reliance by the learned counsel for respondent No.3 upon (2001) 10 SCC 264 K.S. Bhoir Vs. State of Maharashtra and Others on an argument that increase in the seats in the professional colleges cannot be done unless and until it is established that the professional college

has professional expertise to accommodate an increased strength would also not apply to the facts of the instant case. In that case, there was an intake of 350 students who were to be inducted. The present case is a case of single candidate who alone has been deprived of his right of admission in the PWD category for no fault of his.

22 To sum up, it is clear that the status of the petitioner from general category to the PWD category stood changed on 16.07.2017. The first round of counseling was held after that date i.e. 24.07.2017. He was not declared unsuccessful. He was again called on 12.08.2017 for second round of counseling in which again he was successful. The fact that he was under the bonafide impression that his case was being considered favourably after these rounds of counseling was his rightful expectation of the candidate that he was being considered in the PWD category. The submission of respondent No.1 that there was no category of PWD at the time of the second round of counseling is incorrect for the reason that if this was the status, why in the first place, the petitioner was permitted to participate in the second round of counsel and secondly why respondent No.1 continued to write emails to respondent No.3 seeking a clarification about the status of the petitioner (dated 14.08.2017 & 22.08.2017) goes unexplained. The fact that

the petitioner had also participated in the mop up counseling held on 28.08.2017 is also not in dispute. The mop up counseling schedule was notified on 23.08.2017 where again it had been mentioned by respondent No.1 that the seats of PWD/PH categories, if vacant would revert to their parent category meaning thereby that at that stage also respondent No.1 had been given the impression that there were seats available in the PWD/PH category.

23 The petitioner is entitled to the relief prayed for. He be granted admission in the MBBS course by respondent No. 1 in any of the three colleges of respondent No.1.

24 Petition allowed and disposed of in the above terms.

25 Order dasti under signatures of the Court Master

INDERMEET KAUR, J

SEPTEMBER 19, 2017

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