

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

Decided on: 13.11.2017

+ **LPA 651/2017**

MEDICAL COUNCIL OF INDIA

..... Appellant

Through : Sh. Vikas Singh, Sr. Advocate with Sh. T. Singhdev, Ms. Puja Sarkar, Ms. Mischalle Biakthan Singh and Sh. Tarun Verma, Advocates.

+ **LPA 654/2017**

GURU GOBIND SINGH INDRAPRASTHA UNIVERSITY

..... Appellant

Through : Ms. Ekta Sikri and Sh. Jasbir Bidhuri, Advocates.

Versus

DIGANT JAIN AND ORS.

..... Respondents

Through : Sh. Bharat Sanghal, Ms. Vernika Tomar, Ms. Vidushi Garg, Ms. Isha Gupta and Ms. Anudita Deka, Advocates, for Respondent No.1.

Sh. Kirtiman Singh, CGSC and Sh. Waize Ali Noor and Sh. Prateek Dhanda, Advocates, for Respondent Nos. 4 to 7.

Sh. Siddhartha Dutta, Advocate, for Respondent No.8.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUNIL GAUR

MR. JUSTICE S. RAVINDRA BHAT

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1. These appeals are by the Guru Gobind Singh Indraprastha University (hereafter “the University”) and the Medical Council of India (hereafter “MCI”). They are aggrieved by the judgment of a learned single judge

directing the admission of the respondent/candidate (the writ petitioner, hereafter called “Digant”) to the MBBS course commencing in the academic year 2017-18.

2. Digant complained of unfair treatment in regard to admission to the MBBS course, for which he had applied; his contention was that his application as a candidate with disabilities (as a *thalassaemia* patient) did not receive proper and due consideration in accordance with provisions of the *Rights of Persons with Disabilities Act, 2016* (hereafter referred to as the “2016 Act”). The 2016 Act was brought into force on 19.04.2017. The earlier Act dealing with disabilities was repealed. Under the new law, the number of disabilities that can be considered were increased to 21. *Thalassemia* is a disability recognized by the new Act. This Act also increased the reservation of such category of persons (persons with disabilities -PWD) from 3% to 5%.

3. Digant applied in March 2017 for appearing in the National Eligibility-cum-Entrance Test, 2017 (NEET) as a general category candidate. NEET is an All India medical college entrance process. NEET results were announced on 23.06.2017. Digant says that on learning about the coming into force of the new Act, he filed an appropriate application before the competent authorities, i.e. the appellants, on 05.07.2017- for his re-categorization from “general” to “PWD” (“person with disability”). The appellants on 06.07.2017 accepted this and his status from general category was converted to PWD category; he was accordingly placed in the list of PWD category on the website of the University. Digant participated in the first round of counselling that took place on 23.07.2017. Since his name did not appear after the first round of counselling, he had been permitted to

appear in the second round of counselling which was conducted on 12.08.2017. His name did not figure in the list of selected candidates, after the second round of counselling. It was argued on his behalf that in the third round of counselling, (which was the mop-up round, on 27.08.2017), he again appeared and participated, before the University. This occurred during the pendency of the writ petition, which was preferred on 26.08.2017.

4. Digant complained, in the writ petition, that the re-categorization of his candidature, and his participation in the various rounds of counselling, being admitted facts and indeed not disputed in the writ proceeding, denial of admission to him in the PWD quota was shocking and arbitrary. It was stated that the recategorization from originally the general category to PWD category took place on 16.07.2017. This fact was well known to the appellant/authorities, who gave no valid or cogent reason to deny him admission.

5. The University's stand was reflected in its counter affidavit and the additional affidavit; it was submitted that the original 3% quota in the PWD category was enhanced to 5% quota. The University urged its hands were tied, because despite thalassemia's recognition as a disability under the 2016 Act yet in the absence of the MCI's clearance to it (the University) to treat a *thalassemia* patient as entitled for admission to the MBBS course, it could not grant admission. The University wrote several e-mails to MCI dated 30.07.2017, 04.08.2017, 10.08.2017, 14.08.2017 and 22.08.2017 seeking its guidance in respect of Digant's status. Since there was no response, the University was constrained to convert the unfilled seats in the PWD category to the general category.

6. It was argued that as on the date of hearing of the writ petition, all seats were filled. It was argued that Digant approached the court later; the University relied on a circular dated 09.08.2017 notifying that all remaining vacant seats (in the PWD category) reverted back to the parent category. This was after the first round of counselling. This was well known to Digant, who admitted that on 13.08.2017 he was aware of this status. He filed the writ petition only on 26.08.2017, after a considerable delay. It was highlighted that filling such seats is the most contentious part of the admission process. It was argued that as on date of hearing, no seat was available with the University.

7. The MCI pointed out that the timeline/schedule prescribed by the Supreme Court for admission to an MBBS course has to be adhered to; the last date was 31.08.2017; for the purpose of admission in the MBBS course, no exception could be made after 31.08.2017. MCI also argued that an official Committee to regulate these admissions was constituted in May, 2017 (pursuant to the notification of the 2016 Act) and that two meetings were held. After July, 2017, the Committee did not meet.

8. The learned single judge, in the impugned order, noticed that the materials on record revealed that the University had increased the initial reservation from 3% to 5%. The vacancy position in the four affiliated medical colleges reflected from the record was that 3 PH quota seats were unfilled. It was held that as on 24.07.2017, after the first round of counselling three seats were yet to be filled in the PWD/PH category which was after the first round of counselling. Digant participated in this first round of counseling on 23.07.2017. The learned single judge also noticed that on 09.08.2017, a Notification was issued which stated that "*If the seats of sub-*

categories (i.e. Defence and PWD/PH) remain vacant, then they shall first be reverted to the parent category." According to the learned single judge, as on 09.08.2017, the vacant and unfilled PD/PH seats had not been reverted. The learned single judge found that Digant participated in the second round of counselling, on 12.08.2017. It was held that no vacancy in the PD/PH category was notified that day; however, it was held that Digant was under the *bona fide* impression that he would be considered favourably and that was why he was permitted to appear in the second round of counselling. The impugned order reasoned that if indeed the seats had reverted to the general quota, there was no *rationale* for permitting Digant to participate in the second round of counselling. The learned single judge then noticed that the MCI and the University were unclear even after second round of counselling (by relying on letters written on various dates in July and August as to "*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.*"

9. It was next held that despite its constitution, under the 2016 Act, the regulatory Committee had met only twice, to consider and make recommendations as to what kind of disabilities could be earmarked for reservation *inter alia* to medical seats. The impugned judgment then relied on the order in one 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 counselling but the Court had directed that the counselling shall be carried out within 1 week and the petitioner candidate would be allotted a seat. The learned single judge then held as follows:

“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.”

Contentions of parties

10. It is argued by the MCI and the University that the learned single judge assumed that Digant was permitted to participate in the second round of counselling. It was argued that with the notification dated 09.08.2017, in fact, stated that there were no PH/PD vacancies as they had been reverted and added to the general quota. The mere fact that Digant attended the counselling meant nothing, because it did not confer him with any right or advantage. It was argued that in the absence of any clarification by the MCI or the Central Government about the status of *thalassemia* patients, and their entitlement to be considered for PH quota medical seats, Digant could claim no better rights than those who fell in categories of disability, and for whom there was similarly no clarity.

11. It was argued that the University had informed via the notification dated 13.08.2017 that all seats in medical colleges in Delhi affiliated with the university were filled during the second round of counselling. It was submitted that with the publication of this information, Digant clearly had notice of the fact that no seat was left, in the PH/PD quota. He ought to have approached the court and sought his remedies immediately thereafter. The MCI argues that without a notification under the 2016 Act about suitability or feasibility of reservation for educational purposes, no seat could be claimed by one disabled on account of a non-notified disability. It was submitted that the disability recognized and notified was a locomotor disability. Till *thalassemia* was notified as a disability that could be given the benefit of reservation, for its patients, no right could accrue.

12. Adverting next to the regulations framed by the MCI, pursuant to amendments made in 2016 to the *Indian Medical Council Act*, it was argued that a common national eligibility test is conducted to fill all medical seats.

The scheme of admission envisions counseling rounds after declaration of results of the written test. Two rounds of counselling are contemplated, after which “mop-up” rounds are held for the central pool and the state pool. Reliance was placed on Rules 5 and 5A of the *Regulations on Graduate Medical Education, 1997*. It was emphasized that according to Supreme Court directions, in various orders and directions, the last cut-off date for concluding admission to undergraduate medical courses- which at present is 31.08.2017 is considered sacrosanct. Reliance was placed on the decisions in *Medical Council of India v Madhu Singh* 2002 (7) SCC 258; *Mridul Dhar v Union of India* 2005 (2) SCC 65 and *Priya Gupta v State of Chhatisgarh* 2012 (7) SCC 433. The MCI also submits that the order of the Supreme Court in *Dr. Ashish Ranjan & Ors v Union of India & Ors.* [W.P.(C) 76/2015, dated 05.07.2017] clearly states that the last date for admission/joining of medical courses under any circumstances cannot be extended beyond 31.08.2017.

13. The University adopts the position of the MCI; in addition, it urges that though Digant’s application for consideration against the PH/PD quota was received and it sought clarifications through a series of letters and communications, at no stage was it permitted to review seats that had been filled; more importantly, that the notifications issued during counselling rounds clearly had stated that no vacancy for such quota was available. In these circumstances, for not having approached the court earlier, the candidate could not have been granted the relief of direction to admit him, beyond the prescribed cut-off date.

14. Learned counsel for Digant argued that the learned single judge correctly inferred that permitting him to participate in the counseling rounds,

particularly the second counseling round, meant that there was no impediment in consideration as on 09.08.2017. The candidate quite correctly harboured a *bona fide* belief that his request for admission would be considered and granted as a matter of course. Here, he was justified in legitimately and reasonably expecting the University to admit him to the MBBS course, given that *thalassemia* was a recognized or notified disability under the 2016 Act; furthermore, the quota for PH/PD candidates was increased to 5% from the hitherto mandated quota of 3%. Having regard to these conspectus of circumstances, the learned single judge acted reasonably and within bounds of law in directing Digant's admission.

Analysis and Findings

15. The controversy owes its origin, to a large measure in the amendment to the existing law. The new, 2016 Act came into force on 19.04.2017. The scheme for admission was notified after that date. Nevertheless, the appellants cannot be faulted for not straightaway implementing it (or enforcing it) with respect to all categories of disabled persons; concededly under the law, a Committee had to evaluate the *nature of the disability to determine its suitability* towards a particular educational course (in this case, the medical course). That said, it is also a matter of record that candidates were made aware of the guidelines about which categories were entitled to reserved vacancies, in relation to PH/PD candidates, Since the University's queries did not receive any response, on 12.08.2017, Digant's application was rejected. In these circumstances, the candidate stated that he harboured a *bona fide* belief that his candidature would be considered.

16. The notification dated 09.08.2017 clearly stated that after the second counseling was completed, there was no question of any further rounds; the

rationale for the mop-up rounds was to facilitate left over vacancies in the deemed University and another status, to fill left-over seats. This court notices that the foundation of the impugned judgment is the interpretation of the notification issued on 09.08.2017, that seats in PH/PD categories would revert to the general quota; the learned single judge inferred that at the stage of the second counseling, vacancies did exist and that Digant had an expectation that he was considered for one such vacancy. This court is of the opinion that the inference - and the conclusion is without factual basis. The record nowhere shows that when Digant says he attended the second counselling, he was assured a seat, or even a seat was available. The several letters and representations addressed by him or his father (all of which are on record) nowhere state that any such assurance was given, or indeed that he was told that he would be considered for any vacancy. Even the representation written last (dated 24.08.2017) is silent on this aspect; it generally addresses itself to the issue of the Central Government's commitment to persons with disabilities and why Digant should be given a seat.

17. This court is of opinion that the other submission of the University and MCI with regard to the absolute nature of the cut-off date for admission, is substantial. The Supreme Court has emphasized on numerous occasions, through its several judgments that the timelines indicated by the MCI, (*especially the cut-off date for admission*) in its regulations (earlier 30th September, and now 31st August, of the concerned academic year) are absolute and inviolable. Digant, in this case, approached the court and filed the writ petition on 26.08.2017. When the petition was taken-up, no direction to keep a seat vacant was sought or granted. Therefore, when the judgment

was in fact delivered, i.e. on 19.09.2017, the deadline for admission, i.e., the last date had long passed. In these circumstances, the learned single judge could not have directed admission, of the candidate, *even if it were assumed (though such assumption has no basis in the present case) that a vacancy existed in the PH/PD quota.*

18. For the foregoing reasons, it is held that the appeals have to succeed. The judgment and directions of the learned single judge, allowing W.P.(C) 7505/2017 are hereby set aside. LPA Nos. 651/2017 and 654/2017 are allowed; there shall be no order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**SUNIL GAUR
(JUDGE)**

NOVEMBER 13, 2017

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