

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

Decided on: 05.12.2017

+ **LPA 774/2017, C.M. APPL.44198/2017 & 44199/2017**
PRANAY NIJHAWAN Appellant

Through: Ms. Shakti Vardhan with Ms. Aastha Shah,
Advocates.

versus

GGSIPO AND ORS. Respondents

Through: Ms. Anita Sahani, Advocate, for Respondent
No.1.

Mr. T. Singhdev with Ms. Amandeep Kaur, Mr. Tarun
Verma, Ms. Michelle Biakthansangi, Ms. Puja Sarkar and
Mr. Abhijit, Advocates, for Respondent No.5.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT

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1. The appellants complain that the learned Single Judge, who dismissed their writ petition, fell into error in concluding that pooling of all seats – left-over State seats as well as others, without any institutional preference and their filling-up on merit basis, was impermissible. They contend that all such seats can be pooled for the purpose of “counselling” to fill post-graduate medical seats, in Delhi.

2. The appellant filed W.P.(C) 8145/2017, challenging the eligibility criteria prescribed by the University of Delhi and Guru Gobind Singh Indraprastha University (GGSIPO), which permitted institutional

preference/reservation in their post-graduate (MBBS/BDS) courses. The basic argument was that institutional counselling was illegal; the seats in these post-graduate courses should not have an institutional reservation; seats in the post-graduate courses should be open for all residents of Delhi. The writ petitioner contended that under Article 9A of the Post-graduate Medical Education Regulations, 2000, the eligibility criteria on the basis of which counselling to post-graduate medical seats can be conducted has to be on the basis of the merit list of a National Eligibility-cum-Entrance Test (NEET). It is pointed out that, no doubt, the NEET Examination has been formulated which is at an all-India level and the petitioner had qualified in the NEET Examination besides graduating in the MBBS from the Delhi University, the institutional preference criteria followed by the said Universities (Delhi University and GGSIPU), i.e. a 50% institutional preference is available in their respective institutes for students who have graduated from each such University was an illegality. It was argued that the petitioner too should have been permitted to participate to get benefit of the seats available in the post-graduates courses of the GGSIPU as well.

3. During pendency of the writ petition, the appellant was given admission, which he took, to the Maulana Azad Medical College; he, however, states that this was without prejudice to his rights, because the course offered is a post-graduate diploma.

4. The learned Single Judge noticed that by previous order, the material events had been noticed; she also took note of the judgments of the Supreme Court and declined relief, saying as follows:

“This fact is not in dispute. The question of pooling of these seats by common counselling thus could not arise. As noted

supra, this interim order passed by this Court on 13.4.2017 was affirmed by the Division Bench when the LPA No.322/2017 preferred against that judgment had been dismissed on 01.5.2017. The Division Bench had noted that the first round of counselling for the post-graduate medical seats was already over and the students had joined their courses. Relief prayed for before the Division Bench had been declined.

This Court noting the narration of facts of the instant case, as also the case law laid down by the Apex Court as also noting the admitted position that Dr. Deeksha Kalra (petitioner no.1 in W.P.(C) 2610/2017) and Dr. Pranay Nijhawan (petitioner in W.P.(C) 8145/2017) have already obtained admission in the post-graduate courses at the Lady Harding Medical College (Psychiatry) and Maulana Medical College (Anaesthesiology) and undertakings to the effected (as noted supra) having been furnished by them and the timeline (31.5.2017) for admission having been over which timeline cannot be extended in view of the directions of the Apex Court in (2016) 11 SCC 225 Ashish Ranian Vs. Union of India, this Court is of the view that the reliefs prayed for in the present petition cannot be answered in favour of the petitioners.”

5. It is argued that the Supreme Court had in *Asha v. Pt. B. D. Sharma of Health Sciences & Ors* (2012) 7 SCC 389 clearly held that if a deserving candidate would be excluded from admission or denied a postgraduate seat, for none of her fault, relief can be granted. It was submitted that as late as in October 2017, the Supreme Court had extended the cut-off date, to facilitate admission to a large number of vacant unfilled seats. The petitioner argued that the object of court inspired schemes is to ensure that broad based equality is achieved, not to deny merited candidates their just dues on the basis of artificial barriers imposed by procedures that protect institutional preference or reservations, which have no constitutional sanction. Pooling all

seats after exhaustion of the All-India quota seats would promote merit and equality and defeat mediocrity.

6. The decision of a Constitution Bench of the Supreme Court, *inter alia*, held, in *Saurabh Chaudhari v. Union of India* 2003 (11) SCC 146 as follows:

“We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

However, the test to uphold the validity of a statute on equality must be judged on the touch-stone of reasonableness. It was noticed in Dr. Pradeep's Jain's case (supra) that reservation to the extent of 50% was held to be reasonable. Although subsequently in Dr. Dinesh Kumar's case (supra) it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time have produced a large number of Post-graduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law arc expanding.

Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest.”

7. In this case, what is noticeable is that the admission process was completed long back - in May 2017. The petitioner secured admission to the courses offered to him. He, however, impugns as unlawful the procedure- or

practice, adopted by the respondents, of separate counselling contending that institutional preference candidates' counselling should be pooled or taken together with those of other general candidates.

8. The scheme of admission to post-graduate educational institutions, particularly those to professional and technical colleges has a chequered and if one may say so, tenacious jurisprudential history. The evolution of constitutional principles and equality jurisprudence twines its long and winding career. Yet, over the last two decades, a few salient principles have been established as near inviolate: first that the last date of admission to any such professional (medical, dental etc.) course is inviolate; second, there would be an All-India entrance examination to assess the proficiency of candidates. 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 August, 2017 is considered sacrosanct. The judgments reported 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 emphasize this; the recent order of the Supreme Court in *Ashish Ranjan & Ors v. Union of India* [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 August, 2017.

9. The net result of the above discussion is that there cannot be any doubt about the legality of institutional preference. Whether this kind of reservation should be kept apart for counselling purposes, or pooled with seats available and needing to be filled, in regard to other categories or quotas, is a question of policy. The Court also notes that the petitioner

approached and sought relief only in September 2017. Having regard to all these facts, the Court is of opinion that the impugned judgment cannot be faulted.

10. In view of the foregoing reasons, it is held that the appeal is insubstantial; it is, therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

DECEMBER 05, 2017



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