

\$~45

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

% *Date of Judgment: 25<sup>th</sup> April, 2018*

+ LPA. /2018

DR. LOKESH KUMAR MEENA ..... Appellant

Through Mr. R.K. Saini, Mr. Sitab Ali  
Chaudhary, Mr. Azaruddin  
Chaudhary, Advocates for the  
appellant along with appellant.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr. Ripu Daman Bhardwaj, CGSC for  
respondent no.1./UOI.  
Ms. Biakthansangi Das, Advocate for  
Mr. T. Singhdev, Advocate for  
respondent no.2/MCI.  
Ms. Anita Sahani, Advocate for  
respondent no.3/GGSIP University.

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**G.S.SISTANI, J. (ORAL)**

1. We may note, at the outset, that this Bench has assembled at 9:00 A.M. today pursuant to the matter having been mentioned before the Hon'ble Acting Chief Justice.

2. Registry is directed to register the LPA and the applications.

**CM.APPL /2018(Exemption)**

3. Exemption allowed, subject to all just exceptions.

4. The application stands disposed of.

5. The present appeal is directed against the order passed by the learned Single Judge dated 24.04.2018 in W.P. (C).4131/2018. The writ petition of the appellant stands dismissed, which has led to the filing of the present appeal. The urgency expressed before us is that the second round of counseling for the Post-Graduate Medical Courses is scheduled at 10:00 A.M. today.
6. Some necessary facts which are required to be noticed for disposal of this appeal are as under :-
7. The National Eligibility Entrance Test (NEET) 2018 was conducted on 07.01.2018 for admission to MD/MS and post-graduate diploma courses. The appellant had also applied online on 23.01.2018 and secured 274 marks out of 1200 marks, i.e. 38.20 percentile, which is less than 40 percentile and, thus, the appellant could not qualify. The grievance of the appellant is that the respondent no.1, Union of India has failed to comply with Regulation 9 of the Post-Graduate Medical Education Regulation 2000, as per which, when sufficient number of candidates fail to secure the minimum marks as prescribed in the National Eligibility-cum-Entrance Test, the Central Government in consultation with the Medical Council of India (MCI) may lower the minimum marks required.
8. The appellant had filed a writ petition W.P. (C).2287/2018. This writ petition was disposed of by an order dated 12.03.2018 directing the respondents to dispose of the representation of the appellant within two weeks. The appellant then made a representation on 15.03.2018 praying that steps be taken for lowering the minimum percentile prior

to the first counseling, failing which, the ST candidates will not be able to choose the medical subjects of their choice. Since the representation was not replied, a second writ petition being W.P. (C).3144/2018 was filed on 02.04.2018, in which, while issuing notice, an interim order was passed. This writ petition was dismissed as infructuous, as in the meanwhile, the representation of the appellant was rejected by an order dated 03.04.2018. Leave was granted to the petitioner to challenge the order dated 03.04.2018. The appellant then filed a third writ petition being W.P.(C).4131/2018, which also stands dismissed by an order dated 24.04.2018.

9. Since the submissions of the learned counsels for the parties revolve around Regulation 9 of the Post-Graduate Medical Education Regulation 2000, we deem it appropriate to reproduce the same, which reads as under:

“9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

(1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely ‘National Eligibility-cum-Entrance Test’ for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

(2) The “designated authority” to conduct the ‘National Eligibility-cum-Entrance Test’ shall be the National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.

(3) In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility-Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-cum-Entrance Test for Postgraduate courses.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only."

10. Mr. Saini, learned counsel appearing on behalf of the appellant submits that respondents' no.1, Union of India, and respondent no.2 MCI must comply with Regulation 9 at this stage before the first round of counseling. It is contended by Mr. Saini that the seats are fixed in both the General Category and the Reserved Category. Therefore, in case, Regulation 9 is not invoked, a reserved seat would be filled up at the stage of first counseling and benefit of Regulation 9 would not fall on the petitioner and similarly situated persons. He

submits that in case, the UOI and the MCI wait for the entire counseling to be completed and invoke Regulation 9 at a later stage, serious prejudice would be caused to the rights of the petitioner and similarly situated persons as they would not be able to opt the subjects of their own choice and would be left with those subjects, which have not been accepted by persons of all categories. He submits that even in the examination held in the previous year, although, the UOI lowered the percentile in terms of Regulation 9, but the MCI had opposed the same. Mr. Saini submits that the Regulation 9 was invoked by the UOI by an order dated 24.05.2017 after the counseling was over.

11. The learned counsels appearing on behalf of the respondents have opposed this appeal. Mr. Anita Sahani, learned counsel appearing on behalf of the respondent no.3, GGSIP University submits that the appellant had applied based on the Prospectus of the University, as per which, the University was well within its right to merge the seats of the reserved category, once the candidates of the reserved category did not meet the minimum eligibility. Ms. Sahani has relied upon paragraph 7.2 of the Prospectus, in support of her contention that the appellant had applied with open eyes and was well-aware about the stand of the University. Relevant portion of which, is reproduced below:

“7.2 PGMC (CET Code 102)

.....

4. The University follows a 200 point roster system for allocation of seats. The starting point for counseling for

admissions shall be from the next point where the counseling ended in the previous year admissions.”

12. It is contended by Ms. Sahani that this Prospectus was available with the appellant and in case he was aggrieved by any of the conditions, he should have challenged the same prior to participating in the examination and once having participated in the examination, the appellant is estopped from laying challenge to paragraph 7.2 of the Prospectus, more particularly the para, which has been extracted hereinabove, to which Mr. Saini, learned counsel for the appellant has denied the same.
13. Ms. Das, learned counsel appearing on behalf of the MCI submits that the stand of the MCI has been consistent that the Regulation 9, which is discretionary in nature, should not be applied and the minimum marks should not be lowered as the same would affect the standard of Medical Education. She submits that the minimum percentile fixed in the General Category is 50 and in the reserved category is 40. However, the 50 percentile translates to barely 26.7% and for the reserved category to 23.4% for the present year. She submits that lowering the marks further would have serious ill-effects on the Medical Education.
14. Mr. Bhardwaj, learned counsel appearing on behalf of the UOI submits that the object of Regulation 9, broadly is to ensure that no seat remains unfilled, which is one of the reasons why in the preceding year, the percentile was dropped as late in the month of May, 2017. Counsel further contends that the candidate who does not even meet the eligibility requirement of 40 percentile, which is 23.4%, cannot

seek a subject of his own choice, which is the prime objective of the appellant approaching this Court. Learned counsels appearing on behalf of the respondents submit that the counseling for All India has already been completed and the seats have been filled up. It is further submitted that the candidate who does not secure even 40 percentile, which is 23.4% cannot invoke the extraordinary jurisdiction of this Court and seek a direction to the respondents to exercise their discretion in terms of Regulation 9 of the Post-Graduate Medical Education Regulation 2000. It is submitted that after all the seats are filled up, only then the cause of action would arise in favour of the appellant to seek a direction for exercising Regulation 9.

15. We have heard the learned counsels for the parties, who have taken us to the relevant documents which have been annexed along with the writ petition and the appeal.
16. Reading of the proviso to Regulation 9 would show that the first stage of invocation of the proviso would arise, when sufficient numbers of candidates in their respective categories fail to secure the minimum marks. Thereafter, the Regulation provides that the Central Government in consultation with the MCI may, at its discretion, lower the minimum marks required for admission to the Post-Graduate Courses. We find force in the submission made by the learned counsels for the respondents that the aim, purpose and objective of Regulation 9 of the Post-Graduate Medical Education Regulation 2000 is only to ensure that no seats remain unfilled for the NEET Examination. In case the interpretation of Regulation 9 is to be accepted in the manner, in which it has been strenuously urged by Mr.

Saini, learned counsel appearing on behalf of the appellant, it would mean that in case a candidate who has not even cleared the eligibility criteria and not even secured 23.4%, would automatically become eligible for a subject, which any other candidate who is eligible and has secured a higher percentile would be deprived of. Surely, this is not the objective of Regulation 9 of the Post-Graduate Medical Education Regulation 2000. In our view, the appellant cannot complain of prejudice because the appellant is not even an eligible candidate, he can neither claim prejudice for the reason that as in the past in case, all the seats of the NEET Examination are not filled up, he along with other similarly situated persons who have not even secured 23.4%, would still have a chance to claim a seat as per Regulation 9, which we have extracted in paragraph 8 aforegoing. Even otherwise, we are of the view that the Court cannot substitute its opinion for the discretion, which has been exercised by the UOI and the MCI, except in case where the discretion is exercised or not exercised in an arbitrary or unreasonable manner, which in the present case, we do not feel which would require interference. The explanation rendered by the learned counsels for the respondents, in our view, is reasonable, fair and just.

17. Thus, we find no reasons to interfere in the order dated 24.04.2018 passed by the learned Single Judge. The benefits of Regulation 9 of the Post-Graduate Medical Education Regulation 2000 will be extended to the appellant, in case the UOI in consultation with the MCI decide to exercise their discretion in conformity with Regulation 9.

18. The appeal is dismissed accordingly.

**CM.APPL /2018(direction)**

19. The application also stands dismissed in view of the order passed in the appeal.

**G.S. SISTANI, J.**

**SANGITA DHINGRA SEHGAL, J.**

**APRIL 25, 2018**  
pst