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

+ LPA 564/2018 AND CM APPL. 41119-41121/2018

VINAYAK VARMA

..... Appellant

Through

Mr. Divyanshu Srivastava and
Mr. Shubhankar, Advs.

versus

MEDICAL COUNSELING COMMITTEE & ORS..... Respondents

Through

Mr. T. Singhdev, Mr. Tarun Verma,
Mr. Abhijit Chakraborty, Ms. Michelle
Biakthansangi Das, Ms. Puja Sarkar
and Ms. Amandeep Kaur, Advs. for
MCI.

Ms. Bindu K. Nair, Adv. for IBBI.

Mr. Rajesh Kumar, Sr. Panel Counsel
with Mr. Ravi Rai, Adv. for UOI.

Ms. Ekta Sikri and Mr. Jasbir Bidhuri,
Advs. for GGSIPU/R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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11.10.2018

We have heard the counsel for the parties.

The appellant's grievance is with respect to the orders of the learned Single Judge, who rejected his application for a direction to the respondent to provisionally admit him to a vacant seat in MS (Surgery) Course for the Govt. of NCT of Delhi.

Learned Single Judge by the impugned order took note of the fact that on a previous occasion same relief has been declined. The appellant in the course of the submissions relied on *Asha vs. Pt. B.D.*

Sharma University of Health Sciences & Ors., (2012) 7 SCC 389 and urged that if the candidate is not at fault, the circumstance with the last date/cut off prescribed by the MCI Regulations since passed would not deter from granting relief in the interest of justice. The learned Single Judge nevertheless was of the opinion that in the light of the previous judgments and the orders of this Court that have become final in relation to the same academic year for medical seat, it would not be appropriate to issue the direction sought for.

Learned Counsel for the appellant urged this court to intervene and submitted that *Asha's* case (*supra*) carves out an exception to the general rule enunciated in the line of authorities commencing from *Mridul Dhar vs. Union of India*, (2005) 2 SCC and ending with *Ashish Ranjan vs. Union of India*, (2016) 11 SCC 225 (that had preferred all the acts for the date prescribed for the Medical Council Regulations for the purpose of last date of admission). It was submitted that the appellant was not at fault and had approached the court in time; he was sufficiently merited and that the denial of his entitlement was on account of wrong act of the MCI.

It was highlighted that at the stage of the last State Counseling three seats were available on account of increase in intake sanctioned by MCI/UOI on 07.05.2018. Those three seats available to NCT were filled by virtue of MCI Regulations and the previous judgments of the Supreme Court. Balance three were to be filled by the merited candidates of All India Quota. It is submitted that these seats could

not be filled during the period from 07.05.2018 to 10.05.2018. Appellant's counsel highlighted that on 11.05.2018 for the first time three seats which then reverted to State Quota were declared as Central Institutions/Deemed Universities seats for which counselling was conducted amongst all India candidates. It was submitted that even as on 30th July and subsequently in September, 2018, not less than four seats in MS (Surgery) Course were vacant and that having regard to these facts which are apparent from the record, the learned Single Judge ought to have granted relief.

MCI has relied upon various orders including orders of this court in *Dr. Rohan Kapoor and Ors. vs. Guru Gobind Singh Indraprastha University and Anr.* [WP(C) 5971/2018] and *Sneha Yadav vs. Guru Gobind Singh Indraprastha University and Anr.* [WP(C) 6565/2018 decided on 08.06.2018) as well as two orders of the Supreme Court stating that once cut off date for admission had passed, no relief can be granted.

Learned counsel for Guru Gobind Singh Indraprastha University submits that the materials on record also show that the appellant had secured All India rank of 45862 and that even after the third round more merited candidates were secured and admitted to MS (Surgery) course. It was highlighted that when seats were offered in the PG Medical Course in different colleges or institutions, the appellant showed no interest.

At the heart of the controversy, urged by the appellant is of unjust treatment by MCI in declaring the balance three seats which

ought to have reverted to the State Quota as “Central University/Deemed University” quota seats. The appellant seeks to build upon this that even after the last date of admission and commencing of course, not less than four seats were vacant. He invokes the principles of *Asha’s* case (supra) to say that he was not at fault rather wrong acts of the respondents humiliated him as he has been kept out.

To this court, it is apparent that whatever grievance the appellant might have with respect to the alleged wrongful declaration of the three seats as Central Institute Category– which perhaps is the bone of contention and lead to not treating the same under the State Quota, the fact remains that according to the ranking that he had and the marks he was able to secure, he did get a fair chance in respect of State Quota (where he participated upto mop-up round) as well as in the left over All India NEET Quota Counseling round (where he participated). Therefore, his presumption of strong case is subjective. Keeping in mind the arching principle in decisions that had been repeatedly emphasised that cut off date was sacrosanct - which had been held in relation to medical seats by two recent judgment of this court, at this stage of grant of interim relief and in an appeal, this court does not find any reason to interfere with the impugned order. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

OCTOBER 11, 2018/rc