

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

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Reserved on: 10.10.2019
Date of decision: 22.11.2019

+ **LPA 655/2019 & CM APPLs. 44567-44570/2019**

DR RAJAT DUHAN & ORSAppellants

Through: Mr. Nitin K. Gupta, Advocate

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ORS

.....Respondents

Through: Mr. Dushyant Parashar, Advocate for
respondents No.1 & 2/AIIMS
Ms. Puja Sarkar, Ms. Arunima Pal,
Mr. Tarun Verma, Mr. Abhijit
Chakravarty, Ms. Sumangla,
Advocates for respondent No.3/MCI
Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Mr. Prateek Dhanda, Mr.
Rohan Anand, Advocates for
respondent No.4/NBE
Mr. Vikrant N. Goyal, Mr. Suraj
Kumar, Advocates for respondents
No.5 & 6/IOI

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ASHA MENON, J.

1. This intra-court appeal has been preferred by three appellants who are medical graduates, being aggrieved by the order dated 21.08.2019, whereby the learned Single Judge had dismissed their writ petition [W.P.(C)]

6367/2019], with the following prayers: -

“a) set aside/quash the impugned clause 2(c) (vi) of the All India Institute of Medical Sciences, PG course prospectus, July 2019 session and impugned reply dt. 20.05.2019, being violative of Articles 14 and 21 of the Constitution of India;
b) Direct Respondent no. 1 to treat the Indian MBBS Graduates and the Petitioners equal for all intents and purposes for ascertaining their eligibility i.e. as per the marks obtained in MBBS degree, for PG course admissions for July 2019 session and for all sessions in future;
c) Pass any such other and such further orders as this Hon’ble Court may deem and proper in the interest of justice.”

2. The appellants/petitioners who are medical graduates had obtained their MBBS degrees from Foreign Universities between the years 2011 and 2018. As required by the respondent No.3/Medical Council of India (for short ‘MCI’), they passed a Screening Test (FMGE) conducted by the respondent No.4/National Board of Examinations (NBE) for the purposes of registration with MCI. They were thus eligible for medical practice in India. Their grievance is that in their PG Course prospectus for the July, 2019 session, the respondents No.1 & 2/All India Institute of Medical Sciences (in short ‘AIIMS’) had prescribed that only those persons who had obtained 55% marks in the FMGE, were eligible to apply for the PG Course.

3. According to the appellants/petitioners, the respondent no.3/MCI had required the foreign medical students to appear in the FMGE and obtain 50% minimum marks to practice medicine in India and the sudden variation in the eligibility criteria for the post-graduate admission by the respondents No.1 & 2/AIIMS had disentitled them from appearing for the same and this

decision being discriminatory in nature, was liable to be set aside. It was also their case that till January, 2019, the prospectus had not made any differentiation between the Indian medical students and foreign medical students and all of them were required to obtain 55% marks in their MBBS degree to sit for the competitive exam. With the change in the eligibility criteria, the foreign medical students were now required to additionally obtain more than 50% marks in the FMGE, i.e. 55% marks, which acted to their disadvantage.

4. By the impugned judgment dated 21.08.2019, the learned Single Judge dismissed the writ petition on the grounds that the court cannot enter into the domain of academic expertise, set up its own measure of merit and impose it on the universities and other institutions. It was also held that there was no doctrine of *promissory estoppel* in relation to academic pursuits and since the eligibility criteria of 55% marks in the FMGE were prescribed only for admission to the AIIMS, it was open to the appellants/petitioners to seek admission to post-graduate courses in educational institutions other than the AIIMS.

5. Learned counsel for the appellants/petitioners has challenged this conclusion of the learned Single Judge by submitting that till January, 2019 when the prospectus for PG admission to AIIMS in July, 2019 was issued, the respondents No.1 & 2/AIIMS had treated foreign medical graduates at par with Indian MBBS graduates inasmuch as both were required to secure 55% marks only in the MBBS degree exam but this year, foreign medical students were required to obtain a minimum of 55% marks in the FMGE which was an onerous condition more so when the respondent No.3/MCI has prescribed 50% in the same exam to qualify as a medical practitioner.

6. It was also urged that the change in the eligibility criteria could not be made with retrospective effect. Thus, the criteria prescribed by the respondents No.1 & 2/AIIMS was liable to be struck down. Learned counsel for the appellants/petitioners pointed out that the FMGE results were declared in January/February, 2019 and the prospectus with the modified eligibility came after the FMGE results were declared and there was no way that students could take a re-test to improve their scores in the FMGE. This modification in the eligibility criteria had inflicted an undue hardship on the appellants/petitioners. Hence, it was prayed that not only should the impugned judgment dated 21.08.2019 be set aside, directions be also issued to the respondents No.1 & 2/AIIMS to treat foreign medical graduates and Indian medical graduates on an equal footing and to consider the marks obtained by them in the MBBS degree examination alone for the PG Course admission for the July, 2019 session and in all future sessions.

7. We have heard the learned counsel for the appellant and examined the impugned judgment as also the documents placed on record.

8. There can be no two views that the respondents No.1 & 2/AIIMS is running an institution of excellence and maintaining a high academic standard. Therefore, it would be justified in laying down stringent conditions for admission into the institute. Providing for such high standards for admission cannot, by any stretch, be described as a discriminatory practice. Any eligibility criteria is bound to cause hardship to some set of students, particularly, if they are closer to the cut-off criteria. Therefore, such considerations cannot weigh with the court to dilute the standards of academic excellence prescribed by the academicians, who are experts in their field. It is most unwarranted for the court to interfere with such

standards, particularly, if it would result in their dilution. The learned Single Judge has cited the judgment of the Supreme Court in Dr. J.P.Kulshrestha and Others v. Chancellor, Allahabad University and Others, (1980) 3 SCC 418 wherein it has observed as below: -

*“11. ...But, however imperfect and obtuse the current system and however urgent the modernisation of our courses culminating in examinations may be, the fact remains that the court has to go by what is extant and cannot explore on its own or ignore the measure of merit adopted by universities. **Judges must not rush in where even educationists fear to tread.** So, we see no purpose in belittling the criterion of marks and class the Allahabad University has laid down, although to swear religiously by class and grade may be exaggerated reverence and false scales if scrutinised by progressive criteria.”*

(emphasis added)

9. Again, as observed by a co-ordinate Bench of this Court in Ashutosh Bharti and Ors. V. The Ritnand Balved Education Foundation and Ors., MANU/DE/0024/2005: -

*“5. If any step is taken towards better educational method and standard, not only the Court should not come in the way, but must command and encourage it. Those who fail to maintain such standard round the year may lose the very valuable year of the young career, just as they lose if they fail in the examination. **Matters of academic judgment are not for the courts to entertain.** Better standards are required for learning and it can be only from experiences and different modalities. **Educational institutions are the best judges to impose appropriate restrictions and conditions. Merely because the conditions which are imposed may be found inconvenient to some students, it cannot be challenged as being arbitrary.**”*

(emphasis added)

10. As noticed by the learned Single Judge, the appellants/petitioners are not precluded from joining any other institute for undergoing a PG courses. Therefore, it is not as if, the appellants are completely debarred from applying for any post-graduate course conducted by any other institute in this country. Only because they cannot seek admission in AIIMS, cannot be a ground for the appellants/petitioners to claim prejudice.

11. That the eligibility criteria were modified just after the results of the FMGE Screening Test were declared, is not a fact that needs consideration, as it could have been a mere coincidence. It would be too farfetched to hold that the respondents No.1 & 2/AIIMS were guided by some *mala fides* for having decided to declare a higher eligibility criteria for the July, 2019 session so as to deliberately exclude some foreign medical graduates who had cleared the FMGE Screening Test in January, 2019. The record reveals that the appellant No.1 had passed the FMGE Screening Test on 28.07.2015 with 150 marks out of 300. The appellant No.2 had obtained 153 marks out of 300 on 18.01.2016/04.02.2016 and the appellant No.3 had passed the FMGE Screening Test held in September, 2011 with 162 marks out of 300 on 03.10.2011/11.10.2011. Given the fact that upto the July, 2019 session, admittedly, the appellants were eligible to sit for the examination right from 2011/2015-2016 onwards, but were probably unsuccessful, no prejudice had in fact been caused to them by the respondents No.1 & 2/AIIMS only by tightening the eligibility criteria for the PG course.

12. Furthermore, the purpose of the FMGE Screening Test conducted by the respondent No.3/MCI and the respondent No.4/ NBE and the purpose of the examination conducted by the respondents No.1 & 2/AIIMS are not one and the same. The purpose of the FMGE Screening Test is to ensure that the

foreign degree has covered the usual syllabi prescribed for medical education in India and to ensure that Indian citizens/OCIs possessing the primary medical qualification obtained from a medical institution abroad, are not completely debarred from practicing in India and that they are not wasted as a valuable human resource. Therefore, the necessity of obtaining 150 marks out of 300 in the FMGE Screening Test is a standard prescribed by the respondent No.3/MCI to permit those who have obtained foreign MBBS degrees to practice in India.

13. There may be some candidates who may have obtained 148 or 149 marks and could have felt that they have been wrongly debarred. But setting down a criterion would always have such a fall-out and that cannot be the reason to do away with the minimum eligibility criteria. As has been observed by the High Court of Bombay in Ashwin Prafulla Pimpalwar Etc. v. State of Maharashtra and Others, **AIR 1992 BOMBAY 233: -**

“32. ...Students entering educational institutions with the ultimate aim of completing their scholastic career at the peak are expected to strive for academic excellence, and accordingly, it cannot be assumed that a student would only look at a GR operating at or about the time when he intensifies the preparation for the qualifying examination and regulating admission to post-graduate courses. Then again, a student is indeed expected to do his best throughout his scholastic career. ...”

14. In other words, the appellants herein were expected to do their best even in the FMGE Screening Test and they cannot be heard to cry discrimination only because they aimed at achieving only the minimum prescribed percentage that allows them to practice as doctors in India.

15. Learned counsel for the appellants/petitioners has relied on the

judgment of a co-ordinate Bench of this Court in Charanpal Singh Bagri v. University of Delhi and Ors., **W.P.(C) 6751/2019** and Khusi Srivastava v. University of Delhi, **W.P.(C) 6770/2019**, rendered on 14.06.2019, to submit that change in eligibility should not be so sudden as to take the students by surprise. But the facts in that case were entirely different, in that, the change in the eligibility criteria was without adherence to the prescribed procedure of issuance of a notice 60 days prior to the date of admission to any course of the University of Delhi and secondly, the eligibility criteria was changed only a day prior to the date when admission seekers were to make a choice of their subject and college. Further, in that case, the University of Delhi was not precluded from changing the eligibility criteria to maintain high standards of education in accordance with law. The aforesaid decisions do not have any application to the facts of the present case. There has been no change in the criteria laid down by the respondent No.3/MCI through the respondent No.4/NBE, for practicing medicine in India as the foreign medical graduates are still required to obtain 50% marks in the Screening Test (FMGE). Had there been a change at that level, there would have been some purpose in relying on Charanpal Singh's case (supra).

16. The purpose of the examination conducted by the respondents No.1 & 2/AIIMS is to take candidates with good academic background into the PG courses conducted by it. AIIMS is a premier institute of India for medical research and treatment. The eligibility criteria prescribed by the respondents No.1 & 2/AIIMS is strictly for the purpose of admission to its PG courses. There can be no bar on an institute on setting higher standards than those prescribed as minimum by the respondent No.3/MCI or any other institute offering the same course. Other centres may not necessarily impose the

same rigorous eligibility criteria for the subject course. Therefore, students who do not succeed in the entrance examination for the PG Course offered by the respondents No.1 & 2/AIIMS on the basis of the prescribed eligibility criteria, can always seek admission in other medical colleges and institutes.

17. The learned Single Judge has rightly held that the principle of *promissory estoppel* is inapplicable to academic pursuits. Otherwise, it would mean that the admission criteria, once declared, would remain an absolute rule and prospectuses would become un-amendable, precluding institutions from aiming at a higher scholastic and academic excellence. Institutions are built over a period of time and if a particular institution has worked hard enough to provide exclusive academic opportunities to the students studying there, with a reasonable expectation that the students would be able to meet those standards for the courses provided, it could never be that the initial eligibility criteria could never be modified down the line, to make the entry more stringent so as to take the best into its portals. Such a situation cannot be allowed.

18. In the light of the aforesaid discussion, finding no merit in the present appeal, the same is dismissed alongwith the pending applications, with no orders as to costs.

(ASHA MENON)
JUDGE

(HIMA KOHLI)
JUDGE

NOVEMBER 22nd, 2019
s/MK