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

Date of Decision: 28th May, 2019

+ W.P.(C) 6150/2019 & CM APPLs.26443/2019, 26444/2019

DR. ISHA MAKKER AND ORS. Petitioners

Through: Mr. Angad Mehta, Adv.

versus

GURU GOBIND SINGH INDRAPRASTHA
UNIVERSITY

..... Respondent

Through: Mr. Mohinder J.S. Rupal, Adv.
with Mr. Prang Newmai, Adv. for DU

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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JUDGEMENT (ORAL)

1. The petitioners are MBBS students of Jamia Hamdard University, who aspire to obtain Post Graduate degree/diploma, for which they appeared in the National Eligibility cum Entrance Test (NEET) 2019 (hereinafter referred to as “NEET-PG 2019”).

2. The manner in which the NEET-PG examination and allocation of seats to students, thereafter, works, is that a specific number of seats are earmarked for each University.

3. Out of the said seats, 50% are reserved for being filled in from the All India quota and the students undertaking NEET and the balance 50% are treated as “Institutional Quota”.

4. In the case of Delhi, there being two Universities, i.e. the Guru Gobind Singh Indraprastha University (hereinafter referred to as “the GGSIPU”) and the University of Delhi, which contains PG seats which are filled in from the NEET, each institute has its own 50% institutional quota.

5. Counselling is held separately, for the institutional quota, by the concerned Universities, and for the All India quota by the Director General of Health Services.

6. The contention of Mr. Angad Mehta, learned counsel appearing for the petitioner, is that counselling, for all the seats in the GGSIPU i.e. the seats to be filled on the basis of the 50% institutional quota seats as well as the remaining 50% seats to be filled from the All India quota, stands concluded and around 50 seats still remain vacant. His prayer is that these seats should be directed to be filled from the all India NEET merit list. For this, he premises his case on orders dated 25th May, 2018 and 30th May, 2018, passed by the Supreme Court in W.P.(C)556/2018 (*U.P. Unaided Medical Colleges Welfare Association (Regd.) v. Union of India*)

7. The order dated 25th May, 2018, of the Supreme Court, records that, during the course of arguments in the writ petition, it had been pointed out, to the Supreme Court that almost 41.95% of post-graduate medical seats in private unaided medical colleges in the State of Uttar

Pradesh had remained vacant *for the academic year 2018-2019* and that the cut-off date for filling up the said seats was already over on May, 2018. In these circumstances, a statement was made, by learned counsel appearing for the MCI, to the effect that, in the larger public interest, Dr. K.K. Gupta, Director General of Medical Education, who was Respondent No.4 before the Supreme Court, must take the responsibility of allotting students from the All-India NEET Merit List in order of merit to the respective colleges by 31st May, 2018. The Supreme Court found this suggestion to be appropriate and sufficient to assuage the grievance of the private medical colleges and open up new opportunities to the aspiring candidates in the merit list who, otherwise, could not secure admission in other medical colleges.

8. The suggestion was therefore, accepted and Respondent No.4 was directed to take immediate steps in this behalf, in right earnest, while ensuring that the cut-off date of 31st May, 2018 was adhered to. A further suggestion, by learned ASG, before the Supreme Court to the effect that the same dispensation could be followed in other States, *if they so desired*, while ensuring that the cut-off date of 31st May, 2018 was strictly adhered to, was also accepted by the Supreme Court.

9. The subsequent order dated 30th May, 2018, passed by the Supreme Court, in the same writ petition, read thus:

“By an order dated 25.05.2018, we have directed Dr. K.K. Gupta, Director General of Medical Education (respondent No.4) to take the responsibility of allotting students from the All India NEET Merit list in order of merit to the respective colleges. We have also made it

clear that this exercise has to be completed by 31st May, 2018.

Mr. V. Shekhar, learned senior counsel appearing for respondent Nos.3 and 4 submits that there are unfilled vacant Post-graduate seats in Government medical colleges and the order does not mention about filling up of seats in Government medical colleges.

Mr. Gaurav Sharma, learned counsel appearing for MCI does not have any objection for an order to be passed to fill up the vacant seats in Government medical colleges also.

The order passed by us on 25.05.2018 is extended to unfilled vacant medical Post-graduate seats in Government medical colleges in the State of Uttar Pradesh

Mr. V. Shekhar, learned senior counsel submits that the exercise shall be completed by the deadline i.e. 31st May, 2018.”

10. At a bare glance, it is apparent that the aforesaid two orders dated 25th May, 2018 and 30th May, 2018, consequent to the suggestion, made by learned counsel appearing for the MCI, for filling up of the unfilled seats from the All India NEET merit list, which was accepted by the Supreme Court.

11. The order dated 30th May, 2018 further indicates that, the extension of the earlier order dated 25th May, 2018 to Government medical colleges was also directed only because learned counsel for the MCI did not object to the passing of the above order.

12. Significantly, insofar other states were concerned, the suggestion made by learned ASG before the Supreme Court, which was accepted by it, was that a similar dispensation could be followed in such other states, *if they so desire*.

13. It is apparent that, these orders do not amount to any enunciation of clear right, in favour of any party, to seek a mandamus for filling up the unfilled seats, from the all India NEET merit list. The last date for counseling for filling up of seats against both the quotas in the GGSIPU is already over.

14. At this juncture, I may also note another order dated 28th November, 2018 passed by the Supreme Court in Civil Appeal 11433/2018 (***Dr. Vinayak Varma v. Medical Counselling Committee***), on which Mr. Sameer Kumar seeks to place reliance. The passage in the said order, to which Mr. Sameer Kumar draws special attention, reads thus:

“Coming to the order of the High Court passed in the case of Dr. Rohan Kapoor, the High Court has relied upon the order of 25th May, 2018 passed by this court in WP (C) No. 556 of 2018 to hold that seats which remained vacant after 18th May, 2018 have to be filled on the basis of All India NEET Merit list on or before 31st May, 2018. *The High Court has opined that in view of the aforesaid order of this Court it was incumbent upon the respondent to offer all the available vacant seats to the candidates only on the basis of the All India NEET merit list. The High Court has not considered the factual matrix in which the aforesaid order came to be passed by this Court in exercise of power under Article 142 of the Constitution of India. This Court has never issued the general directions to hold good for seats of All India quota which had to be filled and have remained vacant*

after 10th May, 2018. There is no conversion of State Quota Seats to All India Merit Seats. On the contrary there was a piquent situation which arose in the State of UP as 41.95% seats in un aided medical colleges remained vacant for the academic year 2018-2019 and cut-off date for admission in the State Quota was already over. The seats could not be filled up in the counselling by State quota candidates as such the unaided institutions filed writ application to permit them to fill the vacant seats out of the candidates of All India NEET Merit. In that aforesaid context as the seats remained vacant in the State of U.P. after State counselling and they were in fact offered to the State quota candidates first. This court specially permitted the seats to be filled up by way of All India NEET Merit. It was a totally different factual matrix and is not at all applicable to the 3 seats in question which were created in Delhi, have never been put up for the counselling before the State quota/institution quota candidates as required under the Regulations after last date of joining i.e., 10th May, 2018 was over.”

(Emphasis Supplied)

The above-extracted passage from the order of the Supreme Court in *Dr. Vinayak Varma (supra)*, if anything, defeats the case of the petitioner, inasmuch as it categorically notes that no general directions were issued by the Supreme Court in its orders dated 25th May, 2018 or 30th May, 2018, which were passed in exercise of the powers conferred on the Supreme Court by Article 142 of the Constitution of India. Clearly, therefore, there can be no question of the said directions being cited as a precedent, to be followed by this Court.

15. Mr. Angad Mehta also relies on an order, dated 30th May, 2018, of a Coordinate Single Bench of this Court in W.P.(C) 5971/2018

(Dr. Rohan Kapoor v. GGSIPU). He specifically emphasizes the following passage from the said order :

“Mr.Talwar, learned senior counsel for respondent no. 1 submits that as on now, 62 vacant seats are available after the mop up counselling round of the State quota which can be filled up by conducting counselling of candidates from the All India Quota on the basis of the All India NEET Merit List. He further submits that besides the aforesaid 62 seats, one further seat has become available pursuant to letter dated 28th May, 2018 issued by Director General of Health Services and three additional seats have also become available on account of students having left the University for joining other Institutions. He, therefore, prays that these four seats may be permitted to be filled up from the State quota by way of institutional preference.”

16. A reading of the above passage reveals that, apart from the fact that the said case, too, related to the 2018-2019 academic session, the learned Single Judge was proceeding on the basis of a concession made by learned Senior Counsel appearing for the GGSIPU. That, again, cannot constitute a basis for a direction to be issued by this Court, where no such concession is forthcoming. Rather, the order, dated 28th November, 2018, of the Supreme Court in **Dr Vinayak Varma** (*supra*) clarifies that there is no conversion of All India quota seats to institutions quota seats.

17. Learned counsel for the petitioner has drawn my attention to a counseling notice for the MD/MS course 2019 issued by the Government Medical College and Institute, Chandigarh, in which, according to him, unfilled seats of the state quota have been directed to be filled from the all India NEET merit list.

18. Having perused the said notice, it is seen that it makes no reference to filling of unfilled State quota seats from the all India NEET merit list. In any case, this case is concerned with the unfilled seats in the GGSIPU.

19. The decisions in *U.P. Unaided Medical Colleges Welfare Association (supra)* and *Dr. Rohan Kapoor (supra)* dealt, moreover, with 2018-19, whereas the present proceeding is concerned with the 2019-2020 academic session.

20. For all the above reasons, it would not be possible for this Court to direct, as a mandamus, that unfilled seats in the GGSIPU should be filled up from the All India NEET merit list for the academic session 2019-2020.

21. Resultantly, this Court is not in a position to grant the relief prayed for in this writ petition, which is accordingly dismissed, with no order as to costs.

Dasti under the signature of the Court Master.

C. HARI SHANKAR, J

MAY 28, 2019

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