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

+ LPA 740/2019, C.M. Appl.No. 50904/2019 (Stay)

DEEPIKA VEERWAL

..... Appellant

Through: Mr. Divyansh Pratap Singh, Ms.
Deeksha Gaur, Mr. Shantanu Sharma,
Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through: Ms. Maninder Acharya, ASG, with
Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Mr. Rohan Anand, Mr. Taha
Yasin, Advocates for NBE.
Mr. Divyansh Pratap Singh, Ms.
Deeksha Gaur, Mr. Shantanu Sharma,
Advocates
Mr. Gaurav Varma, Advocate for
respondent No. 1 and 3.
Mr. T. Singhdev, Mr. Tarun Verma,
Ms. Arunima Pal, Mr. Abhijit
Chakravorti, Advocate for respondent
No. 4/MCI

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER
13.12.2019

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1. This appeal is directed against the judgment dated 22.10.2019, passed by the learned Single Judge in WP (C) No. 7747/2019, filed by the appellant/petitioner in view of denial of admission to her in the

DNB Broad Speciality (Post MBBS) Course in the Academic Session January 2019, by the respondent No. 2/NBE, at Vivekanand Polyclinic, Lucknow.

2. We may note that the respondent No. 1/UOI and the respondent No. 2/NBE have filed separate appeals against the impugned judgment, registered as LPA No. 770/2019 and 703/2019, wherein notice has been issued and operation of the said judgment has been stayed in view of the plea taken that the directions issued in the said judgment shall have wide ramifications, particularly in the light of the National Eligibility cum Entrance Test – Post Graduate, 2020, that is due in the first week of January 2020.

3. Learned counsel for the appellant herein submits that though all the findings returned in the impugned judgment are in favour of the appellant, but since no interim order was granted in her favour directing the respondents to reserve a seat for her in the particular speciality of Radio Diagnosis at Vivekanand Polyclinic, Lucknow, as prayed for, the learned Single Judge has directed the respondent No. 2/NBE to consider allotting her a seat in the said college in the January 2019 Session, if the same is available and now the respondent No. 2/NBE claims that no seat is available in Radio Diagnosis speciality in Vivekanand Polyclinic, Lucknow, for being allocated to the appellant/petitioner.

4. Learned counsel for the appellant states that if that is the correct position, then NBE be directed to undertake an exercise to ensure that

the appellant is admitted in the subject speciality (Post MBBS) in any other DNB accredited Institute in the country or the respondent be directed to pay her monetary compensation or in the alternative, she be granted admission in the January 2020 Session without having to appear in the NEET PG Examination, 2020.

5. The aforesaid prayer is vehemently opposed by Ms. Acharya, learned Additional Solicitor General, who states that the cut off date for admission in the subject course was 30.06.2019, which date is sacrosanct and the same has been repeatedly held by the Supreme Court in several decisions as also in Asha v. B.D. Sharma University of Medical Sciences & Others, reported as **(2012) 7 SCC 389**. She submits that this aspect has been raised by the UOI and NBE in the connected appeals filed against the impugned judgment, as one of the main grounds of challenge. It is pointed out that the MD course had commenced in the beginning of July 2019 and by now, five months of the academic session are already over.

6. A perusal of the impugned judgment reveals that the appellant/petitioner was allocated a seat in MD (Community Medicine) in Vardhman Mahavir Medical College, Safdarjung Hospital, at Delhi. Therefore, it is not as if the appellant has not been allocated any seat in the MD course, except for the fact that the same is not of her choice. Learned counsel for the respondent has clarified that the seat allocated to the appellant in MD (Community Medicine) in VMMC is on the basis of the All India Quota of MCI.

7. Merely because the appellant does not wish to pursue the MD course in Community Medicine on the seat allocated to her in VMMC, cannot be a ground for this court to grant her relief of the nature prayed for. The appellant has voluntarily resigned from the seat allocated to her in MD (Community Medicine). She had tried to get admission in the Radiology Course offered by Vivekanand Polyclinic, Lucknow but could not succeed as she was unable to produce her original documents, for which, she seeks to blame respondent No.3/ VMMC, which has retained the said documents.

8. The other grievance raised by the appellant in the present appeal is against the refusal of the learned Single Judge to grant her the alternate prayers which were for compensation or in the event no seat is available in the January 2019 course of Radio Diagnosis (Post MBBS), then to adjust her in the January 2020 session. To buttress his argument that the appellant is entitled to monetary compensation, learned counsel for the appellant cites the decision of the Supreme Court in the case of Krina Ajay Shah and Ors. Vs. Secretary, Association of Management of Unaided Private Medical and Dental Colleges Maharashtra & Ors., reported as **(2016) 1 SCC 666**.

9. The impugned judgment records in para 17.2 that the alternate prayer sought by the appellant cannot be granted as that would impact the prospects of the candidates who shall be sitting in NEET Post Graduate Examination in the January 2020 Session. We are not inclined to interfere with the said findings returned in the impugned judgment on the alternate relief as we concur with the view expressed

therein that any such alternate prayer is bound to have an adverse effect on the candidates who shall be participating in the NEET Postgraduate Examination 2020 Session.

10. As for the decision cited by learned counsel for the appellant in case of Krina Ajay Shah & Ors. (Supra), to seek monetary compensation from the respondents, the fact situation of the said case was entirely different. The petitioners/students, therein who had appeared for the entrance examination conducted by the respondent/Association for purpose of selecting eligible candidates for admission into various courses through a Common Entrance Examination (in short ‘CEE’) could not secure admission in a course of their choice and they raised a grievance that admissions were given without following the merit indicated in the CEE. On the basis of their complaint, the State of Maharashtra had appointed a Committee that found several irregularities in making admissions by a few colleges, who were members of the respondent/Association and the Committee recommended cancellation of the said admissions. It was in this background that Supreme Court opined that though the petitioners/students could not be granted the relief prayed for due to lapse of time, they were still entitled to public law damages. In the instant case, the fact situation is entirely different. None of the respondents have been indicted in the impugned judgment for having flouted the constitutional mandate or the legal obligations cast on them that would entitle the appellant to claim public law damages.

11. At this stage, learned counsel for the appellant states that in the light of the views expressed by us above, the appellant may be permitted to approach the respondent No. 3/VMMC, Delhi with a request to release her original documents. As and when such an application is submitted, the same shall be processed by the respondent No.3/VMMC in accordance with law.

12. In view of the aforesaid facts and circumstances, the present appeal is dismissed alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

DECEMBER 13, 2019

pkb/ap