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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 19.06.2020

+ W.P.(C) 10722/2019

SAMRIDHI SUSHIL SHARMA Petitioner
Through: Mr. Vinod Kumar and
Mr. Shashank Sharma, Adv.

versus

UNION OF INDIA AND ANR. Respondents
Through: Mr. Ashim Sood, CGSC for UOI
with Mr. Rhythm Buaria, Adv.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA**

NAVIN CHAWLA, J. (Oral)

This hearing has been held by video conferencing.

CM 8198/2020 (delay of 18 days in filing short affidavit on behalf of R-1)

For the reasons stated in the application, the delay is condoned and the short affidavit filed by the respondent no.1 is taken on record. The Application is allowed.

WP(C) 10722/2019 & CM 44348/2019

1. This petition has been filed by the petitioner praying for a direction to the respondent no.1/Ministry of Women and Child Development to nominate the petitioner for the MBBS course, 2019 against the seat reserved for the National Bravery Awardees in the NSCB Medical College, Jabalpur, Madhya Pradesh in terms of the Government of India, Ministry of Health and Family Welfare, Office Memorandum no.U.14014/4/2019-ME-II dated 16.08.2019.

2. It is the case of the petitioner that vide Office Memorandum dated 16.08.2019, the respondent no.2 had allocated two seats from the Central Pool to the respondent no.1 to be further allocated to the eligible National Bravery Awardees for admission to the MBBS course for the academic session 2019-20. The petitioner, having cleared the NEET Exam 2019, duly applied for being recommended by the respondent no. 1 against one of those seats. The respondent no.1, however, by its letter dated 05.09.2019 informed the petitioner that as the petitioner is not a recipient of either the National Child Award or the Pradhan Matri Rashtriya Bal Puraskar, the respondent no.1 was unable to recommend the petitioner against the said seat. Aggrieved of this decision, the petitioner filed the present petition.

3. The respondent no.1 in its counter affidavit submits that the scheme for National Bravery Awards was started by the

Indian Council for Child Welfare in 1957 to recognize the children who perform outstanding acts of courage. Separately, the Government of India used to confer National Awards on children for exceptional achievement in the fields of innovation, sports, art, culture, etc. These awards have been conferred since 1996 under the Scheme of the National Child Award for exceptional achievements. In April, 2018, the respondent no.1 revamped the National Child Award for exceptional achievements Scheme and renamed it as National Child Awards, which was later renamed as Pradhan Mantri Rashtriya Bal Puraskar.

4. The Pradhan Mantri Rashtriya Bal Puraskar was launched under which the following categories of Awards were created:

- a) Bal Shakti Puraskar which includes recognition of children who have shown exceptional bravery;
- b) Bal Kalyan Puraskar for individual adults working for children;
- c) Bal Kalyan Puraskar for institutions working for children.

5. It is the case of the respondent no. 1 that the said Scheme, however, did not include the National Bravery Awards that were earlier awarded by the Indian Council for Child Welfare. It was for this reason that the name of the petitioner was not recommended against the seats allocated by the respondent

no.2. The respondent no.1 has further taken a stand that the support and facilities by the Government of India were intended to award benefits to the winners of the Pradhan Mantri Rashtriya Bal Puraskar (erstwhile National Child Award) and not the winners of the National Bravery Award.

6. I do not find any merit in the stand taken by the respondent no.1. The Office Memorandum dated 16.08.2019 in its paragraph 7 allocates two seats to the respondent no.1 stating that it should go to the eligible 'National Bravery Awardees'. As explained by the respondent no.1 in its own counter affidavit, the Pradhan Mantri Rashtriya Bal Puraskar Scheme does not cover the National Bravery Awardees. If the respondent no.1 wanted to confine the benefit of the allocation of two seats only to the Pradhan Mantri Rashtriya Bal Puraskar Awardees, it should have requested the respondent no.2 to bring about an amendment to the allocation of the two seats and its office memorandum dated 16.08.2019. In fact, it did make an endeavour in this regard, however, the respondent no.2, did not accede to this request.

7. In any case, it has not been shown that the erstwhile National Bravery Awards have been cancelled by the respondent no.1 or are no longer recognized. In such a situation, the respondent no.1 has clearly erred in not recommending the name of the petitioner against one of the two

seats that were allocated to the respondent no.1 for recommending a National Bravery Awardee.

8. The issue that now arises is that the last date for admission to the academic year 2019-2020 has passed and therefore, what relief is the petitioner entitled to. The learned counsel for the petitioner submits that for the two seats that were allocated to the respondent no.1 by the office memorandum dated 16.08.2019, the petitioner was the only applicant. He submits that therefore, there is no dispute on her eligibility and merit for being recommended against one of the two seats.

9. As far as the petitioner being the only applicant against the two seats that were allocated to the respondent no.1, there is no dispute. In fact, the counter affidavit of the respondents clearly shows that against these two seats, no recommendation was made by the respondent no.1 and the seats were later transferred to be allocated by the State Governments.

10. The learned counsel for the petitioner placing reliance on the judgment of the Supreme Court in ***S.Krishna Sradha vs. State of Andhra Pradesh & Ors.*** 2019 SCC OnLine SC 1609, submits that in this situation where the petitioner had approached this Court expeditiously, and immediately after the rejection by the respondent no.1, the petitioner cannot be denied admission to the MBBS course and this Court should mould the

relief by directing her admission in the upcoming academic year.

11. The Supreme Court in ***S.Krishna Sradha*** (supra), was considering a reference made to resolve the conflict between the earlier decisions of the Supreme Court in ***Asha vs. Pt. B.D.Sharma UHS &Ors*** 2012 7 SCC 389 and ***Chandigarh Administration & Anr vs. Jasmine Kaur & Ors*** 2014 10 SCC 521. The Supreme Court after considering various judgments in this regard, held as under:

“33. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30th September, is over, to do the complete justice, the

Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the

next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

12. Keeping in view the above judgment and the fact that no fault can be attributed to the petitioner in the present case as the petitioner had not only filed her application with the respondent no. 1 well in time, but had also pursued the same with the respondent no.1; it was only by the letter dated 05.09.2019 that the respondent no.1 informed the petitioner of its decision not to recommend the petitioner against the said seats; the petitioner filed the present petition on or about 27.09.2019 and has been pursuing the same; the delay in adjudication of the petition is primarily for the reasons attributed to the respondents who failed to file the counter affidavit within time; and the fact that against the said two seats, the petitioner was the only applicant, I deem it appropriate to direct that the petitioner be considered for admission against the said seats for the academic year 2020-21.

13. This Court had directed the respondent no.2 to state on affidavit if for the current year any seats have been allocated to the respondent no.1 from the Central Pool. The respondent no.2 has filed an affidavit dated 18.06.2020 stating therein under paragraph 3(vii) of the 'Guidelines for Allocation of General Pool MBBS/BDS seats for the academic year 2020-21', the respondent no.1 is one of the beneficiary Ministries for allocation of seats for eligible awardees of Pradhan Mantri Rashtriya Bal Puraskar (erstwhile National Bravery Award and National Child Award) winning children.

14. The learned counsel for the petitioner submits that the petitioner has not taken the NEET Exam for the current year 2020-21.

15. In view of the above, it is directed that the petitioner shall be recommended by the respondent no.2 to the respondent no.1 for being admitted to the MBBS Course for the academic year 2020-21 based on her result of the NEET Exam held for the academic year 2019-20. In case there are more than two candidates who apply against the said seats for the academic year 2020-21, the respondent no. 2 shall allocate an additional seat to the respondent no. 1.

16. The petition is allowed in the above terms with cost quantified at Rs.10,000/- to be paid to the petitioner by the respondent no. 1.

NAVIN CHAWLA, J

JUNE 19, 2020
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