

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 147/2020 and CM APPL. 10972-73/2020, 11275/2020

Date of decision: 27th May, 2020

IN THE MATTER OF:

DR. OJASVINI AGRAWAL

..... Appellant

Through: Mr. Samar Kachwaha with
Mr. Divyanshu Srivastava, Advocates

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr. Rohan Anand, Advocate for R-1 and
R-3/IOI.

Mr. T. Singhdev with Ms. Puja Sarkar,
Advocates for R-2/MCI.

Mr. Vishnu Shankar Jain, Advocate for R-5.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J

1. This appeal has been heard through Video Conferencing.
2. By way of this Letters Patent Appeal, the appellant challenges the judgment and order dated 13th May, 2020, passed by a learned Single Judge dismissing W.P.(C) No.3054 of 2020 filed by her.
3. Shorn of unnecessary details, the facts leading to filing of this appeal are as under:-
 - (a) In the year 2014, the appellant had joined M.B.B.S course with the School of Medical Science and Research, Sharda University, Greater Noida,

Uttar Pradesh. After completing her academic portion of the curriculum which is for four and a half years, the appellant got her certificate of professional (Medical Registration) from the Medical Council, Uttar Pradesh on 25.3.2019 and she started her compulsory internship with the School of Medical Science and Research, Sharda University, Greater Noida, Uttar Pradesh.

(b) We may note here that Section 10D of the Indian Medical Council Act, 1956 (in short, '**IMC Act**'), that provides for a uniform entrance examination for undergraduate and post graduate level reads as under:-

“There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner: Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination.”

(c) In exercise of powers conferred under Section 33 and Section 20 of the IMC Act, with the previous sanction of the Central Government, the Medical Council of India has brought out the Post Graduate Medical Education Regulations, 2000 (in short, '**Regulation, 2000**'). Regulation, 2000 sets out

the procedure for selection of a candidate for Post Graduate courses.
Regulation 9 (1), (2) and (11) read as under:-

“Procedure for selection of candidate for Postgraduate courses shall be as follows.--

(1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely 'National Eligibility-cum-Entrance Test' for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

(2) The "designated authority" to conduct the "National Eligibility-cum-Entrance Test" shall be National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.

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(11) No authority / institution shall admit any candidate to any postgraduate medicine course in contravention of the criteria / procedure as laid down by these Regulations and / or in violation of the judgements passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention / violation of aforesaid shall be discharged by the Council forthwith. The authority / institution which grants admission to any student in contravention / violation of the Regulations and / or the judgements passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year / years.”

(d) A perusal of the aforesaid Regulation would show that the National Board of Examination (in short, ‘NBE’) is the designated authority to conduct the common entrance examination for admission to Post Graduate

courses. The authority fixes the eligibility criteria for the candidates to take the examination.

(e) The NBE, which is the designated authority has brought out an Information Bulletin for the National Eligibility-cum-Entrance Test (Post Graduate) NEET - PG for admission to MD/MS/Post Graduate Diploma Courses for Session 2020. The eligibility criteria for taking the NEET - PG 2020 has been given in paragraph 4 of the Information Bulletin. Paragraph 4.1 A, 4.2, 4.3, 4.4, 4.5 of the Information Bulletin, which are relevant for the instant case are being reproduced hereinbelow:-

“4.1 A) Candidates in possession of MBBS degree or Provisional MBBS Pass Certificate recognized as per the provisions of the Indian Medical Council Act 1956 and possessing permanent or provisional registration certificate of MBBS qualification issued by the Medical Council of India or State Medical Council and have completed one year of internship or are st likely to complete the internship on or before 31 March 2020, may apply for NEET-PG 2020 through online application system at website www.nbe.edu.in.

4.2 Candidates found to be ineligible at any stage of NEET-PG 2020 will not be permitted to appear in the examination and/or counseling. In an unlikely event of any ineligible candidate appearing and/or being successful in the NEET-PG 2020, the results / candidature of such candidate shall be cancelled and/or are deemed to be cancelled.

4.3 Requests for appearing in NEET-PG 2020 from candidates completing st internship after 31 March 2020 or having qualifications that are not recognized as per IMC Act shall be summarily rejected. Candidates are further advised not to canvass for the same. The cutoff date for completion of internship towards determination of st eligibility for appearing in NEET-PG 2020 shall be 31 March, 2020.

4.4 Appearing in NEET-PG does not confer any automatic rights upon the candidate for admission at medical institute /college for MD/MS or PG Diploma Courses.

4.5 The dates indicated by candidates with regard to 12 months Compulsory Rotating Resident Internship in the application form (i.e. internship starting and completion date) shall be treated as final and candidates will be required to submit the original Compulsory Rotating Resident Internship completion certificate at the time of admission in allotted Medical College/Institute.”

(f) A perusal of the above eligibility criteria would show that candidates in possession of an M.B.B.S degree or provisional MBBS pass certificate recognized as per the IMC Act and possessing permanent or provisional registration certificate of MBBS qualification issued by the Medical Council of India or State Medical Council and who have completed one year internship or are likely to complete the internship on or before 31st March, 2020, can take the entrance examination for admission to PG courses. Paragraph 4.3 of the Information Bulletin makes it clear that the candidate had to complete the internship on or before 31.3.2020 and had to submit his certificate at the time of admission in the allotted Medical College/Institute.

(g) In view of the above, the appellant herein, who had got her certificate of provisional (Medical) Registration from the Medical Council of Uttar Pradesh dated 25.3.2019 and who was likely to complete her one year compulsory internship before 31.3.2020, was eligible to take the examination for admission to a post graduate medical course commencing in the year 2020. As per the schedule given by the NBE, the entrance examination was to be held on 5th of March 2020. The appellant sat for the examination.

(h) The appellant fell sick and she absented herself for 8 days between 23rd November 2019 to 22nd January 2020. She further remained absent for 28 days between 23rd January 2020 to 24th March 2020. In all, she absented herself for 36 days. The appellant states that in this duration, she was suffering from Typhoid and she recovered and thereafter joined duty. Unfortunately, she subsequently contracted Upper Respiratory Tract Infection (URTI) in the last week of February, 2020. The explanation offered by her for not recommencing her internship was that in view of her URTI, she felt it prudent not to do so in the interest of her health and safety. The appellant states that she recommenced her internship on 20th March, 2020, when she felt that she had completely recovered. The appellant completed her internship and an internship completion certificate dated 30th April, 2020, was issued in her favour by the School of Medical Sciences and Research & Sharda University. The certificate shows that the appellant was absent for a period of eight days between 23rd November 2019 to 22nd January 2020 and for a period of twenty eight days between 23rd January 2020 to 24th March 2020, totalling to thirty six days and as a result, her period of internship was extended by thirty six days.

(i) In the meantime, results for the entrance examination were declared wherein, the appellant secured 6689 rank on an All India basis. The appellant sat for the first All India Counseling and she was allotted a seat in BRD College, Gorakhpur. The appellant thereafter also attended the first counseling conducted by the State of Uttar Pradesh and she has been allotted a seat in Kings College, Lucknow.

(j) The Medical Council of India brought out a Notification bearing No.NCI-23 (1)/2020/Med./201867 dated 7th of April, 2020, regarding

completion of twelve months internship by medical graduates commencing on/after 1.4.2020 in view of the extraordinary situation due to the COVID-19 outbreak, which compelled the Government of India to declare an all India lockdown w.e.f. 24.03.2020. Paragraphs 4 and 5 of the said Notification, which are relevant for the present case read as under:-

“4. The academic session for post graduate board specialty courses in all Medical Colleges/Medical Institutions falling under the purview of the Indian Medical Council Act, 1956 commences from 1st May of the academic year. A candidate who has qualified the National Eligibility-cum-Entrance test in order to be considered for admission to postgraduate courses, in accordance with the Scheme of Online 50% All India Quota PG counseling: 2020-21 concerning completion of internship requires:

v. Internship completion certificate/certificate from the Head of the Institution or College that the candidate shall complete the internship by 31st March, of the year of admission.

vi. Permanent/provisional Registration certificate issued by the MCI or DCI/State Medical or Dental Council. Provisional Registration Certificate is acceptable only in cases where the candidate is undergoing internship and likely to complete the same on or before 31st March of the year of admission.

5. It has come to the notice of the BOG that after passing final MBBS examination some MBBS students could not join the internship in time, or could not obtain provisional registration with the State Medical Council or the internship was interrupted after start due to COVID 19 pandemic. Therefore, the Board of Governors in supersession of MCI has decided the 12 months compulsory rotating internship can be completed by such students within 30th April, 2021 stop the total duration of the

internship shall be 12 months only irrespective of the date of commencement. Such candidates will also be eligible to appear in PG NEET 2021 for admission in PG Courses.”

4. Knowing that the appellant would not be given admission for the reason that she had not been able to complete her internship before 31st March, 2020, she elected to file W.P.No.3054 of 2020 (from which the instant Letters Patent arises) praying *inter alia* for a direction to be issued to the respondents to extend the scope of the order dated 7.4.2020 issued by the Medical Council of India, so as to include MBBS Doctors like the appellant, who were to complete the internship by 31st March 2020 and declare that the appellant is eligible to secure admission in a PG course having qualified the NEET - PG examination 2020 or alternatively, to extend the period of completion of one year internship up to 30th April, 2020 to enable the appellant to get admission in the PG course having cleared the NEET - PG examination.

5. It was the contention of the appellant/petitioner in the writ petition that she has been subjected to hostile discrimination inasmuch as she has been denied the benefit of the Notification dated 7.4.2020 issued by the Medical Council of India as it restricts the benefit only to candidates who had started their internship in the year 2020. It was contended that similar benefit should also be extended to those students who have not been able to complete their internship by 31st March 2020 due to the COVID-19 pandemic. It was therefore the submission made in the writ petition that the Notification dated 7.4.2020 is manifestly arbitrary and deserves to be struck down or modified so as to include such of those Doctors who could not complete the mandatory one year internship before 31st March 2020. It was also contended that there

is no intelligible differentia between the two classes of Doctors and there is no rationale in excluding those students who have not been able to complete their internship by 31st March 2020 due to the COVID-19 pandemic and consequently, extend the benefit only to those students who have not been able to commence their internship in order to take the examination for the academic year 2020-2021.

6. In the impugned judgment, the learned Single Judge has found that there was nothing to indicate that, at any point of time, the appellant/petitioner had suffered from COVID-19 infection. The Court also observed that neither could her initial indisposition, w.e.f. 29th January, 2020, nor could her subsequent URTI condition, starting from 27th February, 2020, be attributed to COVID-19. The learned Single Judge held that appellant/petitioner might have been well advised not to recommence internship, having suffered from URTI, during the currency of the COVID-19 infection which was however a decision taken by the appellant/petitioner herself, admittedly in her best interest. It was further held that this by itself cannot justify a finding that owing to the COVID-19 pandemic, the appellant/petitioner was unable to complete her internship by 31st March, 2020. Holding that the appellant/petitioner did not possess the necessary qualification of having completed the internship on or before 30th March 2020, she was disentitled from getting admission in the PG course. The learned Single Judge rejected the plea of the appellant/petitioner for seeking extension of the period of completion of one year internship by one month upto 30th April, 2020. It was held that the appellant/petitioner had no right to claim such a relief and a writ petition is not maintainable in the absence of any right. The learned Single Judge while dismissing the writ petition was of the opinion the appellant/petitioner who is an academically bright student

was unfortunately being deprived of admission to a P.G. course for no fault of hers. It was therefore clarified that the impugned judgment shall not stand in the way of the Medical Council of India or the King George Medical College for accommodating her in the PG course should they choose to do so.

7. The impugned judgment has been challenged in the instant Letters Patent Appeal.

8. Mr. Samar Kachwaha, learned counsel appearing for the appellant would contend that the date for submitting the internship certificate by 31st March 2020 does not have any rationale basis. He would submit that the date of 31st March, 2020 is not carved in stone as it has not been statutorily prescribed and therefore, there is nothing which prevents the time limit from being extended. He would further contend that in the present case, the appellant was not able to complete her internship due to circumstances beyond her control and therefore, she ought to be given admission on the basis of the rank she has secured in the examination. In short, the contention of Mr.Kachwaha is that date line as given by the NBE is only directory and not mandatory in nature. He would contend that the appellant has completed her one year internship before beginning of the course and is therefore, qualified to be admitted in the P.G. course. Thus, she cannot be denied admission just because she had not submitted her internship certificate before 31st March 2020. In the alternative, Mr.Kachwaha contends that the benefit of the Notification dated 7/4/2020 should be extended to candidates like the appellant herein. He would contend that unless the said Notification is not extended to candidates who have not been able to complete their internship by 30th March, 2020, due to the COVID-19 pandemic, then the same would

suffer from “*manifest arbitrariness*” and ought to be struck down. He would state that there cannot be any distinction between a candidate who has not been able to complete the internship by March 31, 2020 and those who have not been able to commence their internship for the academic year 2020-2021, to be able to finish their internship by 31st March 2021.

9. On the other hand, Mr.Kirtiman Singh, learned CGSC appearing for the Union of India and Mr.T. Singhdev, Advocate appearing for the Medical Council of India would contend that a reading of the Notification dated 07.04.2020 would show that the same is applicable only to such of those candidates who are going to commence their internship and cannot be extended to candidates like the appellant herein. They would also contend that the appellant was residing in the hostel attached to the Institute and therefore it cannot be said that she could not complete her internship before 31st March 2020 on account of the lockdown attributable to the COVID-19 pandemic. It is also contended that no challenge was laid in the writ petition to the date line of 31st March 2020. Lastly, it is stated that after participating in the counseling for the PG course, it is now not open to the appellant to challenge the date line and the process of admission knowing fully well that she is not eligible to secure admission.

10. We have perused the impugned judgment, the pleadings in the writ petition and given our careful consideration to the arguments advanced by the learned counsel for the parties.

11. The contention of Mr.Kachwaha, learned counsel for the appellant that the guidelines framed by NBE do not have statutory backing, cannot be accepted. Section 10D of MCI Act mandates the conduct of a uniform entrance examination to all medical Institutions at the Undergraduate and

Postgraduate level by a designated authority. Section 20 read with Section 33 of the MCI Act empowers MCI to frame regulations for the purposes of conduct of professional examinations with the sanction of the Central Government. The Medical Council has framed the Postgraduate Medical Education Regulations, 2000. The NBE has been made the designated authority to conduct examinations for the purposes of selection of post graduate students under Regulation 9(2). Being the designated authority, the entrance examination and selection of candidates have to be done under the supervision of the NBE. For this purpose, Guidelines are issued by the NBE, prescribing *inter alia* necessary qualifications required for securing admission to postgraduate Institutions. Therefore, the Guidelines have a statutory backing. [Refer: State of M.P. vs. Gopal D. Tirthani (2003) 7 SCC 83, Bharati Vidyapeeth vs. State of Maharashtra (2004) 11 SCC 755, Chowdhury Navin Hemabhai vs. Ajay Srivastava (2011) 3 SCC 617, Priya Gupta vs. State of Chhattisgarh and Ors. 2012 (7) SCC 433 and Chandigarh Administration and Anr. Vs. Jasmine Kaur and Ors. 2014(10) SCC 521]

12. Paragraph 4.1 A of the Information Bulletin, (quoted supra), lays down that the candidates in possession of an MBBS degree or Provisional MBBS pass certificate recognized as per the provisions of the IMC Act and have completed one year internship are likely to complete internship on or before 31st March, 2020 are alone eligible to apply NEET-PG, 2020 examination. Paragraph 4.3 of the Information Bulletin for the National Eligibility-cum-Entrance Test (Post Graduate) NEET - PG for admission to MD/MS/Post Graduate Diploma Courses for Session 2020, clarifies that any request for appearing in the NEET examination on completing internship after 31st March, 2020 shall be summarily rejected. Paragraph 4.3 of the Information Bulletin in no uncertain terms states that the cut-off date for internship

towards determination of eligibility for appearing in NEET – PG 2020 shall be 31st March, 2020.

13. Completion of internship before 31st March, 2020, is therefore, an essential qualification. There is no power to relax the essential qualification. This Court, while exercising the jurisdiction under Article 226 of the Constitution of India cannot alter the essential qualifications prescribed in the Information Bulletin. The argument advanced by Mr.Kachwaha, learned counsel that students who have completed their internship before commencement of the PG course should also be admitted, cannot be accepted. One more aspect which has to be borne in mind is that several candidates who did not complete their internship before 31st March, 2020 would not have participated in the counseling process for the reason that they were aware of the fact that they did not possess the essential qualifications as prescribed. Any permission granted to the appellant to secure admission in the PG course will amount to changing the rules of the game midstream which is impermissible and cannot be done by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

14. It is also relevant to note that the appellant has not chosen to challenge the time limits prescribed and fixed in the Information Bulletin. In any event, she has not made out any case to demonstrate that the procedure prescribed in the Information Bulletin is violative of Article 14 of the Constitution of India and suffers from the vice of arbitrariness. Knowing that she was ineligible to get admission in terms of the relevant Rules and Regulations, the appellant still proceeded to take part in the counseling conducted for seats reserved under All India quota and also in the

counselling conducted by the State of Uttar Pradesh for filling up the seats which are reserved for State quota.

15. The subject writ petition was filed by the appellant only after the Notification dated 07.04.2020 was issued by the Medical Council of India to facilitate those students who were not in a position to commence their internship before the spread of the COVID-2019 pandemic. Therefore, after participating in the selection process, the appellant cannot be permitted to turn around and challenge the eligibility criteria. It is well settled that a candidate cannot approbate and reprobate at the same time. The appellant should not have participated in the counseling and ought to have challenged the instructions in the Information Bulletin before the counseling process had started. In several cases, the Courts have refrained from entertaining petitions which have been filed by a candidate after participating in the selection procedure and then turning around to challenge it. [Refer: Om Prakash Shukla vs. Akhilesh Kumar Shukla **1986 Supp. SCC 285**, Madan Lal v. State of J&K **(1995) 3 SCC 486**, K.H. Siraj Vs. High Court of Kerala **(2006) 6 SCC 395**, Marripati Nagaraja v. Govt. of A.P. **(2007) 11 SCC 522**, Dhananjay Malik v. State of Uttaranchal **(2008) 4 SCC 171**, Amlan Jyoti Borooah v. State of Assam **(2009) 3 SCC 227**, K.A. Nagamani v. Indian Airlines **(2009) 5 SCC 515**, Manish Kumar Shahi v. State of Bihar **(2010) 12 SCC 576**, Vijendra Kumar Verma vs. Public Service Commission **(2011) 1 SCC 150**, Pradeep Kumar Rai Vs. Dinesh Kumar Pandey **(2015) 11 SCC 493** and Ashok Kumar and Anr. Vs. State of Bihar and Ors. **(2017) 4 SCC 357**] Even otherwise, the Notification dated 07.04.2020, cannot be made as the basis for claiming the relief which the appellant was otherwise not entitled to.

16. The second limb of the argument advanced by Mr.Kachwaha, learned counsel that the Notification dated 07.04.2020 should be extended even to students like the appellant herein and if that is not done, then the said Notification would be violative of Article 14 of the Constitution of India, is unmerited. A perusal of the Notification dated 07.04.2020 would show that this advisory was brought out because it came to the notice of the Board of Governors that after passing final MBBS examination, some of the students could not join internship on time or could not obtain provisional registration with the State Medical Council or their internship was interrupted on account of the COVID-19 pandemic and the consequent lockdown declared by the Government of India. To remedy that situation, the Board of Governors therefore, decided that the duration of internship for such students should be extended upto 31st April, 2021.

17. There is nothing on record to show that the appellant could not complete her internship within time because of the COVID-19 pandemic. She was residing in the Institute and had fallen ill there and thereafter proceeded to her home to recover from the illness. After recovering, she returned to the Institute. Initially, she was suffering from Typhoid and later on, she was diagnosed as suffering from upper respiratory tract infection while at the Institute. It therefore cannot be said that her non-completion of internship within one year was in any way attributable to the COVID-19 infection. In any event, the Notification dated 07.04.2020 cannot be struck down as being violative of Article 14 of the Constitution of India because it does not include students like the appellant. Nothing has been brought out before us to demonstrate that the Notification is irrational, and/or issued without adequately determining the principles or is excessive and

disproportionate, so as to be manifestly arbitrary as has been laid down by the Supreme Court in Shyara Bano vs. Union of India reported as (2017) 9 SCC 1.

18. At the same time, this Court cannot close its eyes to the fact that this is an extremely unfortunate case. The appellant, who has been a very bright student throughout her academic career, was unable to complete her internship due to circumstances beyond her control. She is losing out on a seat in the PG course only because of her inability to obtain the compulsory internship certificate before the cut-off date, i.e., 31st March 2020 which has happened on account of her indisposition and for the reason that she was confined to bed for a critical period. In view of the above, we reiterate the observations made by the learned Single Judge that dismissal of this appeal will not be an impediment the Medical Council of India to accommodate the appellant for being granted a seat in the PG course as a special case. This is all the more so when admittedly, the second round of counselling for the All India seats has yet to commence due to the continuing COVID-19 pandemic situation that has compelled the Government of India to impose fourth lockdown.

19. For the aforesaid reasons, the challenge laid to the impugned judgment is turned down and the present appeal is dismissed alongwith the pending applications in terms of the orders passed above with no orders as to costs.

SUBRAMONIUM PRASAD, J

HIMA KOHLI, J

MAY 27, 2020

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