

\$~1.

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

+ LPA 148/2020

DR YASHI NAGAR & ORS.

..... Appellants

Through: Mr. Krishnan Venugopal, Senior
Advocate with Mr. Shivendra Singh,
Advocate.

versus

MAHUA BINDAL & ORS.

..... Respondents

Through: Ms. Anita Sahani, Advocate for
GGSIU.
Ms. Tara Narula, Advocate for
respondent No.3.
Mr. T. Singhdev & Ms. Michelle B.
Das, Advocates for respondent No.4/
MCI.
Mr. Ajay Digpaul, CGSC for
respondent No.7/ UOI.
Mr. Apoorv Kurup & Ms. Nidhi
Mittal, Advocates.
Mr. Samar Bansal, Mr. Sachin Mishra
& Ms. Devahuti Pathak Advocates for
the writ petitioner.

CORAM

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

18.05.2020

%

CM APPL. 10995/2020 & CM APPL. 10996/2020

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM APPL. 10997/2020

3. Exemption allowed, subject to all just exceptions.
4. The Court Fees be filed within two weeks.
5. The application stands disposed of.

LPA 148/2020 & CM APPL. 10994/2020

6. The present appeal is directed against the order passed by the learned Single Judge dated 29.04.2020 in W.P. (C) No.2941/2020 and C.M. No.10481/2020. The impugned order, insofar as it is relevant, reads as follows:

“WP (C) 2941/2020

The learned senior counsel for the respondent nos. 7 to 12 and the learned counsel for the respondent no. 1 submit that the present petition is liable to be dismissed on the ground of there being a misstatement of facts in the petition. He submits that the petition is premised on a submission that all the petitioners have cleared the NEET examination for the year 2020-21 and are therefore eligible for admission in the Post Graduate Medical Course. He submits that this statement, to the knowledge of the petitioners, is incorrect, as only the petitioner no. 1 has cleared the NEET examination, while petitioner nos. 2 to 7 are not even eligible for the said examination in the current year.

The learned senior counsel for the respondent nos. 7 to 12 as also the learned counsel for the respondent no. 1 further submit that there is a considerable delay in filing of the present petition inasmuch as the policy of reservation is known to all well in advance and the petitioners have chosen to file the present petition belatedly, only when the counselling process was about to begin. They submit that the present petition therefore be dismissed on the ground of delay and laches.

On the other hand, the learned counsel for the petitioner

submits that the statement that petitioner nos. 2 to 7 have also cleared the NEET examination and are eligible for admission to Post Graduate Medical Course was made by a bona fide error. The petition also prays for formation of a policy/guidelines by the State for admission into the 50% State quota in the Post Graduate Medical Courses within the State of NCT of Delhi. He submits that the petitioner nos. 2 to 7 were joined in the petition only because of this prayer, however, inadvertently the distinction between the petitioner no. 1, who had cleared the NEET examination for the current year, and the petitioner nos. 2 to 7 who had joined the petition only for the prayer with respect to the policy that would operate in future, was not brought out in the petition. He submits that even the petitioner no. 1 alone could have maintained such petition and therefore, had nothing to gain by making such mis-statements.

As far as the submission of delay is concerned, the learned counsel for the petitioner submits that the cause of action for filing of the present petition arose only with the publication of the brochure by the respondent no. 1 on 27.02.2020 announcing the 100% reservation for the students of its university. He submits that the petition was filed immediately thereafter and therefore there is no delay in filing of the present petition.

I have heard the learned counsels for the parties. It is not disputed by the learned counsel for the petitioner that the petitioners have made an incorrect statement of all of them being eligible for securing admission in the Post Graduate Medical Course in the current year. It is for this reason that the petitioners did not press the present petition for the petitioner nos. 2 to 7 as recorded in the order dated 22.04.2020 of this Court. At the same time, it is also not disputed that the petitioner no. 1 alone could have maintained the present petition as she was eligible for seeking admission in the Post Graduate Medical Course in the current year as well. In my view, this would be an important factor to be considered while adjudicating on the maintainability of the present petition. While the petitioner no. 1 should have been more vigilant in the pleadings of the petition, at the same time,

in my opinion, cannot be denied an opportunity of presenting her case for such error.

As far as the question of delay in filing of the present petition is concerned, in my opinion, the same is to be considered at the time of grant of an interim relief or the final relief in the present petition. The Court can always mould the relief taking a view on this submission at that stage. This submission, however, would not affect the maintainability of the petition at this stage.

In view of the above, I reject the submission of the respondent no. 1 and respondent nos. 7 to 12 on the maintainability of the present petition.

As recorded in the order dated 22.04.2020, this petition has been pressed only on behalf of petitioner no. 1. Petitioner no. 2 to 7 are therefore, deleted from the array of parties. The petitioner (petitioner no. 1) shall file an amended memo of parties within one week. The petitioner shall also pay costs of Rs. 10,000/- to be deposited with the PM CARES Fund within a period of one week from today.

The learned counsel for the respondent no. 1 prays for clarification of the order dated 20.03.2020 of this Court. This court by its order dated 20.03.2020 had directed that the result of the counselling scheduled by the Medical Counselling Committee of respondent no. 7 with respect to the respondent no. 1, shall be subject to the outcome of the present petition. She submits that this order be confined only to the seats reserved by institutional preference and not for the entire strength of seats of respondent no. 1. In my view, the order is clear, but in view of the submission made, it is clarified that the order dated 20.03.2020 shall operate only against the seats covered by the institutional preference.

The petitioner shall file a brief synopsis of its arguments alongwith supporting judgments within a period of two days after supplying a copy thereof to the counsels appearing for the respondents. The respondents may file their written synopsis alongwith supporting judgments within a period of one week thereafter. The same be supplied to the counsel for the

petitioner as also the other respondents at the time of filing.

List for hearing on 19th May, 2020.

This order shall be uploaded on the website of the Delhi High Court and also supplied to respective counsels.”
(emphasis supplied)

7. The impugned order shows that the writ petition is still pending consideration and is listed before the learned Single Judge on 19.05.2020.

8. The only aspect which stands finally determined by the impugned order is with regard to the submission of the respondents that the petitioners had made a misstatement and suppression of relevant facts. On this aspect, the appellants, and the official respondents have again sought to launch an attack on the surviving writ petitioner, i.e. respondent No.1. We have heard the submissions of learned counsels on this aspect and are not inclined to interfere with the impugned order.

9. The writ petition, as originally filed, had seven petitioners. It appears that though the petitioner no.1 – who is respondent no.1 in the present appeal, had cleared her MBBS Examination and had taken NEET Examination, petitioner nos.2 to 7 were still undergoing MBBS course. In para-1 of the petition, the petitioners had made the following averment:

“That the petitioners are MBBS graduates from Hamdard Institute of Medical Sciences and Research (“HIMSR”) who have cleared the NEET 2020-21 and those pursuing MBBS courses therein, and are eligible to apply for admission to Post Graduate Medical Courses. HIMSR is a minority educational Institute affiliated to Jamia Hamdard University, and is located at Hamdard Nagar, New Delhi. HIMSR is an Institute of eminence (as declared by the University Grants Commission) and offers courses at undergraduate, postgraduate and post-

doctoral levels in medical and allied subjects. The undergraduate course started with its first batch of 100 MBBS students inducted in July 2012 who passed out in 2017, and HIMSR continues to induct batches of similar strength every academic year. ” (emphasis supplied)

10. Thus, in the opening paragraph itself it was disclosed by the writ petitioner that they had either cleared the NEET 2020-21, or were pursuing the MBBS course. The averment that some of them were pursuing the MBBS course itself shows that they possibly could not have appeared in the NEET 2020-21. However, in the other parts of the writ petition, it appears that the averments made by the petitioners conveyed the impression that all the petitioners had appeared in the NEET Examination, and had cleared the same. It is this anomaly in the pleading which was cited as deliberate misstatement by the petitioners.

11. The learned Single Judge accepted the petitioners explanation for the said order in the light of the fact that the petitioner nos.2 to 7 withdrew from the petition, as recorded in the order dated 22.04.2020, and the petitioners conceded that there was an inaccuracy in the drafting of the petition. The explanation for impleading petitioner nos.2 to 7 was also offered, viz. to seek the formulation of a policy/ guideline by the GNCTD for admission to the 50% State Quota in the P.G. Medical Courses within the NCT of Delhi. That relief could be claimed by writ petitioner Nos. 2 to 7 as well. Most importantly, there was no evident intention of the part of the petitioners to either mislead the court, or obtain any order from the court by such misstatement, to which at least petitioner no.1 was not entitled. In view of the finding recorded by the learned Single Judge, we, therefore, do not find

any merit in the submission that the petitioners made any misstatement.

12. It has also been argued by Mr. Krishnan, learned senior counsel for the appellants, that the writ petitioner no.1 had deliberately concealed the fact that she had undertaken the NEET Examination in the previous year as well, and despite that being the position, she had not challenged the confinement of the institutional quota to students of the GGSIP University, which was similarly done in the last year as well, and has been consistently done by the GGSIP University for several years now.

13. We do not find any merit in this submission either. Even if the petitioner had appeared in the NEET Examination in the previous year and had not challenged the same policy of the GGSIPU in the previous year, that does not preclude her from challenging the same in the present year. There is no estoppel against the law. The confinement of the State Quota at the institutional level this year, gives a fresh cause of action to the writ petitioner No.1.

14. For the aforesaid reasons, the submission of the appellant with regard to suppression, or misstatement, is rejected, and we accept the impugned order passed by the learned Single Judge on that aspect.

15. The other aspect raised by Mr. Krishnan is with regard to the delay in filing the writ petition. So far as this aspect is concerned, the learned Single Judge has observed in the impugned order that delay in filing the writ petition would be considered at the final stage of hearing, and the relief would be moulded accordingly. We agree with the approach of the learned Single Judge in this regard.

16. Mr. Krishnan has also urged that certain affected parties have not

been impleaded to the writ petition. The impugned order does not deal with this aspect. We leave it open to the parties to urge their respective stands on this aspect before the learned Single Judge.

17. Mr. Krishnan as well as the other counsels appearing for the authorities have advanced their submissions on the merits of the writ petitioner's contention that the GGSIPU could not have provided institutional reservation to the students in the said University alone, and that such reservation could have been provided only by the GNCT of Delhi on the basis of geography.

18. So far as this aspect is concerned, we are not inclined to deal with the same in the present appeal, considering the fact that the writ petition is still pending consideration before the learned Single Judge and no finding has been returned by the learned Single Judge on that aspect. We, therefore, do not see any point in referring to the several decisions, which have been referred to by learned senior counsel, and other counsels for the respondent authorities, and counsel for the respondent no.1.

19. There is no doubt that the disposal of the writ petition brooks no delay, since the writ petitioner is seeking relief in relation to admissions to the PG Courses of GGSIPU in the medical stream. The process of counselling is in progress and it is imperative that the writ petition is decided at the earliest, so that the claims of the writ petitioner and the appellants are properly addressed. We, therefore, direct that the writ petition aforesaid, be listed before the learned Single Judge tomorrow i.e. 19.05.2020, as already fixed.

20. The roster bench dealing with writ petitions relating to educational

matters presently is of Justice Jayant Nath, and we find from the roster that Justice Jayant Nath is holding court tomorrow. We, therefore, direct that the writ petition be listed tomorrow before him, and request the learned Single Judge to take up the writ petition for hearing either tomorrow, or on any other earliest convenient date, and dispose of the same as expeditiously as possible.

21. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

MAY 18, 2020
SR