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

+ W.P.(C) 4481/2020 & CM APPL. 16158/2020

DR. AJINKYA REWATKAR Petitioner

Through: Mr. Kunal Cheema, Mr. Dhruv Kapur, Mr.
Vishwanath Patil, Mr. Vijayender Kumar
and Mr. Maharshi Kaler, Advocates.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE & ORS.

...Respondents

Through: Mr. Dushyant Parahar and Mr. Manu
Parashar, Advocates for R-1/AIIMS.
Mr. T. Singhdev and Ms. Michelle B. Das,
Advocates for R-2/MCI.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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19.08.2020

1. The hearing was conducted through video conferencing.
2. The petitioner has been selected for admission to D.M./M.Ch. in Neurosurgery at All India Institute of Medical Science (AIIMS). However, he has to submit his certificates of feeder qualification of M.S.Surgery, a course which he is pursuing at Maharashtra University of Health Science, Nasik. The examinations for the said course have got delayed on account of the current pandemic. The petitioner seeks extension of time to submit the said feeder qualifications, after his examinations are held and the results declared. In the interim seeks lien on his offer of admission.
3. The last date for the petitioner to submit the requisite documents and to join AIIMS was 15.08.2020. The said date is over. Mr. Parashar,

the learned counsel for AAIMS submits that the second round of counseling too has gotten got over. Indeed, the third round of counseling is to start shortly.

4. The learned counsel for petitioner submits that in exceptional circumstances, the Court could exercise its discretionary jurisdiction under Article 226 of the Constitution of India for appropriate relief. He places reliance upon the dicta of the Supreme Court in *Asha vs. Pt. B.D. Sharma University of Health Sciences and Ors.* (2012) 7 SCC 389. It held, inter alia, as under:

“38. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

38.1. Question (a): The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.”

38.2. Question (b): 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in Priya Gupta [(2012) 7 SCC 433]). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in Priya Gupta [(2012) 7 SCC 433] and this judgment are found to be unexceptionally satisfied and the

reasons therefor are recorded by the court of competent jurisdiction."

5. The learned counsel for the AIIMS places reliance on the order of the Hon'ble Supreme Court in *Raghuvir Saini & Ors. vs. Union of India & Ors.* in WP(C) 742/2020 passed on 14.08.2020.
6. The learned counsel for the Medical Council of India (MCI), submits that *de hors* the above, since the petitioner does not meet the feeder qualifications, he cannot be admitted to a super-specialty course as per the MCI rules.
7. The Court is of the view that it is for AIIMS to take a call as to whether it should extend the date of joining for the petitioner and all persons similarly placed. The Court is informed that the AIIMS would not do this because there are other qualified candidates in the merit list, who are ready and willing to join the course, with the requisite qualifications. If AIIMS were to grant the aforesaid extension, then the entire academic year of the new batch of doctors is likely to be jeopardized. Furthermore, AIIMS's requirement of a certain number of senior doctors will be impacted if the intake of the new batch is suspended for an uncertain period. More significantly, its day to functioning and provision of medical care to patients will be adversely affected. This is a risk which the country's premier medical institution cannot take, as it has to meet its standards of availability of competent doctors at all times, in view of the heavy footfall of patients from all over the country. For the said reasons, the Court is not inclined to grant the relief sought by the petitioner.

8. The petition is without merit and is accordingly dismissed alongwith pending application.
9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

NAJMI WAZIRI, J

AUGUST 19, 2020
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