

\$~5

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

+ LPA 183/2020

ANURAG KUMAR & ORS.

..... Appellants

Through: Mr.Shivendra Singh, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Manish Mohan, CGSC with
Ms.Manisha Saroha, Advocate for R1/UOI.
Ms.Anita Sahani, Advocate for R2/GGSIPU.
Mr.T.Singhdev, Advocate with Ms.Michelle
Biakthansangi Das, Advocate for R3/MCI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

%

24.07.2020

HEARD THROUGH VIDEO CONFERENCING.

CM Nos.16385/2020, 16386/2020 and 16387/2020 (Exemption)

Allowed, subject to all just exceptions.

LPA 183/2020, CM Nos.16383/2020 (Stay) and 16384/2020 (Permission to bring on record additional documents)

1. This letters patent appeal is directed against the order dated 21.07.2020 passed by the learned Single Judge in W.P. (C) 4244/2020.
2. The appellants are MBBS graduates from Guru Gobind Singh Indraprastha University, respondent No.2 herein.

3. The appellants belong to the OBC category. They took the NEET-PG 2020 examination for admission to post-graduate medical courses. The Directorate General of Health Services conducts counselling for the 50% All India Quota seats. The All India Quota seats, which remain vacant even after the last date of joining prescribed under the schedule laid down by the Directorate General of Health Services, are reverted to the State Quota and they are filled up by a Mop-up counselling conducted by the respective States.

4. The case of the appellants at the time of filing the writ petition was that if a seat falling under the All India Quota to be filled by an OBC candidate remains unfilled, then even on reversion to the State Quota in the Mop-up counselling, it has to be filled by an OBC candidate and not by a candidate belonging to any other category.

5. For the academic year 2020-21 on reversion of seats from the All India Quota to the State of Delhi, the schedule for the Mop-up round of counselling for filling up the vacancies was fixed for 14.07.2020. The appellants state that there were glaring discrepancies in the seat matrix published by the respondent No.1/Union of India in respect of those seats which were earmarked for the OBC candidates in the All India Quota. It was the case of the appellants in the writ petition that when the seats were reverted to the State Quota, the category of the seats was changed and they were sought to be filled up from the candidates who did not belong to the OBC Quota. With this grievance, the appellants had filed the said writ petition praying *inter alia* for issuance of a writ of mandamus to the respondent No.1 UOI/Medical Counselling Committee to modify the seat matrix published on its website on 14.07.2020, to accurately reflect the five

reverted seats of Vardhman Mahavir Medical College (VMMC)-Safdarjung Hospital and Atal Bihari Vajpayee Institute of Medical Sciences – Dr. Ram Manohar Lohia Hospital of the respondent No.2/GGSIPU as OBC seats and for issuance of a writ of mandamus to the respondent No.1 UOI/Medical Counselling Committee to ensure that the three unfilled OBC seats in the Employees State Insurance Corporation-Post Graduate Institute of Medical Sciences and Research (ESIC-PGIMSR), Basaidarapur, affiliated to the respondent No.2/GGSIPU, are reverted to the State Quota as OBC seats.

6. The respondent No.1/Union of India filed a counter affidavit stating that the policy followed by the respondent No.1 is in compliance with the directions of the Supreme Court of India in **I.A. No. 7 & 8 in W.P. (C) No. 76/2015** titled as Ashish Ranjan & Ors. V/s UoI & Ors., which provides that once the seats remain vacant after round 2 of the counselling for filling up the All India Quota seats, they shall be reverted back to the respective States and those seats which are sent back to the respective States are without applying any reservation/category. It was stated in the counter affidavit that these seats are deemed to be converted to State Quota and rules/regulations/reservation of the concerned State will apply for filling up the said seats. The stand of the Committee was that upon reversion of these seats to the State Quota, the State Government fills up the seats in accordance with the existing running roster of the State/Institution.

7. The respondent No.1/Union of India also filed a copy of the notice dated 15.07.2020, issued by the Directorate General of Health Services, Medical Counselling Committee, which reads as under:

“Kind Attention:

MCC of DGHS is receiving many representations regarding change of category of All India Quota seats after being reverted to State Quota subsequent to completion of Round-2 of PG Counselling.

Vide the directions of the Hon'ble Supreme Court of India in I.A. No.16 of 2012 in Civil Appeal No.(s) 1944 of 1993 in the matter of 'Anand S. Biji V/s State of Kerala & Ors.', the Directorate General of Health Services, Government of India, New Delhi has been entrusted with the responsibility to conduct Online Counselling for allotment of Post Graduate (MD/MS/Diploma and MDS) seats to the eligible and qualified candidates in participating Government Medical/Dental Colleges of the country under 50% All India Quota every year.

In this regard, it is mentioned that MCC is following the Guidelines formulated by the Hon'ble Supreme Court of India in I.A. No.7 & 8 in W.P. No.76 of 2015 Ashish Ranjan & Ors. Vs Union of India & Ors. which states as under:

“All India Quota Seats remaining vacant after last date for joining, after Round-2 will be deemed to be converted into state quota.”

Once the seats are reverted back to the respective states they are deemed to be converted to State Quota and rules/regulations/reservation of the concerned state will apply.

Hence, the Institution/State reservation rules have been applied on all India Quota reverted seats and the categories have been changed as per existing running roster of State/Institution.” (emphasis added)

8. A reading of the judgment impugned in the present appeal shows that

in the light of the counter affidavit filed by the State Government, the appellants did not seriously press the point taken up in the writ petition. Instead, a totally different argument was sought to be raised before the learned Single Judge by relying upon Annexure R-3, being the Mop-Up Roster filed by the respondent No.1/UOI with its counter affidavit in the writ petition. It was urged before the learned Single Judge that the roster for the State seats to be filled up in the Mop-up counselling had been prepared in an erroneous fashion. It was argued that the sequence of the Institutes mentioned in the roster for the Delhi University and the respondent No.2/GGSIPU are at variance with each other. While the sequence of the roster for the Delhi University has been mentioned in the alphabetical order, the sequence of seats in the roster for the respondent No.2/GGSIPU has not been mentioned in an alphabetical order.

9. It was contended before the learned Single Judge that ten seats of ESIC-PGIMSR, Basaidarapur have all been clubbed at the bottom of the list, contrary to the alphabetical order which has affected the rights of the students including the appellants. It was also contended that the sequence in the roster is also not in accordance with the importance of the course inasmuch as the seats in MD (Paediatricians), Basaidarapur, have been placed over General Surgery and this is in violation of the sequence of the roster to be prepared. However, the learned Single Judge dismissed the writ petition and held that the roster has not been drawn up in violation of the State policy, rules and regulations.

10. In his arguments before us, Mr. Shivendra Singh, learned counsel for the appellants, has not pressed the main prayer made in the writ petition. He has only stressed on the manner in which the Mop-up roster has been drawn

up and published. He states that originally, the unfilled seats of ESIC-PGIMSR were not added to the original seat matrix. The said seats were added to the seat matrix belatedly, on 15.07.2020. He states that these seats were added after the writ petition was filed but they were wrongly placed at the bottom (below VMMC-SJH) instead of in the correct sequence by drawing an alphabetical roster distribution which ought to have been in the order of ABVIMS-RML, followed by ESIC-PGIMSR and lastly, VMMC-SJH i.e. A, E & V. Instead of the same, the sequence drawn is ABVIMS-RML, followed by VMMC-SJH and lastly, ESIC-PGIMSR i.e. A, V & E.

11. Learned counsel for the appellants states that the revised roster was published by the respondent No.2/GGSIPU only after filing of the writ petition and it was only after issuing the revised roster which had been annexed with the counter affidavit as Annexure R-3, did the appellants come to know that the roster matrix was different from the revised roster published by the Respondent No. 1/MCC on its official website. He further states that the sequence given in the roster even with respect to the courses in the ESIC-PGIMSR is not in alphabetical order which is the usual practice. He states that two MD (Paediatrics) seats have been placed above MS (General Surgery) which has caused confusion.

12. On the other hand, Mr. T. Singhdev, learned counsel appearing for the respondent No.3/MCI, supports the judgment impugned herein. He states that the counselling was over on 19.07.2020 and most of the candidates have reported to their respective colleges. Incidentally, the last date for reporting is 27.07.2020. He states that all the three appellants have already been allotted PG seats.

13. Admittedly, the appellant No.1, Anurag Kumar has been allotted MS

(Ophthalmology) in VMMC-Safdarjung Hospital, the appellant No.2, Chandan Kumar has been allotted MD (Anaesthesia) in VMMC-Safdarjung Hospital and the appellant No.3, Shashikant Prakash has been allotted MS (Orthopaedics) in ESIC-PGIMSR, Basaidarapur.

14. Having heard the learned counsel and on perusing the impugned order, we are of the opinion that Mr. Singh, learned counsel for the appellants, has not been able to point out as to what prejudice has been caused to the appellants due to the fact that the roster had not been published in an alphabetical order. It is not the case of the appellants that the number of seats available in a particular Institution or the course available in an Institution was concealed from the students. It was open to the appellants to select the course of their choice provided it was available to them, depending on their rank in the NEET-PG examination. In the absence of any concealment of the availability of seats in an Institute or the course, it cannot be said that any prejudice has been caused to a candidate just because the roster was not published by listing the Institutes in an alphabetical order.

15. As noted above, this point had not even been raised by the appellants in the writ petition and the same was raised only after the counter affidavit came to be filed by the respondent No.1/Union of India wherein the revised roster was annexed as Annexure R-3. Just because the seats position in ESIC-PGIMSR, Basaidarapur, were shown below VMMC-SJH, it cannot be said that the appellants were unaware of the availability of the seats in ESIC-PGIMSR, Basaidarapur, in the Mop-up counselling. The fact that the roster for the seats in the University of Delhi was drawn in an alphabetical order and the roster of seats for the respondent No.2/GGSIPU was not in an alphabetical order does not vitiate the Mop-up counselling. Similarly, the

fact that the distribution of seats in the course is not in a chronological order of the subjects, is also of no consequence. The fact that the MD (Paediatrics) seats in ESIC-PGIMSR, Basaidarapur, were placed above the stream of General Surgery seats, is also of no consequence. Seats are allotted on the basis of the rank secured by a candidate. A candidate who participates in the counselling, has the Institutes and the subjects from which a choice is to be made by him/her. The sequence in which the Institute is listed or the stream in which the seats are available does not make any difference during the counselling and cannot vitiate the entire counselling process.

16 Therefore, we do not find any infirmity in the impugned judgment for interference. The appeal is dismissed as unmerited along with the pending applications.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JULY 24, 2020

jitender