

\$~A-4

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

+ **W.P.(C) 4761/2020**

SUDATTA MONDAL Petitioner

Through Mr. K. L. Sastry and Mr. K. Sri
Varshini, Advs.,

versus

UNION OF INDIA AND ORS Respondent

Through Mr. Sanjeev Sabharwal Sr. Panel
Counsel and Mr. Vinod Diwakar, CGSC for UOI
Mr. Kirtimaan Singh and Mr. Waize Ali Noor,
Advs for R-2 and R-3
Mr. V.S.R. Krishna, Adv. for R-4/AIIMS

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **31.07.2020**

This hearing is conducted through Video Conferencing.

W.P.(C) 4761/2020 & CM No.17179/2020

1. This Writ Petition is filed by the petitioner seeking to set aside the impugned communication dated 20.7.2020 by the respondent no. 2 whereby the said respondent has rejected the petitioner's request to resign from the seat of MD Anaesthesiology at Vardhman Mahavir Medical College & Safdarjung Hospital.
2. The petitioner was allotted the aforesaid seat of MD Anaesthesiology at Vardhman Mahavir Medical College & Safdarjung Hospital in the second round of counselling under the All India Quota on the basis of her performance in NEET-PG-2020. The petitioner further submits that based on her performance in the independent entrance examination conducted by AIIMS the petitioner has secured an All India Rank 2959 in the SC category

and would therefore be eligible to be allotted a seat in the subject of MD Radiation Oncology in AIIMS which is a premier institution of the country. In this factual background the petitioner states that she had approached respondent No.2 with a request to permit her resignation from the seat allotted to her at Vardhman Mahavir Medical College & Safdarjung Hospital so that she could participate in the counselling to be held by AIIMS on 30.7.2020.

3. The petitioner submitted her resignation letter to respondent No.2. It is claimed that respondent No.2 violated the terms of the contract/admission process as the petitioner had executed a security bond on non judicial stamp paper dated 22.06.2020 wherein it is clearly provided that if a student leaves the course before the completion of the course, the student shall pay a sum of Rs.3 lacs as a security deposit. It is stated that the said amount was paid by the petitioner to the respondent No.2 institution.

4. A perusal of the order dated 20.7.2020 shows that the respondent No.2 Vardhman Mahavir Medical College has noted it has received a resignation letter from the petitioner dated 16.7.2020. The communication further states that the petitioner is not permitted to vacate/resign as per MCC notice dated 24.6.2020/Supreme Court Order.

5. When the matter was listed yesterday by special mentioning none had appeared for respondents No.2 to 4. Notices were issued for today.

6. Today learned counsel has entered appearance for respondents No.2 to 4. Dr. Professor Srinivas, ADG, Medical Education, is also present in person.

7. It is an accepted fact that this court had earlier also in the first round of counselling passed a judgment in similar facts and circumstances.

Reference may be had to the said judgment of this court being **Rayappa Handk Sri Thej vs. Union of India**, in W.P.(C)3959/2020 dated 06.07.2020 which reads as follows:-

“1. This Writ Petition is filed by the petitioner to set aside the impugned order of communication dated 2.7.2020 whereby the respondent No.2 has rejected the petitioner’s request to resign from the seat of MS Gen. Surgery at Vardhman Mahavir Medical College & Safdarjung Hospital. Direction is also sought to respondent No.4 to consider the seat allotment to the petitioner in AIIMS in MS Surgery under OBC Category.

2. The case of the petitioner is that he was allotted the aforesaid seat of MS Gen. Surgery in Vardhman Mahavir Medical College & Safdarjung Hospital in the first round of counselling under All India Quota on the basis of his performance in NEET-PG-2020. Further, based on his performance, the petitioner has also now cleared the Entrance Examination conducted by AIIMS and has secured an All India Rank of 26 in the OBC Category and, therefore, would be eligible to be allotted a seat in the subject of MS Surgery in AIIMS. It is in this background that the petitioner had approached respondent No.1 with a request to permit his resignation from the seat allotted to him in the Vardhman Mahavir Medical College & Safdarjung Hospital so that he can participate in the counselling to be held in AIIMS on 7.7.2020. The respondent No.2 college has, however, rejected the resignation of the petitioner.

.....

5. Heavy reliance was placed by learned counsel for the petitioner on a judgment passed by a co-ordinate Bench of this court in the case of **Dr.Sneha Prakash vs. Union of India** being W.P.(C)5397/2018 dated 18.5.2018. The facts of that case are virtually identical to the present case. In that case the petitioner had resigned from the seat in MS Ophthalmology, Lady Harding College which was allotted to her in the first round of counselling under the All India Quota on the basis of her performance in NEET-PG. The Petitioner therein also got selected for the AIIMS Quota and therefore had approached with a request to permit her to resign

from the seat allotted to her at Lady Harding College. In those facts this court had passed following directions:-

“In these circumstances, it is agreed between the parties that, subject to the petitioner depositing a sum of Rs.10 lakhs with respondent no.2 on 19.05.2018, her resignation from the seat in Lady Harding College would stand accepted and her original documents would be immediately returned to her by respondent no.2, so to enable her to take part in the counselling to be conducted by AIIMS.

Needless to say that the aforesaid statement has been made by respondent no.1 in the peculiar facts of the case and will not act as a precedent.”

6.In this case a perusal of the impugned communication dated 2.7.2020 which has been sent by Vardhman Mahavir Medical College & Safdarjung Hospital shows that the respondent has simply rejected the resignation of the petitioner stating that the matter has to be taken up directly with ADG (ME)/Addl.DG of DGHS (MCC). Further, a perusal of the surety bond signed by the petitioner shows that in case the petitioner leaves the course before its completion he will pay the surety amount of Rs.3 lacs and till then the University shall have a right to retain original certificates.

7.Clearly, the petitioner cannot be forced to continue the course in the college in question and can leave after having paid the necessary sum of Rs.3 lacs, which the petitioner is willing to do.

8.Dr.Athani, appearing for respondent No.3, also very fairly states that the judgment of the co-ordinate Bench of this court is factually somewhat identical to the facts of the present case.

9.Accordingly, it is agreed that the petitioner shall forthwith deposit with respondent No.2 a sum of Rs.3 lacs. On deposit of the said amount the resignation of the petitioner shall be accepted and the petitioner shall be returned the original documents forthwith. Respondent No.4 shall thereafter permit the petitioner to participate in the counselling, as per law, and as per his rank in the list. The

vacancy in Respondent No.2 College may be filled up in the mop up counselling.

20. Parties agree that this order shall not be a precedent for any other matter in as much as this order is being passed in the peculiar facts and circumstances of this case. It is also agreed that this matter may be disposed of accordingly.

.....”

8. As noted this court had in the above case relied on another judgment of a co-ordinate Bench of this court in the case of ***Dr. Sneha Prakash vs. UOI being W.P.(C)5397/2018*** dated 18.5.2018. No judgment to the contrary has been brought to the notice of this Court.

9. Learned counsel for respondent No.4/AIIMS submits that their procedure does not debar the petitioner from taking admission in these facts provided the petitioner is able to produce the original documents.

10. In my opinion, in these peculiar facts and circumstances of this case this petition should also be disposed of, as per the abovenoted judgments.

11. Learned counsel for the petitioner states that the Demand Draft of Rs.3 lacs has already been deposited with respondent No.2 College. In case the same has been deposited/is deposited, respondent No.2 may accept the resignation and return the original documents to the petitioner forthwith.

12. This order shall not be a precedent for any other matter in as much as this order is being passed in the peculiar facts and circumstances of this case.

13. Petition is disposed of as above. All pending applications, if any, also stand disposed of.

JAYANT NATH, J.

JULY 31, 2020/n