

\$~A-39

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

%

Date of decision: 19.08.2020

+ W.P.(C) 5276/2020

DR. AMINU ALIYAR Petitioner

Through Ms.Abha Vijayan, Adv.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES..... Respondent

Through Mr.Dushyant Parashar Advocate and
Mr.Manu Parashar Advocate for AIIMS

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

This hearing is conducted through Video Conferencing.

1. This Writ Petition is filed seeking the following relief:-

i. Issue a Writ, order or direction in the nature of *Mandamus* directing the respondent to admit the petitioner to the course of DM-Neurology for the July 2020 Session and allow her to attend the Session as per schedule;

ii Issue consequential orders directing the respondent to grant leave and relaxation of time to the petitioner to file and submit the original documents pertaining to her qualifying MD Exams, after the respective results are declared by Kerala University of Health Sciences, in the light of Covid -19 crisis;

iii Issue further consequential orders directing the respondent not to pass on the seat, to which the petitioner is reasonably and rightfully entitled, to any other applicant ;

2. The case of the petitioner is that she completed her MBBS from Mahatma Gandhi University, Kerala in the year 2014-15. Thereafter she

joined the course of MD with Government Medical College, Calicut. The session that started in 2017 was scheduled to conclude in April 2020. However, on account of the Pandemic and the subsequent lockdown measures imposed by the Central as well as the State Government, the final practical exams were scheduled between 10th and 12th August, 2020 (subject to the condition that the same does not get postponed owing to increasing number of Covid-19 cases in the State of Kerala). It is further pleaded that based on the CBT-Online Entrance Examination held on 11.06.2020 and the departmental clinical/practical/lab based assessment (Stage-II) held from 22.6.2020 to 24.6.2020 the petitioner has qualified for the seat of DM-Neurology in the first call by scoring the fourth highest score. It is pleaded that pursuant to Notification dated 30.06.2020 the petitioner reported to the respondent as per criteria specified in the form on 10.07.2020. However, the respondent/AIIMS refused to accept the Demand Draft sought to be submitted by the petitioner stating that the petitioner should give undertaking to file original documents by 16.8.2020 or else forfeit the seat. The petitioner states that she has written to the Registrar of the respondent by email to consider her to be admitted to the course, as her inability to produce her MD Degree Certificate is owing to no fault of her, but due to the change in examination schedule brought about by the Pandemic. It is pleaded that the respondent itself conducted its scheduled Entrance Exam in the month of June 2020 instead of April 2020, owing to the Pandemic. Hence, the present Writ Petition.

3. The respondent/AIIMS has filed its counter-affidavit. In the Counter-Affidavit it is pleaded that relaxation was given on account of the existing Covid-19 situation from 31.7.2020 to 15.8.2020. It is also pointed out that

the delay in joining will result in shortage of manpower and impact the nation's fight against Covid-19. Reliance is placed on Clause 2 (Eligibility) of the Prospectus for DM/MCh which provides that a candidate must have completed requisite qualification, degree and tenure by 31.7.2020. The candidates who are likely to complete their 3 year requisite qualification, degree and tenure after 31.07.2020 will not be eligible to appear in this examination. It is further pleaded that the petitioner does not fulfil the eligibility criteria for this seat. It is further pleaded in the counter-affidavit that there can be no certainty that the result of the petitioner shall be published before the second date of counselling in view of Covid-19 situation. Further, there can be no guarantee that the candidate will pass the said eligibility exam. Following further contentions have been raised:

(a) It is pleaded that the eligibility date for recruitment is defined under the powers of AIIMS. The same is being applied to all the candidates who have taken the exam. It is further pleaded that there are waitlisted candidates for the seat in question and any change in the rule at this stage, would be prejudicial to the interest of the waitlisted candidates in the list. It is further pleaded that any concession given to the petitioner will result in penalising honest candidates who may not have applied knowing that they will not be eligible by 31.7.2020. It is further stated that if the petitioner passes the eligibility exam she will be eligible to apply again for the DM Exam in December 2020.

(b) It is further pleaded that the eligibility date of 15.8.2020 has been kept since it is expected that the candidates can join by 31.8.2020 i.e. the final date of joining declared by the Supreme Court for the Academic tenures in the judgment of *Ashish Ranjan vs. Union of India* being W.P.(C) 76/2015

dated 18.01.2016.

(c) The failure of one University to conduct an exam cannot be held as a ground to delay recruitment of all other educational institutions and jeopardise the academic courses. It is further stated that fixing a date of eligibility is not unique to this exam and is a standard requirement for all exams, posts and positions.

(d) It is strongly stressed that the first round of counselling cannot be permitted on the last possible date as this will leave no time for other Round of Counselling to be done.

(e) Reliance is also placed on the judgment of the Supreme Court dated 14.8.2020 in W.P.(C) 742/2020 titled ***Raghuvir Saini and Or. vs. Union of India*** where the Supreme Court was dealing with a case where a large number of seats fell vacant from the All India Quota for the year 2020 and were being reverted to the State Quota. Reliefs claimed was to declare such unfulfilled All India Quota seats as having lapsed on account of the non-joining of selected/shortlisted candidates. The Supreme Court held that the relief as claimed if granted will create confusion and in fact result in denial of admission to eligible candidates against transferred State quota seats. This will be counter-productive and against the expressed communications sent by Medical Council of India.

4. This matter came up for hearing before this court on 14.8.2020 when this court directed that one seat for DM-Neurology shall not be filled, till the next date of hearing. Time was given to the respondent to file its counter-Affidavit.

5. I have heard learned counsel for the parties. Learned counsel for the petitioner has pointed out that the petitioner had filed a Writ Petition before

the Kerala High Court being W.P.(C)16901/2020 where directions have been passed on 18.08.2020 to the University in question to release the results and send the same by email to respondents on or before 21.08.2020. She hence submits that within next two days her result would be available to the respondent and prays for consequential relief. It is reiterated that the delay in completion of her eligibility took place on account of the current Pandemic and that she should not be penalised for the same.

6. Learned counsel for the respondent/AIIMS has vehemently urged that the interim order passed by this court is obstructing the selection process as the subsequent rounds of counselling could not be held for the course in question. He states that in the first round for DM-Neurology there are 7 seats and in the First Round three seats were filled up. The balance seats which include one seat in Delhi, 2 in Jodhpur and one in Rishikesh have still not been filled up. He states that there are 15 waitlisted candidates who are waiting for their seats. He further states that the balance counselling did not take place in view of the interim orders passed by this court.

7. I may look at the Prospectus for the Post-Graduate and Post Doctoral course [DM/MCH & MD] for the July2020 session where clause 2 states as follows:-

"The candidates must have completed the requisite qualification, degree and tenure by 31.07.2020. The candidates who are likely to complete their 3 years requisite qualification, degree and tenure after 31.07.2020 will not be eligible to appear in this examination. Any wrong information provided by candidate on same may invite disciplinary action including debarment from future examination. "

By corrigendum dated 18.6.2020 in view of the Pandemic the last date

was extended to 15.8.2020.

8. What follows is that a candidate must have the requisite qualification and degree by 31.7.2020. Subsequently, on account of the present Pandemic this period has been extended till 15.8.2020. Normally, the terms and stipulations spelt out in the Prospectus would bind the candidates.

9. In the present case, however, I notice certain peculiar facts and circumstances which persuade me to pass consequential directions. The Kerala High Court in the case filed by the petitioner i.e. in ***Dr. Aminu Aliyar vs. Kerala University of Health Sciences in W.P.(C)16901/2020 (K)*** on 18.08.2020 passed the following orders:-

"1. The petitioner who is a final year MD General Medicine student at the Government Medical College, Calicut, which is affiliated to the Kerala University of Health Sciences-the Respondent, (University), is awaiting the result.

2. The petitioner has been selected for Doctorate of Medicine (Neurology) at the All India Institute of Medical Sciences, New Delhi (AIIMS), as per Exhibit P-4.

3. The petitioner has averred that due to the COVID-19 pandemic, the practical examinations for the above course, which were scheduled in April, 2020 got postponed to August, 2020. The examinations have been completed, but the result has not been published. The petitioner who is otherwise qualified for the DM course, may lose her seat, if the result for the MD General Medicine examinations is not published immediately. The petitioner seeks a direction to the University to expeditiously publish the result or alternatively communicate her result directly to the AIIMS, New Delhi.

4. The writ petition came up for admission on 17.08.2020. In view of the urgency that has been projected in the writ petition and also considering the fact that the High Court of Delhi has directed the AIIMS not to pass on the seat allotted to the petitioner, to any candidate until 19.08.2020, and also the merit of the petitioner, this Court directed the Standing Counsel for the

University to urgently get instructions and submit the same before this Court today.

5. Shri P.Sreekumar, the learned Standing Counsel appearing for the University has very promptly got the instructions. He has submitted that the prayer of the petitioner was placed before this University. The University finding the prayer of the petitioner to be genuine, reasonable and of extra ordinary circumstances, has decided to publish the result of the petitioner, on condition that the petitioner forthwith sends a request by email directly to the University, *inter-alia*, furnishing the full address including the e-mail ID of the AIIMS. The University would then communicate the result of the petitioner directly to AIIMS on or before 21.08.2020. The above submission is recorded,

6. The prompt action of the University to rise up to the occasion, is appreciated by this Court, and placed on record.

.... "

10. What follows from the above is that the Kerala High Court in the aforesaid order has noted the urgency expressed by the petitioner and the fact that she has been admitted to AIIMS. Based on the same the respondent therein, namely, Kerala University of Health Sciences, Medical College, Thrissur, Kerala has made a submission in Court that they would on or before 21.08.2020 directly communicate the result of the petitioner to respondent/AIIMS. The said submission of the said University has been taken on record by the Kerala High Court.

11. What follows is that on or before 21.8.2020 the result of the petitioner would be communicated to AIIMS. Today is 19.08.2020. As per the merit list, there is no denial that the petitioner is entitled to the stated seat.

12. It is also a matter of fact that normally the result of the petitioner would have been declared in the month of April of the Academic Year. The same has been delayed on account of the current Pandemic. In fact the

respondent/AIIMS has also extended the eligibility date to 15.08.2020 due to the Pandemic. In these peculiar facts and circumstances and also keeping into account the order passed by the Kerala High Court, as noted above, it would be in the interest of justice that the respondent may grant time to the petitioner till 21.08.2020 to complete all necessary formalities. Hence, in these peculiar facts and circumstances the interim order passed by this court on 14.08.2020 shall continue to apply till 21.08.2020. In case the petitioner is able to fulfil the necessary requisite qualifications her application may be dealt with accordingly. If for some reason, the petitioner is unable to meet the said deadline of 21.08.2020 the respondents will be free to take further steps to fill the vacant seats, as per law.

13. Petition stands disposed of accordingly. All pending applications, if any, also stand disposed of accordingly.

**JAYANT NATH
(JUDGE)**

AUGUST 19, 2020/n