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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 13th October, 2020

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LPA 268/2020

DR. AKSHEE BATRA

..... Appellant

Through: Mr. Siddharth Batra,
Mr. Shreeyash U. Lalit & Ms.
Archana Yadav, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Archana Gaur, Senior
Panel Counsel for R-1/UOI.
Mr. T. Singhdev, Advocate
with Mr. Abhijit Chakravarty &
Ms. Puja Sarkar, Advocates for
R-3.
Mr. Mohinder J.S. Rupal &
Mr. Hardik Rupal, Advocates
for R-4.
Mr. Tushar Sannu, Advocate
with Ms. Ankita Bhadouriya,
Advocate for R-5/IHBAS.
Mr. Arun Kumar Panwar,
Advocate for R-6.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: D.N. PATEL, CHIEF JUSTICE (Oral)

Proceedings in the matter have been conducted through video conferencing.

1. This appeal has been preferred by the original writ petitioner against the judgment and order dated 11th September, 2020 passed by the learned Single Judge in CM Appl. No. 21909/2020 in W.P.(C) 5527/2020 [Annexure A-1 to the memo of this LPA].

2. The appellant, a doctor, participated in the National Eligibility cum Entrance Test [“NEET”] conducted by the National Board of Examinations for admission in Post Graduate medical courses. She participated in counselling pursuant to the NEET and **was allotted MD (Psychiatry) at Kasturba Medical College, Manipal University, Manipal.**

3. On 17.08.2020, she approached this Court by filing W.P.(C) 5527/2020 contending that there were certain irregularities in the counselling process conducted by the respondents, inasmuch as a seat in MD (Psychiatry) at the Institute of Human Behavior and Allied Sciences [“IHBAS”, respondent no. 5 herein] was not advertised. It was contended that, as a result of this, despite the appellant being interested in pursuing Psychiatry in IHBAS, the same was allotted to a lower ranked candidate, being respondent no. 6 herein. The appellant therefore, sought the following reliefs in the writ petition:-

a) Set aside the Annexure P-12, whereby MD (Psychiatry) at IHBAS (Respondent No.5) was allotted to the Respondent No.6 on 30-07-2020 in unfair and biased manner and directions may kindly be passed to direct the respondents to admit the Petitioner against the said seat.

b) Stay the operation of Annexure P-12 during the pendency of the present Writ Petition.

c) Any other appropriate order or direction which this Hon'ble Court may deem fit in the given facts and circumstances of the present case.”

4. After conclusion of hearing of the writ petition, the learned Single Judge passed the following order dated 28.08.2020:-

- “1. This hearing is conducted through video conferencing.*
- 2. The counselling held by respondent No.4/University of Delhi for the seat of MD(Psychiatry) in Respondent No.5/IHBAS on 30.07.2020 is set aside.*
- 3. Respondent No.4/University of Delhi will conduct a fresh round of counselling for the said seat of MD(Psychiatry) on Monday i.e. 31.08.2020 after advertising the same on its website.*
- 4. As the time is short the above directions are given without a detailed order. Reasons for the above directions will follow.*
- 5. Petition is disposed of as above. All pending applications, if any, are also disposed of.”*

5. The detailed reasons for the order were contained in the judgment of the learned Single Judge dated 28.08.2020, which was corrected and released on 30.08.2020 [Annexure A-4 to the present appeal]. The learned Single Judge held that the vacant position in IHBAS was not properly advertised for the stray round of counselling, and therefore accepted the contention of the appellant that the said counselling, and consequent allotment of the seat in favour of respondent no. 6, were illegal. The respondent authorities were therefore directed to carry out the necessary counselling as per the prescribed procedure for the said seat on 31.08.2020 after due

publication of the details of availability of the seat and the counselling mechanism on its website.

6. Having so directed, the learned Single Judge considered whether respondent no. 6 could be protected in any manner as she had appeared in the counselling *bona fide* and was allotted the seat, which was being reversed by reason of the judgment. With a view to moulding the relief in order to do complete justice between the parties, the learned Single Judge passed the following directions in this regard:-

“29. Learned counsel for respondent No. 4 University had informed the court that in the Stray Round of Vacancy, all the seats that were available had not been taken up. One seat in MD Pathology has also fallen vacant which is presently available. Respondent No. 4 may permit respondent No. 6 to choose any one of the seats which are presently available and vacant after conclusion of the Stray Round Counselling. If for some reason, respondent No. 6 does not choose any of the seats, respondents No. 5 College shall refund the entire fees paid by respondent No. 6 to her.”

7. It appears that the appellant was unsuccessful in the counselling for the seat of MD (Psychiatry) in IHBAS held pursuant to the judgment of the learned Single Judge dated 28.08.2020, as a candidate with a rank higher than that of the appellant participated therein and was allotted the seat. Respondent no. 6, on the other hand, was offered the other vacant seats, and opted for MD (Gynaecology) at University College of Medical Sciences, Delhi.

8. The appellant thereafter filed CM Appl. No. 21909/2020 in W.P.(C) 5527/2020 for modification of the judgment and order dated 28.08.2020. Although the appellant expressly stated that she had no grievance regarding the allotment of the seat in IHBAS to the higher ranking candidate, she sought parity with respondent no. 6 by issuance of a direction upon the respondents to offer her the choice of any of the remaining vacant seats. It was stated in the application that other seats were also available for Gynaecology, which was not known to the appellant at the time of the filing of the writ petition. In these circumstances, she sought modification of the judgment and order dated 28.08.2020 to the following effect:-

“Clarify/modify the order dated 28-08-2020 to the effect that “the Respondent No.4 may also permit the Petitioner to choose any of the seats which are pending available and vacant.”

9. By the impugned judgment dated 11.09.2020, the learned Single Judge has declined the reliefs sought by the appellant herein. The learned Single Judge recorded the contention advanced on behalf of the respondent authorities that, during the course of hearing of the writ petition, the learned counsel for the petitioner was in fact informed that some seats are still lying vacant and the appellant was given the opportunity to opt for any of those seats as the MD (Psychiatry) seat at IHBAS had already been allotted to respondent no.6. However, the appellant had declined the opportunity and stated that she was interested only in MD (Psychiatry). The learned Single Judge rejected the appellant's claim for parity with respondent no.6 recording that the

option to pick one of the vacant seats given to respondent no. 6 was on consideration of the fact that she had *bona fide* participated in the counselling and accepted the seat of her, which was being cancelled as a result of the irregularities committed by the respondent authorities. In any event, the learned Single Judge noted that the last date for completion of the admission procedure for Post Graduate courses had lapsed on 31.08.2020 and that the mandatory timelines cannot be breached.

10. Having heard learned counsel for the parties, we are of the view that the impugned judgment of the learned Single Judge dated 11.09.2020 does not call for any interference. It is clear from the writ petition, and particularly the reliefs sought by the appellant, that her entire cause of action was based upon the irregularities in counselling for MD (Psychiatry) at IHBAS. In the judgment dated 28.08.2020, the learned Single Judge accepted the contentions of the appellant and set aside the allocation of that seat to respondent no. 6. Unfortunately, in the counselling held pursuant to the judgment dated 28.08.2020, the appellant was unable to secure admission as a candidate with a higher rank also participated in the counselling. It is at this juncture that the appellant has sought to expand the relief in the writ petition, by virtue of the application for modification of the judgment dated 28.08.2020. The relief sought by her in the application was beyond the scope of the prayers made in the writ petition itself.

11. The appellant's claim for parity with respondent no. 6 is entirely unmerited. The admission of respondent no. 6 in IHBAS was set aside

as a result of the order passed in the writ petition filed by the appellant. In order to ensure that respondent no. 6 was not put to any avoidable prejudice as result of the relief granted to the appellant, the learned Single Judge moulded the relief and directed the respondent authorities to offer a vacant seat to the respondent no. 6. In contrast, the grievance ventilated by the appellant in the writ petition was accepted by the learned Single Judge and the appellant was granted the opportunity to participate in counselling for the seat which had earlier been allotted to respondent no. 6. In these circumstances, we are of the view that there is no substance in her claim for parity with respondent no. 6.

12. In the course of hearing of the present appeal, learned counsel for appellant categorically stated that the appellant does not seek to disrupt the allotment of the seat in favour of respondent no.6 pursuant to the order dated 28.08.2020. However, she seeks a similar indulgence in her own favour, in view of the fact that she was unable to secure the seat in MD (Psychiatry) at IHBAS and that several seats remain vacant including a seat for MD (Gynaecology) which was one of her preferred choices. However, no such relief can be granted to her in view of the fact that the last date for completion of admissions to post-graduate courses for this academic year has already lapsed. The learned Single Judge has rightly rejected the appellant's application on this ground also.

13. It is undisputed that, for the present year, in view of the COVID-19 pandemic, the last date for admission in Post Graduate

courses had been extended by the order of the Supreme Court until 31.08.2020. CM Appl. No. 21909/2020 in W.P.(C) No. 5527/2020 was filed by the appellant only thereafter.

14. The Supreme Court has time and again emphasised that the cut-off dates for admission in medical courses are mandatory and cannot be relaxed. Reference in this connection may be made to the judgments in *State of Bihar & Ors. vs. Dr. Sanjay Kumar Sinha & Ors.* **(1990) 4 SCC 624** and *Priya Gupta vs. State of Chhattisgarh & Ors.* **(2012) 7 SCC 433**. The following observations in *Priya Gupta* are particularly instructive:

“38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from midstream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.

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40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling.

We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

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(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the medical/dental colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

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46.6. All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in *Neelu Arora v. Union of India* [(2003) 3 SCC 366] and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

46.7. If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from

exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. *No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex facie arbitrary and casts the shadow of favouritism.*

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78.4. *With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule,* process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. We may refer to the dictum of this Court in *Medical Council of India v. Rajiv Gandhi University of Health Sciences* [(2004) 6 SCC 76] , SCC para 14 in this regard.”

(emphasis supplied)

15. In fact, even when seats remain vacant, as contended by the appellant in the present case, the Supreme Court has made it clear that extension of time cannot be granted to permit candidates to join. The following observations in *Education Promotion Society for India & Anr. vs. Union of India & Ors.* (2019) 7 SCC 38 clarify this position beyond controversy:-

“6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UoI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400-500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.”

7. We may note that in the schedule prescribed, there are three rounds of counselling, the first round, the second round and the mop-up round. The mop-up round was to be completed by 31-5-2019 and if some seats remain vacant even after the mop-up round it cannot be helped. Extension cannot be granted just because some seats are lying vacant without there being any other justification.”

(emphasis supplied)

16. Learned counsel for the appellant cited certain observations of the Supreme Court in *Priya Gupta* (supra), and the judgments in *Asha vs. Pt. B.D. Sharma University of Health Sciences & Ors.* (2012) 7 SCC 389 (paragraph 31) and *S. Krishna Sradha vs. The State of Andhra Pradesh & Ors.* 2019 SCC OnLine SC 1609 to contend that, in exceptional situations, a departure from the prescribed schedule is permissible. However, we do not find any warrant in *Priya Gupta* (supra) for the appellant's contention that seats can be filled even after the cut-off date. The observations in paragraph 46.7, in the context of admission in MBBS/BDS courses, is that the admissions should be completed by 15th September of the relevant year, and the remaining time until 30th September can be utilized for filling up vacant seats resulting from exceptional circumstances or surrender of seats.

17. The judgment in *Asha* (supra) cited by learned counsel for appellant was considered by a three-judge bench of the Supreme Court in *S. Krishna Sradha* (supra). The case of *S. Krishna Sradha* had been referred to a bench of three learned Judges in view of the perceived conflict between the judgments of smaller benches in *Asha* and *Chandigarh Administration & Anr. vs. Jasmine Kaur & Ors.* (2014) 10 SCC 521. The reference was answered holding that, in exceptional circumstances, where the Court finds no fault attributable to the candidate who has pursued his or her legal rights expeditiously, the admission can be permitted within one month after the cut-off date. It was however expressly clarified in para 33 (v) of *S. Krishna Sradha* that the directions given therein were only for admission in the MBBS

course and that the Court has not dealt with Post Graduate medical courses. This judgment is therefore of no assistance to the appellant.

18. As far as Post Graduate medical courses are concerned, the legal position to the effect that admission cannot be directed after the cut-off date has lapsed, still sustains. In view of the aforesaid judgments of the Supreme Court, we therefore hold that the learned Single Judge has rightly declined the reliefs sought by the appellant on this ground also.

19. In view of the aforesaid facts, reasons and judicial pronouncements, we see no reason to entertain this LPA. No error has been committed by learned Single Judge while passing the judgment dated 11.09.2020 in W.P.(C) 5527/2020.

20. With these observations, this Letters Patent Appeal is dismissed.

CM APPLs. 23882/2020 & 23884/2020

21. In view of the order passed in LPA 268/2020, the pending applications stand disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J.

OCTOBER 13, 2020

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