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

+ LPA 329/2020 & CMs No.28204/2020 (for stay) & 28208/2020 (for condonation of 59 days delay in filing the appeal)

UNION OF INDIA AND ANR.

..... Appellants

Through: Mr. Ruchir Mishra, Mr. Mukesh Kumar Tiwari and Mr. Ramneek Mishra, Advs.

Versus

SAMRIDHI SUSHIL SHARMA

..... Respondent

Through: Mr. Rakesh Kumar Khanna, Sr. Adv. with Mr. Vinod Kumar and Mr. Shashank Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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21.12.2020

[VIA VIDEO CONFERENCING]

1. The Union of India (UOI), through the Ministry of Women and Child Development and the Ministry of Health and Family Welfare, is in appeal against the judgment dated 19th June, 2020 of the Single Judge of this Court, allowing W.P.(C) No.10722/2019 preferred by the respondent.

2. W.P.(C) No.10722/2019 was filed by the respondent, seeking direction to the appellant No. 1 Ministry of Women and Child Development, to nominate the respondent for the MBBS course, 2019 against the seat reserved for the National Bravery Awardees, in NSCB Medical College, Jabalpur, Madhya Pradesh, in terms of Government of India, Ministry of Health and Family Welfare, Office Memorandum (OM) dated 16th August, 2019.

3. The appellants UOI opposed the aforesaid claim of the respondent in the writ petition, contending that the respondent was the awardee of the National Bravery Award instituted by the Indian Council for Child Welfare (ICCW), a Non-Governmental Organisation but with which the appellant UOI had disassociated as far back as in the year 2018, pursuant to revamping of the Scheme of the National Child Award of Exceptional Achievements, renamed as the Pradhan Mantri Rashtriya Bal Puraskar, and after the appellants UOI had so disassociated, the said seats were meant for the awardees of the Pradhan Mantri Rashtriya Bal Puraskar only.

4. The Single Judge did not accept the aforesaid contention of the appellants UOI and allowed the writ petition of the respondent, directing that the respondent be recommended by the appellants UOI for being admitted to the MBBS course for the academic year 2020-2021, based on her result of the NEET examination held for the academic year 2019-2020.

5. Though the appeal came up first before this Court on 9th November, 2020 but was adjourned from time to time without any effective order being passed.

6. We have today enquired from the counsel for the appellants UOI, the status of the subject course i.e. whether the MBBS course with respect to which direction was issued, has commenced or not and whether the respondent has already been recommended by the appellants UOI, pursuant to the directions of the Single Judge.

7. The counsel for the appellants UOI states that the last date for admission is 31st December, 2020 and the respondent has not been recommended for admission or admitted as yet. It is further informed that though the appellants UOI till date have not complied with the impugned

order but by way of abundant caution, besides the two seats already reserved for awardees pursuant to OM dated 16th August, 2019, has, for this year only, got an additional seat released, to be allocated at the instance of the appellants UOI, so that if this Letter Patent Appeal (LPA) is dismissed, the order of the Single Judge can be complied with and the appellants UOI do not become liable for contempt.

8. Since now we are very close to 31st December, 2020, we have proposed, (i) that the additional seat which has been specially created/got released for this year, be allocated to the respondent, without prejudice to the rights and contentions of the appellants UOI, inasmuch as there is no possibility of any other candidate being entitled thereto or being admitted therefor; and, (ii) that since we have not gone into the questions urged by the appellants UOI in this appeal and in which we otherwise find merit (subject to hearing the senior counsel for the respondent), it be ordered that the order/judgment of the Single Judge impugned in this appeal shall not constitute a precedent for any other candidate or for any subsequent year and/or in any other litigation, even before the Single Judges of this Court and will not constitute a precedent otherwise also.

9. The counsel for the appellants UOI states that he be granted time to verify, whether there are any other applicant/s under the Pradhan Mantri Rashtriya Bal Puraskar.

10. We are however not inclined. Since under the OM dated 16th August, 2019, there were only two seats allocated, none else can claim an additional seat, as a matter of right. The third seat which has got released for this year is in the nature of a supernumerary seat, the benefit whereof can be availed of by the respondent only and not by anyone else.

11. We may state that we feel the aforesaid arrangement to be appropriate, also for the reason that in view of the order of the Single Judge, the respondent also today has been placed in a position where there is no time left for her to consider any other option and also because there is no possibility of any other candidate for MBBS course in the academic year 2020-2021 securing the said supernumerary seat, even if were to not be allocated to the respondent.

12. We clarify, that the counsel for the appellants UOI wants to argue the appeal on merit and we have, notwithstanding his contentions, deemed the aforesaid arrangement to be apposite in the facts and circumstances of the case. We may state that the jurisdiction under Article 226 of the Constitution of India, in appeal whereagainst we are sitting, empowers this Court to pass appropriate orders, as may be deemed fit in the facts and circumstances.

13. We accordingly close this appeal in terms of paragraph 8 hereinabove and further direct the appellants UOI to immediately, well before 31st December, 2020, comply with the orders of the Single Judge.

14. We further clarify that the benefit of this order shall not be available to any other awardee of ICCW.

15. The appeal is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 21, 2020

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