

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

% **Date of decision: 12th February, 2021.**

+ **LPA 46/2021 and CM No. 3582/2021 (for stay)**

PRATYAKSHA SINGH **Appellant**

Through: Mr. Shubham Kulshrestha, Adv.

versus

DIRECTORATE GENERAL OF HEALTH SERVICES

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Amit Bansal and Ms. Seema Dolo, Advs. for R-3&4

Mr. T. Singhdev, Ms. Michelle B. Das, Mr. Tarun Verma, Mr. Abhijit Chakravarty, Advs. for R-5

Ms. Tamanna Pankaj for Ms. Tara Narula, Adv for GNCTD/R-6.

Mr. Kirtiman Singh and Mr. Vikrant N. Goyal, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment dated 14th January, 2021 of dismissal of W.P.(C) No.10398/2020 preferred by the appellant, seeking admission in the MBBS course in one of the colleges of the respondent no.4 University of Delhi (University), in the Academic Year 2020-21.

2. The appeal came up first before this Court on 1st February, 2021 and thereafter before us on 5th February, 2021, when finding the counsels for the respondents to be appearing on advance notice and on being informed that

the last date for admission stood extended, we, without prejudice to the rights and contentions of the parties, requested the counsel for the University to check whether any of the seats in any of the medical colleges in Delhi had since fallen vacant, for the reason of the incumbent having not joined or for any other reason; the matter accordingly was adjourned to 9th February, 2021. On 9th February, 2021, it was informed that though two of the seats were vacant but had been reserved for admission of students from the Ladakh region and were not for the category in which the appellant was seeking admission; after hearing the counsels to some extent, the hearing was adjourned to today. We have further heard the counsels today. We have further been informed that today is the last date for admission in the MBBS course of the colleges of University.

3. The case, as set up by the appellant in the writ petition, was/is (i) that the father of the appellant, an Indian Police Service Officer, on 3rd July, 2007 was awarded Police Medal for Gallantry, on 2nd July, 2008 was awarded the 1st Bar to Police Medal for Gallantry and on 16th December, 2009 was awarded the 2nd Bar to Police Medal for Gallantry; (ii) that in view of the same, on 13th May, 2019, the Ministry of Home Affairs, Union of India issued a Educational Concession Certificate certifying that the appellant was eligible for educational concession for admission in the University against the Armed Forces quota, under Priority-V; (iii) that the appellant appeared in the National Eligibility-Cum-Entrance Test – UG (NEET) of the year 2020 and on declaration of result thereof on 16th October, 2020, the “Counselling Scheme and FAQs for NEET–Under-Graduate Courses (MBBS/BDS) 2020-21” (the Scheme) was published by the respondent no. 1 Directorate General of Health Services; (iv) that the

said scheme provided for reservation for CW candidates i.e. children/widows of the personnel of Armed Forces; (v) that around the same time, the Bulletin of Information for Admission to Undergraduate Courses (2020-21) was published by the Faculty of Medical Sciences (FMS) of the University, for NEET (UG-2020) and which provided for reservation for the Armed Forces personnel, more particularly for wards of serving/Ex-servicemen including personnel of police forces who are in receipt of the Gallantry Awards falling in Priority-V (x), in which the appellant falls; (vi) that the appellant qualified NEET-UG with total Percentile Score of 74.4041997; (vii) that the FMS, University issued a notice dated 19th October, 2020 requiring the candidates to submit, the documents relating to CW concession/entitlement, on the portal of the University or by visiting the website of FMS, wherein the provisions were made only for Defence and Para Military categories and which were contrary to the Bulletin of Information of FMS; (viii) that on 22nd October, 2020, when the appellant attempted to upload her documents, there were only 'Defence' and 'Para Military' categories mentioned at the bottom of the form and the appellant was required to click on either of the two categories; there was no mention of 'Police Personnel'; and, (ix) this led to a situation wherein a person from Priority-VI was able to avail benefit, but not the appellant, falling under Priority-V(x).

4. Contending that the appellant was deprived from admission due to the defect/fault in the portal for registration of the University, the writ petition from which this appeal arises, was filed.

5. The Single Judge heard the writ petition on 14th January, 2021, which was then the penultimate day for admission. The counsel for the University

informed the Single Judge that the seats, not only in the CW category but in all other categories had been filled up and the question of the appellant being granted admission did not arise and no additional seat for the appellant could be created. On the contrary, on behalf of the appellant, reliance was placed on *S. Krishna Sradha Vs. The State of Andhra Pradesh* 2019 SCC OnLine 1609.

6. The Single Judge, in the impugned judgment, held that (i) though *S. Krishna Sradha* (supra) provides for possibility of creation of an additional seat in a medical college in an appropriate case but only where a candidate had been deprived of a seat for no fault of his/her and when the authorities were found in fault and if the candidate had been diligent in availing remedies; (ii) it was clear from the format of the portal, that no option was provided for the wards of Police Personnel and the candidates were not informed of any way in which they could submit incomplete information; (iii) a candidate cannot be assumed to have knowledge of the leniency with which the University would treat an incomplete or incorrect document; (iv) just because some other candidates managed to overcome the lacuna in the portal of the University with their own resourcefulness does not mean that other candidates ought to have approached the matter in the same way; a candidate who chooses to be risk averse cannot be faulted therefor; (v) however the question of the appellant's diligence in seeking her remedies came in the way of grant of relief to the appellant for the Academic Year 2020-21; (vi) the only query addressed by the appellant to the University, was on 22nd October, 2020, in the form of an e-mail i.e. just ten days before the counseling ended on 2nd November, 2020; (vii) though the appellant claimed to have made four further representations dated 11th November,

2020, 28th November, 2020, 29th November, 2020 and 7th December, 2020 but they were all made after the registration for the first round of counseling had already lapsed; (viii) there was no plea, of the steps taken by the appellant during the period between 22nd October, 2020, when she claimed to have realized that she was not able to register under the category of her choice, and on 2nd November, 2020 when the registration for the first round of counseling ended; (ix) the appellant started making representations only after the result of the first round of counseling was declared on 5th November, 2020; even then representations were not addressed to the University but to the Minister of Health and Family Welfare of the Government of India and to the Medical Counseling Committee; (x) the appellant finally approached the Court by way of a writ proceeding, only on 14th December, 2020; (xi) the discretion to direct creation of an additional seat could not been exercised lightly; and, (xii) the appellant had not been diligent and was thus not entitled to the said relief.

7. Arguing that the Single Judge has found in favour of the appellant, that indeed the portal of the University was faulty/defective and that the Single Judge has wrongly held the appellant to be not diligent, this appeal has been filed/argued, with *S. Krishna Sradha* (supra) forming the backdrop of the said argument.

8. We may first notice *S. Krishna Sradha* (supra). The said reference to a three Judge Bench was made, noticing a conflict between *Asha Vs. Pt. B.D. Sharma University of Health Sciences* (2012) 7 SCC 389 and *Chandigarh Administration Vs. Jasmine Kaur* (2014) 10 SCC 521. The appellant therein had approached the Court, immediately on being denied admission into MBBS course in Sports and Games category; however it

was found at the time of hearing the petition that the academic year in question had already commenced. The High Court, referring to ***Jasmine Kaur*** (supra) observed that no direction could be issued for grant of admission to the appellant therein and instead granted compensation to the appellant. There was however a categorical unequivocal conclusion reached by the High Court, that the appellant therein was entitled to get priority and was more meritorious than other candidates who had obtained admission. The Supreme Court noticed, that in ***Asha*** (supra) it was held that in rarest of care cases, when the Court returns the finding that no fault is attributable to the candidate, the candidate has pursued the rights and legal remedies expeditiously and without delay and there is fault on the part of the authorities and apparent breach of Rules and Regulations, exception may be made and the Court can direct admission beyond the cut-off date. The three Judge Bench held, that (i) in ***Jasmine Kaur*** (supra) there was a delay of three months, from the issuance of the prospectus, on the part of the candidate and further delay in preferring the Letters Patent Appeal to the Division Bench and by which time substantial part of the academic year was over; (ii) for a student/candidate, who has been denied admission in a professional course for no fault attributable to him/her and who has pursued his/her rights and legal remedies expeditiously and without delay and where there is fault on the part of the authorities and apparent breach of Rules and Regulations and less meritorious candidates have been granted admission, each year is important and precious; (iii) admission in medical course is very important in life of a candidate/student; (iv) payment of compensation to such candidate/student would not be a just and equitable relief; (v) the right to equal and fair treatment is a component of Article 14 of the

Constitution of India (the Constitution); (vi) denial of fair treatment to the candidate would not only violate his/her right under Article 14 of the Constitution but would also seriously jeopardize his/her right under Articles 19 & 21 of the Constitution also; (vii) denial of admission, illegally and for no fault of the candidate/student, violates the principles of Article 14 of the Constitution and the injured must be put back in the original position; to hold that such a candidate would be entitled only to compensation, would not be good law; and, (viii) thus, in exceptional and in the rarest of rare cases, where all the conditions aforesaid are satisfied, the Court can grant exceptional relief of granting admission even after the cut-off date is over or by directing admission to be granted in the next academic year or by directing reduction in seats of the management quota and making available a seat to such candidate. It was however clarified that the said directions pertain only to admissions in MBBS Course and not to admission in Postgraduate Medical Courses.

9. The contention of the counsel for the appellant is, that the appellant squarely falls within the ratio of the aforesaid judgment. It is argued that the respondents have not filed any cross appeal against the findings of the Single Judge to the effect that the portal was faulty and the appellant was prevented from applying at the requisite time. It is further pointed out that the reasoning of the Single Judge, of the appellant having not addressed any communication to the University, is faulty. Attention is invited to page 426 of the paper book, to contend that the Bulletin of Information barred individual communications to be sent before Counseling. Attention is also invited to page 445 of the paper book to contend that the candidates with Priority below the appellant have been granted admission.

10. Per contra the counsel for the respondent no.5 National Medical Commission has drawn our attention to page 391 of the paper book, being a part of Bulletin of Information, clause 5.2 whereof titled “Reservation for Children/Widows of Personnel of the Armed Forces (CW)” specifically refers to the uploading of the Educational Concession certificate issued by the "Ministry of Home Affairs (For Police Personnel in receipt of Gallantry Awards)". It is thus argued that there was no scope for confusion and from the Bulletin of Information it was abundantly clear that the appellant had to apply under the CW category. Attention is next invited to page 394 of the paper book, being the Portal for submission of CW Category documents for seeking admission in UG courses (MBBS/BDS/BAMS/BUMS/BHMS) for the Academic Session 2020-21, to show that the same also expressly refers to Para Military personnel and it is contended that the appellant, therefrom also ought to have been aware. It is further informed that the portal was devised this year for the first time because of the prevalent pandemic. It is argued that the argument of the appellant of the portal being defective, is incorrect.

11. On enquiry, it is informed that notice for submission of documents under CW category was issued on 19th October, 2020 and the day for submission of documents was till 23rd October, 2020 and was subsequently extended to 1st November, 2020. It is further argued that though the appellant claims to have tried on 22nd October, 2020 for the first time but there is nothing to show that the appellant visited the website on 22nd October, 2020. It is further argued that in the prevalent times, students/candidates always take a screenshot of their doings/visits to such portals but the appellant has not produced any screenshot, of having visited

the site on 22nd October, 2020. It is further informed that the appellant, in the NEET exam, was ranked at 1,17,758; that normally admissions beyond the rank of about 50,000 are not granted. It is stated that the appellant, having rank much beyond 50,000, perhaps did not hope that she will get admission and only on realizing that in the second round of counseling candidates having rank below that of the appellant had got admission, the appellant woke up and as an afterthought filed the writ petition from which this appeal arises. Attention is drawn to page 346 of the paper book to show that the appellant, in her first message dated 22nd October, 2020, did not even state that she was unable to upload her CW category documents. Drawing attention to the Schedule for Online Counseling at page 389 of the paper book, it is stated that the first round of counseling was from 27th October, 2020 to 2nd November, 2020, the second round of counseling from 20th November, 2020 to 23rd November, 2020 and the third round of counseling from 10th December, 2020 to 14th December, 2020. It is stated that the appellant filed the writ petition and notice thereof issued on 15th December, 2020 i.e. only when the second round of counseling was going on. It is further informed that in the very first round of counseling seven candidates belonging to the category to which the appellant belongs i.e. Category V(x), were admitted. It is further argued that ultimately also the appellant uploaded her CW category documents herself, on the same portal, without any assistance. It is thus contended that there was gross delay on the part of the appellant.

12. The counsel for the University has drawn our attention to page 404 of the paper book to show that the University had issued a notice dated 3rd November, 2020 informing that the list of candidates, seeking admission

under CW category, who had registered on the portal, had been uploaded on the website and advising the candidates to check their status and if noticed any discrepancy, to report the same by 4th November, 2020 and that thereafter no request would be entertained. It is argued that the appellant, if had made an attempt on 22nd October, 2020 to upload, at least immediately after 3rd November, 2020, should have approached University, but did not do so.

13. The counsel for the respondents no.1&2 Union of India (UOI) has contended that vide the impugned judgment, only interim relief has been denied and else the writ petition is still pending and if the appellant is ultimately found to satisfy the conditions in *S. Krishna Sradha* (supra), can be granted appropriate relief. Else, he has argued that the Union Territory of Ladakh seats, of which two are vacant, cannot be allotted to anyone.

14. The counsel for the appellant, in rejoinder has drawn our attention to the order dated 9th December, 2020 of the Supreme Court in SLP(C) No.14538/2020 titled *Siddhant Batra Vs. The Director Indian Institute of Technology (IIT) Bombay*, directing the petitioner therein to be permitted to join IIT, Bombay and to pursue the course.

15. We have considered the rival contentions and considering the arguments on delay, of the counsel for the respondent no.5 National Medical Commission, which are supported by record and amply borne out, are unable to find any ground to interfere in the reasoning of the Single Judge, of the appellant having not acted with promptitude of the degree required as per dicta in *S. Krishna Sradha* (supra). The facts as highlighted by the counsel for the respondent no.5 National Medical Commission speak for themselves and establish the immense delay after which the appellant

approached the Court. We are also satisfied that there was enough clarity in the Bulletin of Information of the FMS, University. Even otherwise, the appellant had notice from 19th October, 2020 and the appellant, on 19th, 20th and 21st October, 2020 did not seek any clarification. Though the appellant on 22nd October, 2020, when she claims to have visited the portal for the first time, was within time to upload her documents but the appellant even then was satisfied merely by sending a WhatsApp message. The appellant, again, should have been immediately cautioned after 3rd November, 2020 when notice aforesaid was published but she waited till 15th December, 2020 to bring the writ petition. The said conduct of the appellant lends credence to what has been informed by the counsel for the respondent no.5 National Medical Commission, that the appellant, at rank 1,17,758 did not expect any admission in Delhi and filed the writ petition as an afterthought.

16. There is no merit in the appeal.

Dismissed.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

FEBRUARY 12, 2021

‘pp’..

(Corrected and released on 23rd February, 2021).