



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

Date of decision: 05th AUGUST, 2022

IN THE MATTER OF:

+ **LPA 396/2022 & CM APPL. 28407/2022**

DR VISHNU TODI

..... Appellant

Through: Mr. Anupam Srivastava, Mr. Nitin K. Gupta, Ms. Ritika Gautam and Ms. Sarita Pandey, Advocates

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES & ANR.

..... Respondents

Through: Mr. Dushyant Parashar and Mr. Manu Parashar, Advocates for Respondent No.1
Mr. Sudarshan Rajan, Mr. Ramesh Rawat and Mr. Mahesh Kumar, Advocates for Respondent No.2
Mr. T. Singhdev, Mr. Abhijit Chakravarty, Mr. Michelle B. Das, Ms. Sumangla Swami and Mr. Bhanu Gulati, Advocates for NMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The instant Letters Patent Appeal under Clause X of the Letters Patent Act, 1865, has been filed challenging the Judgment dated 30.05.2022,



passed by the Ld. Single Judge in W.P.(C) 1994/2022, whereby the writ petition filed by the Appellant herein was dismissed.

2. The facts, in brief, leading to the filing of the instant appeal are that the Appellant herein is a Nepalese national who took the examination of Institutes of National Importance Super-Speciality Entrance Test ('INI-SS') in the month of October 2021, which was conducted by All India Institute of Medical Sciences, New Delhi (*hereinafter referred to as 'AIIMS'*) for admission into DM/M.Ch & MD (Hospital Administration) Courses at the "Institutes of National Importance" for medical education, namely, AIIMS, New Delhi; Jawaharlal Institute of Postgraduate Medical Education and Research (JIPMER), Puducherry; Post Graduate Institute of Medical Research and Education (PGIMER), Chandigarh; National Institute of Mental Health and Neuro Sciences (NIMHANS), Bengaluru, and Sree Chitra Tirunal Institute for Medical Sciences and Technology (SCTIMST), Trivandrum.

3. It is stated that the entrance test, i.e. Institutes of National Importance Super-Speciality Entrance Test ("INI-SS") is conducted twice a year in the months of January and July. The Appellant herein appeared for the said examination for the academic session commencing from January 2022. The results were declared on 25.12.2021 and a merit list of provisionally qualified candidates was issued by AIIMS wherein the Appellant's Roll Number was shown as selected candidate for admission in PGIMER, Chandigarh for admission in M.Ch. (Cornea, Cataract and Refractive Surgery) course under the 'Foreign National' category. It is stated that after the result was announced, the Appellant approached PGIMER, Chandigarh for further procedure of admission. It is stated that by way of an email communication dated 28.12.2021, the Appellant was informed by AIIMS



that he need not apply for counselling. Thereafter, the Appellant made several attempts to contact PGIMER, Chandigarh, but no communication was received from PGIMER. It is stated that aggrieved by the lack of communication regarding his admission, the Appellant approached the High Court of Punjab and Haryana at Chandigarh by filing a petition bearing CWP 961/2022. The High Court of Punjab and Haryana *vide* Order dated 19.01.2022 disposed of the said petition and permitted the Appellant to approach PGIMER, Chandigarh by making a representation, and directed the PGIMER, Chandigarh, to decide the representation expeditiously in accordance with law, preferably before the last date of the admission, i.e. 31.01.2022.

4. It is stated that on 25.01.2022, an email communication was sent by AIIMS to the Appellant, which reads as under:

"Dear Candidate,

Attention drawn towards allocation of seat for course M.CH in subject/specialty of Cornea, Cataract and Refractive Surgery Vide result notification 205/2021 dated 25.12.2021.

It is informed that seats under Sponsored and Foreign National category are not interchangeable at PGIMER, Chandigarh and an allocation to you has been made inadvertently. The mistake has been communicated to you by the PGIMER on the day of reporting at the Institute.

In continuation of same it is hereby informed that the said allocation on sponsored seat in M.Ch. Cornea, Cataract and Refractive Surgery stands cancelled as you have applied under Foreign National Category and there is no seat available for Foreign National in the said specialty at PGIMER, Chandigarh.

The inconvenience caused is deeply regretted."



5. It is stated that the PGIMER, Chandigarh, by way of a letter dated 29.01.2022 informed the Appellant that he was not entitled to admission in M.Ch. (Cornea, Cataract and Refractive Surgery) course for the January, 2022 session owing to the reason that there were no seats for 'Foreign National' Category and that seats were not interchangeable with the 'Sponsored' category at PGIMER, Chandigarh.

6. The Appellant, thereafter, approached this Court by filing a petition bearing W.P.(C) 1994/2022 with the following prayers:

"i) quash and set aside the impugned order dt. 25.01.2022 passed by Respondent No. 1 and impugned letter dt. 29.01.2022 passed by Respondent No. 2 being violative of fundamental rights guaranteed under Article 14 and 21 of the Constitution of India, 1950, and also on the basis of Principles of Natural Justice, Law of Equity and fair play; and

ii) direct the Respondents to give admission to the Petitioner in the M.Ch. - Cornea, Cataract and Refractive Surgery Course in Respondent No. 2 Institute in session of January' 2022 pursuant to Merit List declared on 25.12.2021;

iii) further prayed that in the alternative one seat be reserved in 'Sponsored'/'Foreign National' category Vacant for the Petitioner In July' 2022 session in M.Ch. - Cornea, Cataract and Refractive Surgery Course in Respondent No. 2 institute, without prejudice to the rights of the parties, during the pendency of the writ petition, in the interest of justice:

iv) pass any other writ, order or direction, which this Hon'ble court may deems fit and proper in the peculiar facts and circumstances of the instant case in favour of the Petitioner."



7. The learned Single Judge by judgment dated 30.05.2022 (impugned Judgment herein) dismissed the writ petition by holding that AIIMS, New Delhi only conducts the examination, and the allotment of seats is decided by the respective institutions in accordance with their brochures and procedure. The Ld. Single Judge accepted the affidavit filed by PGIMER, Chandigarh wherein it was stated that according to the past practice, the students under the 'Foreign National' category were being admitted from the year 2019 only in the July Session. The learned Single Judge accepted the contentions of the learned Counsel appearing for the PGIMER that the prospectus issued by PGIMER, Chandigarh, would be the governing Prospectus for admissions to seats in PGIMER, Chandigarh. The Ld. Single Judge held that the Appellant had no right to seek admission because of an error committed by AIIMS by declaring the Appellant as a selected candidate for admission to the said course.

8. Assailing the said judgment dated 30.05.2022 passed by the Ld. Single Judge in W.P.(C) 1994/2022, the Appellant has preferred the instant LPA before this Court.

9. Mr. Anupam Srivastava, learned counsel appearing for the Appellant, draws attention of this Court to Clause 7 (C) (iv) of the Prospectus issued by Respondent No.1/AIIMS, and contends that as per Clause 7 (C) (iv), Foreign Nationals/Overseas Citizen of India (OCI) will be considered against the seat advertised under the 'Sponsored' category for admission in DM, M.Ch & MD (Hospital Administration) Courses. He submits that according to the said Clause, the Appellant, who is a foreign national and has qualified the examination, ought to be considered against the 'Sponsored' category seats. He submits that even though in the prospectus issued by PGIMER, Chandigarh, 'Sponsored' and 'Foreign National' categories are shown



separately, a 'Foreign National' candidate should also be considered as a 'Sponsored' category candidate as stated in the prospectus issued by the AIIMS which conducts the examination and, therefore, the Appellant should be entitled to be considered against the 'Sponsored' category seats in terms of the Prospectus issued by Respondent No.1/AIIMS. He submits that in case of any ambiguity, the benefit should be given to the Appellant and the Appellant should not be denied the seat. He further submits that pursuant to the declaration of result, the Appellant's roll number was displayed as a selected candidate under the 'Foreign National' category for admission in DM, M.Ch & MD (Hospital Administration) Courses, and, therefore, the Appellant ought to have been given admission under the 'Foreign National' category seat which, according to him, would fall within the definition of 'Sponsored' category in accordance with the Prospectus issued by Respondent No.1/AIIMS.

10. Mr. Srivastava further submits that if there are no seats available in the 'Foreign National' category in PGIMER, Chandigarh for the academic session of January 2022, then the Appellant should be considered for admission in the academic session starting from July 2022 under the 'Foreign National' category. On this proposition, the Appellant places reliance upon the judgment of the Apex Court in Rohit Kumar vs. Secretary, Office of Lt. Governor of Delhi and Ors., (2021) 8 SCC 381, wherein the Apex Court held that when there is no lapse on the part of candidate, they can then be accommodated in the same course in the following academic year. He states that the Apex Court in the said judgment had relied upon another judgment of the Apex Court in S. Krishna Sradha vs. The State of Andhra Pradesh and Ors., (2020) 17 SCC 465, wherein the Apex Court held that a meritorious candidate or student who has been denied admission illegally and wrongfully



by the authorities despite no fault of their own and has approached the Court in time, then such a candidate may be accommodated in the next session.

11. *Per contra*, Mr. Sudarshan Rajan, learned counsel appearing for Respondent No.2/ PGIMER, Chandigarh, draws attention of this Court to the seat matrix of PGIMER, Chandigarh, and states that no seats have been reserved for 'Foreign National' category which is distinguished from a 'Sponsored' category in the Session commencing from January 2022. He submits that the 'Sponsored' category candidates are those candidates who are working in Central or State Government Departments/Institutions, Autonomous Bodies of the Central or State Governments and Public sector colleges affiliated to Universities and recognized by the Medical Council of India/National Medical Council. He further draws attention of this Court to the seat matrix of PGIMER, Chandigarh, in the year 2019 where there was a separate category for admissions in 'Foreign National' category seats which was separate from the General and Sponsored category seats. He, therefore, submits that the Appellant cannot be allotted a seat which is reserved for 'Sponsored' category candidates, being a separate category all together. He further submits that the Appellant has secured 40.667 marks in the said entrance examination. In comparison, there are other Indian National candidates who have secured more marks than the Appellant herein, and diverting the seats from 'Sponsored category' to 'Foreign National' category would lead to depriving more meritorious Indian Nationals with higher marks in the waiting list of securing those seats. He submits that PGIMER, Chandigarh, is an Autonomous Institution governed by its own rules and Prospectus for admission into courses, and not by the Prospectus issued by AIIMS, New Delhi, which is only the exam conducting authority for INI-SS.

12. Mr. Rajan further submits that an error committed by AIIMS, merely



being an examination conducting authority in the present case, reflecting that the Appellant is entitled to get admission in DM, M.Ch. & MD (Hospital Administration) Courses under the 'Foreign National' category seat in PGIMER, Chandigarh, cannot bind the said Institution to give admission to the Appellant and that no right vests in the Appellant to claim admission on the basis of a rectifiable mistake committed by AIIMS. Mr. Rajan also submits that even in the Session commencing from January, 2022, no seats have been reserved for 'Foreign National' candidates.

13. Mr. Rajan further submits that the Appellant had initially approached the High Court of Punjab and Haryana at Chandigarh by filing a petition and the said petition had been disposed of, with directions given to the Appellant to make a representation before the PGIMER, Chandigarh. He submits that the second petition, which has been filed by the Appellant before this Court, ought to have been filed by the Appellant in the very same Court and not before this Court.

14. Heard learned counsel appearing for the parties and perused the material on record.

15. The Appellant has taken the Institutes of National Importance Super-Speciality Entrance Test ('INI-SS') for admission into DM/M.Ch & MD (Hospital Administration) Courses. The Respondent No.1/AIIMS declared the final merit list *vide* result Notification No.205/2021 dated 25.12.2021. The Appellant was declared to be selected for admission in M.Ch. (Cornea, Cataract and Refractive Surgery) course under the 'Foreign National' category in PGIMER, Chandigarh. Aggrieved by the lack of communication regarding his admission, the Appellant approached the High Court of Punjab and Haryana at Chandigarh by filing a petition bearing CWP 961/2022. The said petition was disposed of by the High Court of Punjab and



Haryana *vide* order dated 19.01.2022 permitting the Appellant to approach PGIMER, Chandigarh, by making a representation, and directed the PGIMER, Chandigarh, to decide the representation expeditiously in accordance with law preferably before the last date of the admission i.e. 31.01.2022. The Appellant, thereafter, made a representation before PGIMER, Chandigarh on 20.01.2022. In the representation, it was prayed by the Appellant that he may be given admission in M.Ch. (Cornea, Cataract and Refractive Surgery) course, as per the result declared by AIIMS, New Delhi on 25.12.2021, under 'Foreign National' category in the seat reserved for 'Sponsored' category, in accordance with Rule 7 (C) (iv) of the Prospectus issued by AIIMS, New Delhi and Rule 3.1 (B) (2) of the Prospectus issued by PGIMER, Chandigarh. The PGIMER, Chandigarh by way of a letter dated 29.01.2022 rejected the representation of the Appellant and informed the Appellant that he is not entitled to admission in M.Ch. (Cornea, Cataract and Refractive Surgery) course for the academic session of January, 2022 in PGIMER, Chandigarh because there is no seat available for 'Foreign National' Category and that the seats are not interchangeable with 'Sponsored' category at PGIMER, Chandigarh.

16. At this juncture, it is relevant to reproduce Clauses 7 (B) and 7 (C) (iv) of the prospectus issued by AIIMS, New Delhi and Clauses 3.1 (B) (1) and 3.1 (B) (2) of the prospectus issued by PGIMER, Chandigarh.

"7. Other Instructions

B. Sponsored Candidate

It is mandatory to upload valid Sponsored certificate in the Completion of Application on or before date(s) mentioned in Important Dates Section of Prospectus Part-A. Please note that candidates must have to submit original sponsored certificate



at the time of reporting/joining for the allocated postgraduate seat, failing which, their candidature will be cancelled.

C. Foreign National/Overseas Citizen of India (OCI)

iv. The foreign nationals/Overseas Citizen of India (OCI) will be considered against the seats advertised under the "Sponsored" category for DM/M.Ch. & MD (Hospital Administration) Entrance Examination courses. They should be registered with NMC before they will be allowed to join the said course. If they are selected for the same.

3.1 General Admission Requirements

(B) Other Eligibility Conditions & Requirements for Admissions.

(1) Sponsored/Deputed Candidates

A candidate applying for admission D.M/M.Ch as a sponsored/deputed candidate is required to take the print out of the online application form and furnish the certificates (as per format given in Annexure, Annexure-I & II) with his/her application through his/her employer/Sponsoring Authority for admission to the same.

a) That the candidate concerned shall be a regular/permanent employee of the deputing/sponsoring authority and should have been continually working for three years (on or before 30th June/31st January 2022 (as a one time relaxation) for July & January session respectively).

b) That after getting training at PGIMER, Chandigarh, the candidate will be suitably employed by the deputing/sponsoring authority to work for at least five years in the specialty in which training is received by the candidate at the PGIMER.



c) *That no financial implications, in the form of emoluments/stipend etc. will devolve upon PGIMER, Chandigarh during the entire period of his/her course and such payment shall be the responsibility of the sponsoring authority.*

Deputation/Sponsorship of any candidate by private hospitals, institutes or nursing homes are not accepted. The sponsoring Institute should not nominate more than one candidate for a specialty. Sponsorship/deputation of candidates will be accepted only from the following:

a. *Central or State Government Departments, Institutions.*

b. *Autonomous Bodies of the Central or State Government.*

c. *Public sector colleges affiliated to universities and recognized by the MCI/NMC. In case of candidate deputed/sponsored by the Govt. Medical College affiliated to Universities and recognized by Medical Council of India/NMC, deputation/sponsorship certificate signed by the Principal of Medical College concerned only shall be accepted.*

Deputed/Sponsored candidates are also required to appear in the Entrance Exam, If selected, for admission, they are required to make their own stay arrangement during the period of study.

(2) Foreign Nationals (FN)

A candidate applying for admission as a Foreign National candidate is required to take the print out of the online application form and furnish the relevant certificates are required to route their application through the Ministry of Health and Family Welfare, Government of India, New Delhi. All foreign nationals will have to take prior permission from the Medical Counsel of India/National Medical Commission



before applying for postgraduate courses in the institute, as per their instructions issued vide office no. MCI-202(1) [Gen] Regn-2010/45277 dated 09.12.2010.

A) An advance copy of application form along with relevant documents must be submitted at PGIMER, Chandigarh before the last date of receipt of applications, However applications of such candidates will be processed after receipt of the same through diplomatic channels.

B) These candidates are also required to appear in the entrance examination along with other candidates. A separate merit list of these candidates will be prepared within their own group.

C) Selection of candidates will be made on merit based on their performance in the entrance examination.

D) In the event of selection, the candidates have to apply for temporary registration with the Medical Council of India/NMC for the duration of postgraduate study.”

17. A perusal of the abovementioned Clauses 7 (B) and 7 (C) (iv) of the Prospectus issued by AIIMS, New Delhi, and Clauses 3.1 (B) (1) and 3.1 (B) (2) of the Prospectus issued by PGIMER, Chandigarh, indicates that there is ambiguity in Clause 7 of the Prospectus inviting applications for Institutes of National Importance Super-Speciality Entrance Test (‘INI-SS’) for admissions into DM/M.Ch & MD (Hospital Administration) Courses for the academic session commencing from January, 2022 issued by AIIMS, New Delhi. In the prospectus issued by AIIMS, New Delhi, it is mentioned that Foreign Nationals/Overseas Citizen of India (OCI) will be considered against the seats advertised under the ‘Sponsored’ category for admission in DM/M.Ch. & MD (Hospital Administration) Entrance Examination courses, whereas, in the prospectus issued by PGIMER, Chandigarh, the ‘Sponsored’



category is categorised differently from 'Foreign National' category. The 'Sponsored' category, is specifically defined in the Prospectus issued by PGIMER, Chandigarh, to mean those candidates who are working in Central or State Government Departments/Institutions, Autonomous Bodies of the Central or State Governments and Public sector colleges affiliated to Universities and recognized by the MCI/NMC.

18. The short question which arises for consideration before this Court is whether the Appellant would be entitled to a seat in PGIMER, Chandigarh under the 'Foreign National' category owing to the ambiguity in the prospectus issued by AIIMS, New Delhi.

19. This Court is of the opinion that mere taking of an examination does not vest in the candidate a right to be admitted in the course. The PGIMER, Chandigarh, is an Autonomous Institution and is governed by its own Prospectus, and it is not subjected to the Prospectus issued by AIIMS inviting applications to take the Institutes of National Importance Super-Speciality Entrance Test ('INI-SS') for admission in DM/M.Ch & MD (Hospital Administration) Courses for the academic session commencing from January, 2022. A perusal of the Prospectus issued by PGIMER, Chandigarh makes it clear that the seats under 'Sponsored' and 'Foreign National' category are not interchangeable in PGIMER, Chandigarh. Furthermore, a bare perusal of the PGIMER, Chandigarh Prospectus reveals that seats for the said course are divided into 'General' and 'Sponsored' categories only for the session commencing from January 2022.

20. The contention of Mr. Sudarshan Rajan, learned counsel appearing for Respondent No.2/ PGIMER, Chandigarh, that there are other meritorious candidates in the waiting list having secured a higher score than the Appellant herein, and, therefore, their claim for a seat cannot be ignored by permitting



the Appellant herein to switch the category, has some weight.

21. The conclusion of the Ld. Single Judge that the PGIMER, Chandigarh is the appropriate authority to determine the number of seats to be reserved for each category does not warrant any interference from this Court. Being an Autonomous Institution, it is the prerogative of PGIMER, Chandigarh to determine as to whether the seats for 'Foreign National' candidates should be reserved or not. The documents before us show that in the session commencing from July, 2019, seats had been reserved for 'Foreign National' candidates in PGIMER, Chandigarh. In the session commencing from January 2022, PGIMER, Chandigarh, had decided not to reserve seats in the said category. It is up to the PGIMER, Chandigarh, to take a decision on this aspect, and the Courts cannot interfere or sit over the decisions and policies of the institution unless they are completely arbitrary. This Court has also been informed by Mr. Sudarshan Rajan, learned counsel appearing for Respondent No.2/ PGIMER, Chandigarh, that even for the July 2022 session, no seats have been reserved for 'Foreign National' category.

22. The prayer made by Mr. Anupam Srivastava, learned counsel appearing for the Appellant, that if there are no seats available in the 'Foreign National' category in PGIMER, Chandigarh, then the Appellant should be considered for admission in the session starting from July, 2022 under the said category, for which he also placed reliance on Rohit Kumar vs. Secretary, Office of Lt. Governor of Delhi and Ors. (supra), cannot be acceded to by this Court. In the said judgment, the Appellant, a doctor, who joined service of the Government of National Capital Territory (NCT) of Delhi, was posted as Medical Officer of the Emergency and Accidents Department at Deen Dayal Hospital, New Delhi. The Appellant had duly completed five years of regular service and continuous service with the GNCTD, and was thus eligible to



avail study leave to pursue the Post Graduate course in accordance with the Directives and Guidelines of the Ministry of Health and Family Welfare, Government of India. The Appellant therein was duly granted permission to apply and appear for the INICET-2020, a highly competitive examination for admission to the MD/MS course. The Appellant, thereafter, had taken the examination of INICET-2020 and successfully cleared the said examination, and was accordingly called by PGI, Chandigarh for counselling for admission to the MD/MS course. The Appellant duly participated in the counselling and was allotted a seat in the MD Course in Paediatrics. The Deen Dayal Hospital, New Delhi, duly issued the required 'No Objection Certificate' which was a pre-requisite for the Appellant to pursue the Post Graduate course in Paediatrics at PGI, Chandigarh. After completing all the requisite formalities, the Appellant applied for study leave as per the Rules, to enable him to join the MD course at PGI, Chandigarh. In the meanwhile, a policy decision was taken, not to grant any further study leave to the doctors working in the hospitals of Government of NCT of Delhi in light of the COVID-19 pandemic. Pursuant thereto, by an order dated 22nd January, 2021, the Government of NCT of Delhi rejected the application of the Appellant for study leave in accordance with the policy decision taken by the Government on 20th October, 2020. Consequently, the allotment of the Post Graduate seat to the Appellant was cancelled for the year 2020 session. On the basis of these facts, it was held by the Apex Court that the policy decision taken on 20th October, 2020 would not be applicable to the Appellant and the Appellant was directed to be admitted to the Post Graduate course in the next session, on the basis of INICET-2020 which the Appellant had cleared successfully.

23. In the present case, the PGIMER, Chandigarh, has decided not to reserve any seats under the 'Foreign National' category for the session



commencing from January, 2022. The ambiguity created by AIIMS, New Delhi, in its prospectus by clubbing the 'Sponsored' category and 'Foreign National' category together does not confer a right upon the Appellant herein to a seat under the 'Sponsored' category which is defined separately in the Prospectus issued by PGIMER, Chandigarh. No seats have been reserved for the 'Foreign National' category in the Prospectus issued by PGIMER, Chandigarh, for the academic session of January, 2022. No seats have been reserved for 'Foreign National' category students even in the July 2022 session also, therefore, the Appellant cannot be granted a seat for admission in DM/M.Ch. (Cornea, Cataract and Refractive Surgery) course at the Respondent No. 2/ PGIMER, Chandigarh in Session commencing from July, 2022.

24. In view of the above, this Court does not find merit in the appeal and the judgment passed by the Ld. Single Judge does not warrant any interference.

25. The Appeal is accordingly dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

AUGUST 05, 2022

S. Zakir