
(2008) 07 DEL CK 0127

In the Delhi High Court

Case No : Writ Petition (Civil) 2231 of 2008

Dr. Megha Aggarwal

APPELLANT

Vs

University of Delhi

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 29(2)

Citation : (2008) 07 DEL CK 0127

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : Shyam Moorjani, for the Appellant; Anurag Mathur, for the Respondent

Final Decision : Allowed

Judgement

Siddharth Mridul, J.—This writ petition has been filed by a Doctor, inter alia, seeking a direction to quash Clauses 2.11.3, 2.11.7 and 2.11.15 of the prospectus for Post Graduate (Degree/Diploma) Medical Entrance Test (in short "PGMET") issued by University of Delhi for the year 2008 (for short "Delhi Prospectus") as being illegal, arbitrary, discriminatory and unconstitutional being violative of Articles 14, 19 and 29(2) of the Constitution of India and further for a mandamus directing the University of Delhi, respondent No. 1 herein, to hold a second counseling and to grant the seat obtained by the petitioner in such second counseling to her.

2. The problem of admission to post graduate courses in medical colleges has been the subject matter of numerous writ petitions filed in various High Courts and also in the Supreme Court and continues unabated. The present petition is symptomatic of the same malaise.

3. The factual matrix, as is germane for the determination of the short question that arises in the present petition, is adumbrated as follows:

1) The petitioner successfully completed MBBS course from Lady Harding Medical

College, New Delhi and enrolled for the PGMET conducted by the respondent (for short called "Delhi Test") for 50% seats available for Delhi University MBBS graduates, as well as for the examination conducted by the Ministry of Health and Family Welfare, called All India Entrance Examination for MD/MS/PG Diploma and MDS Courses (for short "All India Test"), for the balance 50% of the seats of Delhi and other States pooled together for the latter examination.

2) The results of the All India Test were declared on 15th February, 2008 and the petitioner obtained rank No. 1168 (Unreserved category). Consequently, on the 5th of March, 2008 she was offered the PG Degree course in MD(Obstetrics & Gynaecology) in JN Medical College of Aligarh Muslim University (for short "AMU") and was directed to join within 15 days from the date of offer, failing which she would forfeit claim for a seat under the All India PG quota 2008.

3) The result of the Delhi Test was declared on 21st February, 2008 and the petitioner secured Rank No. 0063 (General category). The petitioner was to present herself for counseling on 14th April, 2008. However, according to the petitioner, on her premise that the provisions of Clauses 2.11.3, 2.11.7 and 2.11.15 were draconian, inasmuch as, they denied the petitioner the right to participate in counseling without first submitting a surrender certificate qua the seat offered to her at AMU, she instituted the present petition.

4) This Court vide order dated 25th March, 2008 declined, inter alia, to stay the operation of the impugned Clauses of Delhi Prospectus or direct the respondent to allow the petitioner to participate in the counseling to be held on 14th April, 2008 without insisting upon surrender certificate of her AMU seat.

5) The petitioner preferred SLP(Civil) No. 9639 of 2008, before the Supreme Court of India, challenging the order of this Court dated 25th March, 2008, declining to grant any interim relief, which was dismissed as withdrawn by the Supreme Court on 11th April, 2008.

6) Thereafter, the petitioner surrendered her seat of MD (Obstetrics & Gynaecology) at AMU, and appeared for counseling before the respondent on 14th April, 2008.

7) The petitioner states that she was looking for a MD seat at Delhi in the following order of preference: (i) Radiology (ii) Dermatology (iii) Pediatrics (iv) Gynaecology (v) Medicine (vi) Anesthesia.

8) According to the petitioner, at her turn for counseling, she was verbally informed by the Board of Counselors present there, that only MD Anesthesia seats were remaining and available at her rank. The petitioner opted for the course of MD Anesthesia, which according to her was her sixth preference. The petitioner, vide communication dated 14th April, 2008, was provisionally admitted to MD Anesthesia course at University College of Medical Sciences, Delhi (for short "Selected Course") and directed to report for joining the course on or before 21st April, 2008. Vide the said letter dated 14th April, 2008 the

petitioner was further informed that the admission granted to her shall be cancelled if she did not report for medical examination and for joining the course on or before 21st April, 2008, and that no request for extension of time shall be entertained under any circumstances.

4. It would be necessary to extract the relevant Clauses of the Delhi Prospectus before considering the rival submissions of the Counsel for the parties. The relevant Clauses read as under:

2.11.1 Admission would be made strictly on the basis of merit of the eligible candidates determined by marks obtained in the PGMET.

....

2.11.2 The candidates in order of merit will be required to appear before Post-Graduate Admission Committee constituted by the Board of Research Studies of the Faculty of Medical Sciences for counseling and admissions on the specified dates.

2.11.3 No communication would be sent to the individual candidates for appearing before the Post-Graduate Admission Committee. The candidates should appear before the Post-Graduate Admission Committee on the specified dates according to their merit as per schedule given at page (i & ii). The admission authority would reject such a request of a candidate for attending counseling who has already been offered a seat at any Institution/College by any admission authority and not submitted/brought the surrender certificate. Candidates should report to the office of the Assistant Registrar (Medical), Faculty of Medical Science, 6th Floor, V.P. Chest Institute Building, University of Delhi, Delhi-110007 on the stipulated dates at 9:00 A.M. for MD/MS/Diploma counseling. The Reporting time for MDS Counseling is 2.30PM on the Stipulated date.

2.11.7 The candidates would be called in for counseling in batch of 10 candidates. When a candidate appears for counseling, he/she would be informed of the available courses and the institutions in which the courses are available. From among the courses and the institutions available at the time of his/her counseling, he/she would be entitled to select only one course in any particular institution and he/she shall be allotted a seat in the selected course in the selected institution and the candidate shall be provisionally admitted. He/she will be required to complete the essential requirements for admission immediately.

A candidate who does not wish to be admitted in any course available at the time of his/her counseling may request, in writing, for placement on waiting list. The resultant seat/s will be offered to the next candidate/s in the merit. There shall be no second round of counseling.

2.11.9 As soon as a candidate is allotted his/her selected seat, he/she will be provisionally admitted in that course and will be required to submit the following immediately:

(i) Original certificates

(ii) Fee as mentioned below:

....

....

(iii) Bond: A bond worth Rs. 3.0 lacs with two sureties should be submitted by the candidates at the time of their counseling and admission. The admission will not be valid unless and until the Bond is submitted by the candidate.

The student shall have to pay the Bond money of Rs. 3.0 lacs to the Institution/ University in the following circumstances:

A. If the student does not join the course at the allotted institution on or before the stipulated date.

....

....

(iv) The Original Certificates of the student would be kept in the custody of the admitting Institution and would be returned only after completion of the course or on payment of Bond money, as the case may be.

2.11.11 It is clarified that a candidate who selects a seat at the time of counseling shall have no right to surrender the seat. If he/she does so, shall be debarred from appearing in the subsequent PGMET till the duration of the course concerned is over.

2.11.13 The candidates should select the course and institution carefully at the time of counseling as this will be final and binding on them. Once a candidate has selected a course and an institution, he/she shall not be entitled to seek any change in the course or the institution under any circumstances.

2.11.14 If any seat/s becomes vacant due to non-joining of the course by any candidate on or before 01-05-2008, the same shall be filled up from the waitlisted candidates. The candidates who were not offered any seat and those candidates who have not opted any seat at the time of counseling shall be waitlisted.

2.11.15 The candidates who have already opted a course and the candidates who were absent on the specified date of counseling shall not be waitlisted.

5. Mr. Shyam Moorjani, Advocate appearing on behalf of the petitioner fairly conceded that the challenge to the provision of Clause 2.11.3 of the Delhi Prospectus had become infructuous during the pendency of the petition, insofar as, the petitioner had surrendered the seat offered to her at AMU before appearing for counseling with the respondent on 14th April, 2008. Counsel strenuously urged that the operation of provision of Clauses 2.11.7 and 2.11.15,

which deny to the petitioner admission to a preferred course once she has selected any course in a particular institution; preclude her from being considered for a preferred course if a seat becomes vacant due to non-joining of that course by any candidate; and offer the same only to waitlisted candidates; are arbitrary, discriminatory, capable of colorable exercise and violative of the right of the petitioner to practice a profession. In other words, although the petitioner during counseling had opted for the Selected Course, as aforesaid, and had been admitted thereto, however, on a seat falling vacant in another course of her choice, she ought to be offered that vacant seat as a candidate deemed to be included in the waiting list for that higher personal preference. Merely because she had taken admission in Selected Course at the time of counseling, instead of exercising the option of being placed on the waiting list, ought not to preclude her from being considered for admission to a course of her higher preference if a seat falls vacant and becomes available subsequently. Mr. Moorjani urged that a waiting list cannot only be of those candidates arranged in order of merit who are yet to opt for a course, but should include those who have selected another course of lower personal preference in the interregnum. Mr. Moorjani urged that when the PGMET is conducted, candidates are arranged in order of merit for admission and this exercise by itself is a classification done by the State which is reasonable. However, having already made a classification on the basis of merit, the law cannot permit a further classification within classification on any other criteria, as is done in the instant case, where waiting list is drawn according to the impugned Clauses and second counseling is altogether denied. Since the wait list under the provisions of the impugned Clauses is a wait list of not only those candidates who were offered courses but opted out, but also those candidates who were never offered any seat because they were lower in merit, it is impermissible and discriminatory in law, as it would invariably cater to those lower in rank and merit in relation to the petitioner. Counsel submitted that owing to the refusal of the respondent to conduct a second counseling, candidates like the petitioner are being victimized, year after year, and prevented from doing MD in Delhi University in a course of higher personal preference, just because at their turn such course was not available and they opted to select a course lower in their personal preference. The contention of the Counsel for the petitioner is that, the only way to bring a candidate nearer to his higher preference is by holding second counseling in the admission process. In support of his submission Counsel for the petitioner relied on (i) an order dated 2nd August, 2005, in Writ Petition No. 157 of 2005, passed by the Supreme Court of India, asking the Medical Council of India and the Ministry of Health, Government of India, to examine the suggestion about providing from the next academic year, second counseling for admission to post graduate courses, for filling up seats for the all India quota, and (ii) the order dated 17th April, 2006, in the same petition, directing that "second counseling shall not be confined only to the waitlisted candidates". Mr. Moorjani also relied upon the Post Graduate Medical Examination for MD/MS conducted by the Government of Maharashtra, which provides for a second round of counseling for further betterment of candidates,

who have been allotted seats in the earlier round.

6. Per contra, Mr. Anurag Mathur, Advocate appearing for the University of Delhi, submitted that the validity of a provision relating to admissions cannot be tested on the basis of hardship in a few cases and its validity has to be tested on the basis of the generality of situations. He urged that giving option to the candidates in the order of merit to choose a subject available at their turn during counseling or in the alternative remain in the waiting list is a fair method of making admissions and does not suffer from any infirmity. If a candidate is of the view that the course available at the time of counseling, is not to the liking of the candidate, it is open to that candidate to remain in the waiting list. But once candidates exercise an option, and are admitted to a course and institution chosen by them, they are not entitled, if a seat falls vacant later, to seek any change, since the vacant seats are offered only to candidates on the waiting list. In other words, candidates who have selected a course at the time of counseling, cannot be waitlisted, so as to be able to seek any change after they join the course. Counsel submitted that the validity of making admissions in this manner has already been upheld in decisions of this Court and approved by the Apex Court.

7. In the case of Dr. Sandhya Kabra v. University of Delhi reported as AIR 1993 Del 40, a Full Bench of this Court, whilst examining the question of entitlement of the petitioner to change her course of study held that -

66. ...if the petitioners were very keen in studying a particular subject then, according to the new Scheme, the petitioners should not have chosen any course and could have insisted on their names being retained on the waiting list. The petitioners chose not to do so. They wanted to eat their cake and have it too. The petitioners expected the best subject and/or institution which was available at the time of counseling and now if any fortuitous vacancy has arisen, we do not see as to how the petitioners can make any grievance.

67. It is no doubt true that the admission is to be granted only on the basis of merit. On the day when the counseling concludes, all the seats which are available are filled. It cannot be said that at that point of time any seat has been filled on a basis other than merit. Thereafter if any vacancy arises, then that is only in the fortuitous circumstance which occurs. The percentage of such seats which become available by reason of drop outs is very insignificant, but if change of course is allowed, the entire admissions become unsettled.

68. It is not as if the candidates who are in the waiting list are not meritorious. It is not easy to secure admission. Firstly, to Under Graduate Medical Courses. Thereafter, it is only the more meritorious doctors who have taken the entrance/screening examination and have secured good marks who are put on the merit list out of which a waiting list is prepared. For the fortuitous vacancies which occur, the rival claimants, therefore, are the meritorious and more meritorious candidates. While no system can ever be perfect, we are firmly of the opinion

that the present Scheme or procedure which has been devised will cause the least amount of dislocation and is more beneficial to the candidates as well as to the institutions to which they are assigned.

69. It is true that some of the candidates may feel that hardship is being caused to them because the vacant All India seats were not made available to them. It is, however, to be borne in mind that it is not for the Court to lay down any educational policy. The Court has a limited role to play. Its function is to see whether the policy which is formulated, in a case like this, is fair or is it arbitrary. Educational policies are laid down by persons who are experts in their field and as held by the Supreme Court, the Court should be slow in interfering in such matters see *Mr. Bhusham Uttam Khan v. The Dean, B.J. Medical College* Judgments Today 1992 (1) S.C. 583. It has also been held by the Supreme Court in *Kumari N. Vasundara v. State of Mysore* 1971 S.C.R. 381 that hardship in an individual case cannot be a test for determining the validity of a Scheme. Dealing with the question of selection of candidates to Pre-Professional course in Government Medical Colleges, it was observed by the Supreme Court as follows:

But cases of hardships are likely to arise in the working of almost any rule which may be framed in selecting a limited number of candidates for admission out of a long list. This, however, would not render the rule unconstitutional. For relief against hardship in the working of a valid rule, the petitioner has to approach elsewhere because it relates to the policy underlying the rule.

....

....

76. In brief, our conclusions in these writ petitions are as follows:

a)....

b)....

c)....

d) No change of course or hospital is allowable to the candidates who have already secured admission.

8. In *Dr. Veena Gupta v. University of Delhi* reported as AIR 1994 Del 108, a Full Bench of this Court addressing the issue of who could be a wait-listed candidate in relation to a post-graduate medical course held that:

...13. But who are to be regarded as wait-listed candidates is the next question. Those candidates who have not been offered any seat or who have not accepted the allotment of any seat during the earlier counselings will, of course, be regarded as candidates who are wait-listed....

14. It is to be seen that at a short notice, a candidate has to make up his mind during counseling as to which seat to accept. He is thereafter given 15 days time to join. It is possible that even though a candidate may have accepted a seat,

thereafter for reasons best known to him, he may decide not to join course which he has selected. It will be unjust, unfair to punish such a candidate and not to consider him in future counseling if he has chosen not to join and has expressed his desire to be on the waiting list. Of course, if a candidate joins the course and thereafter chooses to resign or abandon then the said candidate cannot be placed in the waiting list. It is only those candidates who do not join any post-graduate course for any reason whatsoever, either because of not being offered, have not accepted or have not joined, who may be regarded as being on the waiting list.

15. We make it clear that in future those candidates who do not join and want to be considered for any resultant vacancies, must inform the University in writing that they want to be placed in the waiting list and they have not joined any course and it is only then that those candidates who, having been allotted but having not joined, will be put in the waiting list. It is clearly understood that such intimation must be given to the University on or before the last date fixed for joining.

16. It is clarified that any candidate who has joined any post-graduate course any-where in India will not be regarded as being eligible to be placed on the waiting list for being considered for counseling in Delhi quota....

9. Mr. Mathur, also urged that the judgment of this Court in Dr. Veena Gupta's case (*supra*) was noted with approval and affirmed by the Supreme Court in the case reported as *Arvind Kumar Kankane. Vs. State of U.P. and Others*, , wherein, whilst considering the issue of the option exercised by a candidate at the time of counseling the Supreme Court held that:

1. In relation to admission to post-graduate medical course, Rules were framed under the Government order issued on March 30, 1994; it was provided therein that the allotment of subject [speciality] and college of study made on the basis of option exercised by a candidate is final and no candidate can be permitted to change the subject or the college. A candidate who does not exercise his option at the time of counseling will be kept in the waiting list and if at any subsequent stage a seat falls vacant the same shall be allotted on the basis of the option exercised by those who are in the waiting list. Writ petitions were filed in the High Court challenging the validity of these Rules.

2. ...

3. Aggrieved by these directions, an appeal was preferred by the Director General of Medical Education and Training. The Division Bench, after considering the scheme of admission and conditions imposed therein and the decisions of the Full Bench of Delhi High Court in *Dr. Veena Gupta v. University of Delhi* and of High Court of Punjab & Haryana in *Anil Jain v. The Controller of Examinations* 1998 (3) E.S.C. 2016, held that any seat which is available and which has not been included in any of the three counseling by mistake should be filled in, in order of merit amongst the wait listed candidates. Normally, when a seat is

available, the same should be included in the initial counseling. If by mistake a seat is not included in the initial counseling then the effect is that nobody opts for the same. If now the said seat is sought to be offered to all the candidates for counseling, the result would be that all the candidates who took part in the first counseling should be given a chance, in order of merit, to opt for the same seat. This will start a chain reaction and ultimately there will be one seat more, which would become available for the second counseling. There again a chain reaction will start leading to the third counseling. The effect of putting the seat back for counseling for all candidates would, therefore, be to upset the entire counseling which had already taken place. Prima facie though it appears to be somewhat unfair, there is no alternative, apart from leaving the seat unfilled, but to offer the said seat to the wait listed candidates. It was also noticed that once the academic course commences the same will have to be completed within a period of three years and if the counseling goes on continuously for a long period then it may not be possible to fulfill that condition and thereby upset the course of study itself. On this basis, the Division Bench set aside the order made by the learned Single Judge and allowed the appeal. It is against this order and connected matters that the present appeals are filed by special leave.

4. We have carefully examined the contentions put forth before the High Court and before us and we are of the view that the finding recorded by the Division Bench and Delhi High Court in Dr. Veena Gupta's case [supra] and the High Court of Punjab & Haryana in Anil Jain's case [supra] is in accordance with the reason and stands the test of rationality. It is clear that once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counseling and his seat becomes vacant, the process of counseling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic course within the stipulated period.

5. The grievance made is that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list. This is only a fortuitous circumstances dependent on so many contingencies like the student, who has been allotted a seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the rule.

10. From a conspectus of the decisions cited above, inter alia, the following conclusions are deducible:

- 1) It is not for the Court to lay down any Educational Policy. The Court has a limited role to play. Its function is to see whether the policy which is formulated, is fair or arbitrary;
- 2) Educational Policies, prepared by experts in the field, should not be interfered with by the Court;

3) Hardship in an individual case, cannot be the test for determining the validity of a policy;

4) Cases of hardship arise in the working of almost any rule framed for admission. This, however, would not render the rule unconstitutional; and

5) Under the policy once an option is exercised by a candidate, and he/she is allotted that subject and institution, that candidate cannot participate in subsequent counseling, because that would render the process of counseling endless. On a seat falling vacant, if the same is allotted to a candidate who is lower in rank in the merit list, it is only a fortuitous circumstance. Such freak circumstance cannot be the test of reasonableness of the rule.

11. Coming to the present case, the crux of the petitioner's grievance is that, under the impugned Clauses of the Delhi Prospectus, once a particular course is selected by the candidate at the time of counseling, all the other personal higher preferences of that candidate are lost forever. The said candidate, under the policy, is not thereafter offered the option of selecting a higher personal preference in relation to another course, seat wherein may become available upon vacation by another candidate. The petitioner is aggrieved by the method adopted for dealing with such vacancies by the respondent, inasmuch as, only those students who opt to remain in the waiting list or were not offered any course by reason of being lower down in the merit list, are offered the seats so falling vacant in order of seniority, but the students who have selected another course at the time of counseling are neither included in the waiting list nor offered the seats that fall vacant.

12. In the present case, it is seen, that the policy enshrined in the Delhi Prospectus has been in existence ever since 1984. The petitioner was aware of the Clauses in the Delhi Prospectus at the time of submission of the examination form for the entrance examination in December, 2007. The petitioner sat for the examination without reservation. It is also seen that the results of the Delhi test were declared in the month of February, 2008. Still there was no challenge to the policy underlying the admission to post-graduate medical courses in Delhi. It is only when, in order to appear before the respondent for counseling, the petitioner had to forego the admission to AMU, that the petitioner at the last minute challenged the vires of the subject policy as contained in the Delhi Prospectus. I find that the petitioner had accepted the stipulations made in the Delhi Prospectus when she submitted her application form for the entrance examination. Also, it is observed that, it is not the petitioner's case that, the PGMET was not held or the admissions were not granted strictly in accordance with the Clauses contained in the Delhi Prospectus. In these circumstances the petitioner cannot be heard to contend that the Clauses of the Delhi Prospectus are not binding upon her or are arbitrary or discriminatory. I also find that there is no challenge to the power or authority of the respondent - University to frame the policy of conducting examinations and granting admissions in terms thereof. There would be no merit in such a challenge, since the respondent is an expert

body invested with the jurisdiction and competence to frame the subject policy. Further, it is seen that the policy in question has been upheld by this Court in a number of judicial decisions. The petitioner seeks a direction to the respondent to hold a second counseling for all desiring candidates. In this behalf it is observed that if a seat falling vacant is offered to candidates who have already selected a course it will start a chain reaction and the process of counseling would become endless. The purpose behind the policy is that when seats fall vacant, the same can be filled from the candidates on the waiting list who are not undergoing any course, thereby ensuring that students already admitted to different courses continue studies uninterruptedly. If the petitioner was stuck on studying a particular subject or pursuing a course of higher personal preference, the petitioner ought not to have chosen any other course and could have insisted on her name being retained in the waiting list. The petitioner, however, selected a course of lower personal preference instead of insisting on her name being retained on the waiting list. The rules do not permit a change of course to candidates who have already secured admission. The reason and rationale of the rules is that there has to be a finality to the admission process. It is clear not only under the subject rules but also from the ratio decidendi of various judgments of this Court, affirmed by the Supreme Court, that once a candidate selects a course of instruction, she cannot be included in the waiting list, and is therefore not eligible to be considered in future counseling, that may be held to accord admissions to candidates on the waiting list. This method of admission is designed to obviate the unsettling of the entire counseling which has taken place hitherto, by preventing change of course or institution to candidates who have already secured admissions. The petitioner cannot be heard to say that the method is violative of the petitioners right to practice a profession. The petitioner has already been admitted to a course of study the successful completion whereof shall entitle her to practice medicine. Further, each State as is evident, is entitled to, and does formulate its own scheme or policy for admission to post graduate medical courses. The Supreme Court has formulated the policy for admissions to the All India Quota. This position ipso facto would not render the subject policy invalid or arbitrary. In my opinion, the aforesaid method for filling up seats is fair and just.

13. There is no gainsaying the principle that admission to postgraduate medical courses has to be granted only on the basis of merit. It is axiomatic in the present case that all the candidates on the merit list, out of which the waiting list is prepared, are meritorious and secured good marks. Therefore, it cannot be said that by offering of a vacant seat to such a candidate on the wait-list, the seat has been filled on a basis other than merit. The policy of admission is not rendered invalid only on account of hardship in an individual case since cases of hardship are likely to arise in the working of almost any rule that may be framed. This, however, would not render the rule unconstitutional. While no system can ever be perfect, I am of the considered opinion that the present policy of admission as contained in the Delhi Prospectus will cause the least amount of

dislocation and is more beneficial to the candidates as it ensures finality and certainty to the process. Furthermore, as has been laid down in a plethora of judicial decisions, it is not for the Court to lay down any educational policy. The Educational Policy in the present case has been laid down by the respondents who are experts in their field, and this Court should be slow to interfere in such matters, and must interfere only when the policy is arbitrary, discriminatory or contrary to law. I am of the view that in the present case, the policy does not suffer from the vice of arbitrariness and is neither discriminatory nor contrary to law.

14. For all the foregoing reasons, the challenge to the Clauses of the Delhi Prospectus is without merit and the relief prayed for in the writ petition cannot be granted. Consequently, the writ petition fails and is hereby dismissed, but without any order as to costs.