
(2012) 11 DEL CK 0095
In the Delhi High Court
Case No : LPA No. 763 of 2012

Manoj Kumar Dhaka

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Citation : (2013) 133 DRJ 473

Hon'ble Judges : D. Murugesan, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Kamini Jaiswal and Mr. Abhimanue Shrestha, for the Appellant; Sweety Manchanda, CGSC for R-1 and 3. Mr. Ravi Sikri with Mr. Vaibhav Kalra and Ms. Neha Bhatnagar for GGSIP University, Mr. Ashish Kumar and Mr. Ankit Rajgadhia for MCI, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—This intra-court appeal impugns the order dated 10th October, 2012 of the learned Single Judge, of dismissal of W.P.(C) No. 3948/2012 preferred by the appellant along with others. The impugned order itself records that during the pendency of the writ petition, the petitioners no. 1, 2 & 4 therein were deleted from the array of parties. We are informed that the writ petition was thereafter pursued by the remaining three petitioners including the appellant and the other two have not chosen to appeal against the impugned judgment. Though the appeal is accompanied with an application for condonation of four days delay in filing the appeal, the counsels for the respondents on 23rd November, 2012 and today, have argued the matter on merits. For the reasons stated in the application, the delay in filing the appeal is condoned. Considering the nature of the controversy, the appeal was heard finally. The respondent no. 2, Guru Gobind Singh Indraprastha University (GGSIPU), in the admission brochure for Super Specialty Medical Courses published for the Academic Session 2012-13 had tentatively shown six seats as available for Super Specialty Course in DM (Cardiology) in the Post Graduate Institute of Medical Education &

Research (PGIMER), Dr. Ram Manohar Lohia Hospital (respondent no. 3). It was however mentioned in the brochure that the final intake for the Academic Session 2012-13 shall be notified before the start of counselling/admissions. Admission was through an Entrance Test followed by counselling.

2. The appellant appeared for the Entrance Test and in the result declared thereof, was placed at 5th position in the merit list. However in the Notification published by GGSIPU for counseling, the seats available in PGIMER for the Super Specialty Course of DM (Cardiology) were shown as three, instead of six as indicated in the admission brochure. The appellant appeared in the first and claims to have also appeared in the second round of counselling and further claims that the candidate placed at the 4th position did not turn up for the second counselling and hence after the second round of counselling he was placed at the 4th position i.e. at No. 1 in the wait list prepared by GGSIPU, after allocation of the three seats to the first three candidates in the merit list.

3. It was then, that the appellant along with others as aforesaid, filed the writ petition from which this appeal arises impugning the reduction in the seats from six as mentioned in the admission brochure to three for which counselling was notified, contending that the rules of the game could not be changed after the game had begun.

4. During the pendency of the writ petition it was brought out, and is undisputed, that though GGSIPU had for the previous academic session allowed six seats to PGIMER in the Super Specialty Course of DM (Cardiology) but PGIMER for the Academic Session 2012-13 applied for approval of the GGSIPU for three seats only; it is explained that in the previous session approval for six seats was sought and granted in the hope that the requisite infrastructure therefor would be available but owing to certain delays, the same could not be made available, thus the application by PGIMER for three seats only. It is also undisputed that the number of seats in a particular course are to be governed by the Postgraduate Medical Education Regulations, 2000 of the Medical Council of India (MCI) (respondent no. 4) though PGIMER being a Central Government Institute, permission of the MCI for the number of seats, u/s 10A of the Indian Medical Council Act, 1956, is not essential.

5. Prior to 28th March, 2012, Regulation 12(4) of the Regulations aforesaid providing for the number of Postgraduate students to be admitted, was as under:-

(4) The number of students to be admitted in case of Post Graduate degree (Super specialty) courses shall be one student per year per recognized Post Graduate teacher in a department having a minimum of three faculty members (one Professor, one Associate Professor/Reader and one Asstt. Professor/Lecturer) and twenty beds. If the number of Post Graduate teachers in the unit is more than one then the number of students may be increased proportionately but not more than two in a unit per year in any circumstances. For this purpose one student should associate with one Post Graduate teacher.

Vide Postgraduate Medical Education (Amendment) Regulations, 2012 notified on 28th March, 2012, Regulation 12(4) supra was amended as under:-

The ratio of PG teacher to the number of students to be admitted for super specialties course shall be 1:2 for Professor/Assoc. Professor and 1:1 for remaining cadre covered by the general note following this rule in each unit per year subject to a maximum of 5 PG seats for the course per unit per academic year provided the complement of 10 teaching beds per seat is added to the prescribed bed strength of 20 for the unit. The Strength of 20 beds per unit as prescribed in the present regulations, will be considered adequate upto total 4 postgraduate seats in D.M./M.Ch. course.

6. It is also undisputed that the lack of infrastructure in PGIMER in the Department of Cardiology, is only in terms of beds and not on account of faculty or otherwise. It is also undisputed that PGIMER currently has 22 beds in the Department of Cardiology.

7. GGSIPU carried out an inspection of the infrastructure in PGIMER for approving the seats in the Super Specialty Course of DM (Cardiology) for the Academic Session 2012-13. By the time of the inspection, the amendment aforesaid had taken place. PGIMER contended that as per the amended Regulation 12(4), for 20 beds available with it, it was entitled to four seats in the said course. However the said plea of the PGIMER was not accepted by GGSIPU and GGSIPU sanctioned three seats only and for which reason, only the first three students in the merit list were admitted and the appellant remained on the waiting list.

8. The learned Single Judge dismissed the writ petition observing that the appellant had misrepresented that PGIMER had applied for six seats and GGSIPU had sanctioned three seats only when what had emerged was that the application of PGIMER was for three seats only. It was further held that it being the case of the GGSIPU that PGIMER lacked infrastructure for more than three seats, the Court could not interfere. It was yet further held that the grievance if any would have been of PGIMER and not of students seeking admission.

9. We had heard the counsels extensively on 23rd November, 2012. The counsel for the MCI at the outset had raised the plea of the last date laid down by the Supreme Court for admission to such a course being of 30th September of each year and it being not open to this Court to now grant admission. We had however drawn the attention of the appearing counsels to *Asha Vs. Pt. B.D. Sharma* University of Health Sciences and Others, where a different note has been struck by the Supreme Court. We had during the hearing on 23rd November, 2012 also enquired as to how many seats with admitted bed strength of 22 were permitted as per the amended Regulation 12(4) supra. Both, counsel for GGSIPU as well counsel for MCI had strongly contended that the bed strength of 20 was for three seats only and for each additional seat the bed strength had to be increased by ten. We were however, on a plain reading of the amended Regulation 12(4), of

the opinion that the bed strength of 22 entitled PGIMER to four postgraduate seats and not three. Since the counsel for MCI on that date was making his own interpretation of the aforesaid Regulation, we asked him to obtain instructions as to how the said Regulation has been applied by MCI to other Medical Colleges/ Institutes imparting education in such courses.

10. The counsel for MCI has today informed that our interpretation of the said Regulation is correct and has been so applied by the MCI. He concedes that for the bed strength of 22 admittedly available with PGIMER, they are entitled to four seats in Super Specialty Course of DM (Cardiology) and not three as was being argued earlier and on the basis of which interpretation, GGSIPU has sanctioned the seats in PGIMER. The counsel for GGSIPU has also today fairly stated that it cannot controvert the said stand of MCI.

11. The question which thus arises is, of the relief to be granted. As aforesaid, the infrastructure available with PGIMER entitles it to admit one more student. The only question which thus remains is of whether on account of delay, such seat even though available, cannot be filled.

12. The counsel for MCI has taken us through Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, in para 31 whereof while laying down the time schedule for Postgraduate and Super Specialty Course Admissions, the Entrance Examination has been prescribed to be held in the months of May-June, the result to be declared by 30th June and the first round of counselling/ admissions prescribed to be over by 25th of July; the last date for joining the allotted College and course is laid down as 31st July and no second round of counselling for Super Specialty Courses has been prescribed and the commencement of the Academic Session has been prescribed on 1st August. However while laying down the last date up to which students can be admitted against vacancies arising due to any reason, the date of 30th September has been prescribed for Super Specialty Courses also. The counsel for MCI has contended that the date of 30th September is only for filling up of vacancies arising subsequently and otherwise admission pursuant to first round of counselling is to be over by 25th July. He has also drawn our attention to Priya Gupta Vs. State of Chhatisgarh and Others, where the High Courts have been requested to ensure strict adherence to the prescribed time schedule and process of selection. Attention is also invited to the judgment dated 6th September, 2012 of the Supreme Court in Civil Appeal No. 6364/2012 titled Faiza Choudhary Vs. State of Jammu & Kashmir.

13. As far as the judgment in Faiza Choudhary is concerned, the same has no application to the present case, being concerned with the principle of, carry forward of seats. Both Mridul Dhar and Priya Gupta have otherwise been considered in the latest judgment in Asha, some of the questions framed for adjudication wherein were as under:-

b) Whether the cut-off date of 30th September of the relevant academic year is a

date which admits any exception?

c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations?

d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this court governing the subject?

14. The Supreme Court, in *Asha* held inter alia held as under:-

30. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the Appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The Appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The Appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the Appellant be denied admission.

32. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate.

33. We must hasten to add at this stage that even if these conditions are satisfied, still, the court would be called upon to decide whether the relief should or should not be granted and, if granted, should it be with or without compensation.

34. This brings us to the last phase of this case as to what relief, if any, the

Appellant is entitled to. Having returned a finding on merits in favour of the Appellant, the Court has to grant relief to the Appellant even, if necessary, by moulding the relief appropriately and in accordance with law. This Court must do complete justice between the parties, particularly, where the legitimate right of the Appellant stands frustrated because of inaction or inappropriate action on the part of the concerned Respondents. In fact, normally keeping in view the factual matrix of this case, we would have directed the admission of the Appellant to the MBBS course in the academic year 2011-2012 and would further have directed the Respondents to pay compensation to the Appellant towards the mental agony and expense of litigation and the valuable period of her life that stands wasted for failure on the part of the Respondents to adhere to the proper procedure of selection and admission process. May be the Court would have granted this relief subject to some further conditions. However, we are unable to grant this relief to the Appellant in its totality for reason of her own doing. She has completely faulted in pursuing her academic course in accordance with the Rules and like a diligent student should do.

35. In the reply filed on behalf of Respondent Nos. 1 and 2, it has been stated that as per the Dental Council of India Norms, minimum required attendance is 75 per cent in Theory as well as in Practical of each subject individually for issuance of roll numbers in the BDS course. Undoubtedly, the Appellant was admitted to the BDS course and she was expected to complete her academic course in terms of the Norms of Dental Council of India. It is also not disputed before us and, in fact, was confirmed to us on behalf of the Medical Council of India and the Respondent University that the course for the first year of both, BDS and MBBS, is more or less the same. Except one paper of Anatomy, rest of the subjects and papers are more or less similar particularly for the first six months. If the Appellant had pursued the BDS course to which she was admitted diligently and had attended all the lectures, she might have been eligible to pursue her MBBS course in continuation thereto. We are not recording any finding in this behalf as, in our opinion, the Appellant is not entitled to this particular relief, as already indicated, and for the same she has to blame none else but herself.

38.2 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counseling by 15th September of the relevant academic year [in terms of the decision of this Court in *Priya Gupta (supra)*]. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extra-ordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in the case of

Priya Gupta (supra) and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

38.3 Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the Rules, Regulations and conditions of the prospectus, causing prejudice to the rights of the students, the Court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment. Where the admissions given by the concerned authorities are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

39. With all humility, we reiterate the request that we have made to all the High Courts in Priya Gupta's case (supra) that the courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction.

In accordance with the aforesaid findings, admission in that case was granted by the Supreme Court.

15. The present is an equally hard case. The Super Specialty Course of DM (Cardiology) in PGIMER is not only prestigious but highly competitive. To secure admission therein is no mean task. The need of the country and the public at large for the doctors with said Super Specialty cannot be over emphasized. The course, we are informed is of three years duration out of which three months are admittedly over.

16. What falls for consideration is as to whether the aforesaid can fall in the category of rarest of rare cases as spelled out by the Supreme Court.

17. The appellant, for the delay, cannot be faulted with in any manner whatsoever. Though the learned Single Judge has observed that the appellant made out a wrong case than what emerged before the Court but the appellant could not be expected to have knowledge thereof. Though on the basis of the infrastructure available in the Department of Cardiology in PGIMER, four seats ought to have been allocated by GGSIPU, but GGSIPU on a wrong interpretation of Regulation 12(4) supra which was supported by MCI also before this Bench till 23rd November, 2012, allocated only three seats. We are unable to digest that such valuable seat should be allowed to go waste for the next three years merely for the reason of three months having elapsed.

18. These Super Specialty Courses are not classroom courses, though 80% attendance is informed to have been prescribed. The loss of three months in gaining hands-on practical-experience, we are sure, can always be compensated by extra hours put in by the candidate. It cannot be lost sight of that the appellant approached this Court without any delay and the writ petition was drafted on 5th July, 2012 itself and filed immediately thereafter, i.e. well before the last date prescribed for admission. Unfortunately the correct facts came to be revealed only through recording of the statement of the Registrar of PGIMER by the learned Single Judge. Had the view, as we have taken, been taken immediately, the appellant would have been admitted well within the prescribed time.

19. We are further of the opinion that the decision of the GGSIPU to reject the request of PGIMER for the four seats in terms of amended Regulation 12(4) was wrong. Though PGIMER did not pursue the case but it cannot be lost sight of that it is a Government Institute with none being personally interested and it is ultimately the students who are the beneficiary of the courses which are being imparted and in our view they would have a cause of action against the wrongful denial/reduction of seats.

20. We are thus of the opinion that the facts of the present case justify admission at this stage.

21. The counsel for GGSIPU does not have instructions as to whether the appellant is now first on the waiting list. The counsel for the appellant contends that the candidate earlier at number 4 not only did not participate in the second round of counselling which was held but also has not chosen to file the appeal against the impugned order.

22. Be that as it may, we are of the opinion that the benefit of the 4th seat ought to go to whosoever is next on the waiting list, whether it be the candidate who was originally at number 4 or the appellant. The appeal is thus allowed on the aforesaid terms, GGSIPU is directed to immediately sanction the 4th seat in the Super Specialty Course of DM (Cardiology) to the PGIMER and to grant admission to the candidate next on the waiting list to the said course for the Academic Session 2012-13. GGSIPU/PGIMER are however granted liberty to impose terms on the admittee to make up for the portion of the academic session missed by such admittee and the admittee shall abide by the said terms.

No costs.