
(2019) 10 DEL CK 0208

In the Delhi High Court

Case No : Letters Patent Appeal No. 556 Of 2019, Civil Miscellaneous No. 38874, 38876, 39533 Of 2019 Civil Writ Petition No. 9605 Of 2019

Tanya Mann

APPELLANT

Vs

Registrar , Guru Govind Singh Indraprastha University & Ors

RESPONDENT

Date of Decision : 24-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Civil Procedure, 1908 — Order 1 Rule 10

Delhi Professional Colleges Or Institutions (Prohibition Of Capitation Fee, Regulation Of Admission, Fixation Of Nonexploitation Fee And Other Measure To Ensure Equity And Excellence) Act, 2007 — Section 3

Citation : (2019) 9 AD(Delhi) 553

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; C. Hari Shankar, J

Bench : Division Bench

Advocate : S.K. Rungta, J.S. Mann, Vipul Kr. Upadhyay, Prashant C.S.S. Pillai, Anita Sahani, Hetu Arora Sethi, Rahul Jain, Priya Barva, Gaurang Kanth, Harish Vaidyanathan Shankar, Atul Bharti, R.K. Saini, Ankit Singh

Final Decision : Dismissed/Allowed

Judgement

C. Hari Shankar, J

1. Tanya Mann and Rashmi Nagia are students, each of whom aspires to be admitted to the MBBS course, starting the 2019-20 academic session, under the aegis of the Guru Gobind Singh Indraprastha University (hereinafter referred to as "GGSIPU"). For the sake of convenience, they shall be referred to, hereinafter, as Tanya, and Rashmi, respectively.

2. Tanya is the appellant in LPA 556/2019.

3. Consequent to an interim order dated 30th August, 2019, passed by this Court in the said LPA, Tanya was granted provisional admission to the MBBS course. Aggrieved thereby, Rashmi immediately petitioned this Court by way of WP (C) 9605/2019.

4. It is the contention of Rashmi that the MBBS seat, which was provisionally offered to Tanya, ought to have been offered to her instead, as she is superior, in merit, to Tanya.

5. The only issue that is to be determined in these two proceedings is, therefore, whether the MBBS seat in the GGSIPU, to which Tanya has been provisionally admitted, ought actually go to Tanya, or to Rashmi.

6. With the above prefatory background, we proceed to adumbrate the facts, in these cognate proceedings, in somewhat greater detail.

Facts

7. Tanya and Rashmi, who are both daughters of ex-servicemen, qualified the All India National Eligibility-cum-Entrance Test (Under-Graduate) (NEET-UG) examinations, conducted for admission to MBBS courses in institutions across the country.

8. It is not in dispute that, in the merit list drawn up, consequent to the NEET-UG, Tanya ranked at 157024 whereas Rashmi's rank was 140553.

9. Both the aforesaid students, i.e., Tanya and Rashmi, registered themselves for admission to the MBBS Courses conducted under the aegis of the GGSIPU, under the OBC-Defence, "OBCDEF" category, and paid the requisite fee. They were placed in priority - VI.

10. The first round of counselling, conducted by the GGSIPU for admission to the MBBS courses run by it, took place on 5th July, 2019. Candidates in priority categories I to V, alone, were called for the first round of counselling; consequently neither Tanya and Rashmi participated in the said round. Neither candidate however, claims to be aggrieved thereby.

11. For the MBBS seats, which remained vacant after the first round of counselling, a second round of counselling took place on 26th July, 2019. In the said second round of counseling, there were only two vacant seats in the OBC category. These two seats were given to Atul and Anjali, who are Respondent Nos. 4 and 5 in LPA 556/2019.

12. Atul was ranked 22416 and Anjali was ranked 69933, in the all India merit list following the NEET-UG. Both the candidates were, therefore, higher, in merit, to Tanya and Rashmi.

13. Consequent to the admission, of Atul and Anjali, to the aforesaid two vacant OBCDEF seats, Tanya addressed a representation, by way of e-mail, to the respondents on 27th July, 2019, protesting against the admission of Atul and Anjali. She contended that Atul and Anjali were migrant candidates, who were not residents of Delhi, and who were not in possession of OBC Certificates issued by the Government of National Capital Territory of Delhi (hereinafter referred to as "GNCTD"). As such, she contended that neither Atul, nor Anjali, was eligible for being admitted to the MBBS course conducted by the GGSIPU. As she was the

candidate, highest in merit, who was present on the spot when the second round of counselling took place on 26th July, 2019, Tanya submitted that she was entitled to be admitted against the very first seat which would become vacant consequent to the admission, granted to Atul and Anjali, being found to be illegal.

14. A mop-up round of counselling, to fill in the seats remaining unfilled after the first and second rounds of counselling, was conducted on 8th August, 2019.

15. On finding that her representation, dated 27th July, 2019, elicited no favourable response, Tanya petitioned this Court by way of WP (C) 8301/2019. The contention of Tanya, in the said writ petition, was that Atul and Anjali, being migrant candidates, were not entitled to be admitted against the OBCDEF category, pursuant to the NEET-UG examination and, consequently, were not entitled to be admitted against the two seats reserved for OBC candidates.

16. The GGSIPU filed a counter-affidavit, to the writ petition, in which the allegation of Tanya, regarding the perceived ineligibility of Atul and Anjali, to be admitted to the MBBS courses conducted by the GGSIPU, was emphatically denied. The GGSIPU contended, per contra, that the OBC Certificate of Atul and Anjali had been issued by the GNCT of Delhi and had been duly verified. It was also contended that both Atul and Anjali qualified as "Delhi Candidates", in view of the following definition, of the expression, as contained in Section 3 of the Delhi Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non-Exploitation Fee and Other Measure to Ensure Equity and Excellence) Act, 2007:

"(f) "Delhi candidate" means a candidate who has appeared or passed the qualifying examination from a recognised school or institution situated in Delhi;"

As such, it was contended, by the GGSIPU, in its counter-affidavit, that the claim of Tanya was bereft of merit.

17. Atul also filed an affidavit, dated 24th August, 2018, in response to the writ petition of Tanya, in which he voluntarily withdrew the allotment given to him by the GGSIPS, to the MBBS course conducted by it, as well as his consequent admission thereto. No ground, for such withdrawal, finds place in the said affidavit of Atul.

18. Consequent, to Atul withdrawing from admission granted to him, the GGSIPU informed, vide Notification dated 28th August, 2019, that it was holding an extended round of counseling, on 31st August, 2019. The eligibility for participation in the said extended round of counselling, thus set out, in para 3 of the Notification dated 28th August, 2019:

"3. Eligibility for participation in extended round:

All the NEET UG 2019 qualified candidates who have been registered with GGSIPU and their name appears in the final list of the Registered applicants for MBBS programme (Code 103) for the academic session 2019-20 after inviting

corrections was displayed vide notice no. IPU-7/Counseling/Admission/01/MBBS/2019/ 12357 dated 03.07.2019 and the student who have successfully registered (Offline) for MBBS Mop-Up round against University notice GGSIPU/Admissions/MBBS/2019/13078 dated 05.08.2019 and whose NEET UG 2019 details are found correct on verification by the University but have not been allotted a seat in 1st and 2nd Round and Mop-up round of Counselling (all candidates except those who are holding a seat of 1st, 2nd Round and Mop-Up round); not admitted through any round of State/AIQ counselling, shall be eligible to participate in the Extended Round of State Counselling.

In case of any grievance/representation, the decision of Admission Appellate Committee shall be final and binding on the candidates.

Notes:

(a) If any vacancy sub-categories (i.e. Defence and PWD/PH) exist and the same remains vacant, then they shall first be reverted to that respective parent category.

(b) Thereafter, the conversion of SC, ST, OBC to General Category shall be done only during the counselling. While converting the seats in Extended round, any unfilled seat reserved for ST category will be offered to SC category and vice versa and only after completing this exercise, the conversion of the reserved category seats to General Category shall be effected. However, any OBC vacant seat shall be directly converted to General Category.

(c) Any, SC/ST vacant seat in ACMS, the same, shall be converted to the seats for "Wards of Army Personnel" after exhausting the complete list of that particular category.

(d) All the candidates claiming seats in Defence Priority (I to IX) shall visit the University on the notified date and time. The University will call candidates priority wise for verification of documents and allotment of seats within the notified date and time;

(e) Candidates are requested to refer to the tentative seats available for Extended round of State counselling at the counseling venue. All the candidates will be called accordingly to ensure that no seat remains vacant. However, the counselling shall stop as and when the seats are filled up.

(f) Any category candidate, which have not been called and/or whose vacancy does not depict in the vacancy position may attend the counselling as an unreserved category candidate and/or the vacancy may arise consequent to the conversion of categories during Mop-round of counselling.

(g) CUT-OFF percentiles and score as per MCI Regulation shall be applicable."

19. Alongside the said Notification, the GGSIPU also issued a "tentative vacant seat status" on 28th August, 2019, for which the extended counselling was being conducted. One vacant seat, in the OBCDEF category, was shown as

being available, therein.

20. On 28th August, 2019, when WP (C) 8309/2019 came up for hearing before the learned Single Judge, the GGSIPU submitted that seventeen (17) MBBS seats were vacant, including the OBCDEF category seat which had fallen vacant on account of the withdrawal, by Atul, of the admission granted to him. In the circumstances, the GGSIPU submitted that it was bound to proceed to fill the said seat in accordance with para 7 of the order, dated 9th May, 2017, passed by the Supreme Court in *Dar-US-Slam Educational Trust v. Medical Council of India* MANU/SCOR/2241/2017, which reads as under:

"7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list."

21. In the circumstances, the learned Single Judge directed the GGSIPU, vide his order dt 28th August, 2018, to complete the process of filling up of seventeen vacant MBBS seats, including the OBC seat vacated by Atul, in accordance with the directions issued by the Supreme Court in its aforementioned order in *Dar-US-Slam Educational Trust* (supra).

22. Aggrieved by the aforesaid order, dated 28th August, 2018, passed by the learned Single Judge, Tanya has filed LPA 556/2019, which, inter alia, is being disposed of by this judgment.

23. When the present LPA had come up before us on 30th August, 2019, we were apprised, of the withdrawal, by Atul, for the admission granted to him, as well as the fact that the last date for admission to the MBBS courses conducted by the GGSIPU, as per the time schedule prescribed by the Supreme Court, was 31st August, 2019. We were also informed that, on 31st August, 2019, i.e. the very next day, the GGSIPU was holding an extended round of counselling for filling up of the remaining unfilled MBBS seats. In the circumstances, we directed the GGSIPU to allow Tanya to participate in the said extended round of counselling, without prejudice to her rights and contentions, and also to grant provisional admission to her, subject to the outcome of these proceedings. The intention of so directing was not to create any equities in favour of Tanya, but to ensure that the surviving unfilled OBCDEF seat was filled up, albeit provisionally, before the stipulated cut-off date of 31st August, 2019.

24. Pursuant to the aforesaid directions, dated 30th August, 2019, an extended round of counselling, for the remaining MBBS seats, was conducted by the GGSIPU, on 31st August, 2019. Consequent thereto, Tanya has been granted provisional admission to the MBBS course.

25. Chagrined thereby, Rashmi approached this Court by filing, on 2nd September, 2019, CM No. 39533/2019 in LPA 556/2019, under Order I Rule 10 of the Code of Civil Procedure, 1908, seeking impleadment, in the said LPA, as a respondent, as well as a substantive writ petition, being WP (C) 9605/2019. This judgement disposes of the CM as well as the writ petition.

26. Rashmi contends that she was superior, in merit, to Tanya, having being ranked 104553rd in the All India NEET-UG merit list, as compared to Tanya's rank which was 157024. Even in the merit list, drawn up by the GGSIPU, Rashmi points out that her rank was 9146, whereas Tanya ranked 9682.

27. It is further pointed out by Rashmi, in her writ petition, that, like Tanya, she, too, had presented herself for the second round of counselling conducted on 26th July, 2019, but that her case was not considered, as Atul and Anjali were accommodated against the two available vacancies. By virtue of para 3 of the Notification dated 28th August, 2019 (supra), preceding the extended round of counselling to be conducted on 31st August, 2019, Rashmi contends that she, too, was eligible to participate in the said extended round of counselling. She also submits that, on 31st August, 2019, she was the candidate, highest in merit, who was available for being counseled and admitted against the seat vacated by Atul. However, she complains, the GGSIPU in a clearly arbitrary fashion, considered Tanya alone, for admission, against the one available OBCDEF seat, thereby sacrificing merit.

28. Though the GGSIPU acknowledges that this, indeed, was the factual position as obtained on the ground, Rashmi has, in order to prove this point, filed, alongwith her writ petition, the seat status report issued by the GGSIPU, on 31st August, 2019, after the extended round of counselling had concluded on the said date. A tabular statement, as contained in the said seat status report, pertaining to seats, in various categories, in the Dr. Baba Saheb Ambedkar college, maybe reproduced as under:

"Prg. Code

998

Prg. Name

Bachelor of Medicine & Bachelor of Surgery

Inst. Code

007

Inst. Name

Dr. BSA (Dr. Baba Saheb Ambedkar)

Category

Total Seat

Total Seat

Remaining

First Rank

Last Rank

DOBC

28

28

0

6838

18092

DOBCDEF

1

1

0

157024

157024

DOBCPH

1

1

0

402631

402631

DSC

16

16

0

158410

73264

DSCDEF

1

1
0
0
158410
DSCPH
0
0
0
145616
0
DST
11
11
0
0
199736
DSTDEF
0
0
0
0
0
Net:
58 58 0.00
Total for programme:
58 58 0.00"

Rashmi points out that whereas, against the other categories reflected, in the above reflected table, i.e. DOBC, DOBCPH and DSC, the first rank and last rank of students, who had been admitted, were different, against the DOBCDEF category, the rank of Tanya alone was shown, i.e., 157024. She submits that, by considering Tanya alone for admission to be available DOBCDEF seat, in the

extended round of counselling conducted on 31st August, 2019, the GGSIPU had completely done away with the concept of merit.

29. The submission of Rashmi, in her writ petition, is, therefore, that as the most meritorious candidate in the DOBCDEF category, who was available in the extended round of counselling, she, and not Tanya, ought to have been admitted against the seat vacated by Atul.

30. She, therefore, prays, in her writ petition, that the allocation of the said seat to Tanya be quashed and set aside, and that a mandamus be issued to the GGSIPU, to allot the said seat to her.

Rival submissions

31. We have heard Mr. S. K. Rungta, learned Senior Counsel appearing for Tanya, as well as Mr. R. K. Saini, Ms. Anita Sahani and Mr. T. Singhdev, who appear for Rashmi, GGSIPU and the Medical Council of India (MCI) respectively, and have carefully perused the material on record, in the light of the rival submissions made at the Bar.

32. Arguing on behalf of Tanya, Mr. Rungta does not dispute the fact that his client was lower, in merit, to Rashmi. He, however, emphasises the fact that, on the date of second counselling, i.e. 26th July, 2019, Rashmi was nowhere on the scene, whereas his client was present and was, therefore, the available OBCDEF candidate, highest in merit, after Atul and Anjali. Further, he points out, it was consequent on her protest, in writing, that Atul withdrew his admission. It was his client, who had filed the complaint, regarding the manner in which admission had been granted, before the Sub-Divisional Magistrate and who had, thereafter, approached this Court, under Article 226 of the Constitution of India, with due dispatch. On 24th August, 2018, when Atul withdrew his admission, Mr. Rungta points out that the writ petition filed by his client was pending before this Court, and submits that the order, dated 30th August, 2019 *supra*, passed by this Court, had to be understood in that light. In these circumstances, Mr. Rungta would submit that the GGSIPU was correct in not considering all candidates, in order of merit, in the extended counselling which took place on 31st August, 2019.

Mr. Rungta submits that, as per the regulations of the MCI, an extended round of counselling was conducted only in the case of non-joining, or non-reporting, of the candidate. In the present case, no such eventuality arose, as Atul had admittedly taken admission and, therefore, withdrawn. In fact, submits Mr. Rungta, the exigency, in which an extended counselling would ordinarily take place, never having arisen, the GGSIPU ought not to have held an extended round of counselling, for the available OBCDEF seat (consequent to the withdrawal by Atul), but ought, straightaway, to have admitted his client against the said seat. Rashmi, Mr. Rungta points out, approached this Court only on 2nd September, 2019, after the last date for admissions, i.e. 31st August, 2019, was over. In any case, submits Mr. Rungta, Rashmi cannot be granted any relief at

this stage, as, in view of the time schedule fixed by the Supreme Court, no fresh counselling can be allowed to be conducted now.

33. Arguing per contra, Mr. Saini, representing Rashmi, emphasises, predictably, the superiority, in merit, of his client, vis-à-vis Tanya. He submits that, as per the Regulations and procedures governing the counselling for admission to the MBBS seats, when Atul opted out, by withdrawing his admission, the seat that became available, resultantly, ought to have been thrown open in the extended round of counselling, and ought to have been filled on merit on the basis of the candidates who turned up for the said extended round. Thus reckoned, he points out, his client was the most meritorious candidate available on the date of extended counselling and was, therefore, entitled to be admitted against the seat vacated by Atul. He submits that Tanya cannot seek to capitalize on her physical presence on the occasion of second counselling, which took place on 26th July, 2019, as no vacancy, for OBCDEF candidates, remained on the said date. The vacancy which arose, consequent to the withdrawal by Atul, of the admission granted to him, arose after the mop-up round. In such circumstances, Mr. Saini would submit, the GGSIPU correctly conducted an extended round of counselling, but erred in granting admission, straightaway, in the said ground, to Tanya, despite his client, who was superior in merit, being present and available on the said date. Mr. Saini draws particular attention to the notice for extended counselling, as issued by the GGSIPU on 28th August, 2019, specifically to Clause 3 therein, which dealt with "Eligibility for Participation in Extended Round", as reproduced in para 18 hereinabove. He submits that the said Clause clearly stated that all candidates, who had not been allotted seats in the first, second and mop up rounds of counselling, were eligible to participate in the extended round of counselling. Having, thus, invited his client to participate in the extended round of counselling, Mr. Saini would submit that the GGSIPU acted in total derogation of the law, in failing to consider her candidature, or her superiority, in merit, to Tanya. Mr. Saini submits that there was no justification for showing the first rank, available for consideration for admission against the OBCDEF category, as 157024, i.e. Tanya's rank. He points out that his client Rashmi, too, protested against the grant of admission to Tanya, immediately after the extended round of counselling.

34. Ms Anita Sahani, appearing on behalf of the GGSIPU, while stating, very fairly, that, on merits, the decision was left to this Court, submits that provisional admission was granted to Tanya only in view of the specific direction, to the said effect, contained in the order dated 30th August, 2019, passed by this Court in LPA 556/2019.

Analysis

35. In our view, the outcome of these proceedings is predestined.

36. Rashmi, admittedly, is superior in merit to Tanya. The scheme of counselling and admission, as reflected in the Notifications issued by the GGSIPU, make it

clear that, among the candidates available at the time of any particular round of counselling, admission would be made on the basis of merit. Indeed, the seats, to which admission was being made, being MBBS seats, merit, and merit alone, has to predominate. It would be doing complete disservice to the very concept of medical education, as well as the public interest, to jettison the opportunity for admission to an MBBS seat, available, in law, to a candidate superior in merit, in favour of a candidate inferior in merit. Of course, this is always subject to the caveat that, if the applicable Rules, Regulations or notifications do not entitle the superior candidate to be admitted, the right of the inferior candidate would have to prevail.

37. We are, however, not of the view that any factor, which would impede the chance of Rashmi, to be admitted against the seat vacated by Atul, exists in the present case. Mr. Saini is correct in pointing out that the presence of Tanya, on the occasion of the second round of counselling, which took place on 26th July, 2019, cannot clothe her with any higher entitlement, to be admitted against the seat vacated by Atul, for the simple reason that the vacation of the said seat took place, not on 26th July, 2019, but even after the mop up round of counselling, on 28th August, 2019. This seat had, therefore, necessarily to be filled up by resorting to an extended round of counselling - as the GGSIPU correctly did - in which admission had to take place strictly according to merit, amongst the candidates available in the said extended round. It is an admitted position that, on the occasion of the extended round of counselling, which took place on 31st August, 2019, Rashmi was the candidate, highest in merit, available for admission against the seat vacated by Atul.

38. We may not be able to find fault with the GGSIPU, in granting provisional admission to Tanya, as the said admission had been granted in compliance with the directions issued by us on 30th August, 2019. Those directions had, however, been issued without our having been made aware of the fact that any candidate, higher in merit, was available - indeed, not being blessed with the gift of clairvoyance, no one could have predicted, at that stage, whether, in the extended counselling which was to take place the next day, i.e. on 31st August, 2019, any candidate, superior in merit to Tanya would, or would not, turn up. It was for that reason that we had specifically directed that the admission granted to Tanya would be provisional. Clearly, it is not open to Tanya to plead equities, merely on the basis of such provisional admission, when a candidate, superior and merit, was available, and has moved this Court.

39. We are, therefore, of the considered opinion that Rashmi's claim to the seat, vacated by Atul, was factually, as well as legally, superior to that of Tanya, and has, therefore, to be accorded precedence.

40. We may note, before concluding this judgment, that the feeble submission was made, by Mr. Rungta, that there may have been candidates, who were superior in merit, to Rashmi, who were present on the date of extended counselling. We have not been made aware of any such candidate. In any event,

no such candidate has either represented to the GGSIPU, against the grant of admission to Tanya, or petitions this Court. It would be, therefore, a blind expedition in the realm of the imponderable, for us, at this stage, to take such a possibility into consideration. Rashmi being the only candidate who has expressed reservation to the grant of admission to Tanya, and who has petitioned this Court thereafter, her claim to admission, to the seat vacated by Atul, cannot be ignored.

41. We are also sanguine that, in directing thus we are proceeding to do, we are not infracting any cut-off date for admissions, fixed by the Supreme Court or by any other applicable law. The admission granted to Tanya was provisional, and had, therefore, to abide by the outcome of these proceedings. The sequitur, to the factual and legal discussion hereinabove, would be that Rashmi would, in being granted admission to the seat vacated by Atul, be effectively stepping into the shoes of Tanya. Her admission would, therefore, date back to the date when admission was granted to Tanya. It is not necessary, therefore, for any fresh counselling to be undertaken, in order for Rashmi to be admitted, against the seat vacated by Atul. The said submission, as urged by Mr. Rungta has, therefore, to be rejected.

Conclusion

42. WP (C) 9605/2019 is, accordingly, allowed. The provisional admission granted to Tanya Mann (the appellant in LPA 556/2019), consequent to the extended round of counselling, which took place on 31st August, 2019 would, resultantly, stand cancelled, and Rashmi Nagia (the petitioner in WP (C) 9605/2019) would be entitled to be admitted against the said seat, subject to fulfilling the requisite formalities. We direct, accordingly, that admission be granted to Rashmi Nagia, against the said seat, forthwith and, at the latest, within two weeks from the date of receipt, by the GGSIPU, of a certified copy of this judgment. The admission provisionally granted to Tanya Mann would stand cancelled, and she would be entitled to be refunded the fees paid by her thereagainst.

43. Subject to, and in terms of, the observations and directions contained in para 42 supra, LPA 556/2019 is dismissed.

44. There shall be no order as to costs.