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FARZANA BATool

v.

UNION OF INDIA AND OTHERS

(Writ Petition (Civil) No. 364 of 2021)

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APRIL 09, 2021

**[DR DHANANJAYA Y CHANDRACHUD AND
M. R. SHAH, JJ.]**

Constitution of India – Article 32 – Petition under – Admission to MBBS degree course – Two seats from central pool seats, one at

- C *Lady Hardinge Medical College (LHMC) and the other at Maulana Azad Medical College (MAMC) were allocated to the Union Territory of Ladakh – Petitioners-students from Ladakh though nominated by the administration of the Union Territory of Ladakh for admission thereto, however were not admitted – Held: Since due allocations were made in favour of the two petitioners, there is no justification to deny them the benefit of admission to the courses for which the allocation was made – Admission formalities for the petitioners be completed – General directions issued for similarly placed students.*

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Constitution of India – Education – Professional education – Access to – Obligation of State– Held: While the right to pursue professional education is not a fundamental right in Part III of the Constitution, however access to professional education is not a governmental largesse – State has an affirmative obligation to facilitate access to education, at all levels – Universal Declaration of Human Rights – Article 26(1).

International Convention/Treaties/Covenants– International Covenant on Economic, Social and Cultural Rights (ICESCR) – India being a signatory, obligations of – Discussed.

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Allowing the petitions, the Court

HELD: 1.1 The Government of the Union Territory of Ladakh and the Union MHFW are represented by the Additional Solicitor Generals. Both the ASGs state that since due allocations have been made in favour of the two petitioners, there is no reason and justification to deny them the benefit of admission to

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the courses for which the allocation has been made. It is directed that the admission formalities for the petitioner, Ms Farzana Batool be completed at the LHMC immediately and, in any event, within a week from today. Similarly, the admission formalities pertaining to Mr Mohammad Mehdi Waziri at MAMC be completed immediately and, in any event, within a week from today. In order to obviate the hardship which has been caused to these students, it is also directed that all the students who are referred to in Annexure A to the Notification dated 19 February 2021 be granted admissions to the concerned institutions, if not already given so far. These general directions are being issued in order to obviate the possibility of each of the similarly placed students being required to move this Court. Financial hardship should not prevent the students from getting admission in terms of the allocation which has been made in their favor legitimately under the central pool seats. [Paras 7, 8][393-D-H]

1.2 While the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels. This obligation assumes far greater importance for students whose background (by virtue of such characteristics as caste, class, gender, religion, disability and geographical region) imposes formidable obstacles on their path to accessing quality education. Article 26(1) of the Universal Declaration of Human Rights, which is a source of persuasive value, obligates every State Party to ensure that technical and professional education is made generally available and that higher education is equally accessible to all on the basis of merit. In its General Comment 13, the ICESCR committee outlined four essential features that education at all levels must possess. Pertinently, one such feature is ‘accessibility’. Two of the components of accessibility highlighted by the ICESCR Committee bear emphasis. First, the guarantee of non-discrimination, in relation to which it notes that, “education must be accessible to all, especially the most

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- A vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds". Second, economic accessibility, meaning that the state party must take steps to ensure that financial constraints do not come in the way of accessing education. The ICESCR Committee pertinently notes that disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant. Each state party is required, inter alia, to fulfill the right to education, by facilitating and providing for its realization. Pursuant to these obligations which India has undertaken by being a signatory to the Covenant,
- B the Union MHFW and the DHSL shall ensure proper co-ordination so that students allocated colleges under the central pool seats are not put to hardship in enrolling once they have been duly allocated their seats. Specifically, the Union MHFW and the DHSL can consider appointing a nodal officer tasked with the responsibility of ensuring that students who are duly nominated under the central pool seats are in fact admitted in their chosen course of study. Such an officer can serve as a one-point contact for students who may otherwise face numerous difficulties in securing their admission, even after they have been allocated the seat. The details of such officer can be widely publicized on the websites of the aforesaid two authorities. Such an institutional framework will ensure that students are not left in the lurch due to lack of help in securing their legitimate admission to the appropriate course. [Paras 9-12][394-B-D, E-G; 395-A-D]
- F *ICESCR Committee, 'General Comment No. 13: The right to education (Article 13)' (8 December 1999) UN Doc E/C.12/1999/10, para 1 – referred to.*
- CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.364 of 2021
- G (Under Article 32 of The Constitution of India)
With
Writ Petition (Civil) No.375 Of 2021
Neeraj Shekhar, Rohit Kumar Singh, Advs. for the Petitioner.
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K. M. Nataraj, Rupinder Singh, ASGs, Ms. Sunita Sharma, Ranjan Kumar Chaurasia, B. V. Balram Das, Anmol Chandan, Ms. Priyanka Das, P. V. Yogeshwaran, G. S. Makker, Advs. for the Respondents. A

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J. B

1. These proceedings under Article 32 have been instituted by two students from Ladakh. They have been nominated by the Administration of the Union Territory of Ladakh for admission to the MBBS degree course under the ‘central pool’ seats set apart by the Union Ministry of Health and Family Welfare. One of them has been allocated against a seat at Lady Hardinge Medical College (“LHMC”). The other has been assigned to Maulana Azad Medical College (“MAMC”). Unfortunately, these students have not yet been admitted to their course of studies despite due nomination by the Administration of the Union Territory of Ladakh and in terms of the seats notified by the Union Government. We have been constrained to take up the issue under Article 32, since the fundamental rights of students from Ladakh to pursue professional education are implicated. We will in the course of this judgment deal of course with the grievance of the two students. But we intend to deal with the issue on a systemic basis so that other students who may lack resources, or simply the knowledge about legal remedies, are not deprived of education. C

2. Notice was issued in these proceedings on 26 March 2021. In pursuance of the order, Mr Rupinder Singh Suri, Additional Solicitor General appears for the Union of India while Mr K M Nataraj, Additional Solicitor General appears on behalf of the Administration of the Union Territory of Ladakh through the Director of Health Services, Ladakh (“DHSL”). The Office Report indicates that LHMC and MAMC have been served. D

3. By a Memorandum dated 9 April 2020, the Government of India through the Ministry of Health and Family Welfare (“MHFW”), issued guidelines for the allocation of the general pool MBBS/BDS seats for 2020-2021. By a Notification dated 23 November 2020, the MHFW (Department of Health and Family Welfare) allotted, *inter alia*, one seat at LHMC to the Union Territory of Ladakh from the central pool. A similar allocation of one seat was made at MAMC. These allocations were made for the Ladakh central pool medical seats for the year 2020-2021. E

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- A 4. Through a communication dated 19 February 2021 issued by the Administration of the Union Territory of Ladakh, the DHSL forwarded the list of selected candidates from Ladakh to be admitted in the central pool medical seats for the year 2020-2021. For convenience of reference, Annexure A to the Notification DHSL(21) of 2021 dated 19 February 2021 is extracted below:

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Annexure - "A"

(Selected/Nominated list)

Order No:27/DHSL(21) of 2021, Dated 19/02/2021

	S.No.	Details of the Candidates	Category	NEET Score	Discipline	College allotment
C	1	Mohammad Mehdi Waziri S/o Mohammad Ali, R/o: Sankoo, Kargil	Unreserved Kargil	440	MBBS	Maulana Azad Medical College, New Delhi (1st preference)
	2	Mohammad Imran S/o Abdul Razak, R/o: Drass, Kargil	Reserved Common Seniority Combined Ladakh	437	MBBS	Medical College Ambikapur, Sarguja, Chhattisgarh (2 nd preference)
D	3	Nadeem Hussain Shabani S/o Mohd Hussain, R/o: Pashkum, Kargil	Reserved Kargil	407	MBBS	M.L.B. Medical College Jhansi, Uttar Pradesh (2 nd preference)
	4	Farzana Batool D/o Kalbi Ali, R/o: Pashkum, Kargil	Unreserved Kargil	403	MBBS	Lady Hardinge Medical College, New Delhi (2nd preference)
E	5	Masooma Khanum D/o Sheikh Mohammad Hussain, R/o: Sankoo, Kargil	Reserved Kargil	386	MBBS	VCSGGMS & RI, Srinagar, Garwal, Uttarakhand (3 rd preference)
	6	Stanzin Palzom D/o Sonam Namgail, R/o: Hemis Shukpachan, Leh	Unreserved Leh	347	MBBS	MGIMS, Wardha, Maharashtra (6 th preference)
F	7	Tsering Gazes D/o Rinchen Tashi, R/o: Chemday, Leh	Unreserved Leh	340	BDS	K.G. Dental College, Lucknow, Uttar Pradesh (6 th preference)
	8	Dechen Angmo D/o Tsewang Phunchok, R/o: Leh, Ladakh.	Reserved Leh	339	BDS	K.G. Dental College, Lucknow, Uttar Pradesh (5 th preference)
G	9	Lamo Dolma D/o Stanzin Gonboo, R/o: Khardong, Nubra, Leh.	Reserved Leh	325	BDS	College of Dentistry Indore (8 th preference)

(emphasis supplied)

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The name of the petitioner in Writ Petition (Civil) No 364 of 2021 appears at serial no 4, while the name of the petitioner in Writ Petition (Civil) No 375 of 2021 appears at serial no 1. A

5. The two writ petitions before this Court under Article 32 of the Constitution have been instituted for seeking directions to facilitate the students to be admitted respectively at LHMC and MAMC, so as to facilitate them to pursue their studies for the MBBS degree course. The petitioner in the first of the two petitions (Writ Petition (Civil) No. 364 of 2021) is Ms Farzana Batool. The petitioner in the second writ petition (Writ Petition (Civil) No. 375 of 2021) is Mr Mohammad Mehdi Waziri. B

6. The grievance is that though the petitioners have been duly nominated by the DHSL, the admission process of the petitioners has not been confirmed. This is even though other similarly placed students nominated by the DHSL, who were allotted to different institutions, have had their admissions confirmed. C

7. Having regard to the predicament of the petitioners, this Court issued notice and as noted above, the Government of the Union Territory of Ladakh and the Union MHFW are represented by the Additional Solicitor Generals, Mr Rupinder Singh Suri and Mr K M Nataraj. Both the ASGs state that since due allocations have been made in favour of the two petitioners, there is no reason and justification to deny them the benefit of admission to the courses for which the allocation has been made. D E

8. In view of the above position, we direct that the admission formalities for the petitioner, Ms Farzana Batool be completed at the LHMC immediately and, in any event, within a week from today. Similarly, the admission formalities pertaining to Mr Mohammad Mehdi Waziri at MAMC be completed immediately and, in any event, within a week from today. In order to obviate the hardship which has been caused to these students, we also direct that all the students who are referred to in Annexure A to the Notification dated 19 February 2021, as extracted above, be granted admissions to the concerned institutions, if not already given so far. We are issuing these general directions in order to obviate the possibility of each of the similarly placed students being required to move this Court. Financial hardship should not prevent the students from getting admission in terms of the allocation which has been made in their favor legitimately under the central pool seats. F G

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- A 9. Given that the issue raised in this case concerns access to education, albeit at the professional level, we would like to take this opportunity to underscore the importance of creating an enabling environment to make it possible for students such as the petitioners to pursue professional education. While the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels.

- B 10. This obligation assumes far greater importance for students whose background (by virtue of such characteristics as caste, class, gender, religion, disability and geographical region) imposes formidable obstacles on their path to accessing quality education. Indeed, as the Committee on Economic, Social and Cultural Rights (“**ICESCR Committee**”)¹ notes in General Comment 13, “*As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities*”².

- C 11. Article 26(1) of the Universal Declaration of Human Rights, which is a source of persuasive value, obligates every State Party to ensure that technical and professional education is made generally available and that higher education is equally accessible to all on the basis of merit. In its General Comment 13, the ICESCR committee outlined four essential features that education at all levels must possess. Pertinently, one such feature is ‘accessibility’. Two of the components of accessibility highlighted by the ICESCR Committee bear emphasis.
- D F *First*, the guarantee of non-discrimination, in relation to which it notes that, “*education must be accessible to all, especially the most vulnerable groups, in law and fact, without discrimination on any of the prohibited grounds*”. *Second*, economic accessibility, meaning that the state party must take steps to ensure that financial constraints do not come in the way of accessing education.

¹ This is a committee formed to monitor the implementation of International Covenant on Economic, Social and Cultural Rights (the “Covenant”), which was ratified by India in 1979. Further, it also issued ‘General Comment(s)’, which function as interpretative tools for the various provisions of the Covenant.

² ICESCR Committee, ‘General Comment No. 13: The right to education (Article 13)’ (8 December 1999) Un Doc E/C.12/1999/10, para 1.

12. The ICESCR Committee pertinently notes that disparities in spending policies that result in differing qualities of education for persons residing in different geographic locations may constitute discrimination under the Covenant. Each state party is required, *inter alia*, to fulfill the right to education, by facilitating and providing for its realization. Pursuant to these obligations which India has undertaken by being a signatory to the Covenant, the Union MHFW and the DHSL shall ensure proper co-ordination so that students allocated colleges under the central pool seats are not put to hardship in enrolling once they have been duly allocated their seats. Specifically, the Union MHFW and the DHSL can consider appointing a nodal officer tasked with the responsibility of ensuring that students who are duly nominated under the central pool seats are in fact admitted in their chosen course of study. Such an officer can serve as a one-point contact for students who may otherwise face numerous difficulties in securing their admission, even after they have been allocated the seat. The details of such officer can be widely publicized on the websites of the aforesaid two authorities. Such an institutional framework will ensure that students are not left in the lurch due to lack of help in securing their legitimate admission to the appropriate course. In this way, it will help remedy the broader problem of which the case before us is a symptom. A
13. We would also like to place on record our appreciation for the fact that Mr Rupinder Singh Suri and Mr K M Nataraj approached these proceedings on behalf of the Union of India and the Administration of the Union Territory of Ladakh in a spirit of dialogue, as opposed to adopting an adversarial approach. E
14. A copy of this order shall be forwarded to the Principals of the LHMC and the MAMC for compliance. The DHSL shall also forward a copy of this order to all the concerned institutions, referred to in Annexure A to the Notification dated 19 February 2021, as extracted above, for compliance. F
15. The Petitions are accordingly allowed in the above terms. G
16. Pending applications, if any, stand disposed of.