

Letters Patent Appeal No. _____ /2020

Union of India and Ors ... Appellants

Samridhi Sushil Sharma ... **Respondent**

In the matter of :

1. Union of India
Ministry of Women and Child Development
Through Its Secretary
Shastri Bhawan, New Delhi
2. Ministry of Health and Family Welfare
Through its Secretary
Nirman Bhawan, New Delhi

...Appellants

Versus

Samridhi Sushil Sharma

(विकास त्रिपाठी)
(VIKAS TRIPATHI)
ज्य. सचिव/Under Secretary
महिला एवं बाल विकास मन्त्रालय
Ministry of Women & Child Dev.
भारत सरकार/Govt. of India
नई दिल्ली/Nw Delhi

.....Respondent

(विक)
VIKA
अवर सचिव
महिला एवं बाल विकास मन्त्रालय
Ministry of Women & Child Dev.
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

Appellants

Through:

[Ruchir Mishra]

Advocate

H-137, LGF, Lajpat Nagar-I, N.D.-110024

Place: New Delhi

Dated 15/10/2020

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In the High Court of Delhi at New Delhi

Civil Appellate Jurisdiction

Letters Patent Appeal No. _____ /2020

In the matter of:

Union of India and Ors ... Appellants

Versus

Samridhi Sushil Sharma ... Respondent

Letters Patent Appeal (LPA) under clause
10 of the Letters Patent Act, against the
order dated 19.06.2020 passed by Hon'ble
Single Judge Bench in Writ Petition (Civil)
No.10722/2019

Most Respectfully Showeth:

1. Letters patent appeal is being filed under clause 10 of the letters patent act, against the impugned judgment and order dated 19.06.2020 passed by Hon'ble Single Judge Bench in Writ Petition No.10722/2019 whereby Hon'ble Single Judge Bench ignoring the vital material on record evidencing that government has severed all

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relations with ICCW and has also decided that the government shall not partner in any event of ICCW and without appreciating Pradhan Mantri Rashtriya Bal Puraskar scheme, passed impugned judgment dated 19.06.2020 by reading OM dated 16.08.2019 in particular paragraph 7 of the said OM in isolation and by misunderstanding the context in which paragraph 7 of OM dated 16.08.2019 should have been understood, has erred in directing for admission of petitioner in MBBS course in the academic year 2020-21, therefore, the same is liable to be set aside.

Copy of the impugned order dated 19.06.2020 passed by Hon'ble Single Judge Bench in WPC No.10722/2019 is annexed hereto and marked as **Annexure A-1**.

2. The above LPA is being filed, inter-alia, raising the issue that impugned judgment amounts to interference in the executive domain and that the impugned judgment has been passed reading just one document (OM dated 16.08.2019) in isolation and ignoring all other vital and relevant documents, therefore, the impugned judgment may not be tenable and sustainable in law. In order to relevant facts of the case, it is submitted that;-

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2.1 Indian council for child welfare (ICCW), Non Governmental Organization, has been facilitating National Bravery Award. Under the Rajiv Gandhi National Creche Scheme, being implemented by the Ministry of Women and Child Development, ICCW was one of the Mother NGOs.

2.2 In the year 2015, a Writ Petition No.11116/2015 was filed before this Hon'ble Court on the functioning of ICCW wherein allegations of financial impropriety, violation of Rules in utilizing funds released by Government etc were made against ICCW. This court had constituted a three members committee in the case and an internal enquiry was also undertaken against ICCW to ascertain the role of its officials.

2.3 On the basis of the report of committee, this Hon'ble Court had observed in the order dated 02.01.2018 that there has been systematic failure regarding utilization of funds and then Hon'ble Court viewed that it would be open to the Ministry to take view on further investigation and that it would also be open to refer the matter for enquiry Central Bureau of investigation (CBI). An FIR against ICCW had since

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been registered against ICCW under Section 406 and Section 420 of the Indian Penal Code, 1860 alleging embezzlement of funds under the National Creche Scheme. In brief the content of the FIR was as under:-

- It was alleged that ICCW had been working in clear violation of the financial rules of the Government of India while utilizing the funds released.
- There had been a systematic failure as far as checks and balances regarding utilization of the funds provided by the Government were concerned.
- There was no evidence that ICCW was conducting inspections regularly in the field for implementation of the Scheme. This could be an indicator either of negligence or complicity in running the programmes assigned to ICCW.
- Programmes were really not running properly at field level.
- The accounting system had serious flaws-all accounting documents were not available at any level.

2.4 Amidst the above circumstances discrediting ICCW, it was felt appropriate that any government should not associate with ICCW in any event, besides this it was also felt that the scheme, then in place, to confer the awards to the children for their exceptional

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achievements should be revamped incorporating additional one more category of 'bravery' to encourage children.

2.5 Before proceeding further, it shall be relevant to point out that Government of India which had been conferring the awards to the children for their exceptional achievements. These awards were given to the children for their merit in the field of innovation, scholastic, sports, arts, culture, social service, music and any other field deserving recognition. These awards were given in the following categories.

1. for exceptional achievements
2. National Child Welfare Award (individual)
3. National Child Welfare Award (Institution)
4. Rajiv Gandhi Manav Seva Award

2.6 However, during the selection process of awardees in 2017-18 it was felt that the scheme is unable to elicit adequate response from society, accordingly a need was felt to frame comprehensive common guidelines for these awards and also incorporating a category of 'bravery' to encourage children.

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2.7 Thus, “Pradhan Mantri Rashtriya Bal Puraskar” was introduced in two categories (1) Bal Shakti Puraskar and (2) Bal Kalyan Puraskar (Individual and Institution).

2.8 It may be noted from the guidelines for Pradhan Mantri Rashtriya Bal Puraskar that it contains stipulations to confer awardees with a medal, cash prize, book vouchers, certificate and citation. A copy of comprehensive guidelines for Pradhan Mantri Rashtriya Bal Puraskar is annexed hereto and marked as **Annexure A-2**

2.9 The then secretary, Ministry of Women and Child Development wrote letter No.CW-l-19019/1/2018-CW-l (Computer No.49678) dated 19.09.2018 to Ministries concerned informing them that Ministry of Women and Child Development has instituted National Children Awards (Pradhan Mantri Rashtriya Bal Puraskar), and accordingly requested to provide all necessary supports and facilities to the awardees of National Child Awards. Copy of letter No.CW-l-19019/1/2018-CW-l (Computer No.49678) dated 19.09.2018 to Ministries concerned annexed hereto and marked as **Annexure A-3**

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2.10 It may be noted from the above letter that in the national child award, the category of “bravery” is also included.

2.11 Ministry of Women and Child Development having taken note of the observation of this Hon’ble Court in the above noted Writ Petition No.11116/2015, issued its decision vide letter No.27-1/2016-CW-1 part(1) dated 27.12.2008 that in view of observations of Hon’ble High Court on the functioning of ICCW it would not be appropriate for any government office to partner with ICCW for any event. Copy of letter No. 27-1/2016-CW-1 part (1) dated 27.12.2018 issued by Ministry of Women and Child Development is annexed hereto and marked as **Annexure A-4**

2.12 It may be noted from the aforesaid letter that Ministry of Women and Child Development took sincere note of the fact that despite advisories, ICCW had been inviting applications for National Bravery Awards, requested all the Ministries to disassociate themselves from extending any support to ICCW.

2.13 From the letter dated 27.12.2018, it may further be noted that government of India has been conferring

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the National Award to children for their exceptional achievements in the field of innovation, scholastic, sports, arts, culture, social service, music and any other field deserving recognition. This scheme of conferring national award was revamped and bravery was also included in the children award.

2.14 Later, in furtherance to letters dated 19.09.2018 and 27.12.2018, Ministry of Women and Child Development issued another office Memorandum dated 13.05.2019 whereby it reminded all the concerned Ministries to disassociate themselves from ICCW and provide support and facilities to the awardees of Pradhan Mantri Rashtriya Bal Puraskar. Copy of office Memorandum dated 13.05.2019 issued by Ministry of Women and Child Development is annexed hereto and marked as **Annexure A-5**

2.15 Once again, reiterating the comprehensive scheme namely Pradhan Mantri Rashtriya Bal Puraskar and letters dated 27.12.2018 and OM dated 13.05.2019, further letter No.D.O. CW-1-27/1/201 7-CW-I-Part(1) dated 03.06.2019 was issued, paragraph 3 of the said letter reads as under;-

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“3. In furtherance of this, MWCD vide letter no.27-1/2016-CW-l dated 27.12.2018 and reminder OM of even no. dated 13.05.2019 (copies enclosed) had requested Ministry of Health and Family Welfare to dissociate completely from ICCW. A request was also made for providing all necessary support and facilities to the Awardees of PMRBP. In view of the issues mentioned in the aforesaid OMs. MoHFW may dissociate itself from ICCW.”

Copy of letter No.D.O. CW-1-27/1/201 7-CW-l-Part(1) dated 03.06.2019 is annexed hereto and marked as **Annexure A-6**

2.16 Ministry of Health and Family Welfare issued guidelines for allocation of central pool MBBS/BDS seats for the academic year 2019-20 and vide office memorandum dated 04.06.2019 issued its decision that from the academic year 2019-20 the two seats of central pool quota have been allocated to Ministry of Women and Child Development for nomination of eligible awardees of Pradhan Mantri Rashtriya Bal Puraskar winning children. A copy of office memorandum dated 4.6.2019 issued by Ministry of Health and Family

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Welfare is annexed hereto and marked as Annexure A-7

2.17 The petitioner submitted letter/ representation dated 31.07.2019 stating that she is recipient of National Bravery Award organized by ICCW and had cleared NEET examination 2019 and, therefore, she demanded that her name be recommended for allocation of one medical seat from central pool quota.

2.18 It is pertinent to point out herein that much before the aforesaid representation dated 31.07.2019 was submitted by petitioner Government has already disassociated itself with ICCW and had stopped extending any support and facility to it.

2.19 Before pointing out as to how the request of the petitioner has been understood and dealt with by Hon'ble Single Judge Bench, it is submitted that Ministry of Health and Family Welfare issued office memorandum dated 16.08.2019 on the allocation of quota of MBBS and BDS seats for the academic session 2019-20 from the Central Pool for the Ministry of Human Resources Development/ Ministry of Women

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and Child Development. The paragraph 7 of the office memorandum reads as under:-

“7. The two seats allocated to Ministry of Women and Child Development should go to eligible national bravery awardees”

2.20 It is the aforesaid office memorandum dated 16.08.2019 which has been relied upon by Hon'ble Single Judge Bench in allowing the writ petition by reading the memorandum in isolation ignoring all other documents produced before him substantiating that writ petition had no merit.

2.21 The aforesaid memorandum dated 16.08.2019 has been misunderstood and misread by Hon'ble Single Judge Bench is very much clear from the office memorandum dated 27.08.2019.

2.22 So far as the memorandum dated 27.08.2019 is concerned, it is submitted that responding to the office memorandum dated 4.6.2019 whereby Ministry of Health and Family Welfare had decided to allocate two seats of central pool quota to Ministry of Women and Child Development, an office memorandum dated 27.08.2019 was issued by Ministry of Women and Child

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Development whereby the decision of Ministry of Health and Family Welfare was welcomed and it was informed that obligation of the awardees clearing the central pool MBBS/BDS seats would be received directly by Ministry of Health and Family Welfare and processed for allocation of seats, however, the Ministry of Women and child development would facilitate verification of the credentials of awardees of “Pradhan Mantri Rashtriya Bal Puraskar”.

Copy of office memorandum dated 27.08.2019 issued by Ministry of Women and Child Development is annexed hereto and marked as **Annexure A-8**

2.23 It is pertinent to mention that the petitioner (respondent in this appeal) is not winner/recipient of “Pradhan Mantri Rashtriya Bal Puraskar”.

2.24 The grievance/request of the petitioner to allocate her a medical seat from central pool quota was not acceded to and her request was rejected vide letter No.27/2/2016-CW-1 dated 05.09.2019 based on OM No. U.14014/4/2018-ME.II dated 4.6.2019 of Ministry of Health and Family Welfare whereby two seats of central pool quota has been allocated to the Ministry of Women and Child Development for nomination of

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eligible awardees of Pradhan Mantri Rashtriya Bal Puraskar and the petitioner was accordingly informed that her case could not be recommended as she is not recipient of “National Child Award” or “Pradhan Mantri Rashtriya Bal Puraskar”.

Copy of letter No.27/2/2016-CW-1 dated 05.09.2019 is annexed hereto and marked as **Annexure A-9**

2.25 Petitioner, without challenging the above noted decision dated 05.09.2019 and without appreciating that she was not recipient of Pradhan Mantri Rashtriya Bal Puraskar, filed Writ Petition No.10722/2019 before this Hon’ble Court wherein she prayed the following relief;

“1. pass appropriate writ, order or direction thereby directing the Respondent No.1/Ministry of Women and Child Development to nominate/allocate the petitioner for the MBBS Course, 2019 against the seat reserved for National Bravery Awardees in NSCB Medical college Jabalpur MP in terms of Government of India, Ministry of Health and Family Welfare Office Memorandum No.U.14014/4/2019-ME-II dated 16.08.2019.”

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2.26 In response to an opposing the writ petition no.10722/2019, respondent no.1 has filed short affidavit on 14.02.2020 producing before Hon'ble Single Judge Bench all the relevant facts including observations of this Hon'ble Court in Writ Petition No.11116/2015, comprehensive guidelines for Pradhan Mantri Rashtriya Bal Puraskar, Letter No. CW-l-19019/1/2018-CW-l (Computer No.49678) dated 19.09.2018, Letter No. 27-1/2016-CW-1 part 1 dated 27.12.2018, Letter No. CW-1-27/1/2017 - CW-l-Part(1) dated 13.05.2019, Letter No. CW-1-27/1/201 7-CW-l-Part(1) dated 03.06.2019, Letter No.U.14014/4/2018-ME.II dated 04.06.2019.

Copy of complete record of the Writ Petition Civil No.10722/2019 is annexed hereto and marked as **Annexure A-10**

2.27 Hon'ble Single Judge Bench decided the above writ petition no.10722/2019 vide impugned judgment and order dated 19.06.2020 whereby Hon'ble Single Judge Bench ignoring the vital material on record evidencing that government has severed all relations with ICCW and has also decided that the government shall not partner in any event of ICCW and without

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appreciating Pradhan Mantri Rashtriya Bal Puraskar scheme, passed impugned judgment dated 19.06.2020 by reading OM dated 16.08.2019 in particular paragraph 7 of the said OM in isolation and directed for admission of petitioner in MBBS course in the academic year 2020-21. Had the material brought on record before Hon'ble Single Judge Bench been perused, considered, and appreciated by Hon'ble Single Judge Bench, the impugned order would not have been passed. It is submitted that the impugned judgment is erroneous, perverse and as the same amounts to interference in the field reserved for executive(s), therefore, the same is liable to be set aside.

3. Appellants are severally and dissatisfied with the impugned order dated 19.06.2020, therefore, seeks to challenge impugned order dated 19.06.2020 and pray for setting aside the same, inter-alia, on the following grounds:

GROUND

A. Because Hon'ble Single Judge Bench erred in passing impugned order on misreading paragraph 7 of OM dated 16.08.2019 in isolation.

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B. Because paragraph 7 of OM dated 16.08.2019 ought to have been read and understood in the light and context of following documents;

1. observations of this Hon'ble Court in Writ Petition No.11116/2015;
2. comprehensive guidelines for Pradhan Mantri Rashtriya Bal Puraskar;
3. Letter No. CW-l-19019/1/2018-CW-l (Computer No.49678) dated 19.09.2018;
4. Letter No. 27-1/2016-CW-1 part 1 dated 27.12.2018;
5. Letter No. CW-1-27/1/2017 - CW-l-Part(1) dated 13.05.2019;
6. Letter No. CW-1-27/1/2017-CW-l-Part(1) dated 03.06.2019; and
7. Letter No.U.14014/4/2018-ME.II dated 04.06.2019

C. Because Hon'ble Single Judge Bench erred in not appreciating the following paragraph 3 of the letter dated 03.06.2019, and without appreciating the said paragraph 3 directed to allocate one MBBS seat to petitioner from central pool quota;

“3. In furtherance of this, MWCD vide letter no.27-1/2016-CW-l dated 27.12.2018 and reminder OM of even no. dated 13.05.2019 (copies enclosed) had requested Ministry of Health and Family Welfare to

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dissociate completely from ICCW. A request was also made for providing all necessary support and facilities to the Awardees of PMRBP. In view of the issues mentioned in the aforesaid OMs. MoHFW may dissociate itself from ICCW.

- D. Because findings in paragraph 7 of the impugned order that “*it has not been shown that erstwhile National Bravery Awards have been cancelled by Respondent No.1 or are no longer recognized*”, are erroneous and perverse and liable to be set aside in view of ample material on record such as comprehensive guidelines for Pradhan Mantri Rashtriya Bal Puraskar, Letter No. CW-1-19019/1/2018-CW-1 (Computer No.49678) dated 19.09.2018, Letter No. 27-1/2016-CW-1 part 1 dated 27.12.2018, Letter No. CW-1-27/1/2017 - CW-1-Part(1) dated 13.05.2019, Letter No. CW-1-27/1/201 7-CW-1-Part(1) dated 03.06.2019, Letter No.U.14014/4/2018-ME.II dated 04.06.2019.
- E. Because Hon’ble Single Judge Bench erred in not appreciating that the petitioner has not challenged the decision dated 05.09.2019 whereby the petitioner was informed that she was not entitled to allocation of MBBS seat from central pool quota, therefore, the petitioner, having accepted the said decision dated

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05.09.2019 could not be allowed to be recommended for admission to MBBS course for the academic year 2020-21 based on her result of the NEET exam for the academic year 2019-20.

- F. Because the impugned judgment dated 19.06.2020 amounts to interference in the field lying under executive domain, therefore, the impugned judgment cannot sustain in law.
- G. Because the impugned order has been passed in a mechanical manner and is bad in law.
4. Appellants have not preferred any other appeal or petition or application in respect of the same impugned order i.e. impugned order dated 19.06.2020 in this Hon'ble Court or in the Hon'ble Supreme Court.
5. The present LPA is being filed within limitation period as prescribed in that behalf.
6. Appellants have filed along with this appeal the entire record of the writ petition (C) No.10722/2019.
7. All the annexures are true copies of their respective originals.

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PRAYER

It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- a. Set aside the impugned order dated 19.06.2020 passed by the Hon'ble High Court in Writ Petition No.10722/2019;
- b. such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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Appellants

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Place: New Delhi

Dated 15/10/2020