

IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR

Reserved on: 30.10.2023

Pronounced on: 02.11.2023

WP(C) No.2720/2023
CM No.6479/2023

DR. INSHA ABID

...PETITIONER(S)

Through: - *Mr. Z. A. Shah, Sr. Adv. with
Mr. Asif Feroz, Advocate.*

Vs.

UNION OF INDIA & ORS.

...RESPONDENT(S)

Through: - *Mr. T. M. Shamsi, DSGI, with
Ms. Zeenaz Akhter, Adv-for R1&R2.
Mr. Mohsin S. Qadiri, Sr. AAG, with
Mr. Syed Musaib, Dy. AG-for R3&R4.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has sought a direction upon the respondents to grant admission to her in Post-graduation course in the discipline of Anatomy in Government Medical College, Srinagar, based on her choice and ranking.

2) Briefly stated, case of the petitioner is that in the recently concluded NEET PG examination, she secured 235 marks whereas the private respondents secured less than the marks secured by her in the same examination. It appears that the petitioner was allotted a seat in PG Anatomy in Government Medical College, Jammu, in 3rd round of counselling conducted by Medical Counselling Committee for All India Quota. Thereafter, the petitioner responded to notice bearing No.029-

BOPEE/2023 dated 27.09.2023 issued by the J&K Board of Professional
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Entrance Examination, expressing her willingness to participate in 3rd Mop-up round of counselling against the seats that had remained unfilled during 3rd round of counselling under the State quota. The petitioner is stated to have appeared before the BOPEE officials and given her choice to take up admission in PG Anatomy in GMC, Srinagar, but she was informed by the officials of BOPEE that she cannot be granted admission in PG Anatomy in GMC, Srinagar, as she has already been selected in PG Anatomy in GMC, Jammu.

3) The contention of the petitioner is that there is no Rule, Regulation or Instruction in vogue that would disentitle a person who has been allotted a seat in All India Quota in 3rd round of counselling from participating in counselling for allotment of a seat under State quota. On this ground it has been submitted that the action of the respondents is not sustainable in law.

4) The respondents have contested the writ petition by filing their reply. In their reply, the respondents have submitted that the petitioner has been allotted the discipline of Anatomy in 3rd round of All India Quota for NEET PG Sessions 2023. According to the respondents, the seat in All India Quota has been allocated to the petitioner on 27.09.2023. It has been further submitted that pursuant to the said allotment, the petitioner reported to GMC, Jammu, and got herself registered in the College for admission by producing the requisite documents. It has been averred that the petitioner completed all the formalities for admission in

the said college, whereafter she along with other candidates was directed to report for duties with immediate effect. It is being submitted that the status of the petitioner as 'joined candidate' upto 3rd round of PG counselling, 2023, was also shared by Medical Counselling Committee, Directorate General of Health Services, Government of India in its notice dated 7th October, 2023.

5) The respondents taking aid of Clause 1.5 of Chapter 1 of NEET-PG (MD/MS/DNB/MDS) Counselling, 2023, Information Bulletin & Counselling Scheme, issued by Medical Counselling Committee, have contended that the petitioner could not have been allowed to participate in any further round of counselling. It has been averred that the petitioner after being allotted the seat in the discipline of PG Anatomy in GMC, Jammu, under All India Quota has not resigned and, as such, she could not participate in further counselling. The respondents have further contended that as per the Schedule issued by National Medical Commission, 20th October, 2023 is the cut-off date for admission to NEET-PG Course, 2023, and beyond this date, JK BOPEE cannot fill any seat. It has also been submitted that all the seats in MD Anatomy in all the colleges of the Union Territory have already been allotted to eligible candidates as per the merit, choice and availability. Therefore, at this stage no order can be passed in favour of the petitioner to the prejudice of the selected candidates.

6) I have heard learned counsel for parties and perused the record of the case.

7) It is not in dispute that the petitioner has been allocated the discipline of Anatomy in GMC, Jammu, under All India Quota after participating in 3rd round of counselling. It is also not in dispute that the petitioner has, pursuant to the allotment of the aforesaid seat in her favour, registered herself in GMC, Jammu, for admission and completed all the requisite formalities necessary for admission in the concerned college. According to the respondents, the name of the petitioner is figuring in the list of candidates admitted upto 3rd round in MD/MS/DNB in PG 2023 counselling having roll No.23661193599 having been allotted the discipline of Anatomy in GMC, Jammu.

8) The question that arises for consideration is as to whether a candidate whose name figures in the list of 'joined candidates' upto 3rd round of PG counselling in All India Quota is entitled to participate in counselling for admission to Post-graduation, 2023, under State quota. In order to answer this question, we need to have a look at Clause 1.5 of Chapter 1 of the Information Bulletin & Counselling Scheme for NEE-PG (MD/MS/DNB/MDS) Counselling, 2023, which reads as under:

“The candidate is now allowed to upgrade seat from second round to 3rd (Mop-up) round. Candidates are advised to take an informed decision of continuing in Third round of AIQ/Deemed/Central Universities. If a candidate joins in 3rd round, they shall not be permitted to resign from 3rd round of AIQ/deemed/Central Universities. They **will not be** allowed to participate in any further round of counselling after joining the Third round of AIQ.”

9) From a perusal of the aforesaid Clause, it is clear that once a candidate joins in 3rd round of counselling in All India Quota, he/she

cannot be allowed to resign from the 3rd round and he/she cannot be allowed to participate in further rounds of counselling after joining in 3rd round of counselling of All India Quota.

10) Another document which is required to be taken note of is notice dated 12th July, 2022, issued by the Government of India, Directorate General of Health Services, Ministry of Health & Family Welfare. As per this notice, those candidates who have joined upto round 2nd of All India Quota or State quota shall not be eligible to participate in further rounds for All India Quota or State quota from the academic year 2022-23 onwards. This means that if a candidate joins upto round 2nd of All India Quota or State quota, he/she cannot participate in any further rounds under any quota.

11) It is being contended by learned Senior counsel appearing for the petitioner that the petitioner has been allocated seat in 3rd round of counselling of All India Quota but the aforesaid notice makes a mention about the joining of candidates upto round 2nd of All India Quota only, as such, the said notice cannot be made applicable to the case of the petitioner. It has been further contended that though the aforesaid notice bears reference to order dated 31.03.2022 passed by the Supreme Court in WP(C) No.174 of 2022, yet the said order does not lay down any direction of the nature as contained in the notice (supra).

12) Before dealing with the contention of learned Senior counsel appearing for the petitioner, we have to understand the logic behind

issuance of notice of the nature which is under reference. The simple logic is that once a candidate has joined upto round 2nd of All India Quota or State quota, he/she cannot be permitted to participate in further rounds because if the participation in subsequent rounds is permitted, then it would become an un-ending process. Besides this, the admission process to PG courses being time specific, there is every possibility that allowing a candidate to participate in different rounds of counselling in an unfettered manner may result in wastage of seats which would not be in the public interest.

13) With the aforesaid logic in mind, we have to interpret notice dated 12th July, 2022. It provides for participation of those candidates in the counselling who have not joined upto 2nd round, meaning thereby that the candidates who have joined in 2nd round of counselling or thereafter either in All India Quota or State quota can in no circumstances be allowed to participate in further rounds of counselling in All India Quota or in State quota. The position of the petitioner, who has joined in 3rd round of counselling in All India Quota, is even worse than the candidates who have joined upto 2nd round of counselling. Therefore, she could not have been allowed to participate in the counselling after she had joined in the 3rd round of counselling in All India Quota.

14) It is true that the Supreme Court in terms of order dated 31.03.2022 passed in Writ Petition (Civil) No.174/2022, has only directed that the students who have joined in round two of the State quota

or round two of the AIQ are not eligible to participate in the mop-up round for All India Quota and there is no mention of State quota in the said order, but in notice dated 12.07.2022 (supra), there is a specific prohibition from participation in State quota as well. The aforesaid notice came up for consideration before the Supreme Court in Contempt Petition (Civil) No.289 of 2022 titled **Subhankar Pattanayak Vs. K. Ramesh Reddy & Ors.** and the Court vide its order dated 22nd July, 2022, after taking note of the aforesaid notice, observed that the development of software as mentioned in the said notice would ensure that a uniform pattern is followed by all the States across India commencing from the academic year 2022-2023. The Court went on to direct that all the States and counselling authorities in the NEET-UG/PG shall scrupulously comply with these directions from the academic year 2022-2023. Thus, the Supreme Court has accorded its seal of approval to notice dated 12th July, 2022. The contention of learned Senior counsel appearing for the petitioner is, therefore, without any merit.

15) It has been contended by learned Senior counsel appearing for the petitioner that the petitioner did not join GMC, Jammu and, as such, it cannot be stated that she had joined after the allotment of seat in her favour in 3rd round under All India Quota so as to attract the rigour of Clause 1.5 of the Information Bulletin or notice dated 12th July, 2022. The learned Senior counsel has submitted that the petitioner has joined GMC, Jammu only on 25.10.2023, that too without prejudice to her rights and contentions in the instant writ petition.

16) As already stated, the petitioner's name figures in the list of candidates who have joined. The said list was issued by the Government of India, Directorate General of Health Services, Medical Counselling Committee, New Delhi, prior to 3rd round of counselling scheduled by the J&K BOPEE in which the petitioner expressed her willingness to participate. It is an admitted case that the petitioner has completed all the formalities pertaining to her admission in GMC, Jammu. She may not have actually attended the duties but that does not mean that she has not joined after the allocation of seat in her favour. Therefore, the consequence of her joining the college after having been allocated the seat in 3rd round of counselling in All India Quota would get attracted to the case of the petitioner.

17) Even otherwise, the petitioner could not have participated in 3rd round of counselling conducted by BOPEE without foregoing the seat allotted to her under All India Quota. As per the Information Bulletin & Counselling Scheme issued by Medical Counselling Committee, if a candidate does not join round 3 seat, he may exit with forfeiture of security deposit and elimination. In the instant case, admittedly, the petitioner has not exit nor her security deposit has been forfeited. Therefore, she could not have participated in counselling that was being conducted by JK BOPEE.

18) Apart from the above, the admission to NEET-PG, Session 2023 has closed on 20th October, 2023. Therefore, at this moment of time no

direction can be issued upon the respondents to allocate any seat in favour of the petitioner as the same would involve wastage of the seat that has been allocated to her under All India Quota and it would also involve cancellation of admission of a candidate in whose place the petitioner can be accommodated. This would work very harshly against the said candidate besides resulting in wastage of seat in the discipline of Anatomy in GMC, Jammu. On the other hand, no serious prejudice would be caused to the petitioner in case the relief prayed by her is declined because she has already been allocated a seat in the discipline of her choice in GMC, Jammu. Thus, in the instant case there are no exceptional circumstances that would persuade this Court to accede to the prayer made by the petitioner.

19) For the foregoing reasons, the writ petition lacks merit and is dismissed accordingly.

(Sanjay Dhar)
Judge

SRINAGAR

02.11.2023

“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No