

IN THE HIGH COURT OF DELHI

Writ Petition (Civil) No. 1897/2008 & CM No. 3687/2008

Date of decision: 14th March, 2008.

Dr. Satish Wasnik
through: Mr. R.K. Saini, Adv.

... Petitioner

VERSUS

Union of India & Ors.
through: Mr. A.K. Bhardwaj, Adv.

....Respondents

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

1. Whether reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

GITA MITTAL, J(Oral)

1. This writ petition has been filed by the petitioner pointing out that he had secured merit rank no. 362 in the All India Entrance Examination conducted by the All India Institute of Medical Sciences for the Post Graduate (MD/MS/PG Diploma & MDS) courses for the year 2008 in the scheduled caste category. On a reading of para 11 of the prospectus issued by the All India Institute of Medical Sciences which stipulated that three batches of scheduled tribes/scheduled caste candidates must report in advance to the batches mentioned in the counselling schedule at the venue

- 2 -

for counselling and as per the notified schedule the petitioner had appeared with all original documents at the venue of the counselling in the morning of 8th March, 2006.

Mr. R.K. Saini, learned counsel appearing for the petitioner submits that the batch of rank nos. from 361 to 375, as per the brochure, was scheduled to appear for counselling in the morning session of 11th March, 2008. As per the notified requirement of the candidates appearing with the three batches in advance, the petitioner had appeared in fact in the morning session of 8th March, 2008 which was really four batches in advance. Yet he was not permitted to participate in counselling by the respondents on the ground that the counselling in rank nos. 361 to 375 had already been held on 7th March, 2008 and consequently he had been marked absent. The petitioner had again appeared on the next date of counselling on 10th March, 2008 when he was still not permitted to participate necessitating the filing of the present writ petition.

2. Mr. A.K. Bhardwaj, learned counsel appearing for the respondent has appeared on advance notice. It has been contended that as per the brochure, the petitioner was required to appear three batches in advance and consequently ought to have appeared in counselling in advance, three days before 11th March, 2008. According to the respondents, the petitioner was required to appear on 7th March, 2008. He not having appeared on 7th March, 2008, the respondents can not be faulted for treating him as absent

- 3 -

and proceeding with the counselling. It has been submitted that the second round of counselling is to be held by the respondent from 22nd March, 2008 to 9th May, 2008.

3. I have heard learned counsel for the parties. I find that clause 11 of the prospectus wherein the manner in which counselling is to be effected of the prospectus

detailed the requirement of candidates appearing in person. The same provides the manner in which counselling for the seats to the reserved categories shall be effected as well. It would be appropriate to consider the relevant extract of this clause in extenso which reads thus :-

“11. ALLOTMENT OF SEATS BY PERSONAL APPEARANCE (COUNSELLING)

(a) The allotment of seats shall be made to the candidates through personal appearance and they will be called in batches in the order of merits as per Time Schedule for 1st round of counselling given in APPENDIX -V. The Time Schedule for 2nd round of counselling will be hosted later on at the web-sites of Ministry of Health & FW and AIIMS subject to the directions of Hon'ble Supreme Court of India. The Counselling shall only be done according to the Category Rank (UR,SC,ST) and not by the Overall Rank. No separate intimation regarding counselling (allotment by personal appearance) will be sent to the candidates individually.

Three batches of SC & ST candidates must report in advance in relation to the batches mentioned in the Counselling Schedule, at the Venue for Counselling to avoid non-availability of SC & ST candidates. There may be a possibility that the candidates of Reserved Category who have been called in advance may or may not get the seat allotted on the same day. If seats are not allotted to them on the day of reporting, they will be allotted the seats on the following day of dates be informed in the counselling

- 4 -

schedule.

There may be chances that because of more absentees in the unreserved category, some of the reserved category candidates may have to come even on the next day of their counselling date mentioned in the Prospectus. If SC and ST candidates fail to report in advance he/she will be marked absent and will not be considered for the counselling even on the specified date as mentioned in the counselling schedule.

There may be a possibility that on the last day of 1st counselling : SC & ST candidates may not be available. In this situation, 3200 Reservation Roster cannot be filled, as a result Dte.GHS will not be able to allot the seats even to UR category candidates. These UR candidates will be considered for allotment of seats in the 2nd round of counselling at their rank.”

4. I find that the respondents have also in Appendix 5 of the prospectus notified

the schedule for the first round of counselling 2008. This schedule provides that counselling would be conducted in two sessions every day that is the morning session and the evening session. The respondents have notified the batches of general category candidates as well as the reserved categories (ST/SC categories) who are required to appear in the morning session. The respondents have separately stipulated the merit ranks of the general category and reserved category candidates who are required to appear in the evening session. The respondents have however treated the consolidated ranks displayed for the morning and evening session as forming one batch for one day.

5. The respondents have not defined the expression 'batch' anywhere in the prospectus. The prospectus also does not stipulate the total number of

- 5 -

candidates or the consolidated merit ranks which is to be considered for counselling on any particular date. On the contrary, the respondents had clearly earmarked the rank of the candidates who are required to appear in the morning session and those who are to appear in the evening session in two separate groups.

6. The expression “batch” has been defined in Shorter Oxford English Dictionary as 'a number of things or persons coming at once and treated as a set'.

7. Even otherwise from the scheme of the schedule for the counselling, as stipulated in the appendix 5 of the Prospectus issued by the All India Institute of Medical Sciences, it is evident that one batch of general category and one batch of reserved category candidates would appear for counselling in the morning session which was to be held at 9 a.m. to 1 p.m. and a second batch of such candidates was to

appear personally for counselling in the evening session which was to be conducted from 2 p.m. to 6 p.m. No other reading of the schedule prescribed by the respondents would be proper or permissible.

8. Learned counsel appearing for the respondents could not point out anything to the contrary which would enable this court to accept the explanation which has been given for not permitting the petitioner to participate in the counselling when he had appeared. In this view of the

- 6 -

matter, this writ petition requires to be allowed. The petitioner has been wrongly prohibited from participating in the first round of counselling.

9. However, there is no substance in the respondent's contention that hundreds of candidates from all over the country have already participated in the first round of counselling and any direction to reconsider the allocation of seats to such candidates would create unwarranted delays inasmuch as it may not be possible to trace out all the candidates who have to physically appear from remote corners of the country in any counselling. The schedule of the admissions has been fixed under orders of the Apex Court. In this view of the matter, this court is not inclined to disrupt or disturb the allocation of seats as already effected.

10. In order to balance equities and to ensure some justice to the petitioner, it is directed that the respondents shall permit the petitioner to participate in the second round of counselling which is to commence from 22nd April, 2008 as per his rank. This order is being passed in the facts and circumstances of the case and may not be treated as a precedent in any other case.

11. Having regard to the confusion which has arisen in the instance case, a direction is also issued to the respondents to consider any further clarification in the Brochure which may be necessary, so far as the expression batch is concerned in any prospectus which may be issued in

- 7 -

the future so that any other candidate is not deprived of his rightful placement and allocation. In this behalf, in case required, the All India Institute of Medical Sciences may be informed so that appropriate steps in this behalf are undertaken.

This writ petition and application are allowed in the above terms.

Dasti to counsel for the parties.

(GITA MITTAL)
JUDGE

March 14, 2008
kr