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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3746/2012

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Judgment dated 06.07.2012

UTTAM KUMAR LENKA

..... Petitioner

Through : Mr.Naushad Ahmad Khan and
Mr.Mehbubul Hassan Laskar, Advs.

versus

DIRECTORATE GENERAL OF
HEALTH SERVICES & ANR

..... Respondents

Through : Mr.Neeraj Chaudhari, Mr.Akshay
Chandra and Mr.Ravjyot Singh, Advs. for
UOI.
Mr.Ashish Kumar, Adv. for MCI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. Present writ petition has been filed by petitioner under Article 226 of the Constitution of India seeking a writ, order or direction to respondents to allow the petitioner to participate in the counselling or to allocate a seat in M.D. (Derm., Venerology and Leprosy).
2. As per the petition, the petitioner appeared in All India Post Graduate Medical Entrance Examination (MD/MS/Diploma) course. Duration of MD/MS course is three years whereas Diploma course is for two years' duration. The petitioner appeared for the competitive exams held on 8.1.2012 conducted by nodal agency AIIMS. The petitioner submitted his choice by way of online on the unreserved seat on being qualified at the rank merit-wise (UR) 641 and opted for as many as 41 choices. The method of reservation of seats to various categories was submitted by the Directorate General of Health Services, Ministry of Health and Family

Welfare, Government of India, for approval by the Hon'ble Supreme Court in the matter of *Anand S Biji v. The State of Kerala and Ors* dated 23.3.2012. This method was to be used for identification of PG Degree (MD/MS) and Diploma/MDS seats for UR, SC, ST, OBC and PH categories in various participating Medical/Dental Colleges for online allotment process (online counselling) 2012.

3. Learned counsel for the petitioner submits that about 5500 PG seats were expected during the year 2012-13 under All India Quota from States. The petitioner, on the basis of his preference online in chronological order and in the first round of counselling was allotted seat in institute of P.G. Med.Edu & Res., Kolkata. The petitioner was also allotted a provisional allotment letter dated 13.5.2012, a copy of which has been filed on record. The petitioner thereafter completed all his formalities on 16.5.2012 for admission on the basis of his rank, merit-wise, i.e. 641. The petitioner also expressed his willingness for second and third round with a view to upgrade himself. Counsel further submits that ordinarily upto 3000 candidates opt for MD/MS courses and upto 1000 candidates are successful in retaining MD/MS seats as per their preferences. Rarely a person, who is in the merit upto 3000, would ever opt for a diploma on his own unless he is unable to secure a MD/MS seat.
4. It has been alleged in the petition that although the scheduled date for declaration of result was fixed as 12.6.2012, the petitioner learnt that unofficially the result was published on 11.6.2012 on a social networking site through PDF files. The petitioner visited the site, in question, and was shocked to learn that his choice at Sl. No.9 was shown as 'Diploma in Veneralogy and Dermatology' at Pt. B.D. Sharma PGIMS, Rohtak, whereas his original choice submitted in the web portal was MD (Dermat and Veneralogy) at Pt. B.D. Sharma PGIMS, Rohtak. The petitioner

alleges that the website of the respondent has been hacked by unknown interested persons and the preferential choice of the petitioner has been manipulated from MS/MD to Diploma.

5. The provisional allotment letter was issued to the petitioner by the Directorate General of Health Services, Ministry of Health & Family Welfare, Government of India, medical Counselling Committee vide online Allotment Process-Counselling-2012 dated 12.6.2012. The petitioner who opted for upgradation and in the process locked 11 choices and his 9th choice was for MD (Derm.Vene. Leprosy) at Pt.B.D. Sharma PGIMS, Rohtak. Per contra, to his choice locked, the provisional allotment letter in Round 3 show caused that the petitioner was allotted Diploma in (Derm. Vene. Leprosy) at Pt. B.D. Sharma PGIMS, Rohtak, which was not his choice and in consequence of the manipulation or hacking, the seat allotted in the first round at I.P.G.M.E. & R, Kolkata, was automatically stands cancelled.
6. Learned counsel for the petitioner submits that petitioner has reason to believe that the system was hacked and manipulation and mischief carried out for two reasons – firstly, the result, which was officially to be declared on 12.6.2012 under the signature of the authorized signatory i.e. Director of the DGHS was available on the social networking site on 11.6.2012, which was identical in nature. Secondly, as per the circular of the petitioner the guidelines for submission of the choices for counselling would show that in case the choice was not locked by the candidate, it would be locked automatically by 5.00 p.m. Learned counsel for the petitioner has relied upon question no.13 of frequently asked questions, a copy of which has been filed by respondent no.1, which reads as under:

“Q.NO.13. Is it necessary to fill up the choices and lock the choices to get seat allotted? Or I will be allotted seat automatically from leftover seats?”

Ans: After online registration (registration is compulsory to take part in online allotment process), you have to fill in choice of college and subject. Once choice is filled in, it can be modified before locking it. During the choice locked period it is necessary to lock the choice. If candidate does not lock the choice submitted by him/her, it will be automatically locked at 5.00 PM of last date of choice locking.

If you don't register and fill in choice, you will not be allotted any seat from left over seats."

7. Learned counsel for the petitioner submits that in this case, admittedly, the petitioner was unable to lock his choice due to sudden breakdown of internet link, and thus, he could not keep a copy of the choice entered into by him nor his choice was reflected on the web portal in the declaration of the result. Counsel further submits that as per Annexure R-10, which has been filed by respondent along with the counter affidavit, the last choice saved on 9.6.2012 was at 22.35.56 hrs., whereas the petitioner did not lock his choices due to sudden break down of internet link and the system should have automatically locked the choice of the petitioner not at 5.00 p.m. Counsel also submits that petitioner stands at Sl.No.641 and on account of either tampering or due to the mistake of the computer the petitioner has lost his seat at P.G. Med.Edu & Res., Kolkata, and has been offered a diploma seat, which cannot be accepted, having regard to the rank in the merit list, which is 641. Counsel next submits that even otherwise the computer could not have locked the Diploma course for the petitioner till all the seats for MS/MD course had been exhausted, which are over 2500 seats, and only person with the rank upto 5000 would seek a diploma course. Counsel for the petitioner submits that either due to human error or technical error the hopes of the petitioner and his family cannot be dashed into pieces. It is claimed that the petitioner belongs to a

humble background and the only Doctor in his family.

8. Learned counsel appearing for respondent no.1 submits that the allegations made by petitioner are baseless, wild and unfounded. Counsel further submits that the result was available at the website a day in advance due to overwriting of the file of 2nd round inadvertently, which was also published instantaneously as the earlier file was already in public domain. The same had been withdrawn quickly as soon as it came to the notice of NIC. Thus, it may be clear that leakage of result of 3rd round counselling was not due to any hacking, as has been alleged, but it was due to inadvertent human error. Moreover, this was not the final result. The final result, approved by the Medical Counselling Committee, was published on due date and time. Counsel further submits that not much can be read into the time when the system was locked at 22.35.56 hrs., as this time reflects when the computer saved the file for the last time and not that the computer system was locked. Counsel further submits that the last date for admission was 30.6.2012, respondent no.1 has filled up all its seats on 21.6.2012 and transferred the remaining vacant seats to the State Governments/colleges and, thus, no relief can be granted to the petitioner. Counsel further submits that it is either the petitioner who has himself locked his choice for Diploma inadvertently or on account of his not locking the choice the computer has automatically locked his choice for a diploma course, a choice which had been given by the petitioner, which is evident from the locked choice of the petitioner, which shows that the petitioner had opted for Diploma at Sl. No.9.
9. Learned counsel for the petitioner submits that it is unthinkable that the petitioner would give a choice of Diploma above the choice of MD, which is evident from the choice, which finds mention at Sl.No.10 to 12, which are below the Diploma course alleged to have been opted by the

petitioner.

- 10.Learned counsel for respondent no.1 on the other hand submits that the petitioner must have made the mistake and this mistake cannot be attributed to respondent no.1.
- 11.Learned counsel for the petitioner, without entering into any controversy, submits that in case any seat for MD/MS course is available at Punjab, Haryana and any other State, the petitioner will accept the same provided the petitioner meets the criteria of merit.
- 12.I have heard learned counsel for the parties. The basic facts of the case are not in dispute that the petitioner appeared in All India Post Graduate Medical Entrance Examination (MD/MS/ Diploma) course. The petitioner appeared for the competitive exams held on 8.1.2012 conducted by nodal agency AIIMS. The petitioner submitted his choice by way of online on the unreserved seat on being qualified at the rank merit-wise (UR) 641 and opted for as many as 41 choices. The petitioner, on the basis of his preference online in chronological order and in the first round of counselling, was allotted seat in Institute of P.G. Med.Edu & Res., Kolkata. The petitioner was also allotted a provisional allotment letter dated 13.5.2012. The petitioner also expressed his willingness for second and third round and with a view to upgrade himself locked 11 choices and his ninth choice was for MD (Derm. Vene. Leprosy) at Pt. B.D. Sharma, PGIMS, Rohtak. The petitioner was unable to lock his choice due to sudden breakdown of internet link. The petitioner was shocked to learn that his choice at Sl.No.9 was shown as 'Diploma in Venerology and Dermatology' at Pt.B.D. Sharma, PGIMS, Rohtak, whereas his original choice was MD (Dermat and Venerology) at Pt.B.D. Sharma, PGIMS, Rohtak.
- 13.Learned counsel for the petitioner has submitted that at this stage the

petitioner would be satisfied in case a seat is allotted to him in a college in any other State to save his career.

14. Having regard to the facts of the case and the submissions made by counsel for the parties it is not in dispute that the rank secured by the petitioner would surely entitle him to a seat in the MD/MS course. Assuming that the petitioner had not locked his choice online, the computer would lock a choice for the petitioner in a Degree course rather than a Diploma course having regard to the rank of the petitioner, however, in the present case the choice has been locked for a Diploma course. In my view, the computer could have locked the Diploma course as a last choice and in case the MS/MD seats had been filled up by the candidates, who had secured a rank above the rank of the petitioner. By no stretch of imagination would the petitioner opt for a Diploma course knowing fully well that even upto 1000 students a Degree course is awarded. At this stage, it is impossible for the Court to return the finding as to whether the system was hacked or any mischief was done or if on account of a technical software error Diploma course was locked for the petitioner. In either of the two situations the petitioner is likely to suffer immense damage. The petitioner belongs to a weaker section of the society and hails from a humble background. The petitioner's father is stated to be a postman in the State of Orissa and the petitioner is the first person in his family, who has studied upto this level, and in case after receiving merit of 641 he is to take admission in a Diploma course that would completely demoralize the petitioner and his entire family.

15. I find force in the submission made by learned counsel for the petitioner that whether it is a human error or it is the error of the computer the petitioner should not be made to suffer, especially, when no prejudice would be caused to any other candidate as his rank is much higher than

any other candidate to whom the seats will be offered.

16. In view of the submission made by learned counsel for respondent no.1 that all the seats of All India quota have been filled up, no direction can be issued to respondent no.1 to allot a seat to the petitioner in MD/MS course, however, to meet the ends of justice, respondent no.1 is directed to inform the petitioner within two days from today as to whether any seat is available in the State of Punjab, Karnataka or any other State, in MD (Derm., Venerology and Leprosy). In case any seat is available, it would be open for the petitioner to approach the concerned college/institute for admission in MD (Derm., Venerology and Leprosy) and the petitioner will be granted admission in MD (Derm., Venerology and Leprosy) if he fulfills the admission criteria.

17. Accordingly, petition stands disposed of in view of above.

CM 7857/2012 (STAY)

18. Application stands disposed of in view of the order passed in the writ petition.

19. Let a copy of this order be given DASTI to counsel for the parties under the signatures of Court Master.

G.S.SISTANI, J

JULY 06, 2012
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