

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

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Date of Decision: 09.09.2013

+ W.P.(C) 4685/2013

AMIT KUMAR PATHAK

..... Petitioner

Through: Mr Som Dutt Kaushik, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through: MrAshish Kumar, Adv for MCI

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner, before this Court, appeared in National Eligibility cum Entrance Test (NEET), 2013, conducted for admission to PG Medical Courses. In the first round of counselling held on 14.06.2013, the petitioner was allotted a seat in respondent No.4-All India Institute of Hygiene and Public Health, Kolkata. On 20.06.2013, the petitioner appeared before the said Institute and was issued an admission letter. The petitioner had expressed his willingness for participation in the second round as well as in the third round of counselling. However, he did not deposit the requisite fee with the respondent No. 4-Institute and thereby did not complete the process of admission.

2. The petitioner appeared for second round of counselling held on 25.06.2013 and was allotted a seat in respondent No. 5-Guru Gobind Singh Medical College, Faridkot. A provisional allotment letter was issued to him on that date, cancelling

the allotment made to him in respondent No. 4- Institute, in the first round of counselling. The petitioner went to respondent No. 5- College, but was not granted admission as he did not submit the relieving letter from respondent No. 4- Institute. It appears from the endorsement dated 27.06.2013 made on the provisional allotment letter dated 25.06.2013, issued to the petitioner that since he did not complete admission formalities and did not pay fee, etc. his admission was treated to be incomplete by the said Institute. Consequently, no relieving letter was issued to the petitioner by respondent No. 4-Institute.

3. Since the relieving letter from respondent No. 4-Institute was not produced by the petitioner, respondent No.5-College did not grant him admission, despite a seat having been allotted to him the second round of counselling.

4. The third round of counselling was held from 09.07.2013 to 11.07.2013. The petitioner was not permitted to participate in the third round of counselling on the ground that he had not taken admission pursuant to the earlier allotment letter issued to him. Being aggrieved, the petitioner first approached Allahabad High Court and then this Court by way of the present writ petition.

A fourth round of counselling was held pursuant to the order of the Hon'ble Supreme Court dated 01.08.2013, passed in W.P. (C) No. 432/2013 read with the earlier order dated 23.03.2012, passed in IA No. 16 in CA No. 1944 of 1993.

5. If a person, who did not participate in the third round of counselling, admittedly, was not entitled to appear in the fourth round of counselling. Therefore, the only question which arises for consideration is whether the petitioner was rightfully refused participation in the third round of counselling or not.

6. Clause 1 of the provisional allotment letter dated 25.06.2013, to the extent it is relevant, reads as under:-

“1. Report to Allotted Medical /Dental College within stipulated period, as mentioned in counseling schedule, after obtaining relieving letter from previously allotted institute, failing which the allotted seat will be cancelled and the candidate will not be eligible in subsequent rounds.”

7. Frequently Asked Questions uploaded on the website of the respondent No. 2 explained the procedure as well as the eligibility for participation in the online counselling.

Question No. 14, 16 and 17 and their respective answers, to the extent they are relevant, read as under:-

“Q.No.14: Is it necessary to join allotted Medical/Dental College to get chance to participate in next round (2nd/3rd round)?

Ans: Yes, in case a seat is allotted, candidate is required to join allotted institution/college and complete the admission formalities then only that candidate can exercise option to participate in next round(s).”

16. “Who are eligible for 2nd Round of allotment?

Candidates eligible for seat allotment in 2nd round would be from one of the following groups:

Group-I: Registered candidates who did not get any seat allotment in the 1st round.

Group-II: Registered candidates, whose 1st round of allotted Seat Cancelled during the document verification on reporting for admission, **who have secured seat under reserved quota**, due to change of Category from reserved to Unreserved or PH status from Yes to No, but are still eligible in the next round of seat allotment, with changed Category.

Group-III: Candidates who have reported at allotted institute after 1st round of allotment and submitted willingness for second round up-gradation as Yes.

Who are not eligible for 2nd Round of allotment?

- **Not reported** at Allotted Institute after seat allotment in 1st round.
- **Reported & Withdrawn** from counseling at Allotted Institute.
- Became **non-eligible** due to change of category.
- Candidates who have not opted for up-gradation.”

17. X X X

Who are eligible for 3rd Round of allotment:

All candidates interested in participation in the third round counseling are required to submit fresh choices, without which they would not be considered.

Group-I Registered candidates who did not get any seat allotment in the 1st or 2nd round of seat allotment and are required to submit fresh choices as per the vacancies shown.

Group-II. Registered candidates, whose 2nd round of allotted Seat Cancelled during the document verification on reporting for admission, **who have secured seat under reserved quota**, due to change of Category from reserved to unreserved or PH status from Yes to No, but they would still be eligible in the next round of seat allotment, with changed criteria, provided they submit fresh choices, subject to fulfillment of eligibility conditions.

Group-III Candidates who have given option for participation in 3rd round at the time of 1st and/or 2nd round reporting at allotted institutions.

Who are not eligible for 3rd Round of allotment?

- **Not reported at** Allotted Institute after seat allotment in either 1st or 2nd rounds.
- **Reported & Withdrawn/ resigned** from seat at the Allotted Institute.
- Because **non-eligible** due to change of category during document verification.
- Candidate who has not given option for third round at the time of taking admission.
- Candidate who does not give fresh choices in 3rd round.
- Who did not register for online allotment of seat before first round of counseling.”

8. The answer to question No. 14 clearly shows that a candidate, who is allotted a seat either in the first or in the second counselling, is not entitled to participate in the next round of counselling unless he joins the allotted college and completes the admission formalities. It can hardly be disputed that completion of admission formalities includes payment of fee prescribed by the college in which a seat is allotted to the candidate. Admittedly, though the petitioner appeared before respondent No. 4-Institute on 20.06.2013 and was also issued a computer generation admission letter, he did not deposit the fee prescribed by the said institute for admission to respondent No. 4-Institute. The candidates coming for admission in the allotted institute were also required to submit the prescribed documents, which are retained by the said institute and in case the admission is withdrawn, those documents are returned back to the candidate. Admittedly, the original documents of the petitioner are still with him. The learned counsel for the petitioner states that the original documents were shown by him, were duly verified by the official of respondent No. 4 and were then returned to the petitioner after finding him eligible. This, however, is strongly refuted by the learned counsel for respondent No. 4, who states that there could be no question of returning the original documents since they were required to be retained by the Institute and only

in the event of admission being cancelled or withdrawn, the documents could be returned to the candidate. There is no material on record which would show that the original documents were verified by respondent No. 4 and then returned to the petitioner. The obvious inference is, therefore, that the petitioner, despite obtaining computer generated admission letter, neither admitted the original documents nor the fee prescribed by the said institute for admission to the PG Course, thereby not completing the process of taking admission in respondent No.4-Institute.

9. A perusal of the answer of question No. 17 would show that the petitioner was clearly not eligible for third round of counselling since, he, despite reporting, did not deposit the prescribed fee and the original documents. In my view, when a candidate is required to report at the allotted institute after seat allotment in the first or second round, he needs not only to be present there, but also deposit the prescribed fee and the original documents. A person who obtains the admission letter, but does not deposit the prescribed fee and/or the original documents shall be deemed to be either a candidate who does not report to the allotted institute or a candidate who reports to the Institute, but withdraws or resigns from the seat at the allotted institute.

10. The question No. 9 and the answer to the said question, to the extent it is relevant, reads as under:

“Q.No.9: What documents are required at the time of joining in allotted Medical/Dental College?”

Ans: Original document for admission to Post-graduate medical courses for admission to 50% of total seats on all-India basis required at the time of joining in allotted Medical/Dental College are as mentioned below.

- (i) Admit Card issued by NBE or AIIMS.
- (ii) Result/Rank letter issued by NBE or AIIMS.

- (iii) Mark Sheets of MBBS/BDS 1st, 2nd and 3rd Professional Examinations.
- (iv) MBBS/BDS Degree Certificate.
- (v) Internship Completion Certificate/Certificate from the Head of Institution or College that the candidate will be completing the Internship by **31st March, 2013**.
- (vi) Permanent/Provisional Registration Certificate issued by MCI or DCI/State Medical or Dental Council.
- (vii) High School/Higher Secondary Certificate/Birth Certificate in proof of date of birth.”

“Candidates without original certificates/documents shall not be allowed to take admission in allotted Medical/Dental College.”

The afore-referred answer clearly shows that it was mandatory for the candidate joining the allotted medical college to deposit the original documents with the said college and the admission cannot be complete unless the prescribed documents are deposited.

11. The learned counsel for the petitioner submits that there is contradiction in the answers question No. 14 and 17 and in support of his contention, he relies upon the decision of Bombay High Court dated 11.07.2013 in **Dr. Deepali C. Tarate v. Union of India & Ors.**, W.P.(Lodging) No. 1659 of 2013. A perusal of the judgment relied upon by the petitioner would show that in the aforesaid case, the petitioner, while filling the form pertaining to NEET-PG, 2013, in the first round, had said no against the option requiring the candidates to express their willingness for participation in the second round and third round. The petitioner in that case sought to participate in the third round, but was prevented from doing so on the ground that in the said form she did not indicate her willingness to participate in the third round. The only question before the Bombay High Court whether by virtue of

having stated in the form that she was not willing to participate in the third round the petitioner could be debarred from doing so. However, the issue before this Court is wholly different. The only issue before the Court is as to whether a person, who despite allotment of a seat in the first round of counselling does not complete the admission process by depositing the prescribed fee and original documents, is entitled to participate in the third round of counselling or not. The answer to this question can only be in the negative, considering the answers uploaded to the Frequently Asked Question on the website of respondent No. 2.

12. As regards the admission granted to the petitioner in respondent No. 5-College in the second round of counselling, since the petitioner did not produce a relieving letter from respondent No. 4-Institute, the said institute was justified in refusing admission to him. Had the petitioner completed the admission formality with respondent No. 4-Institute by depositing the prescribed fee and original documents, he could have obtained relieving letter and the original documents from respondent No. 4-Institute for the purpose of depositing the original documents with respondent No. 5-College. The problem faced by the petitioner is entirely his own creation by not depositing the prescribed fee and original with respondent No. 4-institute.

13. Mr Kaushik states that the original documents would have been returned to the petitioner only on payment of the prescribed penalty. That, however, is not the issue before this Court. The petitioner did not at all deposit the original documents and the prescribed fee. Had he done so, probably, he would have been entitled to challenge the stipulation requiring him to pay penalty before taking back the original documents, deposited by him. However, that stage did not arrive at all in his case.

14. The learned counsel for respondent No. 5 states that the seat which was allotted to the petitioner in the second round of counselling, has already been allotted to another candidate and he has also deposited the requisite fee. Therefore, the said seat is no more available for the petitioner. The learned counsel for respondent No. 4 states that they also do not have any seat available for admitting the petitioner since the seat which was allotted to him in the first round of counseling was filled up by admitting another student to whom that seat was allotted. In fact, allotment made to the petitioner in the first round of counselling was expressly cancelled while allotting a seat to him in respondent No.5-College during the second round of counselling.

15. For the reasons stated hereinabove, it is not possible to grant any relief to the petitioner. The writ petition is hereby dismissed.

V.K. JAIN, J

SEPTEMBER 09, 2013

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