

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

% Date of Decision: 19.09.2013

+ W.P.(C) 5127 of 2013; CM Nos.11536 of 2013 & 12083 of 2013

NISHTHA CHAUBEY

..... Petitioner

Through: Mr. S.K. Ray, Ms. Akanksha Singh &
Mr. Vaibhav Gulia, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Sunil Kumar, Ms. Prema
Priyadarshini, Mr. Rajiv Ranjan Mishra
& Mr. T.P. Singh, Advs. for R-1.
Mr. Amit Bansal, Adv. for R-2 to 4.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner appeared in NEET (Under Graduate), 2013 Examination conducted by respondent-Central Board of Secondary Education (for short 'CBSE') for admission to the MBBS course. The seats in medical colleges are divided into two categories called All India Quota and State Quota. 15 per cent of the seats are allocated to the Central Quota and remaining 85 per cent seats are allocated to the State Quota. While filling up the application form, the petitioner selected the option 'not applicable' against the All India Quota against the column choice of seat/eligible category, though she opted for AFMC seats as well as for private seats. As a result, when the result of the petitioner

was declared, she was not accorded any rank against All India Quota Seats though she was accorded rank 5143 against AFMC seats. Since the petitioner did not receive any counseling letter for admission against All India Quota Seats, she sent an e-mail to the respondents on 6.7.2013, stating therein that due to some technical problems she was unable to download her counseling letter and seeking intervention of the respondents in the matter. This was followed by certain other e-mails to respondent No.2/CBSE. According to the petitioner it was orally explained to her on 9.7.2013, that since she did not tick the option of choice against All India Quota Seats while filling up the application form at the time of applying for NEET she was not eligible to participate in the counseling for admission against 15 per cent All India Quota Seats. The petitioner sent another e-mail on 21.7.2013, enquiring as to whether the State Quota counseling would be conducted in the State of Uttar Pradesh after the decision of the Hon'ble Supreme Court in TC (C) No.98/2012 & connected matters titled Christian Medical College Vellore & Ors. Vs. Union of India & Ors. decided on 13.5.2013. Since, no response was received by the petitioner, she filed the present writ petition seeking the following reliefs:

“a. Issue a Writ of Certiorari and/or any other appropriate writ, order or direction in the nature of Certiorari calling for the records pertaining to Petitioner's application bearing No.1019211 and records of Respondents having instructions in respect of 15% All India Quota;

b. Issue a Writ of Certiorari and/or any other appropriate writ, order or direction directing the Respondents to consider the application of the Petitioner and allow the Petitioner to participate in the counseling for 15% All India Quota of NEET;

c. Issue a Writ of Certiorari and/or any other appropriate writ, order or direction directing the Respondents that during the pendency of the present proceedings, one seat in 15% All India Quota be reserved and/or vacant so as to enable the Petitioner, if successful in the instant proceedings to obtain admission against the same.”

2. A similar issue came up for consideration before this court in WP (C) No.4942/2013 titled Apoorva Singh Vs. Union of India & Ors. decided on 30.8.2013 and the following view taken by the court is pertinent:

“2. The grievance of the petitioner in this writ petition is that his rank in respect of All India Quota seats has not been declared by CBSE. According to the learned counsel for the petitioner, it was on account of an inadvertent mistake that the petitioner selected the option ‘Not Applicable’ in respect of All India Quota while filling up the application form. However, no such plea was taken by the petitioner in her mails sent to the Central Board of Secondary Education. Be that as it may, the facts remains that by exercising the option ‘Not Applicable’, the petitioner clearly closed the option to compete for All India Quota seats. As per Rule 16.1 contained in the Information Bulletin for NEET (U.G.), 2013, the merit list of only such eligible and successful candidates has to be prepared, who opt for 15% All India Quota seats. The names of those who do not opt for such seats cannot be included in the said List. Therefore, the respondent/CBSE was not expected to declare her rank in respect of the seats falling under the All India Quota. Consequently, the petitioner can have no valid grievance for her ranking in the All India Quota not being declared by CBSE. In any case, in terms of the order of the Hon’ble Supreme Court dated 07.06.2012 in IA No. 35/2012 in Civil Appeal No.443/1992 titled as Sharwan Kumar vs. Union of India & Ors., even the third counselling for admission to MBBS course against All India Quota seats was over on 17th/18th August, 2013 and the result of the said counselling was declared on 19th August, 2013 giving time till 5.00 p.m. on 29th August, 2013 to the selected candidates to join the allotted course and college.

After 29th August, 2013, the unfilled seats in the All India Quota have to be surrendered back to the concerned State Govt Medical College and Institution on 30th August, 2013. The petitioner is seeking counselling and admission to MBBS course, which is a relief that cannot be granted at this stage. She ought to have come to the Court immediately after the result of NEET (U.G.), 2013 was declared and she found that her name did not appear in All India Quota Merit List. In these circumstances, when the petitioner herself is to be blamed for her rank in respect of All India Quota not being declared and the admissions to MBBS have already been closed, no relief can be granted to her.”

3. As noted earlier, the Information Bulletin for NEET (Under Graduate)-2013 clearly stipulated that merit list of only those eligible successful candidates would be prepared who opt for 15 per cent All India Quota seats. Since the petitioner did not opt for admission against All India Quota seats, her name certainly could not have been included in such list and no rank of the petitioner for the purpose of admission against All India Quota seats was required to be notified. The learned counsel for the petitioner submits that the rank of the petitioner even in respect of All India Quota seats has since been declared by CBSE. He also submits that in compliance of the interim order dated 29.8.2013 passed by this Court in this writ petition, the petitioner should be considered for admission against one seat which has been reserved for her in Rajkiya Medical College & Hospital, Chakrapanpur, Azamgarh, Uttar Pradesh.

4. In my view the contention cannot be accepted. A perusal of the order dated 14.8.2013 passed by this Court in the present writ petition would show that while directing the Union of India to permit the petitioner to appear in the counseling to be held on 16.8.2013 on a

provisional basis, it was made clear that no equity would be created in her favour on the basis of her being permitted to participate in the said counseling on a provisional basis. Hence, no equitable relief on the strength of the interim order dated 14.8.2013 can be claimed by the petitioner. As regards reserving one seat for the petitioner in Rajkiya Medical College & Hospital, Chakrapanpur, Azamgarh, Uttar Pradesh the purpose of the said interim order was to ensure that the petitioner does not meet a *fait accompli*, in the event of her succeeding in the writ petition on merits. Without succeeding on merits, the petitioner cannot seek admission against the aforesaid seat. Since the petitioner did not opt for admission against All India Quota seats, she cannot be considered for admission against such seats and the seat which has been reserved pursuant to an interim order dated 29.8.2013 was a seat available in 15 per cent All India Quota only.

5. Yet another reason why the petitioner cannot be considered for admission against All India Quota seats is that there may be other candidates who held rankings higher than that of the petitioner but did not opt for admission against All India Quota seats. If a person who did not opt for All India Quota seats is to be considered for admission against such seats, the admission obviously would have to be in the order of merit meaning thereby that the person highest in merit would get the first available seat. In any case that situation does not arise for the reason that those who did not opt for admission against All India Quota seats cannot be considered against such seats. This is more so when pursuant to the order passed by the Apex Court in Civil Appeal No.443/1992 titled Sharwan Kumar vs. Union of India & Ors. decided on 07.06.2012, the admissions against All India Quota seats are already

over and the unfilled seats in the All India Quota have to be surrendered back to the concerned State Governments Medical College and Institutions.

The petition and the applications are devoid of any merit and are dismissed.

SEPTEMBER 19, 2013
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V.K. JAIN, J.