

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

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Date of Decision: 09.09.2013

+ W.P.(C) 5354/2013

VISHNU S KUMAR

..... Petitioner

Through: Mr Sanjeev Narula, Adv. with petitioner in person.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCE (AIIMS) & ANR.

..... Respondents

Through: Mr Ajay Kalra, Adv for R-1
Mr Neeraj Chaudhari, CGSC for R-2

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (ORAL)

The petitioner, who belongs to OBC category, appeared in the entrance examination held on 01.06.2013 for admission to the MBBS course in All India Institute of Medical Sciences (AIIMS) and obtained rank 2168.

The following was the schedule of counseling notified by AIIMS:

“1st Round of Counselling

10th July, 2013 for UR seats (for all candidates up to rank 1348 irrespective of the Category.

11th July, 2013 for OBC seats.

12th July, 2013 for SC/ST seats

2nd Round of Counseling-17th August, 2013

**3rd AND FINAL ROUND OF COUNSELLING -12TH
September, 2013”**

2. The instructions contained in the counseling call letter, inter alia, read as under:-

“3. It is mandatory for all candidates to be present personally in person for counseling on the day as given above. No request for authorized representative on behalf of candidate will be entertained. If a candidate fails to come for counseling in person, she/he will be marked absent and her/his candidature will stand cancelled.”

The case of the petitioner is that he reached the counseling centre at 09.00 am on 11.07.2013 along with his father, but, after completion of counseling for the candidates who had secured rank 1902 to 1960, a notice was displayed on the projector that the counseling had been closed and rest of the rank holders would be considered in the second counseling. According to the petitioner, after confirming the same with the authorities of the respondent, he and his father left the counseling centre, hoping to be called for the next round of counseling. He has further alleged that after display of the above-referred notification on the projector, the respondents decided to resume counseling on 11.07.2013 itself on the request of some parents who had come from far of places and had difficulty in staying in the city for more than a month and accordingly the counseling was held on that day till

rank 2314. It is also alleged that when the petitioner checked the list of candidates eligible for the second counseling on 13.08.2013, he was shocked to find that he has been shown absent in the first counseling. The petitioner sent an e-mail to the Dean of the Faculty of Medical Science on 14.08.2013, explaining the circumstances in which he left the counseling centre on 11.07.2013 and sought inclusion of his name in the list of eligible candidates. The said e-mail was responded on the same day and the petitioner was informed that as per record, he was called at his turn, but he did not appear before the counseling committee and, therefore, having been marked absent, he was not eligible for the second round of counseling. Being aggrieved from the said communication, the petitioner is before this Court by way of this writ petition seeking the following reliefs:

- a) Issue an appropriate writ in the nature of certiorari, mandamus or such other appropriate writ, order or direction directing the respondent No. 1 to immediately permit the petitioner to attend the Counseling Session of the respondent No. 1 scheduled on 12th September, 2013 and /or
- b) issue an appropriate writ in the nature of certiorari, mandamus or such other appropriate writ, order or direction to hold the entire counseling-cum-admission procedure beyond the rank 1960 held on 11.07.2013 after 2.30 p.m. as void and illegal and further issue directions to hold the counseling process after Rank-1960 afresh.”

3. In its counter-affidavit, the respondent AIIMS has stated that the counseling for OBC seats up to the rank 2134 was held on 11.07.2013 and the petitioner did

not attend the said counseling. The respondent has denied the allegation that a notice was displayed through the projector informing the candidates that the counseling on that day was over after candidates up to the rank of 1960 had been called and the rest of the candidates would be considered in the second round of counseling scheduled on 17.08.2013. According to the respondents, the counseling was declared to be over only after all the OBCs seats were allotted and the availability position was zero.

4. As noted earlier, in terms of the counseling letter issued to the petitioner, it was mandatory for him to attend the first round of counseling scheduled to be held on 11.07.2013, he being an OBC candidate and the failure to attend the counseling was to entail cancellation of the candidature. Though the petitioner claims that a notification was displayed on the projector, intimating the candidates present in the counseling hall that the counseling for the candidates having rank beyond 1960, would be held on the date fixed for the second round of counseling, there is no material on record to substantiate this claim, which the Sub-Dean Shri Rakesh Yadav of the respondent –AIIMS has denied on oath. Even otherwise, there would be no logic behind stopping the counseling midway on 11.07.2013, considering that the second round of counseling is meant only to fill up the seats which remain vacant in the first round of counseling. Therefore, I cannot accept the plea that the

respondent had postponed the counseling for the candidates who had secured rank beyond 1960.

5. The learned counsel for the petitioner submits that even if the Court proceeds on the assumption that the petitioner did not appear during the first round of counseling on 11.07.2013, he should be permitted to participate in the third round of counseling, scheduled to be held on 12.09.2013, so that no candidate holding a lower rank is offered a seat in OBC category. He also points out that one seat in OBC category is still available with the respondent at AIIMS, Raipur. The request, however, was strongly opposed by the learned counsel for the respondent, who submitted that having not participated in the first round of counseling, the petitioner forfeited his right to appear in subsequent rounds of counseling.

6. In my view, the request of the petitioner for permission to participate in the third round of counseling cannot be accepted at this stage for two reasons. Firstly, the petitioner having remained absent during the first round of counseling forfeited his right in the second round of counseling and secondly, because there is a possibility that one or more candidates holding a rank higher than the rank of the petitioner in OBC category did not participate in the first and/or second counseling and in case the candidates who did not participate in the first/or second counseling, are permitted to appear in the third round of counseling, the only available seat in

OBC category must necessarily go to the candidate holding highest rank in his category.

7. In support of his contention, the learned counsel for the petitioner has relied upon the following orders passed in various writ petitions:-

Saniya Siddiqui vs University Of Delhi & Anr , W.P.(C) No. 10322/2009, decided on 30.07.2009, **Dr. Seema S. Yadagiri vs Uoi And Anr**, W.P.(C) No. 1584/2011, decided on 10.03.2011, **Dr. Sumita Mathur vs. Union of India**, Special Appeal (Writ) No. 212 of 1994, decided on 12.05.1994, **Anjeev Nayan Kumar Anjani v. UOI and Ors.** W.P.(C) No. 5383/2008, decided on 28.07.2008, **Subadhra S. v. Union of India**, W.P.(C) No. 5678/2008, decided on 06.08.2008.

I, however, find that the orders relied upon by the learned counsel for the petitioner, I find that they are based on wholly different set of facts and therefore, do not apply to the case of the petitioner.

In **Saniya Siddiqui** (*surpa*), the petitioner on account of her medical condition had to be admitted in District Government Hospital and, therefore, could not attend the counseling. That, however, is not the position in the case before this Court.

In **Dr. Seema S. Yadagiri** (*supra*), the petitioner, a resident of District Gulbarga, Karnataka had travelled all the way to Mumbai to participate in the counseling and she fell ill on reaching Mumbai and had to be hospitalized. On

discharge from the hospital, she returned at the counseling centre and sought participation in the counseling. That, however, was denied. The Court noted that the counseling was being held only at four places and the candidates had to either appear personally or otherwise a blood relative or spouse on his behalf in the counseling. The Court felt that it was not always possible that the candidate would be travelling with such blood relative/spouse. In these circumstances, the petitioner in that case was permitted to participate in the counseling.

In **Dr. Sumita Mathur** (*supra*), which is a decision of Rajasthan High Court, the petitioner before that Court, was not eligible for admission at the time of first and second round of counseling. Thereafter, another round of counseling was held pursuant to a direction given by the Court. The name of the petitioner, however, was excluded from the said counseling. The petitioner before the High Court contended that at the time of second counseling, there were two more vacancies, but this fact was not brought to the knowledge of the Director General and the petitioner was not considered in the second allotment. The candidate, who was given seat in the State Quota, had applied for cancellation of his name under the Central Quota and an order was passed on 19.07.1993 effective from 01.06.1993, but since the order was passed on 19.06.1993, the petitioner was not considered in the second allotment. The State Government then passed an order on 13.07.1993, whereby it came to be known that certain available seats were surrendered to the

State Government. The order surrendering the seats was later withdrawn. It was submitted by the petitioner before the Court that one seat in the Central Quota was still lying vacant. In these circumstances, the respondents were directed to consider the candidature not only of the petitioner, but also of any of the deserving candidate for admission against the said seat. Proper notice on the Notice Board was directed to be affixed in all the colleges giving 15 days time for making application and the seat was directed to be allotted to the meritorious candidates. Therefore, this judgment is of no help to the petitioner.

In **Anjeev Nayan Kumar Anjani** (*supra*), the petitioner did not report for pre-cancelling three days in advance and, therefore, was not permitted to appear in the counseling. He submitted that the said fact was not mentioned in the letter, issued by CBSE. It was in these circumstances that the direction was given to the respondent to permit the petitioner to appear in the second round of counseling.

In **Subadhra S.** (*supra*), the petitioners were under a bona fide impression that they were required to appear in the counseling according to their All India Rank, though, in fact they were to appear as per their category rank. It was on these facts that the petitioners were permitted to appear in the counseling which was still going on that time. Thus, all the cases relied upon by the learned counsel for the petitioner are clearly distinguishable on facts.

More importantly, the petitioner having taken a false plea that a notification was displayed on the projector postponing the counseling for the candidates who had secured rank beyond 1960, is not entitled to any discretionary relief from the Court. A person seeking an equitable relief must necessarily disclose a true state of affairs to the Court instead of taking a plea which he is unable to substantiate and which on the face of it appears to be false. This reason alone is sufficient to deny any relief to the petitioner.

For the reasons stated hereinabove, I find no merit in the writ petition and the same is hereby dismissed.

Dasti under the signature of Court Master.

V.K. JAIN, J

SEPTEMBER 09, 2013
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