



Serial No.34
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 304 of 2024

Date of Decision : 11.12.2024

Dr. Shireen L.Dkhar.

...Petitioner

-Versus-

1. The State of Meghalaya,
Represented by the Chief Secretary to the
Government of Meghalaya.
2. The Commissioner and Secretary to the
Government of Meghalaya,
Health and Family Welfare Department.
3. The Joint Secretary to the
Government of Meghalaya,
Health and Family Welfare Department.
4. The Directorate of Health Services
(Medical Institutions), Shillong,
Represented by the Director of Health Services
(Medical Institutions), Shillong,
Meghalaya.
5. Dr. Albandouglas Kharmawlong,
Lumsohkhur , P.O. Mairang,
West Khasi Hills District,
Meghalaya – 793120.

...Respondents



Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge

Appearance:

For the Petitioner/Applicant(s) : Mr. S.Sen, Adv.
Mr. M.U.Ahmed, Adv.

For the Respondent(s) : Mr. A.Kumar, AG with
Mr. A.Thungwa, GA and
Mr. J.N.Rynjah, GA for R 1-4.
Mr. Philemon Nongbri, Adv. with
Mr. B.Iawim, Adv. for R 5.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: _ | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. The brief facts surrounding the case are that the petitioner had applied for Master of Dental Surgery (MDS) (PG) Course against a seat allotted for the State of Meghalaya at the Regional Dental College, Guwahati for the academic year 2024-2025 along with six other candidates. As per the said list, the petitioner having obtained the highest NEET score was nominated to the said vacancy and after complying with all the necessary formalities, was admitted to the said Post Graduate Course for the academic year 2024-25 on 22-07-2024 and the classes had then commenced, immediately thereafter.



2. The grievance of the writ petitioner is that the State respondents, vide an order dated 19-08-2024, unilaterally withdrew her nomination for the MDS PG Course against the seat allotted to the State of Meghalaya on the ground that there existed another candidate (respondent No. 5) with a higher NEET score as per the second list, which had been submitted to the State respondents on 29-07-2024, and that by another order the private respondent was nominated against the seat already occupied by the writ petitioner in the same College.

3. Mr. S.Sen, learned counsel for the petitioner has submitted that the petitioner having been allocated the seat validly on her application and being the most meritorious, as per the list released by the State respondents on 22-05-2024, had acquired a vested right to the seat and the unilateral cancellation, without affording any hearing to the petitioner was arbitrary and illegal. It is further submitted that once the seat had been allotted to the writ petitioner, notwithstanding the fact that other meritorious candidates are present, however, once the order had been issued, the State respondents were estopped from retracting the same. As such, he prays that the allotment of the MDS PG Course seat to the private respondent made at her expense, be set aside.



4. Mr. A.Kumar, learned AG assisted by Ms. A.Thungwa, learned GA appearing on behalf of the State respondents Nos. 1 – 4, submits that the reason for the issuance of the order recalling the allotment of the seat to the petitioner, was due to the fact that after the earlier applications had been processed, fresh applications had been received from the private respondent and others, and as the private respondent was having a higher NEET score, the State respondents had resorted to the action which is now impugned in the present writ petition. It is further submitted that the recalling of the writ petitioner's candidature, was only not to deprive a more meritorious candidate who was available for consideration.

5. Mr. Philemon Nongbri, learned counsel appearing on behalf of the private respondent No. 5, has submitted that the request for admission for MDS PG Course was made much prior to the allocation of the seat on 02-07-2024 and has referred to Annexure-R/1 of the State respondent's affidavit to substantiate this fact. Learned counsel has also referred to Annexure-R/2, to show that copies of the petition/representation from the private respondent had been received by the concerned authority on 29-07-2024. He therefore, submits that the private respondent being more meritorious and due to no fault of his, having been deprived of a seat, deserves some consideration.



6. This Court in the course of hearing, as it appeared that there was some serious anomaly in the matter of the allotment of the seat to the writ petitioner, had directed for the production of the original records dealing with the entire matter. A perusal thereof, however, has reflected that there was no malafide intent in the entire exercise that had been conducted for admission of the States MDS PG Course, but the same was occasioned by the lack of procedure or policy for admission to MDS PG seats allocated to the State. As per the notesheet, it is clearly reflected that there is no set process followed, nor any deadline prescribed for receiving of applications and no systematic counseling process practiced. The allocation of seats, it is seen is based on the applications received from the candidates, as very few applicants apply.

7. It is also seen from the records that the applications were received in two lists on separate dates for the same seat, and the writ petitioner, it appears was approved from the first list, which had been then communicated to the said College. It is further reflected from the record, that the second list was forwarded by the DHS at a later stage which had candidates with higher NEET scores who on not being selected, had then submitted representations. It is further seen from the records itself, that the State respondents in this situation, had realized that it was essential to keep a process for the selection of candidates for the PG seats on Dentistry like



the department does in MBBS Course, but however, proceeded to recall the nomination of the writ petitioner. As observed earlier, though there has been an anomaly in the manner of allocation of the seats, there is no malafide intent on the part of the respondents and the entire exercise was done bonafide, for which in the absence of a stated policy, no one can be held responsible or accountable.

8. In this view of the matter, notwithstanding the contesting claims of the writ petitioner and the private respondent, in order to balance the equities, more so, in view of the fact that the writ petitioner is already pursuing the course for a considerable period of time now, it is provided that henceforth, for selection and allocation of seats from the State quota for MDS PG Course, or for that matter in other specialized streams, the State respondents are to put in place and notify the methodology for selection of candidates. The learned AG at this stage has also produced an order passed by this Court in WP(C). No. 457 of 2022, wherein this Court on the production of a Notification dated 4th February/13th May, 2022, which contains the methodology had recorded the same in the order at para 2 thereof, which is reproduced herein below:

“ 2. Today, Mr. A. Kumar, learned AG has produced a notification dated 04.02.2022/13.05.2022, which are the orders of the Governor in the matter of selection of



candidates for MBBS seats allotted to the State of Meghalaya. For easy convenience the same is reproduced hereinbelow:-

***“GOVERNMENT OF MEGHALAYA
HEALTH & FAMILY WELFARE DEPARTMENT***

Notification

Dated Shillong, the 4th February/13th May, 2022

No. Health. 306/2021/21: The Governor of Meghalaya is pleased to notify the Methodology for selection of candidates for MBBS seats allotted to the State of Meghalaya as under:

- 1. Once notified by the Central Government, the list of medical colleges allotted to the State of Meghalaya will be shared with all eligible candidates for indicating their preference descending order. The candidates are required to provide preference for each college in an online system.*
- 2. The candidates will be ranked as per their NEET score but in their respective categories. In the event that two or more candidates obtained the same NEET score, then the marks obtained in PCB (Physic, Chemistry, Biology) will be the deciding factor for ranking.*
- 3. Counselling will be done based on the preferences provided by the candidates and seats will allocated while adhering to the following rules;*
 - a) For the Open Category, the seats will be allotted solely on merit.*
 - b) For all other categories, including Khasi & Jaintia, Garo, SC and OST, the seats will be equitably allocated to each category as per category rank. In the first round, all the first rankers in each category will be allocated a seat. In the second round, all the second rankers will be allocated seats and this process will be repeated until all seats are exhausted.*



4. *The State Reservation Policy will be strictly adhered to while allocating the seats to the eligible candidates. This Notification will take effect from the date of issue.*

Sd/-
Principal Secretary to the Govt. of Meghalaya
Health & Family Welfare Department”

9. In the instant case, the private respondent due to no fault of his, has been deprived of pursuing the MDS PG Course in the current academic year and the writ petitioner who had also been granted a seat in a bonafide exercise of power in the absence of a policy, has also acquired a vested right; facts, which cannot be ignored by this Court.

10. At this juncture, it would be useful to refer to the case of Krishna Sradha vs. State of Andhra Pradesh & Ors. reported in (2020) 17 SCC 465, wherein in a similar case, the Supreme Court had at paras 13.2 and 13.3 held as follows:

“13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it



should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut-off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.”



11. In the present case, the private respondent being more meritorious, in the considered view of this Court deserves the same concession, that is to the moulding of the relief and to direct for admission to be granted in the next academic year into the MDS PG Course with the same NEET score. It is further noted that though the judgment refers to the admission in the MBBS Course only, the same principle would apply to the instant case which involves admission to Post Graduate Medical Course.

12. It is thus ordered accordingly, that the State respondents shall make provision for accommodating and allocating a seat in MDS PG Course from the State quota to the private respondent in the next academic year 2025-26 with the same NEET score. This order is being passed considering the peculiar nature of the case and to balance the equities and not to serve as a precedent.

13. Before parting with this case, this Court notes with appreciation the stand of the private respondent who has agreed to accept a seat in the next academic year for the pursuit of his MDS Degree.

14. The writ petition on the above terms, stands allowed and is disposed of.



15. Records are returned to the State respondents.

Judge