

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2327/2023
c/w
CCP(S) No. 223/2024

***Reserved on:- 24.09.2025.
Pronounced on:- 30.09.2025***

Mohd. Imran.

.....Appellants

Through: Mr. Ayjaz Lone, Advocate

Vs

J&K Board of Professional Entrance Examination and ors.

..... Respondents

Through: Mr. Raman Sharma, AAG with
Ms. Salika Sheikh, Advocate
Mr. Suneel Malhotra, GA
Mr. Abhinav Sharma, Sr. Advocate
with
Mr. Abirash Sharma, Advocate

CORAM: HON'BLE MR.JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner, through the medium of present petition has challenged Provisional Select List of NEET MD/MS/PG Diploma and MDS Courses 2023 so far as it pertains to UT of Ladakh issued vide Notification No. 065-BOPEE of 2023 dated 20.08.2023 to the extent that one seat of MDS Course reserved under ST Ladakh category has been allocated to respondent No. 6 ignoring the better merit/rank of the petitioner. Challenge has also been thrown to Operative Seat Matrix dated 08.08.2023 which provides for selection of ST Kargil to the reserved seat of MDS in NEET 2023. A direction commanding respondent Nos. 1 & 3 to select and allocate one seat of MDS Course Sessions 2023

reserved under ST Ladakh category to the petitioner has also been sought.

2. Briefly stated, the facts emanating from pleadings of the parties are that the petitioner appeared in NEET 2023 for admission in MDS Course for the session, 2023. He obtained a score of 528 and secured 37th rank in the merit list issued by respondent No. 3 vide notification No. 052-BOPEE of 2023 dated 07.08.2023 whereas, private respondent No. 6 obtained a score of 243 and secured 65th rank in the merit list.

3. Respondent No. 3 issued operative seat matrix for 1st Round of counselling for MDS Online of BOPEE vide notice dated 08.08.2023. In the said seat matrix, as per Note 3, one seat earmarked for ST Ladakh was proposed to be allotted to ST Kargil. The reason stated in the Note was that in the year, 2022, the seat earmarked for ST Ladakh was allotted to ST Leh. The petitioner, it seems, made a representation to Lieutenant Governor of UT of Ladakh on 11.08.2023 complaining that seat matrix issued by respondent No. 3 is illegal as the seat earmarked for Union Territory of Ladakh has to be allocated as per the NEET score only. Thereafter, a communication came to be issued by Director, Health Services, Ladakh to respondent No. 1 requesting it to allot MDS seat as per the NEET score only.

4. It appears that respondent Nos. 1 & 3, issued impugned notification dated 20.08.2023 whereby, Provisional Select List of candidates was issued. In the said notification, it was provided that one seat in MDS course for UT of Ladakh has been allocated to ST Kargil candidates during the current session as per rotational policy applicable to the seats of UT of Ladakh and the percentage/quota fixed i.e. 2 % STL and STK where the number of seats available is in odd number. Thus, on the basis of this reasoning, respondent No. 6 was shown to have been selected for MDS Course instead of the petitioner who had secured a higher merit.

5. The petitioner has challenged the impugned action of the respondents on the grounds that the same is ex-facie illegal and arbitrary because the respondents have ignored his better merit. It has been further contended that rotational policy stated to have been adopted by the respondents while allocating the seat to ST Kargil is contrary to the provisions of the Reservation Rules. It has been further contended that in the session, 2022, the candidate from Leh was selected on the basis of better merit and not on the basis of rotational policy. Therefore, the justification offered by the official respondents in the impugned notification dated 20.08.2023 and impugned seat matrix dated 08.08.2023 is ex-facie misconceived.

6. The respondent-J&K Board of Professional Entrance Examinations (hereinafter referred to as "BOPEE"), in its reply to the writ petition has submitted that as per Rule 13 of the J&K Reservation Rules, 2005, two per cent seats each to the Scheduled Tribes residing in District Leh and Scheduled Tribes residing in District Kargil are reserved in professional institutions. According to respondent-BOPEE, after the reorganization of the erstwhile State of J&K into two Union Territories in 2019, the BOPEE by virtue of S.O. 339 of 2020 was enjoined to continue to conduct the entrance examination for professional courses for UT of Ladakh as per the Reservation Policy. It has been submitted that administration of UT of Ladakh did not communicate any policy decision as to how to allocate Odd seat of MDS after the issuance of the aforesaid S.O. It has been submitted that up to the year, 2021, there was no dispute as regards the allocation of seats between residents of Leh and Kargil because the UT of Ladakh started for the first time to contribute 50 per cent seats to the Central pool in the year, 2022. In the absence of any policy, the respondent-BOPEE relied upon the Rules of J&K BOPEE framed under the J&K BOPEE Act, 2022 and adopted the rotational policy with effect from the Year, 2022. Pursuant to adoption of the aforesaid policy, the seat earmarked for UT of Ladakh in the year, 2022 was allocated to a candidate from Leh District.

7. It has been submitted that during the academic year, 2023, again, J&K BOPEE was allowed to continue with the process of admission of Domiciles of UT of Ladakh, against 4% seats [@ 2% each for STL & STK] reserved in the Government owned Professional Colleges/Institutions of the UT of J&K. It has been further submitted that during session, 2023, out of 21 MDS seats 4 % i.e. 0.84 (one seat) was to be allotted to UT of Ladakh and keeping in view the reservations for UT of Ladakh which is 4 % (0.42 seat for STK and 0.42 seat for STL) were to be allotted which was not practically possible. It has been submitted that fractions of both the categories were clubbed together to make it whole number of one seat. Respondent-BOPEE is stated to have invoked Sub Rule (14) of Rule 5 of J&K BOPEE Rules, 2014 and allocated the seat in the year, 2022 to Scheduled Tribe Leh candidate and in the year, 2023 to Scheduled Tribe Kargil candidate. It has been submitted that the aforesaid decision to apply rotational policy for Scheduled Tribe Leh and Scheduled Tribe Kargil has been approved by the Chairman of the BOPEE.

8. Respondent No. 6-private respondent, who is the beneficiary of the impugned decision taken by respondent-BOPEE has, in her reply, supported the stand of the respondent-BOPEE. It has been contended by the said respondent that the petitioner has approached the Court after a considerable delay, therefore, no relief can be granted in his favour, particularly,

when respondent No. 6 has been granted admission and two years have already lapsed.

9. I have heard learned counsel for the parties and perused record of the case including the record produced by learned counsel for the respondent- BOPEE.

10. The controversy involved in this writ petition is as to in what manner allocation of one seat of MDS earmarked for UT of Ladakh was required to be made by the respondent- BOPEE. It is admitted case of the parties that only one seat in MDS Course for the session 2023 was available for allocation. While the petitioner belongs to District Leh, respondent No. 6 belongs to District Kargil. As per Rule 13 of the J&K Reservation Rules, 2005 which is applicable to the present case, 2% seats each to the Scheduled Tribes of Leh District and Kargil District are to be reserved in all professional institutions. Under the reservation policy, one seat fell to the share of UT of Ladakh which was to be distributed between the Scheduled Tribes of Kargil and Scheduled Tribes of Leh District.

11. The stand taken by the respondent-BOPEE is that they have adopted a rotational policy during the year, 2022 and under this policy BOPEE allocated the seat in MDS course to a candidate from District Leh. Thus, during the academic session, 2023, the seat was to be allocated to the candidate from District

Kargil. Thus, even if the petitioner, who belongs to District Leh, has secured higher merit in NEET, still then, he is not entitled to selection on account of rotational policy and this position was clearly mentioned in the impugned seat matrix dated 07.08.2023. The respondent-BOPEE is drawing strength for adopting rotational policy in such cases on the basis of sub rules (13) & (14) of Rule 5 of J&K BOPEE Rules, 2014.

12. In order to determine the merits of the stand taken by the respondent-BOPEE, it would be appropriate to notice the provisions contained in sub rules (13) & (14) of Rule 5 of the Rules of 2014. The same are reproduced as under:-

“13. The Board shall follow a rotational policy of odd / fractional seats of contiguous categories by clubbing them together to make it a whole number seat which shall be allotted to the candidate of the clubbed categories by following rotational policy between male and female candidates where such reservation is provided under rules.

(14) The fractional seats of contiguous categories other than given herein above shall be clubbed together to make it whole number (1 seat) which shall be allotted to the candidate of the clubbed categories.”

13. From a plain reading of the aforesaid Rules, it is clear that the respondent-BOPEE is vested with power to follow the rotational policy of odd/fractional seats of contiguous categories by clubbing them together to make it a whole number seat which has to be allocated to the candidate of the clubbed categories by

following rotational policy. However, the concluding portion of Sub Rule (13) makes it clear that rotational policy has to be followed between male and female candidates where such reservation is provided under the rules. Sub Rule (14) further clarifies the position by providing that the fractional seats of contiguous categories, other than the category falling in Sub Rule (13) has to be allotted to the candidate belonging to the clubbed categories meaning thereby that rotational policy has to be adopted only in cases where separate reservation under rules is provided for between male and female candidates. In such cases, the rotational policy can be adopted by the BOPEE. In all other cases, where the BOPEE resorts to clubbing together of seats to make it a whole number, the seat has to be allotted to the candidate of clubbed categories which means that the candidate who has better merit amongst the clubbed categories will have to be allocated the seat and not that the seat has to be rotated between the clubbed categories in the different sessions. The interpretation adopted by the respondent-Board to rotational policy is contrary to the spirit of sub rules (13) & (14) of Rule 5 of Rules of 2014.

14. The aforesaid aspect of the matter gets further support from the fact that way back on 11.08.2023 after the impugned seat matrix was issued by the respondent-BOPEE, in response to the representation made by the petitioner and similarly situated

candidates, Director, Health Services of UT of Ladakh had clearly indicated to respondent No. 1 to allot one PG seat reserved for UT of Ladakh as per NEET PG score only. Thereafter, vide communication dated 09.08.2024, the administration of UT of Ladakh has informed the Government of UT of J&K that allocation of seat should be made on the basis of NEET PG Score in the cases where single seat is allotted to MDS/MS/PG Courses to UT of Ladakh.

15. In the face of aforesaid position, the action of respondent-BOPEE in allocating the MDS seat for the session 2023 in favour of respondent No. 6 who belongs to District Kargil and is admittedly having inferior merit to that of the petitioner is not sustainable in law.

16. The next question that arises for determination is as to what relief can be granted to the petitioner having regard to the fact that whole admission process for the academic session 2023 has come to an end on 20.10.2023 and respondent No. 6 has been undergoing the MDS Course for the last about 02 years. In this context, the Supreme Court has in the case of **S. Krishna Sradha Vs. State of Andhra Pradesh and ors; 2020 (17) SCC 465** laid down the guidelines for the Courts to deal with a situation that this Court is confronted with in the present case. The relevant observations of the Court are reproduced as under:-

“13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1 That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

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.

13.4 Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not

be granted any relief of admission in the same academic year.

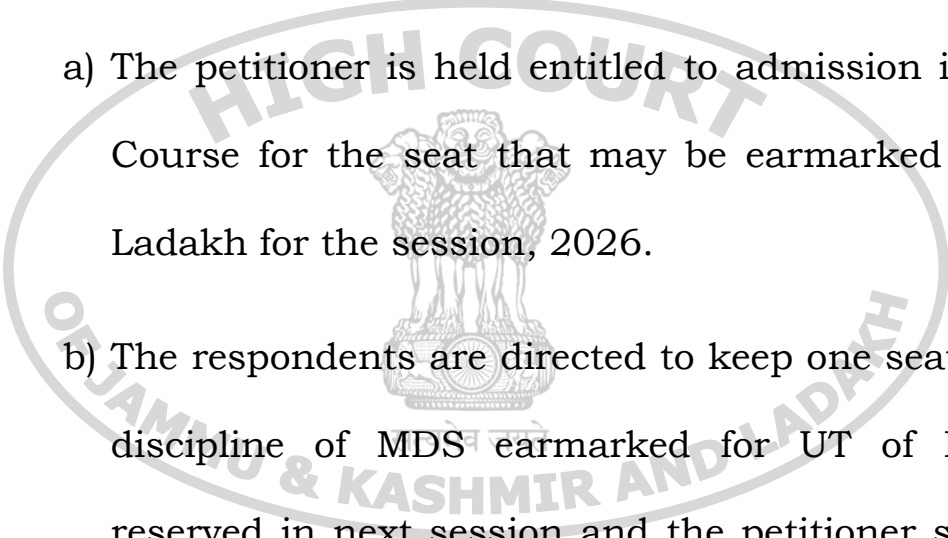
13.5 It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.

17. Although the aforesaid guidelines were issued by the Supreme Court in the context of NEET-UG courses yet in the later judgment of the Supreme Court in the case of National Medical Commission V. Mothukuri Sriyah Koumudi and ors .(Civil Appeal No. 3940 of 2020 decided on December 07, 2020), it has been held that the principles can be applied even in the case of selection in NEET-PG courses as well.

18. In the light of aforesaid principles, let us now consider case of the petitioner. A perusal of the record would show that the petitioner has approached this Court on 05.09.2023 which is within a couple of weeks from the date of issuance of impugned notification dated 20.08.2023. The selection process has concluded on 20.10.2023 but the writ petition could not be disposed of before the said date. Thus, no fault can be attributed to the petitioner. It is to be noted that this Court vide interim order dated 18.10.2023 had directed that selection to one seat earmarked for MDS course shall not be made. At that time when the said interim direction was passed by this Court, respondent No. 6 had already joined Government Dental College, Jammu on

24.08.2023 even before the filing of the writ petition. Therefore, interim order dated 18.10.2023 passed by this Court did not provide any relief to the petitioner.

19. As has been already stated, denial of MDS seat to the petitioner who is admittedly having a better merit than private respondent No. 6, is not sustainable in law. Therefore, it is clear that a grave injustice has been meted out to the petitioner by illegal and wrongful action of respondent-BOPEE. In order to undo the wrong to him, it is directed as under:-

- 
- a) The petitioner is held entitled to admission in MDS Course for the seat that may be earmarked for UT Ladakh for the session, 2026.
 - b) The respondents are directed to keep one seat in the discipline of MDS earmarked for UT of Ladakh reserved in next session and the petitioner shall be entitled to admission against the said seat.
 - c) The respondent-BOPEE shall not put the aforesaid seat for selection/admission to PG Course 2026.
 - d) The respondent-BOPEE shall pay compensation in the amount of Rs. 3 lacs to the petitioner for having denied to him his rightful claim.

e) Having regard to the fact that respondent No. 6 has already undergone the course for two years now, her selection shall not be disturbed.

20. Disposed of.

CCP(S) No. 223/2024

21. This contempt petition arises out of interim order dated 18.10.2023, whereby it was directed that the seat of MDS Course earmarked for Ladakh UT shall be kept reserved.

22. In the statement of facts filed by the respondents, it has been stated that respondent No. 6, who had been selected for the said seat, had already joined the college on 24.08.2023, well before the aforesaid interim order came to be passed.

23. In view of the above, no case for proceeding against the contemnors is made out. The proceedings are, accordingly, dropped. The petition is disposed of.

**(SANJAY DHAR)
JUDGE**

JAMMU

30.09.2025

Tarun/PS

Whether the judgment is speaking?	Yes
Whether the judgment is reportable?	Yes