

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 16.03.2015

+ **W.P.(C) 1547/2015 & CM No.2749/2015**

ARUN A AND ORS.

..... Petitioners

versus

NATIONAL BOARD OF EXAMINATION

..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr Puneet Yadav.

For the Respondents : Dr Rakesh Gosain.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, praying as under:-

“a) issue an appropriate Writ/Order or Direction in the nature of a Writ of mandamus to the Respondents to ensure that all the seats notified in July, 2014 session of Diplomat of National Board examination are allotted to the candidates/students who have secured ranks and are not carried forward to the January, 2015 session of the Diplomat of National Board examination;

b) issue an appropriate Writ Order or direction in the nature of a Writ of mandamus directing the Respondents to report the vacant seats left out after conducting 2nd round of counseling/ extended second round of counseling and also seats allotted but not joined by or resigned by the candidates

after 1st and 2nd round/ extended second round of counseling of DNB examination for the July, 2014 session;”

2. The petitioners are qualified doctors and had appeared for the Diplomate of National Board (hereafter ‘DNB’) Examination conducted by the respondent for the July 2014 Session. The petitioners believe that certain seats for the said session are still vacant and have not been filled up; the petitioners are, therefore, seeking that a fresh round of counseling be held for filling up those seats.

3. It is not disputed that three rounds of counseling had been conducted for the July 2014 session. The first round of counseling was conducted from 22.09.2014 to 29.09.2014; the second round of counseling was conducted from 14.10.2014 to 17.10.2014; and an extended second round of counseling was conducted on 31.10.2014. The respondent has affirmed that all candidates had been called for counseling and at the end of the counseling session, seven seats remained vacant and hence, further round of counseling was not considered necessary. It has been explained that a definite number of candidates are called for the first round of counseling for the available seats. The second round of counseling is called for filling up of the balance seats which have not been filled up in the first round of counseling and also for the seats that have fallen vacant after the first round of counseling. These seats are then offered to candidates who had not been called for counseling in the first session and those who had been called but had not opted for any of the seats. This process is repeated until all candidates have been called and have been afforded an opportunity to opt

for the available seats. In the past, respondent has also conducted additional rounds of counseling if significant number of seats remained vacant or have fallen vacant subsequently.

4. The learned counsel for the petitioners contended that the respondent is obliged to ensure that maximum numbers of seats are filled up in the session for which the examination has been conducted and the vacant seats are not carried forward to the next session. The learned counsel for the petitioners contended that as only three rounds of counseling were held, the petitioners who are otherwise entitled to the vacant seats – that is, the seats which remained vacant at the end of the third round of counseling or have fallen vacant thereafter - have been left out and if the said seats are carried forward to the next session, that is, to January 2015 session, the petitioners would be deprived of the same. The learned counsel further contended that five rounds of counseling were held for January 2014 session and thus the petitioners were expecting that further rounds of counseling would be held for the July 2014 session also.

5. It is not disputed that in the January 2014 session, five rounds of counseling were held; the last one was held on 21.09.2014. The respondent was called upon to explain as to the reason why it had conducted five rounds of counseling for the January 2014 session which was extended up to 21.09.2014 but had limited the counseling rounds for the July 2014 session to only three rounds. The learned counsel for respondent submitted that this was done because a large number of seats had remained and/or fallen vacant. This was so because number of candidates had also appeared for other competitive examinations such as All India Post Graduate Medical

Entrance Examination (hereafter 'AIPGMEE') and State Post Graduate Courses and some of those candidates and joined other colleges. He explained that the counseling session for AIPGMEE and State Post Graduate Courses were conducted till June 2014 and many candidates had vacated their seats after those counseling sessions were conducted. This resulted in a large number of vacant seats which had compelled the respondent in conducting additional rounds of counseling.

6. It is apparent that the vacant seats are carried forward to the next session as a result of the seats remaining vacant after the last round of counseling or falling vacant on account of the candidates not joining the course after the last round of counseling is over. In my view, there is no infirmity with this process that would warrant any interference by this Court in proceedings under Article 226 of the Constitution of India.

7. The learned counsel for the petitioners has relied upon the decision of the Supreme Court in ***Faiza Choudhary v. State of J&K: (2012) 10 SCC 149*** in support of his contention that a seat falling vacant in a particular year cannot be carried forward or created in the succeeding year. According to the petitioners, the respondent has been carrying forward the seats to the next session and this falls foul of the principle laid down by the Supreme Court in ***Faiza Choudhary*** (*supra*).

8. In my view, the decision of Supreme Court in ***Faiza Choudhary*** (*supra*) is inapplicable to the facts of the present case. In this case, the seats that remain vacant at the end of the last round of the counseling session or which fall vacant thereafter, are available for being filled up in

the next session. The admission to DNB is conducted biennially and therefore, there is also no seat, which is carried forward to the next year. This aspect is squarely covered by a decision of a Coordinate Bench of this Court in **Manish Yadav and Ors. v. Union of India and Ors.:** W.P.(C) 3210/2014, decided on 20.05.2014.

9. In *Manish Yadav* (supra) this Court had declined to interfere with the process followed by the respondent by referring to the following passage from the decision of the Supreme Court in **All India Council for Technical Education v. Surinder Kumar Dhawan and Ors.:** (2009) 11 SCC 726:-

“17. The role of statutory expert bodies on education and role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, courts will step in. In J.P. Kulshrestha (Dr.) v. Allahabad University [(1980) 3 SCC 418 : 1980 SCC (L&S) 436] this Court observed: (SCC pp. 424 & 426, paras 11 & 17)

‘11. ... Judges must not rush in where even educationists fear to tread. ...

* * *

17. ... While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.”

10. In view of the above, the prayers as sought for by the petitioners must be declined. However, it is not disputed that there is no definite policy as to the number of rounds of counseling that would be conducted. I had

repeatedly enquired from the learned counsel for the respondent whether any policy or guideline has been specified which would indicate as to rounds of counseling that would be conducted. The response was in the negative; the respondent has neither specified the number of rounds of counseling that would be conducted nor specified the threshold number of vacant seats below which counseling would not be considered necessary. Whilst it is open for respondent to frame any reasonable policy for filling up the seats, it is necessary that such policy be framed. In my view, it is also necessary that such policy be made known to the candidates in order for them to make an informed decision. As it appears, with the desire to secure a seat of their choice, candidates have to speculate as to the number of counseling rounds that may be held; and, as in the case of the petitioners, they sometime lose out in securing any seat while waiting for further rounds of counseling or are deprived of a seat because another candidate opts for the same and fails to join the programme. The learned counsel for the respondent had also fairly conceded that a policy for the counseling should be made known to all candidates. The policy could either fix the number of rounds of counseling or provide that the additional counseling rounds would be held till the seats remaining vacant are less than the threshold number which may be specified. The respondent could also fix a cut off date beyond which further counseling would not be held. Any transparent policy, which is reasonable, would address the uncertainties faced by candidates. In the circumstances, the present petition is disposed of with the direction that respondent frame a clear policy for conduct of counseling in future. Respondent shall also ensure that the same is publicized and is adhered to.

11. The pending application also stands disposed of.

12. No order as to costs.

VIBHU BAKHRU, J

MARCH 16, 2015

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