

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

Date of decision: 1st September, 2015.

+ **W.P.(C) No. 8347/2015 & CM No.17685/2015 (for stay)**

KHALID IMAM

..... Petitioner

Through: Mr. Rajeev Saxena, Mr. Matloob
Alam & Ms. Mehak Tanwar, Advs.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC
with Mr. Raj Kumar Dahiya, Adv. for
R-1 to 3.
Mr. Amit Bansal, Ms. Seema Dolo
and Mr. Akhil Kumar Kulshrestha,
Advs. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner appeared in the All India Pre-Medical Test (AIPMT) conducted by the respondent no.4 Central Board of Secondary Education (CBSE) for admission to MBBS course under the All India Quota Seats in various medical colleges across the country and has secured All India rank of 4198 in the said test.
2. As per the "Guidelines (User Manual) for the Candidates for Online Registration and Choice Filling" published by the respondent no.4 CBSE, the candidates declared eligible / qualified for participation in the All India

Quota counselling (as per the result of the said test) were required to, during the “registration and choice filling period”, register through internet in the manner provided therein and after successful registration submit / log in their choices of medical colleges. The “registration and choice filling period” was from 19th to 21st August, 2015 and the process of seat allotment was to begin on 22nd August, 2015 and the result of the round one of seat allotment to be declared on 23rd August, 2015 and the candidates allotted colleges in the first round were to report for admission to the allotted medical college between 24th to 27th August, 2015.

3. This petition was filed on 28th August, 2015 contending that the petitioner, though registered online but inadvertently failed to fill up / long in the choices of medical college and owing where to, in the process of seat allotment, not allotted a seat though candidates with rank much below the rank of the petitioner were allocated seats. The petitioner seeks mandamus for allotment of a seat in any medical college as per his rank and / or a direction for including his name in the second round of seat allotment to commence on 1st September, 2015.

4. The petition came up first before this Court yesterday on 31st August, 2015, when notice thereof was issued to the respondents.

5. The counsel for the respondents no.1 to 3 Union of India (UOI), Directorate General of Health Services and Medical Counselling Committee has today in Court handed over a copy of the letter dated 31st August, 2015 of the respondent no.2 Directorate General of Health Services, Medical Examination Cell, to the counsel stating as under:-

“So far as DGHS/MOHFW/MCC (Respondent No.1, 3 and 4) is concerned in the matter, it is stated that as per the directions of Hon’ble Supreme Court of India in W.P.(C) No.298, 299, 305 and 325 of 2015-Tanvi Sarwal Vs. CBSE and ors., the Schedule for online counselling (Allotment Process) for All India Quota Under Graduate (MBBS/BDS) seats for the year 2015 was uploaded on the website of Medical Counselling Committee (MCC) of Directorate General of Health Services for the information / knowledge/benefits of the candidates appearing in online counselling. Copy of Time Schedule is annexed here to ANNEXURE-1.

The main counselling Registration and Choice filling and locking by the candidates was from 19.08.2015 to 21.08.2015 up to 11.59 P.M. as per Schedule mentioned on the website.

In case a candidate did not register or choice filling and locking within prescribed period as mentioned in Schedule is not eligible for online allotment process of All India Under Graduate Quota seats (15%) in terms of All India Quota Scheme as approved by the Hon’ble Supreme Court of India.

The Petitioner as per Petition registered but did not fill up choice within stipulated time. The answering Respondent have no authority to allow

the Petitioner to allotted the online counselling for allotment of MBBS/BDS seat under 15% all India Quota because the Petitioner did not fill up choices as per time Schedule uploaded on MCC's website (www.mcc.nic.in).

It is also worth mentioning that the entire data available in NIC Server has been frozen and on the basis of such data, first round of Counselling is already completed on 27/08/2015. The process of second round of allotment is already going on.

As such there is no provision in software to incorporate petitioner choices for allotment at this point of time.

In view of the above you are requested to please appear before Hon'ble High Court on 01.09.2015 and apprise about the facts on behalf of Respondents No.1,3 and 4 (MOHFW/DGHS/MCC) and protect the interest of the Government and also keep this Directorate informed about the development of the case."

The counsel states that the counselling is online and the petitioner having not, within the prescribed time, filled / logged in his choice of medical colleges, cannot participate in online counselling and the system automatically locked after the time prescribed for registration and choice filling and now the petitioner cannot be technically permitted to participate in the second round of counselling / seat allotment underway today i.e. 1st September, 2015 and the result whereof is to be published tomorrow i.e. 2nd September, 2015.

6. I may in this regard notice that, the third and last round of counselling / seat allotment is to happen on 9th September, 2015.

7. The counsel for the petitioner has sought to refer to the following Clauses of the Guidelines (User Manual) aforesaid:-

*“The above data submitted by candidate is verified against the candidate’s detail provided by the Central Board of Secondary Education (CBSE). If it matches, then, Candidate would be allowed access for updating of the candidate’s profile along with selection of individual password. In case of any mismatch, the candidate would not be allowed to access the online counselling website. **In case of genuine candidates, who could not register for the online counselling, the candidates could approach personally, to nearby Help Centers (Participating Government Medical / Dental College) or MCC Control Room for recovery of the correct information on production of individual identity and other credentials during registration period only.**”*

“9. Choice Locking & Printing of locked choices

*Locking of choices is mandatory for the processing of choices submitted by the candidate. After completion of the choice submission to ones satisfaction candidate can lock her / her choices **during choice locking period, dates of which are mentioned in Counselling Schedule.** By clicking the Choice Lock Button and confirming the same, the choices could be locked. **Choices once locked can’t be unlocked.** Therefore the candidates are advised to exercise choice carefully, as the choices above the allotted choice will be processed in second round. In case candidate fails to lock choices, choices filled in by the candidate will be automatically locked at 5:00 PM of last date of locking.”*

and has contended that the same permit allowing participation of the petitioner in the process of counselling / seat allotment even though the petitioner had not filled up the choices and that the same prescribe allocation of medical college as per its merit and as per the rank of the petitioner, even without the petitioner filling up / logging in his choices.

8. The aforesaid, is clearly in misconstruction of the language of the Clauses aforesaid. The same nowhere permit of such interpretation. While the first of the aforesaid two Clauses provides for seeking assistance in registration for online counselling, only “during the registration period” prescribed and the second is with respect to automatic locking of choices filled up, even if the candidate himself / herself had failed to lock the choices made / filled up / logged in, as was required to do. Neither of the aforesaid Clauses permit the inclusion in seat allotment of the candidate who has not filled up / logged in the choice of medical college, after the system has automatically locked and / or for allocation of medical college as per rank. The User Manual clearly required the petitioner to, post registration, fill up / log in the choices of medical college, to be eligible for seat allotment during the online counselling.

9. Faced therewith, the counsel for the petitioner has contended that the

petitioner hails from District Siwan in Bihar and is not well-versed in login and in computerised counselling.

10. However that is not the case pleaded. The petitioner, as per his petition, was merely inadvertent in not filling up his choices.

11. The counsel for the petitioner has also sought to invoke the plea of “merit ought to prevail”. It is contended that the candidates with All India rank as low as 77000 have been allocated a seat and the petitioner with a rank of 4198 should not be made to lose a year.

12. Our Courts have been very frequently bending the Rules in the name of preventing injustice. However, computerised counselling having been introduced to provide a transparent, tamper and tool proof admission process, to me it appears that if this Court were to continue passing directions / orders, interfering therewith, the same would obviate the whole purpose of introducing mechanised foolproof system of seat allotment and would not sub-serve the larger public interest.

13. The petitioner, who is an aspirant for admission to prestigious, arduous course of MBBS, requiring him to exercise care to the utmost, ought to have gone through the User Manual carefully and followed the same. It is not the case of the petitioner that he was prevented from filling up the choices for

any reasons beyond his control or for any circumstance which may be described as act of God.

14. Moreover, this Court cannot in exercise of powers under Article 226 of the Constitution of India give a direction in contravention of the rules of admission and cannot be generous or liberal in issuing directions to authorities to violate their own rules and regulations. Reference in this regard may be made to the host of case law referred to in the judgment of the Division Bench of this Court in *Amit Kumar Vs. University of Delhi* MANU/DE/3046/2014.

15. I am also of the opinion that to ensure proper governance, it has become necessary to abide by the Rules and to minimise the variation, in the name of doing justice, therefrom.

16. I am therefore constrained to hold that no relief can be granted to the petitioner.

Dismissed.

No costs.

Copy of this order be given *dasti* under signature of Court Master.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 01, 2015/‘pp’..