

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 29.05.2018

1. CWP No.11828 of 2018

Nanki BakshiPetitioner

Vs.

UOI and othersRespondents

2. CWP No.13651 of 2018

Dr. Samiksha GuptaPetitioner

Vs.

UOI and othersRespondents

**CORAM:- HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present:- Mr. Aalok Jagga, Advocate for the petitioner
in CWP No.11828 of 2018.

Mr. Jai Vir Yadav, Advocate for the petitioner
in CWP No.13651 of 2018.

Mr. Vipul Aggarwal, Advocate for respondent No.1.

Mr. Suvir Sehgal, Senior Standing Counsel, Chandigarh
with Mr. Akshay Sethi, Advocate and Mr. Suman Jain,
Advocate for UT, Chandigarh.

MAHESH GROVER, J.(Oral)

This order will dispose of two writ petitions bearing CWP
No.11828 of 2018 – Nanki Bakshi v. UOI and others and CWP No.13651 of
2018 – Dr. Samiksha Gupta v. UOI and others.

The petitioners are MBBS Doctors and are desirous of pursuing
their Post Graduation with Medical College at Chandigarh.

After participating in the National Eligibility Entrance Test (NEET), the petitioners were declared successful. Pursuant to the counseling which commenced on 17.03.2018, the petitioners got a seat to pursue their Post Graduation in All India Quota in different streams which may not be necessary to mention here.

With a desire to get a better stream of their own choice, the petitioners applied online as per the procedure with the Medical College, Sector-32, Chandigarh against the State Quota. Although other issues have been raised such as the petitioners having settled in Chandigarh and thus, entitled to a preferential claim, the issue that has been largely addressed before us is that the Medical College at Chandigarh has not treated the petitioners eligible on the ground that Hon'ble the Supreme Court in **Dar-us-Slam Educational Trust and others v. MCI and others, [WP (C) No.267/2017]** Writ Petition (Civil 267 of 2017) had held as under:-

“4. After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/ permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from the all India merit list only. The students who take admission and secure admission in Deemed Universities pursuant to the second round of counselling conducted by the DGHS shall not be eligible to participate in any other counselling.

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6. The students who secure admission in MBBS course pursuant to the Common counselling conducted by the State Government, at the time of common counselling itself, should be made to deposit with the admission/ counselling committee the Demand Draft towards the fees payable to the Institution College/ University. The admission/ counselling committee shall forthwith forward the Demand Draft to the respective Institution/ Colleges/ University. The necessity for including the above-mentioned requirement has arisen as it has been time and again noticed that when students report to the college after the counselling they are refused admission by the colleges on some pretext or the other and it is shown by the college as if the student never reported to the college for admission. If the Demand Draft is deposited by the admission/ counselling committee then there would be no scope for colleges to refuse admission to any student.”

The aforesaid observations were, however, clarified subsequently by Hon'ble the Surpeme Court in SLP No.16282 of 2017, the **Association of Private Medical and Dental Colleges of Chhattisgarh v. State of Chhattisgarh and others**, where it was held unequivocally that **Dar-us-Slam's case (supra)** would be applicable only to undergraduate Courses and not Post Graduate. The relevant extract is as below:-

“As far as the third contention is concerned, this Court in I.A Nos.45538, 45540 and 45542 of 2017 with I.A. Nos.45855, 45856 and 45859 of 2017 in Writ Petition (Civil) No.76 of

2016, Ashish Ranjan and Ors. v. Union of India and Ors. has dealt with this issue and come to the conclusion that the order in Dar-us-Slam case (supra) is not applicable to post graduate courses. This Court rejected the contention that the order in Dar-us-Slam(supra) or the letter of the Union of India dated 26.05.2017 are applicable to post-graduate courses. This Court held as follows:

“22. We are, thus, of the considered view that order dated 09.05.2017 does not relate to admission into Post-graduate courses and is confined to admission in Under-graduate courses as noted above.

23. Coming to circular issued by the Government of India, Ministry of Health and Family Welfare dated 26th May, 2017, the said circular has been issued on the strength of the order of this Court dated 09.05.2017 in Writ Petition (C) No.267 of 2017. It appears that the said circular has been issued by the Government of India, Ministry of Health and Family Welfare in misconception that order dated 09.05.2017 is applicable to the admission to the Post-graduate courses. When the order dated 09.05.2017 is itself not applicable to Post-graduate courses, circular dated 26.05.2017 is not effective.”

We had issued notice to the Medical Council of India as also the Union of India who without noticing the urgency placed on the matter in

view of time bound process to be concluded upto 31.05.2018, did not file the reply and on 28.05.2018. we were constrained to impose costs of ₹25,000/- in one of the writ petitions. Today, when the matter was taken up, learned counsel representing Union of India still pleaded that the reply is not ready, although an affidavit has been received by them which needs to be put on a proper format.

We have, however, taken it on record and perused the same which largely reproduces the factual aspect of the case and then in conclusion falls back on the judgment of Hon'ble the Supreme Court in **Dar-us-Slam's case (supra)** to justify the negation of the petitioners' claim.

On the previous date of hearing, we had also put the respondents on notice regarding the subsequent clarification of Hon'ble the Supreme Court that **Dar-us-Slam's case (supra)** would apply only to Under Graduate Courses and not to Post Graduate ones. Despite being privy to the Court proceedings and the observations made by this Court, no justification has been offered by the respondents, in insisting on their previous decision which is unsustainable in view of the subsequent clarification of the Supreme Court in **Association of Private Medical and Dental Colleges of Chhattisgarh (supra)**. When the matter was being argued, learned counsel for the respondents state that this Court may pass an order as their final stand is reflected in the affidavit placed before us. Evidently, the deponent who has filed the counter affidavit on behalf of the Ministry of Health and Family Welfare seems to have rather unjustifiably stuck to its stand based upon a judgment which has been clarified subsequently.

We view this with utmost seriousness for the reason that their

unjust stand has forced the petitioners to come to the Court and has resulted in sheer wastage of the time of the Court when the situation could have been redeemed by the Union of Indian itself by taking a fair decision in view of the judgment of Hon'ble the Supreme Court.

We, therefore, direct that the deponent who has filed the affidavit, i.e. Dr. B. Srinivas be burdened with costs of ₹25,000/- which shall be recovered from his personal pay.

Insofar as claim of the petitioners is concerned, we direct their claims to be considered in the first round of counseling in the State Quota which we had permitted earlier on interim directions dated 16.05.2018. If found eligible in all respects and not wanting on any count, they be granted the admission in accordance with law. Since the petitioners had already submitted their original certificates at the time of participation in the counseling for the All India Seats Quota, they would be granted one week's time to furnish the original certificates. If admitted, their admission shall remain provisionally till the time they satisfy the respondents.

Disposed of.

Copy of order be given dasti under signatures of the Bench Secretary.

**(MAHESH GROVER)
JUDGE**

**May 29, 2018
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**(RAJBIR SEHRAWAT)
JUDGE**

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No