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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision:- 12.04.2018

+ W.P.(C) 635/2018 & C.M.Nos.2743/2018, 7612/2018 & 14130/2018.

DR ANANYA SHARMA Petitioner
Through Mr.Mukul Gupta, Sr.Adv with
Mr.Sumit Kr.Mishra,
Mr.Tushar Gupta &
Mr.Deepanshu Advs.

versus

ALL INDIA INSTITUTE OF MEDICAL SCIENCES
..... Respondent
Through Mr.V.S.R.Krishna, Adv with
Mr.V.Shashank Kumar, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner, who is a MBBS doctor having passed MBBS from Lady Hardinge Medical college, New Delhi in December, 2015 and having appeared in the Post-Graduate Medical Entrance Examination conducted by the respondent/Institute on 12.11.2017 for January, 2018 Session, has prayed for a direction to the respondent to grant the seat of M.D. (Dermatology) allocated to her on the basis of her All India Rank in the aforesaid entrance examination, which seat had been duly accepted by her in first round of counselling itself.

2. Mr.Mukul Gupta, learned Senior Counsel for the Petitioner submits that the respondent/Institute which was till the year 2018 conducting only physical counselling, had for the first time in

November, 2017, decided to introduce online counselling for the P.G.courses w.e.f. for the Academic Session of January, 2018.

3. In support of his aforesaid contention, he draws my attention to the notification dated 18.11.2017 issued by respondent, the relevant extract thereof reads as under:-

“ AIIMS, New Delhi has initiated the process for Online/Computer Based Counseling for admission to various Postgraduate Courses (MD/MS/6 Yrs DM/6Yrs MCh/MDS) in AIIMS New Delhi, Bhopal, Bhubaneswar, Jodhpur, Raipur, Rishikesh for the January 2018 Session. Since this mode of counseling is being introduced for the first time, should there be any unfortunate delay in implementation of the Online/Computer Based Counselling due to unforeseen circumstances, then Physical Counselling, requiring personal appearance at AIIMS, New Delhi tentatively on 7th December 2017, 18th December 2017 and 23rd February 2018 (for First, Second and Open Rounds respectively), shall be carried out. The candidates should therefore make arrangements for such eventualities accordingly. However it is expected that such a situation shall be exceptional.”

4. Mr.Gupta submits that the aforesaid notification dated 18.11.2017, was followed by issuance of a notice dated 01.12.2017, wherein it was reiterated that the respondent had decided to proceed with online/computer based counselling for allocation of seat for admission to various P.G. courses in the AIIMS for January, 2018 session. He submits that the said notice was followed by three further notices dated 15.12.2017, 01.01.2018 & 11.01.2018 to the same effect.

5. While drawing my attention to the notice dated 01.01.2018, Mr.Gupta submits that the said notice, while laying down the schedule given for first round of counseling, made it very clear that after the result for seat allocation of first round of counselling is announced on

11.01.2018, the candidate allocated seat of his/her choice was not required to take any further steps and there was only a provision for a candidate to '*actively refuse*' the seat allotted to him/her in the first round of counselling on or before 5 p.m. on 15.01.2018.

6. Mr.Gupta further submits that based on her merit, the petitioner was duly allocated a seat in M.D. (Dermatology) in the first round of counselling, the result whereof was announced on 11.01.2018. He submits that after announcing the result of the first counselling, the respondent had vide its subsequent notice dated 11.01.2018, for the first time prescribed that every candidate allocated a seat in the first round of counselling, should visit the website and actively exercise one of the four options, which included accepting the allocated seat, the petitioner was unable to do so due to a technical problem in the website of the respondent.

7. Mr.Gupta further submits that since the petitioner was unable to actively exercise the option to '*once again*' accept the allocated seat on or before 15.01.2018, due to technical problems in the website of the respondents, she remained under the *bona fide* belief that since she had, according to the earlier notices, not submitted any '*active refusal*', she would automatically be granted admission in the seat allocated to her on 11.01.2018 i.e. when the result of the seat allocation in respect of first counselling was announced. In support of his contention that there were technical problems in the website of the respondents, he, by drawing my attention to the application written by other two candidates, contends that other students were also unable to access the

website of the respondent and were compelled to send an e-mail to the respondent to remove the technical problem in the website.

8. Learned Senior Counsel submits that in these circumstances, the petitioner went to the office of the respondent on 17.01.2018 to deposit her original documents, which were duly accepted with a subsequent endorsement that “*the following certificates are retained by the academic section after confirmation of the seat*”.

9. Mr.Gupta submits that after the petitioner had duly submitted her original documents against a proper receipt, she was finally able to access the website of the respondent on 18.01.2018, when she was shocked to learn that the offer made to her stood cancelled on the ground that she had not accepted the admission offer. He submits that the petitioner immediately visited the office of the respondent, but did not get any satisfactory response and in these circumstances, the petitioner has preferred the present petition on 22.01.2018, which was listed before the Court on 22.01.2018 itself.

10. On 22.01.2018, this Court while issuing notice, had passed interim orders directing the respondents to keep one seat of M.D. (Dermatology) vacant in the academic session beginning from January, 2018. The said interim order is continuing till date.

11. Upon notice, the respondent has filed a detailed counter affidavit opposing the petition. Mr.V.S.R. Krishna, learned counsel for the respondent contends that the plea set up by the petitioner that the petitioner was under a *bona fide* belief that since she had not entered any ‘*active refusal*’ after 11.01.2018, she was automatically entitled to get admission in the seat allotted to her on 11.01.2018, was

wholly false. He submits that the petitioner was well aware of the notice dated 11.01.2018 which enjoined her to once again actively exercise one of the four options which included accepting the allocated seat by 5 p.m. on 15.01.2018. Mr.Krishna contends that the petitioner was personally informed vide communication dated 11.01.2018 about the requirement to '*actively accept*' the allocated seat on or before 5.00 p.m. on 15.01.2018. He further submits that the plea of the petitioner that there was some technical problem with website of the respondent is without any basis and contends that there was no technical problem in the website of the respondent.

12. Mr.Krishna submits that in view of the aforesaid provision requiring a candidate to '*actively accept*' the allocated seat on or before 5 p.m. on 15.01.2018, which condition the petitioner has admittedly not fulfilled, she does not deserve any sympathy from this Court only on the ground that she is a meritorious candidate and was initially allocated a seat in M.D. (Dermatology) in the respondent/Institute.

13. By placing reliance on the login details, Mr. Krishna submits that in fact there was no effort by the petitioner to login to the website of the respondent on or after 13.01.2018 and, therefore, on this ground also he contends that the plea of the petitioner, that there was some technical problem in the website, needs to be rejected.

14. I have heard learned counsels for the parties and considered their rival contentions. I find that the basic issue which arises for my consideration in the present case is, as to whether, in view of the admitted position that the various notices issued by the respondents

from 18.11.2017 to 11.01.2018, prescribing different guidelines for the students, should a student who was admittedly allocated a seat based on her merit in the first round of counselling itself, be deprived of the valuable seat, only because she was unable to once again exercise her '*active acceptance*' of the seat on or before 15.01.2018, which requirement was admittedly introduced only on 11.01.2018.

15. The second issue, which arises in the facts of the case, would be as to whether the respondent after having not only accepted the petitioner's documents, with a clear endorsement to her that the said documents were being accepted after confirmation of the seat, can the respondent subsequently cancel the seat allocated to her?

16. On the first aspect, I find that even though the respondent may be justified in contending that as per their last public notice issued by them on 11.01.2018, it was incumbent upon the petitioner to once again actively exercise the option to accept the seat already allocated to her, I cannot lose sight of the fact that in the earlier notices including notice dated 01.01.2018, there was a specific clause stating that 15.01.2018 was to be treated as a last date of '*active refusal*' of the allocated seat in the first round. The relevant clause in the notice dated 01.01.2018 reads as under:-

	<i>Activity</i>	<i>Date(s)</i>	
		<i>Start on</i>	<i>Closed on</i>
5.	<i>Last date of Active Refusal of allocated seat in 1st Round</i>	15.01.2018 (Monday){up to 5.00 p.m.}	

17. In my considered opinion, in these circumstances, if the petitioner, a young MBBS student and meritorious candidate having secured All India 7th Rank in the Post-Graduate Medical Entrance Examination, 2018 conducted by the respondent, remained under a *bona fide* belief that she would be granted admission in the seat allocated to her in the first round of counselling itself as she had not submitted any '*active refusal*' thereafter, the said belief cannot be said to be wholly unfounded.

18. I am of the opinion that, there was sufficient reason for the petitioner to remain under this *bona fide* belief and in such circumstances, non-exercise of an '*active acceptance*' of the said seat on 15.01.2018, coupled with the explanation given by the petitioner that there were some technical problems, cannot be said to be wholly unfounded. Having examined the complaints made by two other students regarding the technical problems in the respondent's website, I am inclined to accept the explanation given by the petitioner that due to the aforesaid reasons she remained under the belief, that even though due to technical problems she was unable to exercise a fresh '*active acceptance*' in respect of the allocated seat, she would be granted admission in the seat of M.D. (Dermatology) already allocated to her.

19. Another undisputed fact which emerges from the record is that when the petitioner went to deposit her documents on 17.01.2018, the same were accepted by the duty staff, there was a specific endorsement therein that the same was being done after confirmation of the fact that she had been allocated a seat. In view of the

undisputed position that when the petitioner's documents were accepted by the respondent, the a receipt issued to her was signed not only by the staff but by the Registrar of Respondent No.1 himself, who would have at least verified the status of the seat.

20. I am unable to accept the contention of Mr.V.S.R. Krishna that the mere acceptance of documents by clerical staff cannot be held against the respondent, firstly because the receipt issued to the petitioner was signed by the Registrar of the respondent himself and secondly it clearly states that the documents were being retained after confirmation of the seat. (*Emphasis supplied*)

21. Another factor which persuades me to grant relief to the petitioner is that the responses to the FAQ (Frequently Asked Questions) issued by the respondent also supports the contention of the petitioner that she was under a *bona fide* belief that not having executed any '*active refusal*', she would be allocated seat in M.D. (Dermatology). I deem it appropriate to reproduce *in extenso* question nos.10 & 15 along with the answers found in FAQ of the respondent which reads as under:-

“10. What happens if I have saved the choices (AIIMS and subject/speciality) but could not submit and lock the choices (AIIMS and subject/speciality)?

- The last saved choices (AIIMS and subject/speciality) and their order will be considered as submitted and locked choices (AIIMS and subject/speciality) and their order at the last date and time for that Round even if the candidate did not submit and lock the choices (AIIMS and subject/speciality) and their order.

15. What is meant by Active Refusal of the allocated seats in the 1st round?

- If you have submitted and locked your choices (AIIMS and subject/speciality) and you are allocated a seat in 1st Round, it is

*assumed that you will be accepting the allocated seat and will deposit the required documents/Demand Draft of Rs.3.00 lakhs only in the allocated AIIMS by the date and time mentioned in the **Important Dates** Link. If you do not wish to accept the allocated seats then you must **Actively Refuse** the allocated seat by clicking on the **I Refuse to Accept the allocated seat** button that will be visible after the seat allocation of the 1st Round on the Online PG counseling/Seat allocation portal on login.”*

22. There is yet another reason why the petitioner is entitled to succeed, the same being that, while issuing notice, this Court directed the respondent to keep one seat of M.D. (Dermatology) vacant for the academic session starting from January, 2018. It is an admitted case of the parties that the said seat is still vacant and no other candidate has approached either the respondent or the Court for admission for the said seat.

23. In view of the aforesaid reasons, the writ petition is allowed and the respondent is directed to grant the allocated seat of M.D. (Dermatology) to the petitioner forthwith. Keeping in view that the petitioner has already missed more than two months of the academic session 2018, it is expected that the respondent will take adequate steps to ensure that she does not fall short of attendance, by taking all remedial steps, as permissible under the Rules.

24. The present petition and pending applications are allowed in the above terms with no order as to costs.

(REKHA PALLI)
JUDGE

APRIL 12, 2018

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