

\$~

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

Date of Decision: 15.05.2018

+ **W.P.(C) No.5187/2018 & CM No. 20136/2018**

RAHUL BHUSHAN Petitioner

Through: Mr.Shree Prakash Sinha, Adv.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Neeraj & Mr.Sahaj Garg, Advs.for R-1.
Mr.T.Singhdev with Ms. M. Biakthansangi
Das, Ms.Puja Sarkar, Mr.TarunVerma &
Mr.Abhijit Chakravarty Adv for MCI
Mr.Kirtiman Singh, CGSC with Mr.Waize
Ali Noor, Advs. for NBE.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the Petitioner impugns clauses 12.3 and 12.6 of the Information Bulletin for Diplomate of National Board Centralized Entrance Test-Super Specialty for admission to DNB Super Specialty Course, 2018 issued by the Respondent No. 3/National Board of Examinations (hereinafter referred to as the “impugned clauses”). The Petitioner has also sought a direction to the Respondents to permit him to participate in the 2nd round of Merit Based Centralized Counselling, to be conducted by the Respondent No. 3 on 17.05.2018.

2. Mr. Shree Prakash Sinha, learned counsel for the Petitioner submits that the Petitioner, after completing MS (General Surgery) course from Era

Medical College, Lucknow in academic years 2014-2017, had appeared in the DNB Centralized Entrance Test Super Specialty Exam (hereinafter referred to as the "DNB CET SS Exam") conducted by the Respondent No. 3 for the 2018 academic session, in accordance with the terms of Information Bulletin published in the month of October, 2017. Upon the Petitioner being declared successful therein, he was allocated the Super Specialty of Neuro Surgery in Apollo Gleneagles Hospitals, Kolkata, which he joined on 20.03.2018.

3. Since Clauses 12.3 and 12.6 of the Information Bulletin debar candidates who accept the seat in the first round of counselling to take part in any subsequent round of counselling, the Petitioner, who had taken admission in the aforesaid course in the first counselling, was not permitted to take part in any subsequent rounds of counselling. In these circumstances, the Petitioner has impugned the aforesaid clauses 12.3 and 12.6 of the Information Bulletin for DNB CET SS course, which read as under:-

“12.3 Ineligibility, if detected, at any stage, NBE reserves its rights to take necessary actions as deemed fit including but not limited to cancellation of admission to DNB course and to debar the candidate from taking any further examinations conducted by NBE.

Candidates joining DNB Super Speciality course for Jan 2018 admission session, after opting a confirmed seat through DNB CET-SS Centralized Counselling shall not be eligible to appear in DNB CET-SS and shall not be eligible for another DNB SS seat for the entire duration of their DNB Course i.e. 3 years. This shall be irrespective of their resignation or discontinuation from the course due to any reason i.e. Jan 2018 session joined candidates shall be debarred from appearing in DNB CET SS and admissions till December 2020

* * *

12.6 Candidates opting for a confirmed seat are NOT eligible for participation in subsequent round(s) of counselling irrespective of their joining/non-joining resignation from the seat already opted for.”

4. Mr. Sinha submits that the impugned clauses debarring a candidate who has joined a DNB Super Specialty course after getting a seat in the first counselling, from either taking part in any subsequent round of counselling or appearing in the said DNB CET SS Exam for a further period of three years, are not only arbitrary and unreasonable but also discriminatory. He contends that in all the other medical courses, a student opting for a seat offered to him in the first counselling, remains eligible to take part in the second counseling so as to have the opportunity to upgrade his/her seat. He, thus, contends that there is no reason as to why the Respondents ought to put such a stringent condition only for the DNB CET SS Exam. He submits that even otherwise the condition incorporated by Respondent No. 3 in the impugned clauses of the Information Bulletin, was contrary to the settled and uniformed principles of counseling, being followed both by the Medical Council of India and Ministry of Health and Family Welfare. He draws my attention to the relevant clauses of the process of counselling of All India Quota UG-2017, Online All India Super Specialty Counselling 2017-18 as also of the All India Quota PG Counselling-2018. He, thus, contends that there is no justifiable reason as to why a candidate who accepts the Super Specialty seat offered to him/her in the first counselling, should not be granted an opportunity to change his/her choice in case, based on his/her merit, there is a likelihood of upgradation of the seat.

5. On the other hand, Mr. Kirtiman Singh, who appears on advance notice for Respondent No. 3, while opposing the present petition, contends that the Petitioner, having appeared in the DNB CET SS Exam, 2018

pursuant to the Information Bulletin issued in 2017, was bound by the terms and conditions thereof and cannot challenge the same at this belated stage. He submits that it is a settled legal position that a person cannot be allowed to challenge the terms and conditions of the Information Bulletin, after having appeared in the examination on the basis of those terms and conditions and therefore, contends that the present petition is liable to be dismissed.

6. Mr. Singh further contends that the impugned clauses were just and fair and had been introduced only to ensure that a candidate who has already secured admission in a Super Specialty Course, is not allowed to abandon the said course at a later stage as the same could result in wastage of the said seat. He places reliance on the decision dated 19.03.2015 of the Division Bench of this Court in ***Dr. Nidhi Goyal vs. Faculty of Medical Sciences, University of Delhi [WP (C) 7160/2014]*** and submits that a similar clause in the Information Bulletin published for the *All India Post Graduate Examination*, was held to be valid by this Court after observing that such a clause was meant to ensure that a candidate after taking admission in a Super Specialty course, should not be allowed to abandon the said seat and thereby deprive other eligible candidates from getting admission in the Super Specialty courses.

7. Mr. Singh also places reliance on a decision dated 03.05.2018 of the Hon'ble Supreme Court in ***Rachit Sinha & Ors. vs. UOI & Ors. [WP (C) No.357/2018]*** to contend that the Supreme Court has declined to interfere with similar changes made by the Medical Council of India in the counselling process.

8. I have heard learned counsels for parties at length and considered their rival contentions. I find that there is no denial to the fact that when the

Petitioner appeared in the DNB CET SS Exam, 2018, he was well aware that the impugned clauses clearly debarred him from taking part in the 2nd round of counselling or for opting for another DNB SS seat for the entire duration of the DNB course, once he had taken admission in the seat offered to him in the 1st counselling. Thus, the issue would be whether the Petitioner, after having appeared in the aforesaid exam and taking admission in accordance with the result thereof, can now be permitted to challenge the clauses of the Information Bulletin laying down the terms and conditions of the DNB CET SS Exam? The answer in my opinion is a clear 'No'. I am fortified in my aforesaid conclusion by the observations of the Division Bench of this Court in paragraphs 10 and 11 of its decision in the case of **Dr. Nidhi Gupta (supra)**, which read as under:-

*"10. As far as the challenge to the aforesaid Clause is concerned, the senior counsel for the petitioner agrees that the same can only be in the event of finding the same to be unreasonable. Besides the averments of the respondent in the counter affidavit, judicial notice can be taken of the large number of students who appear in AIPGMEE which has a very few seats. We have no reason to also doubt that much infrastructure and other resources go into providing post graduate education and which is all subsidized. The respondent in its counter affidavit has detailed the strict parameters which a university / medical college is required to fulfil for being entitled to impart post graduate education in Medicine. The number of students permitted is also linked to the number of beds / patients in the hospital attached to the medical college. Certainly, all this would suffer and be wasted, if a student leaves the course in between. **It matters not whether the student leaves after seven days as the petitioner claims to have done or after one year or two years. The fact of the matter remains that the seat and the resources are thereby wasted.***

*11. One of us (Rajiv Sahai Endlaw, J.) in **Jyoti Yadav Vs. Government of NCT of Delhi** MANU/DE/2728/2010 relying on **Gorak Nath Balu Shinde Vs. State of Maharashtra** MANU/MH/0393/2009 and **Amlan Jyoti Borooah Vs. State of Assam** (2009) 3 SCC 227 held that **the terms and conditions of a brochure***

*of admission are binding on all persons in the conduct of examination and all are expected to adhere thereto strictly in order to avoid prejudice to any person and that candidates who take part in selection process knowing fully well the procedure laid down therein, cannot be permitted to turn back and assail the same after having been declared unsuccessful. Mention may also be made of **Madan Lal Vs. State of Jammu & Kashmir** (1995) 3 SCC 486 also laying down that if a candidate takes a calculated chance and appears at the interview, then only because the result of interview is not palatable, he cannot turn around and subsequently contend that process of interview was unfair or the Selection Committee was not properly constituted; when the petitioner appears at the examination without protest and when he finds that he would not succeed at the examination, he files a petition challenging the examination, the Court should not grant relief to the petitioner. Reference in this regard may also be made to **Manish Kumar Shahi Vs. State of Bihar** (2010) 12 SCC 576. Recently also in **Chandigarh Administration Vs. Jasmine Kaur** (2014) 10 SCC 521 it was reiterated that if the candidate takes a calculated risk/chance by subjecting himself / herself to the selection process, after knowing his / her non-selection cannot turn around and contend that the process of selection was unfair. It was further held that once the candidate is aware that he / she does not fulfil the criteria of the prospectus, he / she cannot be heard to say that he/she chose to challenge the same only after preferring the application and after the same was refused on the ground of eligibility."*

9. Even otherwise, I find that keeping in view the acute scarcity of seats in the Super Specialty medical courses, the decision of the Respondent No. 3 cannot at all be said to be arbitrary or unreasonable in any manner. The impugned clauses are meant to act as a deterrent to ensure that students do not abandon these Super Specialty seats after having accepted admission therein as the experience of the academic experts has shown that where candidates after securing admission in one course, subsequently shift to another Super Specialty course, there is generally a wastage of the first seat. On this aspect, it may be appropriate to refer to the observations of the

Division Bench of this Court in paragraphs 12, 13 and 24 of its decision in the case of **Dr. Nidhi (supra)**, which reads as under:-

"12. The Supreme Court in **Mabel Vs. State of Haryana** (2002) 6 SCC 318 was concerned with a clause which barred a student who had taken admission in any Medical / Dental College from seeking admission in another course during the period of the course in which the candidate had taken admission. **It was held that though such a condition may appear to operate harshly but is meant to ensure that a candidate who has already secured admission should not abandon the studies to seek admission in another course and that such a condition is in public interest for otherwise it would result in the wastage of the seat in the course in which the candidate had taken admission and that further such a change would deprive another eligible candidate from seeking admission to other courses. It was also held that such a condition could not be held unreasonable since the bar was with respect to that university / college only and that too only for the duration of the course in which the admission had been taken.**

13. The said logic squarely applies to the present situation also and thus the challenge by the petitioner has no merit. **The condition which is impugned, is meant to be a deterrent and has been imposed by educational experts and it is even otherwise not proper for the Courts to interfere therewith.**

24. We also find that a Division Bench of this Court in judgment dated 2nd March, 1990 in W.P.(C) No.642/1990 titled **Dr. A.K. Bhardwaj Vs. University of Delhi** was concerned with an undertaking to not apply for or accept admission to any course in the Faculty of Medical Sciences till the completion of the course in which admission was being sought. The student in that case also did not complete the post graduate course in which he had taken admission after furnishing such an undertaking and again appeared in the entrance examination for admission to postgraduate courses in Medicine and upon being denied such right had filed the writ petition. **The Division Bench of this Court held that there is a great shortage of number of seats available for postgraduate courses and if the candidates after gaining admission are allowed to abandon the same midstream and join some other courses, the effect would be of the seats so abandoned being completely lost and some others also being deprived of the seats which such students subsequently want to occupy. We also find the question to have again arisen in Dr.**

Bhawna Sharma Vs. University of Delhi 96 (2002) DLT 850 and same view having been taken. This, thus has been the consistent view of this Court."

10. At this stage, it may also be appropriate to refer to the observations of the Hon'ble Supreme Court in paragraphs 7 and 8 of **Rachit Sinha (supra)** wherein the Apex Court declined to interfere with the decision of the Medical Council of India making similar changes in the method of counseling and the same read as under:-

"7. It is clear from the record that the Medical Council of India decided to make certain changes to the method of admissions to the Postgraduate Courses to arrest the blocking of seats by certain candidates which was detrimental to the interest of meritorious candidates in the All India Quota. There is material on record to suggest that devious methods were adopted by certain candidates to block the seats in the All India Quota and resign thereafter from those seats later which resulted in reversion of the All India Quota seats to the State Quota. The Medical Counselling Committee identified about thousand candidates who were indulging in such illegal practice and proposes to take action against them after a thorough inquiry.

8. There is no infringement of any legal right of the Petitioners in the change of the method of Counselling made by the notice dated 09.04.2018. Reduction of chances of admission does not entail in violation of any right. If the change in the method of Counselling was due to the circumstances mentioned above, we see no reason to interfere. Further, the Petitioners have participated in the second round of Counselling for up-gradation. We are informed that the second round of Counselling for All India Quota is completed. No interference is warranted at this stage in respect of the All India Quota."

11. During arguments, Mr. Sinha has also contended that the Petitioner having already resigned from the Neuro Surgery in Apollo Gleneagles Hospitals, Kolkata on 05.05.2018, he ought to be permitted to take part in the 2nd counselling as otherwise despite his merit, he will be debarred from undergoing any Super Specialty course for the next three years. Even

though, at the first blush the said argument appears to be attractive but I find that even in such circumstances, the impugned clauses clearly disentitles the Petitioner from seeking the aforesaid relief. Thus, in view of the admitted position that the petitioner had accepted the Super Specialty seat in the first counselling, he cannot be permitted to take part in the second counselling.

12. For the aforesaid reasons, the present petition is dismissed with no order as to costs.

MAY 15, 2018/gm

**(REKHA PALLI)
JUDGE**