

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

Sr. No.102

**CWP-17510-2019 (O&M)
Date of decision : 15.7.2019**

Amanpreet Singh

..... Petitioner

VERSUS

Government Medical College & Hospital, Sector 32, Chandigarh and
others

..... Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Anurag Goyal, Advocate, for the petitioner.

SUDHIR MITTAL, J.

The petitioner seeks a writ in the nature of mandamus to admit him to the MD (Medicine) course for the session 2019 being run by the Government Medical College & Hospital, Sector 32, Chandigarh, against a seat vacated by one Dr. Arka Prabha Chattopadhy and all consequential benefits.

2. As per the pleadings, the petitioner completed his MBBS course from Government Medical College, Patiala, in the year 2017. Being desirous of admission to MD/MS course, he took the All India Test known as NEET (PG), 2019 and qualified the same. He secured All India Merit No.14297. He submitted his application for admission to the MD/MS course in Government Medical College & Hospital, Sector 32, Chandigarh and his order of merit for State quota seats was 41. Certain

candidates filed CWP-8234-2019 titled as '**Shrey Goel and others Vs. Union Territory of Chandigarh and another**', challenging the preference given to candidates who have studied in U.T Chandigarh, for a period of five years or whose parents have resided in U.T Chandigarh for a period of five years prior to the last date of submission of application and also those who held immovable property for a period of five years in Chandigarh. The challenge succeeded and Clauses 2(i) (ii) (iii) of the prospectus were struck down vide judgment dated 23.4.2019. This judgment was challenged by filing SLP (Civil)-15961-2019 titled as '**Tanvi Behl Vs. Shrey Goel and others**' and vide order dated 9.5.2019, the Division Bench judgment of this Court was stayed till the next date of hearing. Meanwhile, the first counseling took place on 5.4.2019, but the petitioner did not get his preferred choice of MD (Medicine). He was offered the discipline of Anesthesia, Radiotherapy etc., but he refused the same. On account of pendency of the litigation, the second counseling was delayed and was held on 17.5.2019, but again he could not get his choice i.e. MD (Medicine). On the very next day i.e. 18.5.2019, mop up round was held, but here again, the petitioner was unsuccessful. Meanwhile, the result of admissions to post-graduate courses in PGIMER, Chandigarh was declared on 28.5.2019 and a selected candidate namely Dr. Parminder succeeded in getting a seat in the said institution. He vacated the seat of MD (Medicine) granted to him resulting in fresh online applications being invited vide notices dated 29.5.2019 and 30.5.2019. Counseling was held on 31.5.2019. Petitioner applied for the seat and was shown at merit No.4. The seat however, went to Dr. Anish

Garg, who was at merit No.2, even though, he was not an applicant for MD/MS courses in the Government Medical College & Hospital, Sector 32, Chandigarh. He was given admission on the basis of All India Merit, even though, as per the prospectus, for filling up left over seats, preference was to be give to candidates belonging to the Chandigarh pool. However, the petitioner did not challenge the selection of said Dr. Anish Garg. Thereafter, Dr. Arka Prabha Chattopadhy admitted in the course of MD (Medicine), vacated his seat and shifted to West Bengal. The two other persons higher in order of merit than the petitioner, as per merit list prepared for the counseling held on 31.5.2019, were not interested in the seat vacated by Dr. Arka Prabha Chattopadhy, as they had already secured their preferred disciplines of Gynae and Orthopaedics in other institutions and thus, the petitioner was the only candidate left, who was eligible and qualified to be admitted against the vacant seats.

3. It is, further stated that the process of counseling was delayed on account of the litigation initiated in this Court and then carried to the Hon'ble Supreme Court of India. Had the counseling been conducted as per schedule, the seat vacated by Dr. Arka Prabha Chattopadhy would have been available before 31.5.2019 and the petitioner would have got admission against the same. After the vacancy arose, the petitioner submitted a representation to the Director of Government Medical College & Hospital, Sector 32, Chandigarh, but no decision has been taken thereupon. The seat is going waste and thus, a direction be given to admit the petitioner against the said seat.

4. Learned counsel for the petitioner submits that similarly situated candidate namely Sidharth Mohindru was denied admission by a learned Single Bench of this Court vide judgment dated 6.10.2016 passed in CWP-16163-2019 titled as **‘Sidharath Mohindru Vs. The Director Principal, Government Medical College and Hospital, Chandigarh.’** Letter Patents Appeal was filed by the said candidate and direction for provisional admission was given by a Division Bench of this Court. Vide order dated 10.7.2019, the said LPA viz. No.2094 of 2016 titled as **‘Sidharth Mohindru Vs. Director Principal, Government Medical College and Hospital, Chandigarh’** was dismissed as having been rendered infructuous as meanwhile, the candidate had completed his course. Thus, the petitioner deserves to be granted similar relief. Reliance has also been placed on judgment dated 5.10.2016, passed in **‘Himani Sharma Vs. Director, Government Medical College and Hospital, Chandigarh and others’** as well as judgment dated 28.11.2018, passed in Civil Appeal No.11433 of 2018 titled as **‘Dr. Vinayak Varma Vs. Medical Counseling Committee and others.’**

5. The submissions made by learned counsel for the petitioner cannot be accepted. Admittedly, as per revised schedule of counseling, the last date for admission was 31.5.2019 and no counseling has been held after the said date. No admissions can be made or can be directed to be made after the last date, prescribed by the concerned authorities, has passed. Law in this regard is well settled. In **‘Medical Council of India Vs. Madhu Singh 2002 (7) SCC 258’**, the Supreme Court had directed the Medical Council of India to ensure that examining bodies fix a time

schedule for making admissions and that the same should be strictly adhered to. In **‘Mridul Dhar (minor) Vs. Union of India 2005 (2) SCC 65,’** the ratio of the judgment in **Madhu Singh’s case (supra)** has been followed and directions have been given to all States and Union Territories to ensure that the time schedule, provided by the authorities, for making admissions must be strictly adhered to. This principle has been reiterated in **‘Priya Gupta Vs. State of Chhatishgarh and others 2012 (7) SCC 433.** The latest judgment in this regard is dated 21.6.2019, passed in Writ Petition (Civil) No.747 of 2019 titled as **‘Education Promotion Society for India and another Vs. Union of India and others.’** Accordingly, since the seat being claimed by the petitioner was vacated after 31.5.2019, no directions can be issued to Government Medical College & Hospital, Sector 32, Chandigarh to admit the petitioner against the said seat.

6. The Division Bench order in LPA-2094-2016 titled as **‘Sidharth Mohindru Vs. Director Principal, Government Medical College & Hospital, Sector 32, Chandigarh’**, also does not help the petitioner as no law has been laid down vide the said order. In fact, it has been clarified by the Hon’ble Judges that the order shall not be treated as a precedent. The case of **Himani Sharma (supra)** is distinguishable as in the said case, the petitioner had applied before the cut of date and was higher in merit than the candidate who was given admission. Reliance by learned counsel for the petitioner on **Dr. Vinayak Varma’s case (supra)** is misconceived. In the said case, as per note appended to Post-Graduate Education (Amendment) Regulations, 2018, All India Quota Seats

remaining vacant after 10th of May, were to be converted into State quota seats. The petitioner before the Supreme Court namely Dr. Vinayak Varma, approached the concerned High Court on 16.5.2018 and an interim order dated 18.5.2018, was passed, making the diversion of All India Quota Seats subject to the outcome of the writ petition and candidates admitted to the seats were informed accordingly. Thereafter, one Dr. Rohan Kapoor approached the High Court and vide order dated 30.5.2018, the High Court directed the filling up of vacant seats through All India NEET Merit, even though, the regulations provided for transfer of the unfilled All India Quota Seats to State quota. Accordingly, the Supreme Court held that even though, last date for admission i.e. 31.5.2018 had been crossed, the petitioner could not be made to suffer as his rights had been protected by the High Court vide order dated 18.5.2018. Accordingly, an exception to the general rule was made keeping in view the peculiar facts and circumstances of the said case. The argument of learned counsel for the petitioner that the petitioner has been prejudiced on account of delay in the admission process also cannot be accepted. Courts do not pass orders on the basis of suppositions. The fact of the matter is that vacancy sought by the petitioner arose only after the last date for making admissions and it is only this date that has been kept in mind for the purposes of this case. Imponderables as to what would have happened in case the process of admission had not been delayed, cannot be taken into consideration.

7. Similarly, the petitioner cannot derive any benefit by arguing that Dr. Anish Garg was wrongly given admission and that his admission

was contrary to the rules laid down in the prospectus. The admission granted to Dr. Anish Garg, has not been challenged nor is it challenged in the present petition, making the arguments of learned counsel for the petitioner, unsustainable.

8. For the aforementioned reasons, the writ petition has no merit and is dismissed, in limine.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

15.7.2019
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes / No
Yes/ No