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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on 17.09.2019
Judgment pronounced on 15.10.2019

+ **W.P. (C) 6796/2019 & C.M. No. 28445/2019**

DR. SHIVAM CHUGH

.... Petitioner

Through Mr. R.K. Saini, Mr. Ankit Singh, and
Ms. Bhavana Jain, Advs.

Versus

NATIONAL BOARD OF EXAMINATIONS & ORS. ... Respondents

Through Mr. Kirtiman Singh, Mr. Waize Ali
Noor, Mr. Prateek Dhanda, and
Mr. Rohan Anand, Advs. for R-1.

Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Sarvan Kumar Shukla, Adv
for UOI/R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface: -

1. This is a petition which is directed against communication dated 04.06.2019 (hereafter referred to as “impugned communication”) whereby the National Board of Examinations (NBE) intimated to the petitioner that the seat allotted to him for January 2019 admission session had been “forfeited” on account of his failure to produce original certificates during the certificate verification process. This communication went on to state that the petitioner’s seat had been “forwarded” to the next round of counselling.

Background: -

2. The petitioner being aggrieved has filed the instant writ petition against the impugned communication in the background of the following broad facts.

2.1 In and about January 2019, the petitioner who is a qualified MBBS doctor sat for the National Eligibility Cum Entrance Test – Post Graduate, 2019 (in short “NEET-PG 2019”). The NEET-PG 2019 result was declared on 31.01.2019. In the merit list, the petitioner was ranked 2140.

2.2 It is pertinent to note that the NEET-PG 2019 merit list, as in the previous years, is a common merit list based on which students are admitted to various postgraduate courses offered by medical colleges across the country based on quotas which include the All India Quota, the State Quota and the seats allocated by the NBE.

2.3 The process for admission requires students to attend counselling sessions on the stipulated date, time, and venue before the counselling committees set up for this purpose.

2.4 Insofar as the All India Quota is concerned, in which MD/MS seats are allocated, the counselling is carried out by the Director General of Health Services (in short “DGHS”) *via* the Medical Counselling Committee (in short “MCC”).

2.5 Likewise, the MD/MS seats in the State Quota are allocated by the State counselling authorities. Similarly, the allocation of DNB (Post MBBS) seats is carried out by the counselling committee set up by the NBE.

2.6 In the first instance, the petitioner was called for the first round of counselling under the All India Quota. Resultantly, in and about March 2019, the petitioner was allocated a seat in MD (General Medicine) in the Government Medical College, Amritsar, Punjab.

2.7 The petitioner, however, availed of the free exit route (i.e. did not join the aforementioned college) and hence became entitled to be invited for the second round of counselling.

2.8 The second round of counselling was held in and about April 2019. This time around, the petitioner was allotted a seat in MD (General Medicine) in respondent no. 3 college i.e. Shri M.P. Shah Medical College, Jamnagar, Gujarat. The petitioner took admission with the aforementioned college and as required deposited his original documents/certificates.

2.9 As luck would have it, even though he had taken admission in respondent no. 3 college, he was called for the third round of counselling on 23.05.2019 by the NBE for DNB (Post MBBS) course.

3. The list published by the NBE showed that the petitioner was allocated a seat in DNB (Radio Diagnosis) in Breach Candy Hospital, Mumbai, Maharashtra.

3.1 Since the petitioner was spoiled for choices, he gave up his seat in respondent no. 3 college by dispatching a resignation letter dated 24.05.2019. The reason given in this communication was that due to certain circumstances obtaining in the family he was required to participate in the State and DNB counselling.

3.2 On the date fixed for counselling by the NBE which was 29.05.2019, the petitioner appeared before the concerned committee but he was denied admission as during the certificate verification process it was found that he had not carried the requisite documents/certificates in original.

3.3 The petitioner claims that during the certificate verification process, he had presented photocopies of the requisite documents/certificates along with an affidavit wherein he had averred that the originals stood deposited with the respondent no. 3 college in which he had obtained admission and that he had applied for having them returned to him. The petitioner asserts that he had conveyed to the concerned committee that the originals of the documents/certificates would be returned to him shortly and that he would submit the same as soon as they were received from respondent no. 3 college. The petitioner also avers that the concerned committee asked the petitioner to make contact after he had received the originals.

3.4 On 04.06.2019, the impugned communication was sent to the petitioner *via* email at 12:25 P.M. As indicated above, it was conveyed by the NBE to the petitioner that his seat had been forfeited and thereafter forwarded to the next round of counselling.

3.5 It appears that on the very same day i.e. on 04.06.2019 at 03:04 P.M., the petitioner sent out an email to the NBE wherein he highlighted the fact that he had placed before the concerned committee photocopies of requisite documents/certificates. The fact that he had obtained admission in the respondent no. 3 college from which he had resigned and/or surrendered his seat was also adverted to in this communication.

3.6 Pertinently, there was no response to this communication by the NBE. The NBE, however, forwarded the petitioner's seat in DNB (Radio Diagnosis) to the final/mop-up round of counselling slated for 18.06.2019. It is in this background that the petitioner instituted this writ petition on 14.06.2019. The petition came up for hearing on 14.06.2019 when notice was issued which was made returnable on 17.06.2019. On 17.06.2019, the following order was passed:

"Learned counsel for the petitioner has pointed out that pursuant to directions of this court respondent No.3 has handed over the original certificates to the petitioner and they are available for scrutiny.

Learned counsel for the respondent has today in court filed his counter-affidavit. It has been pleaded in the counter-affidavit that de hors the controversy regarding the inability of the petitioner to produce the original certificates during the counselling for admission to the seat for the course of Radio Diagnosis in Breach Candy Hospital, Mumbai the petitioner even otherwise is not eligible in view of the judgment of the Supreme Court in the case of Dar-us-Slam Educational Trust and Ors. V5. Medical Council of India being Writ Petition No267/2017. It is pleaded that after the second round of counselling of All India Quota Seats the students who took admission in All India Quota seats would not be allowed/permitted to vacate the seats.

Learned counsel for the petitioner has refuted this contention stating that originally the only ground on which the petitioner's admission was cancelled was non-production of documents which is clear from the communication dated 4.6.2019 issued by respondent No.1. He further states that documents could not be produced as respondent No.3 was illegally withholding the same and is now available with the petitioner as they have been released by respondent No.3.

Let the respondents file their rejoinder within two weeks from today.

List for arguments on 08.7.2019.

In the meantime, the respondents may keep one seat vacant for the course of DNB (Radio Diagnosis) in the Breach Candy Hospital, Mumbai as per notification dated 23.5.2019 which will be subject to further directions of this court.”

3.8 As would be evident upon perusal of the extract of the order dated 17.06.2019 that the Court recorded the fact that respondent No. 3 college had in consonance with the directions contained in the order dated 14.06.2019, handed over the original certificates to the petitioner and that, consequently, they were made available for scrutiny.

3.9 It is also evident that the NBE had placed its counter-affidavit on record on 17.06.2019, based on which the Court noted that apart from the NBE's defence that it denied admission to the petitioner to the DNB (Post MBBS) course on the ground that he had not produced original certificates during the counselling, the other ground taken to defend its action was pivoted on the directions issued by the Supreme Court *vide* order dated 09.05.2017, passed in W.P. (C) No. 267/2017, titled ***Dar-Us-Slam Educational Trust and Others vs. Medical Council of India and Others***.

4. The argument which was advanced before the Court on 17.06.2019 based on the aforesaid order was that since the petitioner had taken admission with respondent No. 3 college under the All India Quota, he was not allowed or permitted to vacate that seat and hence, in any case, could not have been granted admission by the NBE in the DNB (Post MBBS) course.

4.1 It is also evident upon perusing the very same order dated 17.06.2019 that the petitioner in turn had responded to this objection raised on behalf of the NBE by stating that the impugned communication which articulated the reasons for denying admission to the petitioner only adverted to the fact that he had not produced the original certificates at the time of verification, and therefore, his seat had been forfeited and forwarded to the next round of counselling.

4.2 Thereupon, a counter-affidavit was filed by the NBE which obviously was the only contesting party. Respondent No. 3 college, as alluded to hereinabove, had already handed over the original certificates to the petitioner.

4.3 In the counter-affidavit, the NBE has taken the very same objection which was put forth before the Court to which I have referred hereinabove. Therefore, one need not dilate on the assertions made in the counter affidavit by the NBE.

4.4 I must, however, also advert to the fact that the NBE, in the counter-affidavit, to get over the possible impediment as to why the petitioner was called for counselling if he was otherwise not eligible has averred that in the e-mail dated 27.05.2019 sent by the petitioner wherein he had indicated that he was not able to deposit the fee amounting to Rs.1,25,000 due to a technical glitch experienced by him while opening the web-page, did not advert to the fact that he had already got admission with respondent No. 3 college.

4.5 In this behalf, the NBE, therefore, asserts that because it was unaware of the fact that the petitioner had obtained admission in respondent No. 3 college, it issued an e-mail dated 28.05.2019 whereby the petitioner was asked to deposit a demand draft favouring the NBE towards its first-year course fee and also report for biometric and certificate verification at the venue indicated on its website.

Submissions of Counsel: -

5. It is, in this background, that the arguments were advanced by counsel for the parties. The submissions on behalf of the petitioner were made by Mr. R.K. Saini, Advocate while arguments on behalf of the NBE were advanced by Mr. Kirtiman Singh, Advocate. Both counsels have argued in line with their respective pleadings.

5.1 Mr. Saini submitted that the NBE had wrongly denied admission to the petitioner. The petitioner has filed, *inter alia*, the following documents appended as annexures to the writ petition to establish the fact that he was entitled to relief in the petition.

- (i) NEET-PG 2019 Score Card (NEET-PG 2019 Rank)
- (ii) Seat allotment details *qua* Government Medical College, Amritsar.
- (iii) Provision Allotment letter (Round-2) dated 11.04.2019.
- (iv) Allotment details of DNB (Post MBBS) counseling for January 2019 Admission Session (Round-3) dated 23.05.2019.

(v) Resignation letter addressed to Dean, respondent No. 3 college dated 24.05.2019

5.2 The absence of an original MBBS degree certificate could not have been used as a rule to deny admission to the petitioner since during the counselling, the petitioner had presented photocopies of the requisite documents and certificates supported by an affidavit wherein he had averred that originals stood deposited with respondent No. 3 college in which he had obtained admission as also the fact that he had applied for having them returned to him.

5.3 In this behalf, my attention was drawn to paragraph 12 of the writ petition. Besides this, my attention was also drawn to the e-mail dated 04.06.2019 sent by the petitioner to the Counselling Committee of the NBE.

5.4 As to the other objection raised by the NBE, which is that once the petitioner had obtained admission under All India Quota in the second round of counselling with respondent No. 3 college, he could not have vacated that seat and thus was ineligible for admission to the DNB (Post MBBS) course, was pivoted on the order of the Supreme Court in ***Dar-Us-Slam Educational Trust***. The circular dated 01.05.2019 on which the NBE places reliance is also predicated on the aforementioned order of the Supreme Court.

5.5 The Supreme Court has clarified both in ***Ashish Ranjan vs. Union of India***, W.P. (C) No. 76 of 2016 and in ***Association of Private Medical & Dental Colleges of Chhattisgarh vs. State of Chhattisgarh***, 2017 (8) SCC 627 that the directions contained in ***Dar-Us-Slam Educational Trust*** would

apply only to the undergraduate courses and not to the postgraduate courses. Therefore, this objection of the NBE is without merit and, hence, unsustainable.

6. On the other hand, Mr. Kirtiman Singh, Advocate who appeared on behalf of the NBE reiterated the very same objections. Insofar as the necessity of producing the original certificates at the time of counselling was concerned, learned counsel relied upon paragraph 7.3 of the Handbook for Admission to DNB Broad Specialty Courses including Direct 6 Years Courses (Post MBBS) January 2019, Admission Session (hereafter referred to as “Handbook”).

6.1 Based on the aforesaid provision, it was submitted that the production of original certificates at the time of counselling was mandatory and since the petitioner had not produced the certificates, he has rightly been denied admission.

6.2 Insofar as the other objection was concerned which is that since the petitioner had been allotted a seat in the second round of counselling, *albeit*, under All India Quota and had taken admission, thereafter, with respondent No. 3 college and, hence, was not eligible for admission to DNB (Post MBBS) course, reliance was placed on paragraph 7.4 of the Handbook apart from the directions contained in *Dar-Us-Slam Educational Trust*.

Analysis and Reasons: -

7. I have heard counsel for the parties and perused the record.

7.1 In my view, principally, there are two objections taken by the NBE for denial of admission to the petitioner. First, that he did not carry his original certificates on the date of the counselling for verification. Second, that the petitioner was not eligible for being considered for admission to the DNB (Post MBBS) course since he had obtained admission in the second round of counselling under the All India Quota with respondent No. 3 college.

Objection No. 1: -

8. Insofar as this objection is concerned, in my view, what is required to be emphasized is that there is no dispute that the petitioner fulfilled the eligibility criteria which is that he had the necessary basic qualification for being admitted to the DNB (Post MBBS) course.

8.1 Given the fact that the petitioner had sat for NEET-PG 2019 and passed the same with an overall rank of 2140 but for not having in his possession on the date of counselling the original MBBS degree certificate, he would have obtained admission with the NBE.

8.2 The petitioner claims that on 29.05.2019 when he was called for counselling by the NBE, he had produced the photocopies of the requisite documents and certificates supported by an affidavit wherein he says that he had averred that the originals stood deposited with respondent No. 3 college in which he had obtained admission and even though he had applied for the

same, respondent No. 3 college had not returned the documents and certificates filed in original with it.

8.3 This assertion has been made in certain terms in paragraph 12 of the writ petition. The petitioner in paragraph 12, in this behalf, has referred to an e-mail dated 04.06.2019 which was sent by him to the NBE. Therefore, it becomes crucial to extract what exactly did the petitioner say in the said e-mail.

“Respected Sir

With reference to your mail at the time of dnb counseling I told u that I had taken MD medicine at Jamnagar and resigned from the same. The duplicate copy has been shown to you. Jamnagar College had not returned me my original certificates at that time. Photocopy of the certificates have been shown to you. And also I submitted an affidavit that when my documents are received from the college I will produce them. Kindly consider my case on natural justice.

Thanking you

Shivam Chugh”

8.4 As indicative above, this fact was emphasized by the petitioner in paragraph 12 of the writ petition. For the sake of convenience, the same is extracted hereafter:-

“12. That on 4th June 2019 Petitioner made a representation to the DNB that at the time of counseling itself he had informed that he had earlier taken admission in MD (Medicine) as M.P. Shah Medical College, Jam Nagar (Gujrat) but resigned from /surrendered the same and that duplicate copies of the certificates were shown at that time on account of fact that Jamnagar College has not returned his original certificate by them. A true copy of the email sent by the

Petitioner in this regard is annexed herewith and marked as ANNEXURE P-8.”

8.5 In the counter-affidavit filed on behalf of the NBE, there is no denial of the assertions made in paragraph 12 of the writ petition. Therefore, based on the material before me, I would have to accept the fact that the petitioner's e-mail dated 04.06.2019 was received by the NBE.

8.6 If this fact is correct, as it would have to be assumed in law to be correct on account of no specific denial, it would be evident that the fact that the petitioner had the necessary basic qualification was not contested by the NBE. The NBE was, then, only concerned with the production of the originals.

8.7 I had to deal with this very issue in a recent judgment dated 10.10.2019, passed in W.P. (C) 7255/2019, titled ***Dr. Shidore Shital Mhatardeo vs. National Board of Examination (NBE)***. On this aspect of the matter, relevant extract of the said judgment is extracted hereafter: -

“80. A mere inability to produce the original degree or certificate on the cut-off date cannot be the reason for denying admission as long as there is material available with the Counselling Committee or the authority charged with the responsibility of admitting the student which is demonstrative of the fact that a candidate has acquired the eligibility qualification or met the eligibility criteria.”

8.8 Therefore, to my mind, this objection, cannot sustain. The NBE could not have denied admission to the petitioner only on the ground that on the date of verification, he did not have in his possession, physically, the original certificates.

8.9 The fact that the originals were in the possession of respondent No. 3 college came to light during the pendency of the writ petition. Respondent No. 3 college, only upon a direction being issued by this Court in that behalf, handed over the same to the petitioner and were, thus, available for scrutiny before the cut-off date for admission to the DNB (Post MBBS) course i.e. 30.06.2019.

9. As noticed in my narration above, the Court records the fact in its order dated 17.06.2019 that original certificates have been handed over to the petitioner and are available for scrutiny.

9.1 Further, paragraph 7.3 of the Handbook, which was relied upon by the NBE in support of its decision because the original certificate was not produced on the date of the counselling does not come to the aide of the NBE. The relevant portion, on which emphasis was laid, was paragraph 7.3.10, which reads as under:-

“10. Candidates who have failed to produce their original certificate and failed to Join the allotted institute or declared not eligible as per the Information Bulletin of respective DNB course by the allotted institutes/hospital/NBE shall be filtered out from the counseling process. The seat allotted to them will be taken back for further allotment and their candidature will be cancelled.”

9.2 A plain reading of the said clause would show that it is not stipulated that the original certificates had to be produced on the date of the counselling. The clause simply states that the candidates who failed to produce their original certificates and failed to join the allotted institute or

are declared ineligible as per the Information Bulletin of the respective DNB course shall be filtered out from the counselling process.

9.3 There is no articulation in the counter-affidavit, as noted hereinabove, that the petitioner was not eligible. The reason mentioned was that the petitioner did not produce his original certificates. Therefore, insofar as the petitioner or other similarly placed candidates were concerned, they could not have been filtered out from the counselling process, only if they failed to produce the original certificates or failed to join the allotted institute.

9.4 Thus, the question that arises is: could the NBE, in such a situation, not have given the petitioner further time to produce the original certificates? In my view, such a leeway ought to have been granted to the petitioner. The NBE, perhaps, realising, the fact that this argument may not sustain took up the other objection which is adverted to hereinabove and dealt with hereafter.

Objection No. 2: -

10. Insofar as the second objection is concerned, it is founded on the directions issued by the Supreme Court in ***Dar-Us-Slam Educational Trust***. The NBE, in consonance with the directions of the Supreme Court, has issued a circular dated 01.05.2019.

10.1 I may only extract the circular for the sake of convenience as this would establish the link between the issuance of the circular and the directions contained in ***Dar-Us-Slam Educational Trust***.

NOTICE

MCC of DGHS is receiving lots of queries from students as well as colleges whether the candidates who have joined the seats allotted to them in Round-2 can resign from their seat or not.

In this regard, it is informed that candidates, who joined their allotted seat of All India Quota of Round-1 but did not resign within the stipulated time period (i.e till 16th April, 2019) and freshly allotted and joined candidates of Round-2 will not be able to resign from their allotted seat, and candidates who have joined a seat in Deemed/Central University in Round-2 will not be eligible to participate in any further rounds of counselling in Compliance with the directions of Hon'ble Supreme Court of India dated 09-05-2017 passed in W.P. No. 267 of 2017 Dar-Us- Slam Educational Trust Vs MCI & Qrs.

*Further, it is clarified that MCC of DGHS will not entertain any such requests of resignation from colleges or candidates.
Notice posted on: 01-05-2019”*

11. It is important to note that the very same Bench, in a subsequent order issued in **Ashish Ranjan's** case clarified that the directions contained in **Dar-Us-Slam Educational Trust** did not apply to postgraduate courses. This fact was noticed by the Supreme Court in **Association of Private Medical & Dental Colleges of Chhattisgarh**. The relevant observations are extracted hereafter: -

“62. We are, thus, of the considered view that the order dated 9-5-2017 does not relate to admission into postgraduate courses and is confined to admission in undergraduate courses as noted above.

63. Coming to the circular issued by the Government of India, Ministry of Health and Family Welfare dated 26-5-2017, the said circular has been issued on the strength of the order of this Court

dated 9-5-2017 in Dar-Us-Slam Educational Trust v. Medical Council of India . It appears that the said circular has been issued by the Government of India, Ministry of Health and Family Welfare in misconception that the order dated 9-5-2017 is applicable to the admission to the postgraduate courses. When the order dated 9-5-2017 is itself not applicable to postgraduate courses, the circular dated 26-5-2017 is not effective.”

11.1 Furthermore, thereafter, *via* an order dated 13.06.2017, passed, once again, in ***Association of Private Medical & Dental Colleges of Chhattisgarh***, this fact has been re-emphasized. The relevant observations are extracted hereafter: -

“69. As far as the third contention is concerned, this Court in Ashish Ranjan v. Union of India has dealt with this issue and come [sic: came] to the conclusion that the order in Dar-Us-Slam case is not applicable to postgraduate courses and is applicable only to undergraduate courses. This Court rejected the contention that the order in Dar-Us-Slam or the letter of the Union of India dated 26-5-2017 are applicable to postgraduate courses. ... ”

11.2 A plain reading of the observations made by the Supreme Court leaves no doubt that the directions contained in ***Dar-Us-Slam Educational Trust*** have no application to postgraduate courses.

11.3 Therefore, the circular dated 01.05.2019 is based on a misinterpretation of the directions contained in ***Dar-Us-Slam Educational Trust*** which was also the position that obtained *qua* an earlier circular dated 26.05.2017 issued by the Government of India, Ministry of Health and Family Welfare.

11.4 The Supreme Court commented on the same, as would be obvious on a reading of the extract from the judgment which has been quoted

hereinabove, that the circular proceeded on a misconception of directions contained in the order dated 09.05.2017 passed in ***Dar-Us-Slam Educational Trust***.

12. This brings me to the other argument raised in this connection on this aspect by Mr. Kirtiman Singh. Mr. Singh, perhaps, conscious of the fact that the directions contained in ***Dar-Us-Slam Educational Trust*** applied to the postgraduate courses relied on paragraph 7.4 of the Handbook. The clause has been extracted in paragraph 21 of the counter affidavit and reads as follows: -

“7.4 Final Round (In-person)

1. All the registered candidates; who have not been allotted with any seat during the first, second and third round of counselling, will be considered for Final Round of counselling.”

12.1 As noticed in my narration above, insofar as the objection taken *qua* the petitioner’s admission is concerned, the NBE in paragraph 17 had relied upon paragraph 7.3 which relates to the third allotment i.e. third round of counselling and to justify this objection, reliance is placed on paragraph 7.4 of the Handbook.

12.2 The undisputed fact which has emerged is that the petitioner was not called for the final round of counselling but was called for the third round of counselling.

12.3 The fact that this is so, is evidenced upon a perusal of Annexure P-5, which is a document dated 23.05.2019, and is titled as **“Allotment Details of DNB (Post MBBS) Counselling for January 2019 Admission Session (Round-3)”**.

12.4 Via this list, the petitioner was informed that he had been allocated a seat in Breach Candy Hospital in Radio Diagnosis specialty in the DNB (Post MBBS) course. It may be pertinent to note that in this list only the roll numbers of candidates and their ranks are given.

12.5 The fact that the petitioner's candidature bore the roll number '1966106533' which was set out at serial No. 27 of this list is not disputed by the NBE. This list, as is evident from the title, pertains to the third round of counselling. If there was any doubt concerning the same, it attains clarity if one were to read the assertions made by the NBE in paragraph 17 of the counter affidavit which read as follows: -

“17. However, the Petitioner did not produce the Original Certificates on date fixed i.e. 30-05.2019. It is relevant to mention herein that no time whatsoever was thereafter granted to the Petitioner to submit the Original Documents as alleged by the Petitioner in his petition. Accordingly, in terms of the Handbook of Counseling, the seat allotted to the Petitioner was forfeited and was forwarded to the next Round of Counseling i.e. Final Round (In-person) and the same was informed to the Petitioner vide email dated 04.06.2019. It is submitted that the seat matrix for Final Round (In-person) Counseling is in public domain. The relevant portion of the Handbook of Counseling is reproduced hereunder:-

7.3 Third Allotment

1. The candidates who have accepted the allotment by paying one-year course fee and successfully verified their certificate and Bio-metric at NBE designated centres along with all the registered candidates who have not been allotted with any seat during the First and Second round of counselling will be eligible for Third Round of counseling.

2. *The candidates allotted with a seat and not paid one-year course and/or did not get verified their Certificate and Bio-metric, will not be considered for Third round of counseling.*
3. *The panel of choice will be reopened for all the eligible candidates mentioned above to re-shuffle/rearrange their higher order choices and also allow to add new choices. No new candidate will be allowed to register for counseling during this period.*
4. *The allotment of seats will be made as per the choice preference arranged/selected by the candidates during the Third Round of counseling.*
5. *The method of allotment will be same as mentioned in the Second Round of counseling.*
6. *During the allotment process, seat vacated by the candidate due to the allocation of their higher order options, dynamically allotted to the lower ranked candidate than the candidate who have vacated the seat, as per the choice made by them during the third round of counseling.*
7. *Candidate allotted with a seat first time will have to pay one-year course fee of Rs. 80000/- through NBE online counseling portal. The candidate who have not paid the course fee within the stipulated time will be treated as explicit refusal of allotted seat and such candidate will not be considered for any further round of counseling.*
8. *The candidates who have been allotted with a seat first time and paid the one-year course fee have to report to the selected centre for the Certificate and Bio-metric verification. Candidate who have been allotted with a seat and paid the one-year course fee and not reported for Certificate and Biometric Verification will not be eligible for any further round of counseling. The seat allotted to them will be taken back for further allotment and their candidature will be cancelled.*
9. *The candidates who have accepted the allotment by paying one-year course fee and successfully verified their certificate and' Bio-metric at NBE designated centres can download their allotment letter from the online counseling portal and have to report to allotted institute/hospital/college within the period mentioned on the website along with the allotment letter. The*

Candidates have to produce their prescribed original documents for Joining the DNB course. The original certificates will be verified and the eligibility of the candidate will also be confirmed by the allotted institute/hospitals as per NBE guidelines.

10. Candidates who have failed to produce their original certificate and failed to Join the allotted institute or declared not eligible as per the Information Bulletin of respective DNB course by the allotted institutes/hospital/NBE shall be filtered out from the counseling process. The seat allotted to them will be taken back for further allotment and their candidature will be cancelled.

A copy of the Handbook of Counseling for DNB Broad Specialty Courses (Post MBBS) January 2019 Admission Session is annexed herewith and marked as ANNEXURE R-8."

13. Therefore, to my mind, the provisions of paragraph 7.4 of the Handbook would apply to all those candidates who were registered but had not been allotted any seat in the first, second and third round of counselling. It was only these candidates who were considered in the final round of counselling. The petitioner, in fact, was called for the third round of counselling. Therefore, paragraph 7.4 of the handbook, in my view, would have no application.

14. Given the aforesaid position, in my opinion, the NBE wrongly declined admission to the petitioner. The petitioner, undoubtedly, meets the basic eligibility criteria. The petitioner has, in his possession, the original degree certificate.

15. There is a seat available in Breach Candy Hospital, Mumbai in Radio Diagnosis specialty in the DNB (Post MBBS) course. The petitioner has come to grief due to the NBE not recognizing the fact that the requirement

for a candidate to have met the eligibility criteria as stipulated on the date of the counselling as against proof of the same are not the same thing.

16. The Supreme Court, when faced with such like situation, has issued the directions for admitting the candidates. There are three judgments which immediately come to mind viz. ***Dr. Vinayak Varma vs. Medical Counselling Committee & Ors.***, 2018 SCC OnLine SC 3113; ***UPSC v. Gyan Prakash Srivastava***, (2012) 1 SCC 537¹; and ***Dolly Chhanda vs. Chairman, Jee and Others***, (2005) 9 SCC 779².

16.1 For the sake of convenience, the observations made by the Supreme Court in this behalf in ***Dr. Vinayak Varma*** are extracted hereafter: -

“22. It is a case of illegal deprivation of admission in spite of the fact that the rights were protected vide High Court's order dated 18th May, 2018 extracted herein above as well as vide order dated 31st May, 2018 the appellant has been made to suffer for

¹ *“23. In our view, even though the Division Bench of the High Court in UPSC case [WP (C) No. 10058 of 2009 decided on 25-1-2010 (Del)] was right in not entertaining the respondents' plea that they could not produce LLB degree certificates because the same had not been made available by the university, it is not possible to approve the view that enrolment certificates issued by the Bar Council were not sufficient for treating the respondents eligible for the post of Assistant Public Prosecutor. Unfortunately, the Division Bench of the High Court did not give due weightage to the essential qualifications specified in the advertisement i.e. a degree in Law of a recognised university or equivalent and 3 years' experience at the Bar and the fact that one can gain experience at the Bar only by practising as an advocate and for that purpose enrolment with the Bar Council is sine qua non and, as mentioned above, the requirement of having passed the requisite examination in law is a must for enrolment as an advocate with the Bar Council.”*

² *“10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year.”*

no fault on his part. It is settled proposition when court has protected interest. The Maxim Actus Curiae Neminem Gravabit comes to rescue of appellant. It would be travesty of justice in the facts of the case to deny him admissions on the ground that 31.05.2018 cut-off date for admission is over.

23. In the peculiar facts and circumstances, we direct admissions as an exception to general rule, as the admission were made subject to the outcome of the petition and we have found on merits that the appellant is entitled for admission; we have decided matter on merits, now nothing further survives in the writ petition pending in the High Court that stands disposed of and order passed by the High Court is hereby set aside. The Civil appeal is allowed.

24. Let the appellant be given admission within a week from today. It is stated that in Vardhman Medical College there are seats of MS (Surgery) lying vacant. Let the appellant be admitted against one of the seats. He will have to complete the entire duration of the course of three years. Writ petitions pending before the High Court stand disposed of.”

Conclusion: -

17. Thus, for the foregoing reasons, the writ petition is allowed.

17.1 Given the fact that a seat is available in DNB (Radio Diagnosis) in Breach Candy Hospital, Mumbai, Maharashtra, I am inclined to direct the NBE to allot a seat to the petitioner in the said institute.

17.2 The writ petition is disposed of in the aforesaid terms. Accordingly, CM APPL. 28445/2019 shall also stand closed.

RAJIV SHAKDHER, J

OCTOBER 15, 2019/A