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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on 01.10.2019

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Judgment Pronounced on 22.10.2019

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W.P.(C) 7747/2019 & CM No. 32175/2019

DR. DEEPIKA VEERWAL

..... Petitioner

Through

Mr. Divyesh Pratap Singh, Ms. Deeksha Gaur, and Mr. Shantanu Sharma, Advocates.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through

Mr. Gaurav Varma, Advocate for R-1/UOI & R-3/VMMC.

Mr. Kirtiman Singh with Mr. Prateek Dhanda, Mr. Waize Ali Noor, and Mr. Rohan Anand, Advocates for R-2/NBE.

Mr. T. Singhdev with Ms. Arunima Pal, Ms. Puja Sarkar, Mr. Abijit, Mr. Tarun Verma, Ms. Manpreet Kaur, and Ms. Sumangla, Advs. for R-4/MCI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

Preface: -

1. The main grievance of the petitioner veers around denial of admission to her in the DNB Broad Specialty (Post MBBS) course [in short 'DNB (Post MBBS) course'] in the academic session January 2019 by respondent no. 2 i.e. the National Board of Examinations (hereafter referred to as 'the NBE').

2. The NBE denied admission to the petitioner on two short grounds. First, that she was unable to produce the requisite documents/certificates, in original during the document/certificate verification process. Second, that she had blocked a seat as she had secured admission in the All India Quota in respondent no. 3 college i.e. VMMC and Safdarjung Hospital, New Delhi (hereafter referred to as 'VMMC'). It is this which, essentially, has propelled the petitioner to approach this court *via* the instant writ petition. Thus, to adjudicate on the instant petition, the following broad facts are required to be noticed.

Background: -

2.1 The petitioner avers that she completed her MBBS course from Krishna Institute of Medical Sciences Deemed University, Karad, Maharashtra (in short 'KIMS') on 23.02.2013. Thereafter, the petitioner sat for the UPSC exam and upon being declared successful, was appointed as a medical officer on 12.09.2014, in DHS cadre (GDMO sub-cadre) in the Health and Family Welfare Department, Government of National Capital Territory of Delhi (in short 'GNCTD').

2.2 The petitioner, upon her appointment, was posted in the Lok Nayak Hospital. The petitioner sat for the National Eligibility cum Entrance Test – Post Graduate, 2019 [in short '2019 NEET (PG)'] on 06.01.2019 after informing her superiors in Lok Nayak Hospital *via* a communication dated 06.11.2018.

2.3 The 2019 NEET (PG) result was declared on 31.01.2019. The petitioner obtained 643 marks out of a total of 1200 marks and consequently was ranked 10437. Given this development, the petitioner, *vide* letter dated 19.02.2019, once again, sought the permission of her superiors at Lok Nayak

Hospital for participation in the counselling which would follow *qua* postgraduate courses in MD/MS Diploma/DNB. In this communication, the petitioner also indicated that she would require study leave, in case, she was offered a seat after the counselling.

2.4 On 27.03.2019, the petitioner received a Provisional Allotment Letter (in short 'PAL'). *Via* the PAL, the petitioner was intimated that she had secured a seat in the All India Quota in "DEG. Preventive Social Medicine" [hereafter referred to as 'MD (Community Medicine)'] in VMMC.

2.5 Accordingly, the petitioner fulfilled all formalities which included execution of a surety bond on 02.04.2019 whereby she gave an undertaking that she would be liable to pay a sum of Rs. 3,00,000/- to VMMC if any of the following circumstances occurred.

- a) She did not join the concerned course at the allotted institution on or before the stipulated date.
- b) She left the concerned course before its completion.
- c) If her admission/registration was cancelled/terminated by the University on account of unsatisfactory performance or indiscipline.

2.6 More importantly, besides executing the surety bond, the petitioner also deposited her documents/certificates in original with VMMC.

2.7 Consequently, on 03.04.2019, the petitioner received a formal admission letter which evidenced the fact that she had obtained admission in MD (Community Medicine) with VMMC. The admission, though, was subject to the petitioner submitting a "No Objection Certificate" (in short 'NOC') from her employer i.e. GNCTD.

2.8 On 12.04.2019, Government of India, Directorate General of Health

Services (in short 'DGHS') took out a public notice stating that the 2019 NEET (PG) candidates who had joined the allotted seat in round I (one) and had given their willingness for upgradation in round II (two) at the reporting institute and had not been upgraded in round II (two) could resign from their seat allotted in round I (one) by 16.04.2019 till 05:00 P.M. without forfeiture of refundable tuition fee failing which their seat would be presumed to be part of round II (two).

2.9 It was further stated that refundable tuition fees of candidates who were allotted fresh seats in round II (two) and upgraded candidates will be forfeited if they did not join the allotted seat in round II (two).

3. This apart, the notice also adverted to the fact that the candidates who had joined their allotted seat in All India Quota in round II (two) would not be able to resign and the candidates who had been allotted a seat in Deemed/Central University in round II (two) would not be able to participate in any further rounds of counselling in compliance of the directions issued by the Supreme Court in its judgement dated 09.05.2017, passed in W.P. (C)No. 267/2017, titled ***Dar-Us-Slam Educational Trust & Ors. vs. MCI & Ors.***

3.1 It appears that the petitioner, thereafter, wrote a series of letters to VMMC seeking an extension of time to join the MD (Community Medicine) course 2019 session. The ostensible reason given was that she had not been able to secure a NOC and permission for study leave from her employer. These letters are dated 22.04.2019, 02.05.2019, and 22.05.2019 and 06.06.2019.

3.2 In the interregnum, on 26.04.2019, the NBE took out a notice in continuation of its earlier notice dated 25.04.2019. In this notice, the NBE

indicated that admissions to DNB (Post MBBS) and (Post Diploma) courses *vis-à-vis* July 2019 admission session shall be carried forward to January 2020.

3.3 However, on 14.06.2019, the petitioner wrote to VMMC stating that since she was not able to obtain a NOC from her employer, it should accept her resignation and, accordingly, proceed to release her original documents and certificates. The communication ended with the petitioner conveying to VMMC that she is willing to pay the bond amount for the release of her original documents and certificates. This letter ended with an endorsement by VMMC, to which, I will be making a reference hereafter.

3.4 Within two days of this communication, on 17.06.2019, VMMC received another communication dated 15.06.2019, wherein the petitioner alluded to the fact that her joining VMMC, on 03.04.2019, was subject to the condition that she would be in a position to obtain a NOC from her current employer by 16.04.2019.

3.5 She further averred that since she was not able to obtain the NOC by 16.04.2019, VMMC should have cancelled her allotment on that date as that was the last date set out for round I (one) of counselling in the All India Quota.

3.6 The petitioner went on to aver that since VMMC did not allow her to resign after 16.04.2019, she continued with her endeavour to obtain a NOC from her employer and, had thus, sought an extension of time for this purpose. It was also stated that because of this situation obtaining she was unable to attend further rounds of counselling as per the Medical Counselling Committee (MCC) guidelines.

3.7 It was, thus, averred that given this odd situation, as advised, she

tendered her resignation to secure her original documents/certificates. The petitioner claimed that she regretted the decision and therefore would like to withdraw her resignation and instead make further endeavours to produce the NOC.

3.8 The petitioner also conveyed that since she had been informed by her employer that the sanction of study leave was subject to the approval of the Government of India and clarification being given in that behalf by Department of Personnel and Training, she may be allowed to join the course.

3.9 It was also suggested by the petitioner that if she could not continue with the May 2019 batch on account of delay in the production of the NOC, she should be allowed to join the next session i.e. the May 2020 session or a session falling in between.

4. The aforesaid letter was followed by the petitioner by yet another letter dated 17.06.2019 addressed to VMMC wherein she, *inter alia*, conveyed her request for release of the original documents/certificates. In this communication, the petitioner sought to highlight the fact that it was conveyed to her on an earlier occasion that unless she resigned her seat in the round I (one) under the All India quota by 16.04.2019 she would not be allowed to attend any further round of counselling which, according to her, was also the reason as to why her original documents/certificates were not released. The petitioner went on to aver that this position was adopted by VMMC based on an incorrect reading of the judgement rendered in ***Dar-Us-Slam Education Trust*** which applied only to undergraduate courses and not to postgraduate courses. Like the letter dated 14.06.2019, in this letter as well, on behalf of VMMC, an endorsement has been made at the foot of the

letter, to which, I would be referring in the latter part of my judgement.

4.1 The record shows that the petitioner, finally, attended the counselling held by the concerned committee of the NBE on 18.06.2019.

4.2 Though the petitioner applied, she was unable to get through the first three rounds of counselling held by the NBE. The petitioner, however, succeeded in the final round (in-person) counselling and, accordingly, received a Counselling Participation Letter (hereafter referred to as 'CPL') whereby she was invited to attend counselling for DNB (Post MBBS) and (Post Diploma) courses on 18.06.2019.

4.3 As alluded to hereinabove, the petitioner's candidature was rejected at the document verification stage since she did not have the original documents/certificates available on her person. Resultantly, the petitioner shot off an email dated 19.06.2019. This email was addressed to the NBE.

4.4 There is on record a reply of one Mr. Suresh Kumar K on behalf of the NBE of the same date i.e. 19.06.2019 at 04:44 P.M. *Via* this reply, the NBE conveyed to the petitioner that her candidature had been rejected on the ground that she had not produced the original documents/certificate. In this behalf, paragraph 7.4.4 as incorporated in "Handbook for Admission to DNB Broad Specialty Courses including Direct 6 Years Courses (Post MBBS) January 2019, Admission Session" (hereafter referred to as "Handbook") was adverted to.

4.5 Besides this, it was also stated that the original documents/certificates were required to be seen at the verification stage to not only to know whether or not the candidate meets the eligibility criteria but also to prevent a candidate from blocking more than one seat. Insofar as the latter statement was concerned, it was sought to be supported by placing reliance on the

judgement of the Supreme Court in ***Dar-Us-Slam Educational Trust***.

4.6 The petitioner in response to the NBE's email, once again, *vide* an email dated 19.06.2019 wrote to Mr. Suresh Kumar K, NBE stating that their discernment of the ratio of the judgement rendered by the Supreme Court in ***Dar-Us-Slam Educational Trust*** was flawed. In this behalf, the petitioner relied on judgement dated 29.05.2018, passed in W.P.(C) No. 11828/2019, by the Punjab and Haryana High Court and orders of the Supreme Court in SLP (C) 16282/2017.

4.7 On 21.06.2019, the petitioner yet again represented to the NBE. This communication was addressed to one Ms. Rashmikanth Dave, Vice President, NBE. The reply to this communication was sent by Mr. Suresh Kumar K, Deputy Director (Counselling and Registration), NBE *vide* letter dated 28.06.2019. The reply, though, was dispatched on 01.07.2019 and received by the petitioner on 02.07.2019. In this letter, the NBE, *inter alia*, alluded to the fact that the petitioner was not allowed to participate in the counselling *qua* the DNB (Post MBBS) course for the reason that she had blocked a seat under the All India Quota.

4.8 In this behalf, reference was made to a public notice dated 01.05.2019. In support of its stand, reference was made to Frequently Asked Questions (FAQ's) No. 61 uploaded on the website of the MCC. Furthermore, it was indicated that, in any case, as per paragraph 7.4.4 of the Handbook, the petitioner was required to carry the original documents/certificates at the time of counselling.

4.9 It appears that VMHC *vide* letter dated 02.07.2019 addressed to one Dr. B Srinivas, ADGME, Medical Education Cell, DGHS, New Delhi, *inter alia*, took the position that the petitioner could be relieved from her

obligation to continue with the seat allotted to her and be handed over her original degree and certificates only upon an order being issued by a Court in that behalf. This letter was copied to the petitioner.

5. Since the petitioner's grievance was not resolved, she filed the instant writ petition on 15.07.2019. Notice in the petition was issued on 19.07.2019.

6. Since then, the NBE, VMMC, and DGHS have filed their respective counter-affidavits.

7. In a nutshell, what emerges is the following.

- i. Firstly, the petitioner obtained a seat in the round I (one) of the counselling in VMMC in MD (Community Medicine) under the All India Quota.
- ii. Secondly, she resigned her seat, in the first instance, on 14.06.2019 and followed it up by withdrawing the same on 15.06.2019, *albeit*, before its acceptance.
- iii. Thirdly, the circulars dated 12.04.2019 and 01.05.2019 are cited by the NBE in support of its contention that the petitioner cannot be allocated a seat in DNB (Post MBBS) course since she held a seat under the All India Quota. Both the circulars are founded on the premise that the directions contained therein apply to postgraduate courses.
- iv. Fourthly, the petitioner has not placed on record either the NOC or approval of her employer i.e. GNCTD which was a prerequisite for seeking admission to VMMC.

8. Therefore, what needs to be addressed right at the beginning is: whether the directions contained in *Dar-Us-Slam Educational Trust* would

apply to postgraduate courses? In the event it does not apply, the circulars dated 12.04.2019 and 01.05.2019 would lose their efficacy.

8.1 That ***Dar-Us-Slam Educational Trust*** does not apply to postgraduate courses is no longer *res integra* is apparent on a plain reading of the judgements/orders passed by the Supreme Court in ***Ashish Ranjan vs. Union of India***, W.P. (C) No. 76 of 2016 and ***Association of Private Medical & Dental Colleges of Chhattisgarh vs. State of Chhattisgarh***, 2017 (8) SCC 627. The observations made to that effect in ***Association of Private Medical & Dental Colleges of Chhattisgarh*** which refers to ***Ashish Ranjan***, being apposite are extracted hereafter.

“69. As far as the third contention is concerned, this Court in *Ashish Ranjan v. Union of India* [Set out in paras 42 to 64, above.] has dealt with this issue and come to the conclusion that the order in *Dar-Us-Slam* case [Set out in paras 22 to 25, above.] 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* [Set out in paras 22 to 25, above.] or the letter of the Union of India dated 26-5-2017 are applicable to postgraduate courses. This Court held as follows: (See paras 62-63)

“62. We are, thus, of the considered view that order dated 9-5-2017 [Set out in paras 22 to 25, above.] 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* [Set out in paras 22 to 25, above.] . 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 [Set out in paras 22 to 25, above]; is applicable to the admission to the postgraduate courses. When the order dated 9-5-2017 [Set out in paras 22 to 25, above.] is itself not applicable to postgraduate courses, the circular dated 26-5-2017 is not effective.””

(Emphasis is mine)

9. Given the aforesaid, the two circulars dated 12.04.2019 and 01.05.2019 would have no applicability. Thus, the basis for rejecting the petitioner’s candidature, which is, that she cannot block a seat in All India Quota and simultaneously hope to obtain a seat in DNB (Post MBBS) course comes to naught.

9.1 In my opinion, this may be a wholesome and robust principle. However, it needs to be balanced with the right of a candidate to better his/her prospects, *albeit*, without impeding other candidates who are waiting in the queue.

9.2 That being said, this principle has to be backed by the necessary legal framework. In the absence of a legal embargo, the petitioner cannot be denied a seat in DNB (Post MBBS) course on this ground. The NBE, perhaps, conscious of this fact, seeks to place reliance on paragraph 7.4.4 of the Handbook which reads as follows.

“7. PROCEDURES FOR ALLOTMENT OF SEATS

xxx xxx xxx

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 counseling, will be considered for Final Round of counseling.*

2. *The Final Round of counseling shall be held in New Delhi, at National Board of Examinations, PSP Area, Sector-9, Dwarka (Landmark: Opp. District Court, New Delhi) as per*

the prescribed schedule.

3. Candidates are required to make their own arrangements for boarding & lodging. Travel cost to appear in the counseling shall be borne by the candidates themselves.

4. Candidates are required to produce the following documents in original at the time of counselling, failing which the candidate shall not be allowed to participate in the counselling:

*a. MBBS Degree certificate/Provisional Pass Certificate of MBBS**

b. Permanent Registration certificate issued by MCI/State Medical Council for registration of MBBS qualification.

c. Internship Completion Certificate (internship completion date must be on or before 31st March 2019).

d. SC/ST/PWD/OBC certificate issued by [the] competent authority, if applicable. Caste certificate must be issued by [the] competent authority. The sub-caste should tally with the Central Govt. list.

e. Special category certificate issued by the competent authority, if applicable.

f. Valid Identity proof i.e. PAN Card, Indian Passport, Voter ID card, Driving License or Aadhaar Card (with [the] photograph).

g. Any Bonafide Certificate (optional)

**Provisional certificate of MBBS Qualification is permissible only for those candidates who had passed the MBBS Qualification in the year 2018. If the candidate has passed MBBS Qualification before 2018 and the MBBS degree certificate has not been issued to him/her so far by the concerned university/Board, documentary evidence to this effect in the form of a letter from competent authority of respective university/Board is to be furnished at the time of certificate verification/joining the allotted institute. All the certificates must be in HINDI or ENGLISH. In case if any of the certificate(s) is/are in [the] regional language, its Hindi/English version translated copy duly authenticated by a Gazetted Officer will be required in original at the time of certificate verification/joining the allotted institute.”*

10. The petitioner was allotted a seat in the round I (one) under the All India Quota and therefore while she would fall within the ambit of paragraph 7.4.4 of the Handbook as she was called by the NBE only in the final round (in-person) of counselling, the question is: What would be the end-date by which she would be required to submit in original the documents and/or certificates referred to in subparagraph 7.4.4 (a) to (g) of the Handbook?

10.1 A perusal of paragraph 7.4.4 of the Handbook would show that save and except, where a candidate has obtained an MBBS degree certificate before 2018 and the same is not issued to him/her by the concerned Board/University, in which case, a letter from a competent authority to that effect submitted either at the time of certificate verification i.e. counselling or at the time of joining the allotted institute would suffice, however, in respect of all other documents/certificates, the date of counselling would be the end-date.

10.2 Ordinarily, the date of counselling, which otherwise, to my mind, is encompassed in a provision that is only directory and not mandatory, should hold in the absence of a challenge to the provision- its tenability, though, would require to be examined where fault for non-adherence lies at the doorstep of the NBE.

11. The facts obtaining, in this case, show that the petitioner had expressed her intention to resign and thus gave up her seat in VMMC on 14.06.2019. She retracted her resignation on 15.06.2019. Both steps were taken by the petitioner were based on tenuous legal advice.

11.1 The fact that VMMC was not sure as to whether the petitioner should be permitted to resign or not and thus be handed over her documents is

evident from the following endorsement made on the letter dated 14.06.2019.

“Matter to be discussed with DGHS and legal opinion to be taken”

-sd/-
15.06.2019

11.2 The fact that the petitioner did not have a NOC from her employer or approval for study leave was the reason given by the petitioner as to why she ought not to have remained on the rolls of VMMC and therefore be handed over her original documents.

11.3 This bravado did not last too long as on the very next day i.e. on 15.06.2019 she retracted her resignation and followed it up with a letter dated 17.06.2019. In the letter dated 17.06.2019, the petitioner reiterated her request for the return of her original documents/certificates. The fact that the directions contained in ***Dar-Us-Slam Educational Trust*** had no applicability to postgraduate courses was also brought to fore. The VMMC instead of taking a decision one way or the other simply passed the buck by having its officer make the following endorsement on the petitioner's letter dated 17.06.2019.

“Bring Court order in your case for appearing in counselling for DNB course”

-sd/-
18.06.2019

11.4 The petitioner's counselling with the NBE was on 18.06.2019. The petitioner was not entertained on that date. The very next day i.e. on 19.06.2019, the petitioner made a representation to the NBE in which she demanded to be told the reason for rejection of her candidature.

11.5 In response, the NBE on the same date i.e. on 19.06.2019 gave two

reasons for rejection of the petitioner's candidature. First, non-production of original documents/certificates as required under paragraph 7.4.4 of the Handbook. Second, blocking a seat under All India Quota.

11.6 In this behalf, reliance was placed by the NBE on ***Dar-Us-Slam Educational Trust***.

12. The second reason given by the NBE for rejection of the petitioner's candidature is legally untenable for the reasons noticed hereinabove. The directions contained in ***Dar-Us-Slam Educational Trust*** as clarified by the Supreme Court in the later judgements to which I have referred above do not apply to postgraduate courses.

12.1 Insofar as the first objection is concerned which is non-production of original documents/certificates, I need to extract the relevant assertions made in the correspondence exchanged between the petitioner and the NBE. First in the series is the letter dated 21.06.2019 addressed by the petitioner to the NBE. In this letter, the petitioner made the following assertions.

"As per the counseling participation letter uploaded on website of DNB. I appeared for participating in [the] final round of [the] in-person counseling on scheduled dated and time i.e.18/06/2019 at 1:30 p.m., as per merit based counseling I opted for DNB Radio diagnosis at Vivekananda polyclinic at Lucknow so my biometric verification was successfully completed and DD of 1 lac 25 thousand was deposited. I proceeded for [the] document verification process in support of my qualification. DMC registration certificate, paper certifying internship completion and provisional degree certificate were produced in original and as I had earlier opted for M.D. course admission in V.M.M.C. and Safdarjung Hospital through all India 50% quota, my M.B.B.S. Degree is deposited at V.M.M.C. and Safdarjung Hospital so acknowledgement certified and duly signed for submission of my original documents by competent authority from the above

mentioned institute were produced. But [a] person pretending to be Mr. Suresh Kumar. Deputy Director cancelled my candidature and declared me ineligible on the ground that I have already opted for a seat in All India quota. On being asked to show me any relevant order in support of cancellation of my candidature on the above mentioned ground or at least give in writing so as to why my candidature is being cancelled, he started raising his voice and refused to give anything in writing and started threatening to cease my DD that was deposited already and on talking about showing him the judgment of Honorable Supreme Court and Honorable High Court of Punjab and Haryana relating to the same incidence he simply said I should go to Court if I want to show any Court Judgment and he is not bound to listen or follow anything shown by me even if it is a Supreme Court Judgment because he is very sure of his knowledge that I am ineligible on the ground stated earlier. ...”

(Emphasis is mine)

12.2 The NBE responded to this letter vide communication dated 28.06.2019. It is to be noted that though this letter is dated 28.06.2019, it was received by the petitioner only on 02.07.2019, that is, after the cut-off date i.e. 30.06.2019. The NBE has put nothing on record to show as to when the letter was dispatched. On the other hand, the petitioner has placed on record an e-tracking report which shows that the letter was dispatched to her after the cut-off date i.e. on 01.07.2019.

12.3 In this letter, the NBE elaborated on its stand, taken in its earlier communication dated 19.06.2019. In support of its stand that the petitioner could not exit the seat which was allotted to her in VMMC under the All India Quota, reference was made to FAQ No. 61 on the MCC's website. Furthermore, reference was also made to the circular dated 01.05.2019 which was also uploaded on the MCC's website, to which, I have referred

hereinabove.

12.4 The FAQ in its entirety and the answer given against it (as quoted in the counter-affidavit of the NBE) is extracted hereafter, for the sake of convenience.

“Q. No. 61: Whether I am eligible for State/ DNB Counseling if allotted a seat in 2nd Round of DGHS?”

Ans: If a candidate has been allotted a seat in Round-2 but not reported at the allotted Institute, he/she can exit with Forfeiture of Fees i.e. the Refundable Tuition Fee will be forfeited. However, once the candidate joins a seat allotted in 2nd Round (of AIQ/ Deemed University) he/she will not be eligible for exiting the seat and not eligible for any other round of Counseling including State and DNB Counseling. The names of such candidates who have joined in Round-2 of AIQ/ Deemed/ Central Universities will be circulated to all state counseling authorities for prohibiting them to participate in any other counseling.”

The above rule is due to the direction of Hon’ble Supreme Court in Dar-Us- Slam case.

(Emphasis is mine)

12.5 Besides this, in support of its stand that original documents/certificates were required to be produced at the time of counselling, reference was made to a public notice dated 25.03.2019 along with paragraph 7.4 of the Handbook to which as well I have referred above. This apart, the NBE also referred to another public notice dated 04.06.2019 and the CPL to emphasize the point that the petitioner was required to produce original documents/certificates on the date of counselling. The letter concluded with the following justification for rejecting the candidature of the petitioner.

“7. The submission of the original documents during the counseling is not only to ascertain the eligibility of a

candidate in terms of his qualifications but also to ascertain whether the said candidate is not blocking up any other Post Graduate seat at any other institute as part of the policy of NBE to avoid the wastage of PG Seats.

Accordingly, you have not been allowed to participate in the Final Round (in-person) counseling is as per rule of NBE.”

(Emphasis is mine)

13. On record is a letter dated 02.07.2019 written by VMMC to DGHS. A copy of this letter was dispatched to the petitioner. In this letter, VMMC after recording several extensions sought by the petitioner to join MD (Community Medicine) course for various reasons, also adverts to the letters dated 14.06.2019, 15.06.2019, and 17.06.2019 which were directed by the petitioner to VMMC. The letter concludes with the following averment.

“... However, in similar cases, the individuals were relieved only after Hon'ble Court directions which imposed penalty above bond money in some cases during [the] 2018-19 session. Therefore, in [the] above case too, similar procedure may be followed, and the candidate can be relieved only upon Hon'ble court order if the candidate resigns while admission process through NEET for various courses/programs is incomplete. ...”

(Emphasis is mine)

13.1 What emerges from the aforementioned is that whether it was the FAQ No. 61 or the circular dated 01.05.2019, it erroneously sourced its directions in ***Dar-Us-Slam Educational Trust*** which did not apply to the petitioner's case. Despite the petitioner pointing out this egregious error well before the cut-off date, the NBE refused to make a course correction.

13.2 As a second string to its bow, the NBE adverted to public notices dated 25.03.2019 and 04.06.2019, paragraph 7.4 of the Handbook, and the extract from the CPL. Notably, while the NBE did so, it could not but accept

(as is evident on reading the concluding part of its reply dated 28.06.2019) that it had enough and more material available with it, in original, in the form of DMC registration certificate, internship competition certificate, and provisional degree which were demonstrative of the fact that the petitioner met the eligibility criteria.

13.3 Perhaps, being aware of the tenuous nature of its stand, the NBE concluded its letter of 28.06.2019 by asserting that the original documents/certificates at the time of counselling were required not only to ascertain the eligibility of the candidate but also to gather information as to whether the candidate was blocking a postgraduate seat in another institute.

13.4 The NBE claimed that this was part of its “policy” to ensure that postgraduate seats are not wasted.

14. To my mind, what the aforesaid exchange of communication brings to fore is that the NBE had no legal framework to back its objection that the petitioner could not be considered for the DNB (Post MBBS) course because it had been allotted a seat in VMMC.

14.1 As far as the non-production of original documents was concerned, the correspondence reveals that the NBE did not doubt the fact that the petitioner met the eligibility criteria.

14.2 The petitioner, on the other hand, could not lay her hands on the original MBBS degree and other documents as they were lodged with VMMC which could not make up its mind as to what was the right course to be followed in such a situation.

14.3 As noted above, in the first instance i.e. on 14.06.2019, the concerned officer in VMMC wanted to discuss the issue with DGHS and seek legal opinion. Since the petitioner reiterated her request for return of the original

documents/certificates *vide* letter dated 17.06.2019, VMMC washed its hands off the problem by asking her to obtain judicial orders.

14.4 The counter-affidavit filed on behalf of the Union of India *via* the office of DGHS only adverts to the fact that the petitioner having obtained admission under the All India Quota was not allowed/permited to vacate her seat given the directions contained in ***Dar-Us-Slam Educational Trust***. In support of this assertion, reference is made to FAQ No. 61 as also to the fact that the petitioner had participated in the round II (two) of counselling for up-gradation of her seat and college, though, she could not get upgraded.

14.5 Respondent No. 4 i.e. The Medical Council of India (in short ‘the MCI’) has not filed any counter-affidavit. For the first time, in the written submissions filed on behalf of the MCI, the very same submission is made, which is, that after the round II (two) a candidate was not allowed to vacate his/her seat. This submission is rooted in Regulation 9A (4) contained in the notification dated 05.04.2018 issued by the MCI which amended the “Postgraduate Medical Education Regulations, 2000.”

14.6 Importantly, this submission is foregrounded in the directives incorporated in ***Dar-Us-Slam Educational Trust***, which, as noticed above, have no application to postgraduate courses. Moreover, the petitioner had no opportunity to rebut this assertion as it was not part of the pleadings or correspondence exchanged on the issue before the institution of the captioned petition.

14.7 Pertinently, the justification given for inserting Regulation 9A (4) is that it prevents seat blocking and permits exercise of fresh choice during the counselling. As noted above, none of this was put to the petitioner.

14.8 Thus, if the provisions of Regulation 9A (4) applied and therefore prevented the petitioner from resigning then there was no need for VMMC to convey to the petitioner on 14.06.2019 that a legal opinion had to be obtained and then followed it up on 17.06.2019 with an advice that she should obtain judicial orders for release of her original documents/certificates if she wished to participate in the DNB counselling.

14.9 What is even more surprising is the contents of VMMC's letter dated 02.07.2019 addressed to DGHS wherein it, *inter alia*, conveyed that in similar cases, *qua* academic session 2018-2019, original documents/certificates had been released, *albeit*, after intervention of the Court and upon imposition of penalty. As to what were these orders was not brought to fore either by VMMC or DGHS. Thus, in effect, except for the MCI, none of the other authorities have referred to Regulation 9A (4).

15. There is no doubt that the petitioner had approached VMMC as early as on 14.06.2019 for release of documents at the pain of suffering a penalty of Rs. 3,00,000/-. VMMC, though, stalled the release of original documents/certificates. The petitioner ran pillar to post i.e. between VMMC and the NBE but to no avail.

15.1 Clearly, neither VMMC nor DGHS thought that notification dated 05.04.2018 applied to the petitioner. Furthermore, it is evident that even according to the MCI this notification was issued on the premise that the directions contained in *Dar-Us-Slam Educational Trust* applied to postgraduate courses.

Conclusion: -

16. Therefore, given this position, can one hold the petitioner responsible for her travails? In my view, on a consideration of the entirety of the matter,

in particular, the factual matrix obtaining in this case, the petitioner cannot be held responsible for what came to pass. The fault, if any, lies with the two institutions, that is, VMMC and the NBE.

16.1 The argument that a seat will be wasted, given the facts obtaining in this case, can have very little relevance as the cut-off date for All India Quota which is 31.05.2019 has already been crossed. Should this by itself deter the Court? The answer to this lies in *Dr. Vinayak Varma vs. Medical Counselling Committee & Ors.*, 2018 SCC OnLine SC 3113 (refer paragraph 22-23). The question, however, which needs to be answered, is: If there is a seat available with the NBE in DNB (Post MBBS) course, should that be allotted to the petitioner? In the given case, the record shows that there is no interim order in favour of the petitioner. It is therefore not known as to whether a seat is available in Radio Diagnosis specialty in Vivekanand Polyclinic, Lucknow; a direction which is sought by the petitioner.

17. Thus, the only direction which can be issued is that the NBE should consider allotting a seat to the petitioner in the aforementioned college in January 2019 session if the same is available. In case a seat is available, intimation in this behalf will be given to the petitioner by the NBE within one week from today.

17.1 If such intimation is received, VMMC will immediately allow the petitioner to disengage from MD (Community Medicine) course and VMMC will thereupon release the original documents/certificates to the petitioner to enable her to submit the same to the NBE.

17.2 The alternative prayer sought for by the petitioner cannot be granted as it would impact the prospects of the candidates who may sit in the NEET

(PG) examination in the January 2020 session.

17.3 Needless to add, the aforementioned directions will be subject to the petitioner complying with all other prerequisites.

18. Before I conclude, in my view, it is important for all authorities dealing with various quotas viz. All India Quota, the State Quota, and DNB in the interest of candidates to elucidate their position in no uncertain terms, the stage until which the candidates can make their choices *dehors* the directions contained in *Dar-Us-Slam Educational Trust*. The fact that there is no clarity both in the minds of candidates, as well as those who manage various institutions, came through vividly in this case. The NBE, in particular, is directed to put in place the legal framework to prevent such occurrences in the succeeding academic sessions.

19. The petition is disposed of in the aforesaid terms. Resultantly, CM APPL. 32175/2019 shall stand closed.

RAJIV SHAKDHER, J

OCTOBER 22, 2019