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

Date of decision: 10th January, 2019

+ W.P.(C) 7891/2018

DR MOHSIN KHAN

.....Petitioner

Through: Mr. Praveen Agrawal, Adv.
with Mr. Abdul Karim Ansari, Adv.

versus

NATIONAL BOARD OF EXAMINATIONS & ANR

..... Respondents

Through: Mr. Kirtiman Singh, Adv. with
Mr. Waize Ali Noor, Mr. Prateek Dhanda,
Ms. Shruti Dutt, Mr. Nikhil Lal and Mr.
Parth Semwal, Adv. for R-1
Mr. Subhash Kumar, Adv. for R-2

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T (O R A L)

1. In the hierarchy of qualifications which may be attained by medical professionals in this country, following obtaining of an MBBS qualification, a candidate could aspire to attain an MD/MS qualification, depending on whether he belongs to the non-surgical or surgical discipline and, thereafter, could proceed to attain a DM/M.Ch, or, alternatively, an FNB qualification, which stands for “Fellow of National Board”. The FNB programme is run by the National Board of Examination, and entrance into the programme is dependent on clearance of a test known as the “NBE Fellowship Entrance Test” (NBE FET).

2. Under the said scheme – if one may call it that – qualification in the NBE FET is followed by counselling. The guidelines relating to counselling, consequent to clearance in the NBE FET, are contained in the NBE FET Handbook for Centralized Counselling for Admission to the Fellowship Programme. The said Handbook, as issued for the academic session 2018 – with which the present writ petition is concerned – contained the following relevant clauses:

“1. ELIGIBILITY FOR COUNSELING:

1.1 Candidates who have qualified the NBE Fellowship Entrance Test (NBE FET) conducted by NBE on 17th February 2018 and fulfill the eligibility criteria for admission to Fellowship courses (2018 admission session) at various NBE accredited Medical Colleges/Institutions/Hospitals in India shall participate in the counseling for allocation of seats purely on merit cum choice basis.

1.2 Candidate pursuing any other post graduate/Post doctoral medical course can join a FNB seat only after he/she resigns from such course. Seat allotment letter to such candidate shall be issued by NBE (within the admission calendar) only if the candidate has been relieved and discharged from the institution/college/hospital from where he/she is undergoing such post graduate medical course.

1.3 If ineligibility is detected at any stage, NBE reserves its rights to take necessary actions as deemed fit including but not limited to cancellation of admission to FNB course and to debar the candidate from taking any further examinations conducted by NBE

1.4 Candidates absent/not participating in any round of counseling either in-person or through online (opt out) shall not be eligible for participation in subsequent

rounds(s) of counseling, i.e. Attending the previous round of counseling in-person or through online mode is essential to make the candidate eligible for the subsequent round of counselling (if any).

Counselling	Eligibility
1 st Round	i) Candidates who are in possession of Post Graduate Medical Degree/ Provisional Pass Certificate (MD/MS/DM) by 31.12.2017 in the eligible specialties and their Medical qualifications are recognized as per the provisions of IMC Act (1956) (OR) (ii) Candidates who are in possession of DNB degree certificate / Provisional Pass Certificate by 31.12.2017 in the eligible specialties (AND) (iii) Candidates who have qualified the FET conducted by NBE in the respective session for admission to the respective courses at Various NBE accredited Medical Colleges /Institutions /Hospitals in India shall be eligible to participate in the counseling for allocation of seats purely on merit cum choice basis
2 nd Round	Candidates who have participated in the 1 st Round of counseling either in-person or through online (opt out) shall be eligible for

	participation in the 2 nd round of Counseling in order of merit.
3 rd Round (if conducted)	Candidates who have participated in the 2 nd Round of counseling either in-person or through online (opt out) shall be eligible for participation in the 3 rd round of Counseling in order of merit

1.5 Candidates joining Fellowship Programme for 2018 admission session, after opting a confirmed seat through NBE FET Centralized Counseling shall not be eligible to appear in NBE FET and shall not be eligible for another FNB seat for the entire duration of their Fellowship Programme (i.e. for 2 years). This shall be irrespective, of their resignation or discontinuation from, the course, due to any reason. Candidates joining Fellowship course for 2018 session shall be debarred from appearing in NBE FET and admissions-till December 2019.

1.6 Candidates who are pursuing FNB course are not eligible to appear or participate in counseling till such time they have not completed the duration of prescribed course.

1.7 NBE reserves its rights to alter/amend or modify or interpret any clause/criteria/guidelines contained in this handbook pertaining to Centralized Counseling.

1.8 Jurisdiction for disputes if any, shall be at New Delhi only.”

3. Learned counsel appearing for the petitioner stresses the fact that no last date, for effecting admissions to the aforementioned FNB Programme found place in the public notice or in the application form which was required to be submitted consequent thereto.

4. Consequent to the issuance of the aforesaid public notice, for the NBE FET, on 11th December, 2017, the petitioner applied and was 65th in merit, as per the result of the NBE FET which was declared on 28th February, 2018.

5. Consequent to declaration of the aforesaid merit list of the candidates who appeared in the NBE FET, the NBE circulated notice, dated 8th March, 2018, setting out the schedule for centralized merit base counselling, of the candidates who had qualified in the FET. Counselling, in respect of the speciality of Minimal Access Surgery (MAS), to which the petitioner belonged, was fixed at 09:30 a.m. on 5th April, 2018.

6. It is not in dispute that the petitioner “opted out” of the aforementioned first round of counselling which had been fixed on 5th April, 2018, thereby opening his chance to appear in the second round of counselling. The second round of counselling took place on 28th May, 2018, in which round, too, the petitioner opted out.

7. Learned counsel for the petitioner – as well as the petitioner, who is present in person – submit that the petitioner opted out these two rounds of counselling as he was aspiring for a seat in Delhi, which was not available in his speciality in either round of counselling. The petitioner, therefore, apparently, hoped that in the third round of counselling, he would be able to secure a seat in Delhi.

8. Unfortunately, no such third round of counselling ever took place. As a result, the petitioner could not obtain admission to the FNB Programme.

9. It is in these circumstances that the present writ petition has been filed before this Court, seeking issuance of a direction, to the respondent, to have a third round of counselling, and to consider the case of the petitioner on merits therein.

10. The basis for his prayer, as set out in the writ petition and as argued before me by Mr. Praveen Agrawal, learned counsel appearing for the petitioner, appears to be that two vacancies in the Minimum Access Surgery (MAS) super speciality arose in the Sir Ganga Ram Hospital (hereinafter referred to as “SGRH”) on 29th June, 2018 and 6th July, 2018.

11. Learned counsel for the petitioner stresses the fact that at least one of these vacancies, i.e. the vacancy which arose on 29th June, 2018, had arisen prior to 30th June, 2018, when the academic session was to begin, though, learned counsel for the petitioner submits that the said fact was never communicated to him. As such, learned counsel for the petitioner urges that a clear case existed, for issuance of a direction, to the respondent, to hold a third round of counselling and consider him therein, so that he could, if he cleared the said round, occupy the vacancy which had arisen on 29th June, 2018 in the SGRH.

12. The foundation, for any claim in a petition filed under Article 226 of the Constitution of India, has necessarily to be the existence of a legal right. As the adage goes, *ubi jus ibi remedium*. Sans a right, per corollary, there can be no remedy.

13. A perusal of the various provisions governing the Centralized Counselling, as contained in the NBE FET Handbook, and as reproduced hereinabove, especially clause 1.4, make it amply clear that the right of a candidate, who opted out of counselling in a particular round, to appear in the next round of counselling would only crystallize if such round were held, as is emphasized by the use of the parenthesized words “if any” as contained in the said clause.

14. This aspect is underscored in the tabular representation which follows the said clause, by the use of the word “if conducted”. It is only, ∴, if a subsequent round of counselling is held or conducted, that a candidate who opts out of an earlier round of counselling gets another chance to appear.

15. Clearly, the scheme of the aforesaid handbook, insofar as counselling is concerned, is to put the candidate on guard that, if she/he opts out of a particular round of counselling, it is at her/his own peril, and that there can be no guarantee that there would be a subsequent round of counselling in which the candidate would be able to appear.

16. Neither, in my opinion, can a mandamus issue, solely for the reason that two vacancies had arisen, out of which one had arisen prior to 30th June, 2018. It is not for this Court to second guess the reason why the respondent did not choose to hold a third round of counselling. In any case, the vacancy itself having been arisen on 29th June, 2018, and the session having started on 30th June, 2018, quite possibly, the holding of a third round of counselling may have been practicably impossible.

17. That apart, this Court cannot issue a mandamus, to the respondent, to hold a third round of counselling – which is what the writ petition prays for – in the absence of any obligation that exists, in law, mandating the holding of such a third round of counselling.

18. The petitioner, who appears in person, has tried his best to impress, on the court that, by reason of the non-holding of a third round of counseling, he, a qualified specialized doctor, has lost out on an opportunity to participate in the FNB programme which would have enhanced his surgical skills and would, ultimately, have been in the interests of the general public at large.

19. These considerations, howsoever attractive they may seem, cannot form the foundation for issuance of a writ of mandamus to the respondent to hold a third round of counselling and consider the petitioner therein. The petitioner by opting out of the second round of counselling did so at his own peril, and he has to abide by the consequence thereof.

20. For these reasons, the court regrets that it is not in a position to come to the aid of the petitioner.

21. The writ petition, accordingly, stands dismissed, with no orders as to costs.

JANUARY 10, 2019

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C. HARI SHANKAR, J

HIGH COURT OF DELHI



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