

\$~24

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

Date of Decision: 15th December, 2020

+ **W.P.(C) 10381/2020 & CM APPLs. 32870-72/2020**

SHASWAT KUMAR THAKUR Petitioner

Through: Mr. Gautam Narayan, Ms. Asmita
Gautam, Mr. Murari Kumar, Mr.
Achint Kumar, Mr. Rahul Ranjan,
Mr. Gaurav Sharma, Advocates.
(M:9650510500)

versus

**GURU GOBIND SINGH INDRAPRASTHA
COLLEGE AND ORS. & ORS.** Respondents

Through: Ms. Anita Sahani, Advocate for R-1
with Brig. P.K. Upmanyu, Joint
Registrar
Mr. T. Singhdev, Ms. Michelle B.
Das & Mr. Abhijeet Chakravarty,
Advocates for R-2.
Mr. Srivats Kaushal, Advocate for R-3
with Prof. (Dr.) B.Srinivas, Member
Secretary, MCC.

**CORAM:
JUSTICE PRATHIBA M. SINGH**

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present petition has been filed by the Petitioner- Mr. Shaswat Kumar Thakur, who is an aspirant for the Bachelor of Medicine, Bachelor of Surgery (*hereinafter*, “MBBS”) course, and who wishes to seek admission in Dr. Baba Saheb Ambedkar Medical College, attached to the Guru Gobind Singh Indraprastha University (*hereinafter* ‘GGSIPU’). In the NEET

Examination, he has secured an overall rank of “5610” and category rank of “3062” under the reserved category - Delhi General quota.

3. The Petitioner, has challenged the second cut-off list published on 11th November 2020 by the GGSIPU for the MBBS course, which according to Mr. Narayan, ld. counsel for the Petitioner, is contrary to the judgment of the Supreme Court in ***Dar-Us-Slam Educational Trust And Ors. v. Medical Council of India And Ors. (WP(C) Nos. 267/ 2017)***.

4. According to Ld. counsel, the various rounds of counselling which take place for the candidates, in the All-India Quota and the State Quota, have to follow a particular format, and the GGSIPU has completely violated the dictum of the Supreme Court in ***Dar-Us-Slam (supra)*** with respect to the same. Ld. counsel submits that a perusal of the first list, which was announced for the first round of counselling, would show that the Delhi General category rank for Dr. Baba Saheb Ambedkar Medical College was kept between 475 to 4500. A perusal of the second cut-off list would show that the same ranks have been repeated in the second list. He submits that this has occurred because of the fact that GGSIPU failed to follow the discipline of weeding out all the candidates who were allotted seats in the All India category counselling, and who had secured admission in the respective colleges.

5. It is further urged that students like the Petitioner, are being put to a tremendous disadvantage in view of the non-weeding out of already admitted All India Quota candidates. It is because of this that the minimum and maximum ranks in the second cut-off list has not changed. Although the Petitioner would be fully entitled to admission in the second round of counselling post the weeding out, he has instead been

issued a communication, dated 11th December 2020, stating that he is not entitled to any seat even after the second round of counselling. His prayer, therefore, is to scrap the cut-off list of the second round of counselling issued by GGSIPU, and for directions to conduct a fresh counselling for the second round, post weeding out and releasing the new cut-off range of ranks.

6. On behalf of GGSIPU/ Respondent No. 1, Ms. Anita Sahani, Id. counsel, submits that there is no doubt that students who had already been allotted seats, in the All India Quota or in the State Quota of other States or in deemed Universities, ought to have been weeded out before the publication of the second counselling list by GGSIPU. However, since the All India Quota list was published only on 8th December, 2020, and the second counselling list was to be published by GGSIPU on 10th December, 2020, there was no time for removal of those students, because of which the second list was published in this manner. She, however, fairly concedes that weeding out, of already allotted candidates, ought to be done, and in any event, no student who has taken admission in the All India Quota or any state quota in the second round of counselling, would be entitled to get admission in GGSIPU.

7. Yesterday, the matter was listed before this Court, when Ms. Sahani, Id. counsel for Respondent No. 1, had sought time for instructions. Today, she has reverted with instructions, and submits that 72 seats are still vacant in Dr. Baba Saheb Ambedkar Hospital and Medical College, and 31 seats are vacant in NDMC Medical College at Hindu Rao Hospital.

8. Considering this position, Id. counsels for the National Medical Commission/ Respondent No. 2 and Medical Counselling Committee

(hereinafter, "MCC")/ Respondent No. 3, were requested to seek instructions as to whether further time can be given to GGSIPU to finish the second round of counselling. Prof. (Dr.) B. Srinivas, the Member Secretary of the MCC has then joined the video conferencing proceedings, along with Brig. P.K. Upmanyu from GGSIPU.

9. On behalf of MMC, it is submitted that data with respect to the All India Quota allotments was given to all States and Universities on 8th December, 2020. In fact, Haryana and Rajasthan have published their second counselling list after weeding out the students, as was to be done. However, GGSIPU did not carry out the said exercise. According to all the parties, weeding out of candidates already selected, is absolutely essential, before the publication of the second counselling list.

10. After hearing all the parties concerned in the present writ, there is no doubt that as per the applicable regulations and the judgment of the Supreme Court in *Dar-Us-Slam (supra)*, once the second round of counselling is conducted by the MCC for the All India Quota, as also for other deemed university and other states, the said candidates who are allotted seats and who have accepted admission ought not to be part of the second round of counselling in GGSIPU. The observations of the Supreme Court are as under:

"4. After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from the All-India merit list only. The students who take admission and secure admission in Deemed Universities pursuant to

the second round of counselling conducted by the DGHS shall not be eligible to participate in any other counselling xxx"

11. Thus, releasing the list, without following the discipline as laid down in *Dar-Us-Slam (supra)* would be impermissible, while holding counselling for the MBBS course. Even the MCC's counselling scheme for the MBBS course clearly confirms this position. The following are the relevant extracts from the MCC's counselling scheme for the year 2020-21:

"MCC COUNSELLING SCHEME AND FAQ'S FOR NEET-UNDER-GRADUATE COURSES (MBBS/BDS)-2020-21

.....

The Hon'ble Supreme Court of India vide Order dated 09/05/2017 passed in Writ Petition (C) No.267 of 2017 Dar-Us-Slam Educational Trust & Ors Vs MCI and Ors. Directorate General of health Services, Ministry of Health & Family Welfare had directed as follows:

"After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from the all India merit list only. The students who take admission and secure admission in Deemed Universities pursuant to the second round of counselling conducted by the DGHS shall not be eligible to participate in any other counselling."

Keeping the above directions in view, Candidates are advised to take a calculated decision of continuing in Second round of AIQ/Deemed/Central Universities as they would not be permitted to resign from 2nd round of AIQ/Deemed/Central Universities. They will also not be allowed to participate in any Counselling after joining in Second round of AIQ.”

These guidelines have been reiterated in the notifications and regulations/ circulars issued by GGISPU itself. The same are extracted below:

i. **Notification No.155/2020 dated 3rd December, 2020**

“The procedure of Online Registration and submission of Counselling Participation Fees (ROUND 02) for admission/allotment of seat in MBBS programme (CET Code 103) on the basis of score/rank of NEET UG 2020 for Academic Session 2020-21 in respect of the following medical colleges affiliated with Guru Gobind Singh Indraprastha University, New Delhi, is as follows:

....

(ii) Dr. Baba Saheb Ambedkar Medical College and Hospital, Sector-6, Rohini, Delhi (Admissions to be made against 85% State Quota seats only in respect of candidates who have completed their 11th & 12th class from any school located in the NCT of Delhi).

xxx ”

ii. **Notification No.775/2020 dated 10th December, 2020**

“10. The admission/allotment of seats of candidates will also be cancelled, if the candidate already holds a seat in Round II of any State/AIQ in 2020-21.”

iii. **Notification No.180/2020 dated 11th December, 2020**

“Notice

MBBS Admissions for Academic Session 2020-21

.....

The University vide its notification No. 175/2020 dated 10.12.2020 has mentions:

“The admission of students, who fail to fulfill the minimum eligibility criteria mentioned in the Admission Brochure or as stated by tile Statutory Body or fail to produce the adequate documents for eligibility, will be cancelled.”

"The admission/allotment of seats of candidates will also be cancelled, if tile candidate holds a seal in Round II of any State/AIQ in 2020-21 ".

The University has already instructed each respective college to ensure compliance of the above said directions as above for not permitting reporting of the candidates who have been allotted any seat in GGSIPU State Quota counselling but have already taken a seat in the All India Counselling.

It is for information of all that the resultant vacancies on account of non-reporting of candidates in each college; on account vacancies occurred due to withdrawal; or not meeting the eligibility conditions; or on account of having acquired a seat after 2nd Counselling of All India Counselling, shall be notified on the University website on 15th December 2020 forenoon.
xxx”

12. A perusal of the above scheme, notifications and circulars issued both by the MCC and GGSIPU leave no doubt that the procedure followed in the second round of counselling by GGSIPU is not proper. The deletion of

candidates who have already been allotted seats and who have taken admission, is mandatory, prior to publication of the second counselling list. However, considering the overall legal and factual position in the present case, and the fact that in the second round of counselling, some students have already taken admissions, the following directions are issued:

- i. GGSIPU is permitted to conduct an extended second round of counselling, and is directed to publish the extended cut-off list for the second round of counselling by tomorrow i.e. 16th December, 2020 at 4:00 P.M.
- ii. All students who would be entitled to seek admissions in terms of the extended cut off list for second round of counselling, shall report to GGSIPU on 17th December, 2020.
- iii. The admissions in terms of the second extended cut-off shall be concluded on the 17th and 18th of December, 2020.
- iv. Thereafter, if there are any seats which remain vacant, the GGSIPU shall conduct the mop-up round or subsequent rounds, as per the prescribed procedure.
- v. The entire process of admissions shall be concluded by 31st December, 2020.

13. A status report shall be filed by GGSIPU on the said date. It is made clear that if any candidate, who has already been admitted in the second round of counselling in either of the colleges, faces any difficulty after the publication of the extended cut-off list by GGSIPU, such a candidate is permitted to approach this court by way of an application. The Petitioner is also given liberty to approach this Court, if required.

14. With these observations the present petition and all pending applications are disposed of.

15. List for reporting of compliance on 7th January, 2021.

**PRATHIBA M. SINGH
JUDGE**

DECEMBER 15, 2020

dj/Ak

