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

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Date of decision: 03.07.2020

+ W.P.(C) 3636/2020

DUDDUGUNTA VISHNU PRIYA

..... Petitioner

Through Mr.Naushad Ahmed Khan, Adv.

versus

DIRECTORATE GENERAL OF HEALTH
SERVICES & ANR

..... Respondents

Through Mr.Vikrant N.Goyal, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

W.P.(C) 3636/2020 & CM No. 12964/2020

1. This hearing is conducted through video-conferencing.
2. This writ petition is filed by the petitioner seeking the following reliefs:-

“a. Pass an order of writ of mandamus or any other appropriate writ, or order or direction thereby directing the respondents to rectify wrongly allotted seat i.e. MD Microbiology seat in University College of Medical Sciences, New Delhi, instead of MD General Medicine.

b. Pass order/directions to the Respondents to provisionally allot the petitioner seat in any opted college in course MD General Medicine, in the leftover seats in second counselling or anywhere else in any Government college, to allot MD General Medicine seat.”

3. The case of the petitioner is that she is a meritorious candidate who secured rank 553 in All India Quota in NEET PG 2020-21. She is aggrieved that she has been wrongly allotted seat of MD Microbiology instead of the opted course of MD General Medicine.
4. It is pleaded that the petitioner applied for NEET PG 2020-21 and thereafter, appeared in the examination, which was conducted on 06.01.2020. Her merit rank was as noted above 553.
5. The first round of counselling for All India Quota was held on 12.03.2020 to 22.03.2020. The petitioner was allotted provisional allotment for All India Quota in general category with Grant Medical College, Mumbai the course being MD General Medicine. The petitioner deposited online fees of Rs.1,12,400/- for admission to the said course.
6. It is pleaded that as per the process of counselling (flow chart), a candidate can upgrade the seats and further can opt for the better college in the second round of counselling. Hence, the petitioner applied for the upgradation of her seat in the second round of counselling on 11.06.2020 and opted for 8 institutions for a common department, namely, MD General Medicine. On 15.06.2020, the petitioner received a provisional allotment letter in round-II but was shocked to know that she had been allotted University College of Medical Sciences with the MD Microbiology course in general category for All India Quota Seats instead of MD General Medicine.
7. It is the contention of the petitioner that she has never opted for MD Microbiology in round –I or in round- II and there seems to be an inadvertent mistake or technical glitch. It appears that on account of some default or technical glitch, at serial No.3 in second round, the choice of the

petitioner was wrongly noted as University College of Medical Sciences-course MD Microbiology. It is the case of the petitioner that in this particular course of MD Microbiology the next rank allotted is the rank of 18829 in contrast to the rank of the petitioner, which is 553.

8. Learned counsel for the petitioner stresses that given the merit of the petitioner in the said exam, namely, rank 553, she would be eligible in the normal course to admission in the said college i.e. University College of Medical Sciences in MD General Medicine. Learned counsel has also drawn my attention to the communications dated 15.06.2020 and 17.06.2020 where the petitioner has protested to the respondent.

9. Learned counsel for the petitioner has relied upon the judgments of a Division Bench of the Bombay High Court in the case of ***Sashi Saraswat v. The State of Maharashtra & Anr.***, W.P. ST. N.19728/2018, decided on 18.07.2020 and ***Uttam Kumar Lenka v. Directorate General of Health Services & Anr.***, W.P.(C) 3746/2012, a judgment of a Co-ordinate Bench of this court to plead that in similar circumstances the petitioners in those matters were granted relief and were not deprived of their choices on account of inadvertent or *bonafide* error.

10. On 19.06.2020, this court passed an interim order directing the respondents to ensure that one seat, if not already filled up, be kept available in any of the colleges for the course of MD General Medicine.

11. Respondent No.1 has filed a short counter affidavit. In the counter affidavit, it is stated that the petitioner had filled a total of 09 choices during round-II of choice filling. The last date for filling of the choices was 11.06.2020 and she logged into her account on 11.06.2020 at 7.57 p.m. and saved her choices. The choice locking facility was extended to 12.06.2020.

It is pointed out that the entire process of allotment is a computer generated programme and when the petitioner upgraded in round–II of the counselling, the seat earlier allotted to the petitioner in round-I of counselling is automatically allotted to the eligible candidate next in line of merit. As the petitioner, as per her choice adopted for MD Microbiology in University College of Medicinal Science, New Delhi at option No.3, she was allotted the same by the computer generated process the said seat.

12. I have heard learned counsel for the parties.

13. A perusal of the choices filled by the petitioner, which is attached by respondent No.1 as Annexure R-3 at page 17 of the counter affidavit shows that she has given 09 different choices. All of them from serial Nos.1 to 9 are for MD General Medicine. However, at serial No.3 for University College of Medical Science, New Delhi she has opted for MD Microbiology. Similarly, in round –I of the counselling, the petitioner had opted for the course MD General Medicine and had got admission in respondent No.2 College. Clearly, the noting of the course MD Microbiology in University College of Medical Sciences at option No.3 appears to be a technical glitch/*bonafide* mistake on the part of the petitioner.

14. I also cannot help noticing that immediately after receipt of the communication that she had been allotted MD Microbiology, the petitioner had protested by her communication dated 15.06.2020. It is pleaded that this communication was sent pursuant to a notice issued by the respondents of the same date whereby asking candidates to point out any mistake. The communication written by the petitioner on 15.06.2020 reads as follows:

“Respected Sir,

This is to bring to your kind notice that myself, Dr.D.Vishnupria Duddugunta secures AIQ- 553, with testing ID: 2066055572. I have participated for second round counselling and kept MD General Medicine, UCMS, New Delhi as option. Due to clerical error, it was recorded as Microbiology in UCMS, New Delhi and has been allotted the same. Kindly help me sir. Take necessary action. Please Sir.

Thanking you.

Yours faithfully,
D.Vishnupria.”

The above immediate protest also confirms that the selection of MD in Microbiology at serial No.3 for University College of Medical Sciences is a technical glitch/*bonafide* mistake on the part of the petitioner.

15. Today, learned counsel for the respondents has informed that pursuant to the interim order passed by this court on 19.06.2020, respondent No.1 has retained one seat in MD General Medicine at Rohtak Medical College i.e. Pt.B.D.Sharma, Medical College, Rohtak.

16. Learned counsel for the petitioner has pointed out that the candidate upto the rank of 18829 have got seat of MD General Medicine in Rohtak Medical College i.e. Pt.B.D.Sharma, Medical College, Rohtak whereas the rank of the petitioner is 553. Hence, it is pleaded that the petitioner, as per her merit, is entitled to the said seat.

17. I may now look at the judgments relied upon by the learned counsel for the petitioner. In *Sashi Saraswat v. The State of Maharashtra & Anr.*(supra), the Division Bench of the Bombay High Court held as follows:

“5. The petitioner thereafter was expected to undertake the on-line preference filing process where she was to give the

preference of the college, where she was desirous of prosecuting her studies based on her score and ranking. It is the case of the petitioner that she was in Lucknow at the time of online filing of the preference form and she undertook the said exercise through a cyber cafe. It is the specific case of the petitioner that on opening the website and on filling the form number of the petitioner and the login password, the student's page was opened in which code number of 21 colleges were displayed. It is the specific averment made in the petition that on opening the website, the form of the petitioner appeared and on supplying the login password, students page came to be opened which flashed 21 medical colleges code number. The petitioner under the impression that Defence-3 quota was provided in the said medical colleges, selected all the Code numbers under a bonafide belief that they were all Medical colleges. The petitioner has obtained a print out of the said web-page and has annexed the same along with the petition at Exhibit-H. The petitioner makes a statement in the petition that she was under a bonafide belief that she had completed the process and had opted for the colleges which were the colleges to be opted for MBBS course and that she had successfully uploaded her preferences.

It was only when on 4th July 2018, when the selection list of the first round was published, she noticed that against her name, an endorsement to the following effect was made:

It is at that time, the petitioner realized that the preferences which were selected by the petitioner were of Nursing colleges and they were not the Code numbers of the Medical colleges. The petitioner was thus ousted from the selection process for the MBBS course as no seat was available to her in any of the colleges in State of Maharashtra offering MBBS course, since she has not exercised her preference in favour of any such college. The gross mistake committed by the petitioner occurred to her and with a hope that some solution can be afforded to the error committed by her, she preferred a representation to the respondent no.2 and conceded to the error

and the mistake committed by her and requested for its rectification in some way. However, the respondent no.2 orally informed the petitioner that there is no mechanism for rectification of mistakes in filling online preferences and the software/system installed for carrying out the admission process did not permit such an intervention. This action of the respondents and deprivation of the petitioner to secure a seat in MBBS course inspite of her merit, has constrained her to approach this Court by filing the present writ petition. By the said writ petition, she has sought a direction to the respondents to entertain her claim for the MBBS course as per her merit in the Merit list of NEET- UG-2018 in Defence-3 quota by affording her an opportunity to choose medical colleges of her preference.

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11.

The submission of Mr.Patwardhan that if the petitioner is now permitted to participate, the meritorious students would be kept out of the arena, according to us, is not acceptable. In the first round of selection, the list has been declared on 4th July 2018 and the candidates were directed to report on or before 12th July 2018. The second round of counselling is ongoing and the list, after conclusion of the second round is to be published on 27th July 2018. It is not our intention to deprive any meritorious student of his/her claim and we have noted the submissions of Shri Patwardhan that out of 12 seats from D-3 category, 10 students have reported to the respective colleges on conclusion of first round of selection and now, there are only two seats in D-3 category and there are 63 candidates claiming these two seats. We again reiterate that we have no intention of whatsoever nature to deprive a meritorious candidate, but we are also very clear in our mind that all the candidates who claim in D-3 category quota were aware of their merit position on the publication of the provisional State merit list of NEET UG-2018 on 19th June 2018 and this position was also reflected in

the revised provisional State merit list published on 26th June 2018. In view of the fact that the lists are displayed on the website and the students are fully aware about their movement in the said process, each student gets a clear idea as to what is his score and what are his chances in getting into a particular college of his choice, since he is also aware of the merit position and preferences of other students. A candidate from D-3 category who would be considered in the second round is surely a candidate who is less in merit and lower in NEET All India Ranking than that of the petitioner, since we have seen that a candidate lower in rank than that of the petitioner finds place on the Defence-3 category seat in the list published on 4th July 2018. Therefore, we do not think that any meritorious candidate who is higher in merit than the petitioner would stake a claim against that seat when it is made available for the second round. Any candidate who is lower in merit than the petitioner cannot stake the claim as the All India Rank Merit is the sole criteria for selection to a course and to secure a particular seat. Merely because the petitioner has erred and we emphasize grossly, in filling the preference form, still the position remains that the merit secured by the petitioner would not be wiped and she cannot be thrown out of the said process merely because of such an error, solely attributable to her. In any event, we are not pushing the petitioner into the round no.1 as that round is already over and the students have taken their respective positions. However, we intend to introduce the petitioner in the second round and it would be open for her only to exercise her choice/preferences in the seats which are vacant and where there is a reservation of D-3 category. More so, when a further round of admission is indeed going to be held. That is to be held to ensure that no seat remains unfilled. Equally, any remaining or unfilled seats should not go less meritorious students ought to be the concern of the Authorities.

In such gross circumstances, and only in facts peculiar to this case, we expect the Authorities to take the requisite corrective steps. No precedent can be created by such a course for every mistake not attributable to the authorities but entirely to the

candidates is incapable of being corrected if there are no further rounds or no vacant seat left at all. A bonafide exception can therefore be made only to redress the gross injustice to an otherwise meritorious candidate who is the daughter of a defence personnel. Hence, the fear that this course sets a precedent is baseless.

12. In such circumstances, we are of the clear opinion that since ranking of the candidate in NEET UG-2018 is the decisive factor in securing a seat in a Health Science course and in a college of his/her choice, the petitioner who has incorrectly filled the preference/option form, deserves to be granted an opportunity in the ongoing selection process by permitting her to fill in the option form and directing the respondent authorities to consider her options for the MBBS colleges and operate the said options against the vacant seats available for the second round of selection/counselling. Since it is informed to us that the second round of counselling is ongoing and the list is likely to be displayed on 26th July 2018, we direct the respondent no.2 to undertake the said exercise forthwith. Hence, we pass the following order:-

(i) The respondent no.2 - Commissioner Common Entrance Test Cell, is directed to permit the petitioner to offer her choice of preference in the MBBS course against the seats of MBBS course in the second round of counselling.

(ii) We direct the respondent no.2 to consider the candidature of the petitioner, on the basis of the State merit list of NEET UG-2018 and operate the preference/option given by the petitioner as against her merit position in the second round of counselling to the Health Science courses.”

18. Reference may also be had to the judgment of a Co-ordinate Bench of this court in *Uttam Kumar Lenka v. Directorate General of Health Services & Anr.*(supra). The Co-ordinate Bench in the said matter noted as

follows:

“12. I have heard learned counsel for the parties. The basic facts of the case are not in dispute that the petitioner appeared in All India Post Graduate Medical Entrance Examination (MD/MS/Diploma) course. The petitioner appeared for the competitive exams held on 08.01.2012 conducted by nodal agency AIIMS. The petitioner submitted his choice by way of online on the unreserved seat on being qualified at the rank merit-wise (UR) 641 and opted for as many as 41 choices. The petitioner, on the basis of his preference online in chronological order and in the first round of counselling, was allotted seat in Institute of P.G.Med.Edu. & Res., Kolkata. The petitioner was also allotted a provision allotment letter dated 13.05.2012. The petitioner also expressed his willingness for second and third round and with a view to upgrade himself locked 11 choices and his ninth choice was for MD (Derm.Vene. Leprosy) at Pt.B.D. Sharma, PGIMS, Rohtak. The petitioner was unable to lock his choice due to sudden breakdown of internet link. The petitioner was shocked to learn that his choice at Sl.No.9 was shown as a Diploma in Venerology and Dermatology at Pt.B.D. Sharma, PGIMS, Rohtak, whereas his original choice was MD ((Dermat and Venerology) at Pt.B.D. Sharma, PGIMS, Rohtak.”

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15. I find force in the submission made by learned counsel for the petitioner that whether it is a human error or it is the error of the computer the petitioner should not be made to suffer, especially, when no prejudice would be caused to any other candidate as his rank is much higher than any other candidate to whom the seats will be offered.”

19. Clearly, the ratio of the above judgments squarely applies to the facts of this case. The petitioner should not be made to suffer on account of a *bonafide* human error or error in the computer. This is especially so when no

prejudice is caused to any other candidates in the sense that the petitioner is getting what she is entitled to as per her rank in the examination. She has been offered a seat strictly as per her rank.

20. As noted above, a seat has been retained by the respondent on account of the interim order of this court course in MD General Medicine at Rohtak Medical College. I may note that this seat the petitioner is entitled to as per her rank of the merit list.

21. Keeping in account the fact that it is an advertent and *bonafide* mistake and also the fact that the petitioner has a rank of 553 and is entitled to be admitted to the course, which is now available, namely, MD General Medicine at Rohtak Medical College on merit, it would be in the interest of justice that respondent No.1 may grant the said seat to the petitioner. It is ordered accordingly.

22. Learned counsel for the respondents states that the petitioner can forthwith complete the formalities as the seat is readily available.

23. The petitioner may do the needful forthwith. The respondents will also comply with the normal procedure while granting admission to the petitioner in Pt.B.D.Sharma, Medical College, Rohtak.

24. With the above direction, the present petition is disposed of. All pending applications, if any, are also disposed of.

JAYANT NATH, J.

JULY 03, 2020/v