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

% *Date of Decision: 3rd July, 2020*

+ LPA 169/2020 & CM APPL.14059/2020

DR. VIVEK KUMAR Appellant

Through: Ms. Shashi Kiran, Advocate

versus

NATIONAL BOARD OF EXAMINATION & ANR..... Respondents

Through: Mr. Kirtiman Singh, CGSC with
Mr. Rohan Anand & Mr. Waize Ali Noor,
Advocates for R-1

Mr. Jivesh Kr. Tiwari, Sr. Panel Counsel for R-2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

: **D. N. PATEL, Chief Justice (Oral)**

Proceedings of the matter have been conducted through video conferencing.

CM APPL.14060/2020 (exemption)

Exemption allowed, subject to all just exceptions.

The application is allowed.

LPA 169/2020 & CM APPL.14059/2020 (Stay)

1. This Letters Patent Appeal has been preferred by the appellant (original petitioner) against judgment and order dated 23rd June, 2020 passed

by learned Single Judge in W.P.(C) 3633/2020 (**Annexure A-1** to the memo of this Letters Patent Appeal).

FACTUAL MATRIX

2. The appellant completed his Bachelor of Medicine and Bachelor of Surgery (MBBS) from Chaudhary Charan Singh University, Meerut, in 2006. He further completed his Post Graduate Diploma in Child Health (DCH) from King George Medical University, Lucknow, in 2017.

3. The appellant, on 21st December 2017, appeared in “Diplomate of National Board, Post Diploma Centralized Entrance Test” (**hereinafter referred to as DNB-PDCET**) for January 2018 Admission Session and thereafter participated in the centralized counseling on 29th May 2018, wherein he was allotted a seat for specialty in pediatrics in Northern Railway Central Hospital to pursue DNB (Post Diploma) course for two years. He joined the said course on 4th June, 2018.

4. Northern Railway Central Hospital informed the National Board of Examination – respondent No.1, of the unauthorized absence of the appellant and subsequently, a show cause notice dated 20th July, 2018 was issued by respondent No.1 to the appellant on account of his unauthorized absence from the hospital. Northern Railway Central Hospital *vide* e-mail dated 21st July, 2018 requested the respondent No.1 for withdrawal of the candidature of the appellant on the basis of his unauthorized absence.

5. *Vide* communication dated 24th September, 2018 the respondent No.1 requested the Northern Railway Central Hospital to allow the appellant to

rejoin the course and consider the period of his absence as leave. This communication was made by the respondent No.1 to the hospital on the basis of e-mail received from the appellant requesting permission to rejoin the said course.

6. In reply to the aforementioned communication dated 24th September, 2018, the said hospital on 27th September, 2018, informed the respondent No.1 that the appellant is an employee of the South Delhi Municipal Corporation (SDMC) and was placed under suspension since 1st May, 2018.

7. Thereafter, the respondent No.1 on 14th November, 2018, cancelled the candidature of the appellant on the ground of non-disclosure of information and non-production of No Objection Certificate (NOC) from his employer (SDMC) during the DNB counseling.

8. The appellant appeared in DNB-PDCET, 2020 on 20th December, 2019, and subsequently participated in the First Round of the counseling conducted by the respondent No.1 between 8th May, 2020 to 31st May, 2020. The appellant thereafter was allotted a seat in Swami Dayanand Hospital with specialty of pediatrics. The appellant, however, did not freeze the seat allotted to him in the First Round of counseling and instead opted for Second Round of Counseling.

9. The appellant was informed that he is not eligible for All India Examination – 2020 (DNB-PDCET, 2020) *vide* communication dated 14th June, 2020 issued by respondent No.1 and his candidature was cancelled. This communication was challenged by the appellant in W.P.(C) 3633/2020.

10. The Second Round of the counseling was conducted by the respondent no. 1 on 30th June, 2020 and the results have already been declared on 2nd July, 2020.

ARGUMENTS CANVASSED BY THE COUNSEL FOR APPELLANT

11. Counsel appearing for the appellant submitted that the judgment and order dated 23rd June, 2020 passed by the learned Single Judge in W.P.(C) 3633/2020 is not tenable at law and several factual aspects of the matter have not been properly appreciated by the learned Single Judge.

12. It is further submitted by the learned counsel for appellant that counting of two years' period for appearing in Diplomat of National Board, Post Diploma Centralized Entrance Test (DNB-PDCET) has not been properly appreciated by the learned Single Judge. She submitted that the appellant had initially appeared for the very same entrance test in 2018 and was admitted in a course, which he joined on 4th June, 2018, hence is entitled to appear in the aforesaid entrance test in the year 2020 especially when the period of two years has ended.

13. It is also submitted by the learned counsel for appellant (original petitioner) that in fact this appellant had appeared in the aforesaid entrance test for the year 2020. He cleared the examination (DNB-PDCET) and was already given admission in the specialty of Paediatrics at Swami Dayanand Hospital, Shahdara, New Delhi in the First Round of counselling. This appellant, however, opted for Second Round of counselling for upgradation, i.e. getting admission in a better medical college.

14. It is submitted by the learned counsel for appellant that before Second Round of counselling started, a communication was received by this appellant (original petitioner) from respondent No.1 dated 14th June, 2020 (**Annexure A-9** to the memo of W.P.(C) 3633/2020), wherein, it has been stated by the respondent No.1 that this appellant (original petitioner) is not eligible for admission in January, 2020 session. This communication was under challenge in the writ petition.

15. Earlier the admission was secured, and the appellant joined on 4th June, 2018 and because of sickness of this appellant, he could not attend the classes and subsequently a show cause notice was issued by the respondent No.1 about absenteeism. Explanation along with the medical certificate was provided by the appellant and subsequently a request was made by respondent No.1 to Northern Railway Central Hospital to allow this appellant to join the course *vide* communication dated 24th September, 2018.

16. As there was lot of delay, this appellant did not want to pursue the said course further in 2018. The appellant waited for two years as per the rules of admission. Now the period of two years having elapsed from the earlier admission in DNB (Post Diploma) Courses January 2018 Session, on 4th June, 2020, this appellant is entitled to get admission in DNB (Post Diploma) Courses.

17. It is also submitted by the learned counsel for appellant (original petitioner) that a so-called communication by the respondent No.1 to the petitioner dated 14th November, 2018 has never been received by this appellant.

18. Learned counsel appearing for the appellant (original petitioner) has relied upon the Clause 1.5 and Clause 1.6 of the Handbook for Centralized Counseling for Admission to DNB (Post Diploma) Courses, January 2018 Admission Session which are annexed as **Annexure A-2** to the memo of this Letters Patent Appeal which is known as “**DNB-PDCET Handbook for Centralized Counseling for Admission to DNB (Post Diploma) Courses, January 2018 Admission Session**” (hereinafter referred as “**The Handbook for Admission to DNB PDECT, 2018**”), published by National Board of Examinations, New Delhi. It is submitted by the counsel for the appellant (original petitioner), relying on Clause 1.5 and Clause 1.6 of the aforesaid handbook that, bar to apply afresh is two years and not two academic years.

19. It is further submitted by the learned counsel for appellant (original petitioner) that one Dr. Himanshu Gupta is appearing every year for getting admission in DNB (Post Diploma) Courses without there being gap of two years. Thus, there is discrimination by the respondent No.1. Learned counsel for appellant (original petitioner) has referred to **Annexures 21, 22 and 23** of the writ petition to substantiate the aforesaid contention. This aspect of the matter has also not been properly appreciated by the learned Single Judge and hence the judgment and order dated 23rd June, 2020 passed in W.P.(C) 3633/2020 deserves to be quashed and set aside.

**ARGUMENTS CANVASSED BY THE COUNSEL FOR
RESPONDENT NO.1**

20. Learned counsel appearing for respondent No.1 submitted that no error has been committed by the learned Single Judge while deciding W.P.(C) 3633/2020 *vide* judgment and order dated 23rd June, 2020 (**Annexure A-1** to the memo of this LPA) and hence this Letters Patent Appeal deserves to be dismissed.

21. It is submitted by the learned counsel for respondent No.1 that appellant is relying upon the rules of 2018 which are not applicable to the facts of the present case, as this appellant (original petitioner) is seeking admission in DNB (Post Diploma) Courses in the year 2020. The rules which are annexed at **Annexure-3** to the memo of the Letters Patent Appeal are applicable. These rules of admission are “**Handbook for Admission to DNB (Post Diploma) Courses, 2020, Admission Session**” (hereinafter referred as “**The Handbook for Admission, 2020**”) published by National Board of Examinations, New Delhi. It is further submitted by the learned counsel for respondent No.1 that earlier this appellant (original petitioner) had applied for DNB (Post Diploma) Courses and was given admission, and he joined on 4th June, 2018. On account of there being suppression of material facts by this appellant, his candidature was cancelled *vide* communication dated 14th November, 2018 (**Annexure-G** to the reply by respondent No.1 to memo of W.P.(C) 3633/2020).

22. It is submitted by the learned counsel for respondent No.1 that Eligibility Criteria for DNB-PDCET, 2020 Admission Session was not

satisfied, especially as per Clause 3.4 thereof, and hence this appellant (original petitioner) is not eligible to get admission.

23. It is further submitted by the learned counsel for respondent No.1 that also as per Clause 2.3 and Clause 4.2 of 2020 Admission Session, this appellant is not eligible for admission in the year 2020. Learned counsel for the respondent No.1 has taken this Court to these clauses of handbook for the Admission Session, 2020, which are at **Annexure A-3** to the memo of this Letters Patent Appeal. These aforesaid clauses are to be read with Clause 3.4 of “**Information Bulletin for Diplomate of National Board, Post Diploma Centralized Entrance Test (PDCET)**” (hereinafter referred as “**The Information Bulletin DNB PDCET, 2020**”), (at **Annexure A-4** to this LPA).

24. Learned counsel appearing for the respondent No.1 submitted that once this appellant’s (original petitioner) candidature was cancelled *vide* communication dated 14th November, 2018 (**Annexure-G** of the reply filed by respondent No.1 in W.P.(C) 3633/2020), this appellant cannot apply for two years i.e. till the academic session of 2018 is over.

25. Learned counsel appearing for the respondent No.1 submitted that as per Clause 7 of the rules of admission of the year 2018, this appellant was bound to disclose that he was employed with South Delhi Municipal Corporation and he was bound to furnish No Objection Certificate (‘NOC’) and/or relieving letter issued by the competent authority of the employer, before the cut-off date prescribed to join the DNB Course.

26. Learned counsel for respondent No.1 has relied upon the decisions rendered by the Hon'ble Supreme Court in:

- **Prestige Lights v. State Bank of India (2007) 8 SCC 449;**
and
- **Mabel v. State of Haryana and Others (2002) 6 SCC 318**

On the basis of the aforesaid decisions, it has been submitted by the counsel for respondent No.1 that this appellant had earlier suppressed the fact that he was serving with South Delhi Municipal Corporation and had never supplied the No Objection Certificate ('NOC') from his employer i.e. SDMC at the time of admission, which ultimately led to cancellation of candidature of the appellant. Counsel appearing for the respondent No.1 also pointed out to this Court that the services of this appellant (original petitioner) were suspended by the South Delhi Municipal Corporation. For such type of appellant (original petitioner), extraordinary jurisdiction of this Court may not be invoked by this Court.

27. Learned counsel appearing for the respondent No.1 also placed reliance on a decision rendered by Division Bench of this Court reported in **(2015) SCC OnLine Del 8347**. On the basis of the aforesaid decision, it has been submitted by the learned counsel for respondent No.1 that the clauses of the admission criteria, 2020 especially Clause 3.4 (**The Information Bulletin DNB PDCET, 2020**) to be read with Clauses 2.3 and 4.2 (**The Handbook for Admission, 2020**) have been accepted by this Court. In any event, these provisions are not under challenge by the appellant (original petitioner), hence, this appellant (original petitioner) cannot get admission till the academic session of the batch in which this appellant got admission

earlier in the year 2018 is over. The two years' bar, therefore, will continue till the academic session of a course of two years in which the appellant (original petitioner) earlier got admission is over. This aspect of the matter has been properly appreciated by the learned Single Judge while deciding W.P.(C) 3633/2020 *vide* judgment and order dated 23rd June, 2020 and hence this Letters Patent Appeal may not be entertained by this Court.

ARGUMENTS CANVASSED BY THE COUNSEL FOR RESPONDENT NO.2

28. Learned counsel appearing for respondent No.2 adopts the arguments advanced by the learned counsel for respondent No.1 and has submitted that looking to the rules of admission for the year 2020 which are annexed to the memo of this Letters Patent Appeal (**Annexures A-3 and A-4**), no error has been committed by the learned Single Judge while deciding W.P.(C) 3633/2020 *vide* judgment and order dated 23rd June, 2020 and hence this Letters Patent Appeal may not be entertained by this Court.

REASONS

29. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case as well as looking to the judicial pronouncements, we see no reason to entertain this Letters Patent Appeal for the following facts and reasons:

- (i) Looking to the facts of the present case, this appellant is the original petitioner who challenged the communication dated 14th June, 2020 by the respondent No.1 to this appellant (original petitioner) wherein this appellant was found not eligible to

participate in the counseling in DNB (Post Diploma) Course for the Academic Session 2020 (**Annexure-9** to the memo of the writ petition). As per this communication, this appellant had earlier got admission in DNB (Post Diploma) Course and was admitted on 4th June, 2018. Thereafter, *vide* communication dated 14th November, 2018, his candidature was cancelled as he had suppressed the fact that he was employed with South Delhi Municipal Corporation.

- (ii) Looking to Clause 7 of the DNB-PDCET Handbook for Centralized Counseling for Admission to DNB (Post Diploma) Courses, January, 2018 Admission Session, this appellant (original petitioner) was bound to declare the fact that he was employed and also had to furnish No Objection Certificate ('NOC') which was not supplied by this appellant before the course started on 4th June, 2018, and hence his candidature was cancelled. For ready reference, relevant part of Clause 7 of the aforesaid admission process (**Annexure-2** to the memo of this LPA) reads as under:

“7. LIST OF PRESCRIBED DOCUMENTS

7.1 Candidates have to bring the following documents IN ORIGINAL.

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If a candidate is employed or under any kind of bond he/she has to furnish a 'No Objection Certificate or/and Relieving letter' issued by competent authority of concerned University /Employer before the cut off date prescribed to join the DNB course in case he/she decides to opt for a confirmed seat. The seat allotment letter to such candidates will be issued only after a copy of 'No Objection Certificate or/and Relieving letter' is submitted to NBE.”

(emphasis supplied)

In view of the aforesaid procedure, this appellant (original petitioner) had to disclose the fact about his employment and suppression of this fact leads to cancellation of his candidature for Academic Session 2018.

- (iii) Much has been argued by the learned counsel for appellant that, No Objection Certificate ('NOC') was not marked as one of the essential documents to be uploaded/supplied by this appellant at the time of admission process when this appellant (original petitioner) got admission in the year 2018 in DNB (Post Diploma) Course. For this, the learned counsel for appellant has relied upon **Annexure-34** to the memo of this writ petition. This contention is not accepted by this Court mainly for the reason that as per Clause 7 of admission rule of the year 2018 (**Annexure A-2** to the memo of this LPA), this appellant (original petitioner) was bound to disclose that he was employed with South Delhi Municipal Corporation. Moreover, this appellant (original petitioner) was bound to give No Objection certificate prior to start of the Academic Session 2018. Thus, uploading of the documents is one thing, whereas disclosure is altogether another thing. Because of the violation of Clause 7 of the rules of **the Handbook for Admission to DNB PDECT, 2018**, his candidature was cancelled from the earlier batch of the year 2018 *vide* communication dated 14th November, 2018. Further, the appellant has never challenged the cancellation of his admission in the batch of the year 2018. Hence no error is committed by the respondent in issuing

communication dated 14th June, 2020 (**Annexure 9** to the memo of W.P.(C) 3633/2020) which was under challenge in the writ petition. No error has been committed by the learned Single Judge in appreciating these clauses of the admission process.

- (iv) Now looking to the eligibility criteria for DNB-PDCET, 2020 Admission Session, till the two years of the Academic Session are over from the earlier admission, a candidate cannot get admission in next batch. For ready reference Clause 3.4 of Information Bulletin DNB-PDCET, 2020 (**Annexure A-4** to the memo of this LPA) reads as under:

***“ELIGIBILITY CRITERIA FOR DNB-PDCET 2020
ADMISSION SESSION***

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*3.4 Candidates already pursuing a MD/MS/DNB course are not eligible to appear for DNB-PDCET till such time they have completed the duration of prescribed course or have been discharged from the course. Candidates who have joined DNB (Post Diploma) course in or after January 2018 Admission session are not eligible to appear in **DNB-PDCET 2020** admission session. This shall be irrespective of their resignation or discontinuation from the course due to any reason.”*

(emphasis supplied)

The aforesaid Clause 3.4 of Information Bulletin DNB PDCET, 2020 is to be read with Clause 2.3 and 4.2 of Handbook for Admission to DNB (Post Diploma) Course 2020 Admission Session (**Annexure A-3** to the memo of this LPA). For ready reference Clauses 2.3 and 4.2 of Handbook for Centralized

Counseling for Admission to DNB (Post Diploma) Courses, 2020
Admission Session read as under:

***“2. ELIGIBILITY CRITERIA FOR ADMISSION TO
DNB (Post DIPLOMA) 2020 ADMISSION SESSION
(Broad specialty Courses):***

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2.3 Candidates already pursuing a DNB course or any other Postgraduate medical course are not eligible for admission to DNB (Post Diploma) 2020 Admission Session till such time as they complete the entire duration prescribed for the said course. Resignation or discontinuation from the said course due to any reason shall not make the candidate eligible for admission to the DNB (Post Diploma) 2020 Admission Session.

(emphasis supplied)

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***4. ELIGIBILITY FOR ONLINE CENTRALIZED
MERIT BASED COUNSELING — DNB (POST
DIPLOMA) 2020 ADMISSION SESSION.***

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4.2 Candidates already pursuing a DNB course or any other Postgraduate medical course are not eligible for admission to DNB (Post Diploma) 2020 Admission Session till such time as they complete the entire duration prescribed for the said course. Resignation or discontinuation from the said course due to any reason shall not make the candidate eligible for admission to the DNB (Post Diploma) 2020 Admission Session.”

(emphasis supplied)

In view of the aforesaid rules and regulations of the admission process for the Academic Session 2020, it is explicitly clear that a candidate already admitted in DNB (Post Diploma) Courses is not

eligible for admission to DNB (Post Diploma) Courses 2020 Admission Session till such time the entire duration prescribed for the earlier course is over. Notwithstanding the fact that any candidate has resigned and left the course or the fact that any candidate has discontinued from the earlier course for any reason whatsoever, the candidate shall not be eligible for admission to the DNB (Post Diploma) Courses 2020 Admission Session.

- (v) In the facts of the present case, this appellant's candidature was cancelled when he took admission, earlier in the batch of 2018 for suppression of material facts of his employment. As he has wasted the seat for medical education, he is not eligible for DNB (Post Diploma) Courses 2020. This aspect of the matter has been properly appreciated by the learned Single Judge.
- (vi) Much has been argued out by the learned counsel for appellant that this appellant (original petitioner) is debarred only for two years. Earlier admission date in the very same course was 4th June, 2018 and therefore after expiry of two years i.e. 4th June, 2020, this appellant is entitled to get admission in the same course again. This contention is not accepted by this Court for the reason that:
 - (a) Looking to Clause 3.4 of Information Bulletin DNB PDCET, 2020 to be read with clauses 2.3 and 4.2 of the Handbook of Procedure for Admission, 2020, this appellant (original petitioner) is not eligible till the earlier academic session is over.

- (b) Thus, the bar for getting admission again is not two years is not to be calculated mathematically but till the study of the earlier batch is over. Hence, till the study of that 2018 batch is over, this appellant (original petitioner) cannot get admission.
- (vii) This appellant (original petitioner) has neither challenged the validity of the clause of the admission process which is Clause 3.4 of The Information Bulletin DNB-PDCET, 2020 nor has challenged the validity of Clause 2.3 to be read with Clause 4.2 of The Handbook for Admission, 2020.
- (viii) Learned counsel for the appellant has relied upon Clauses 1.5 and 1.6 of the Handbook for Admission to DNB-PDECT, 2018, however, the same are not applicable to the facts of the case as this appellant (original petitioner) is in search of quashing of communication by the respondents dated 14th June, 2020 (**Annexure 9** to the memo of W.P.(C) 3633/2020). *Vide* this communication, this appellant (original petitioner) was found not eligible. Thus, the Information Bulletin DNB-PDCET, 2020 and the Handbook of Admission, 2020 are applicable to the facts of the case of this appellant (original petitioner).
- (ix) It has been held by the Hon'ble Supreme Court in **Prestige Lights Ltd. v. State Bank of India** reported in (2007) 8 SCC 449 in paragraph 35 as under:

“35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in

mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

(emphasis supplied)

In view of the aforesaid decision, when the party is invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the party must disclose full facts. This rule was evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court.

- (x) It has been held by the Supreme Court in **Mabel v. State of Haryana and Others** reported in (2002) 6 SCC 318 in paragraphs 3, 4 and 5 as under:

“3. It is submitted by Mr K.V. Viswanathan, the learned counsel for the petitioner that clause 18 of the Information Brochure cannot be so interpreted as to debar her from seeking admission to the course for all times to come and if the order is not reviewed she would be precluded from seeking admission in MBBS course forever, which is an unintended punishment. Mr Sanghi would contend that clause 18 bars a student who has taken admission in one course, to seek admission in another course.

4. It will be useful to refer to clause 18 which reads as under:

“18. The candidates already admitted in any medical/dental colleges will not be considered eligible for admission to the course.”

5. A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission, and further, such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the authority concerned in framing clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4/5 years, as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under clause 18 in this case will cease after the BDS course for the academic year 2000-01, in which the petitioner has taken admission comes to an end after 5 years. In the light of the above

observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in 2000-01.”

(emphasis supplied)

In view of the aforesaid decision, till the study of batch of 2018 is over, this appellant (original petitioner) is not eligible to get admission in 2020 Academic Session of DNB (Post Diploma) Courses.

- (xi) It has been held by the Division Bench of this Court in **Nidhi Goyal v. Medical Sciences University of Delhi** reported in (2015) **SCC OnLine Del 8347** in paragraph Nos.2, 9, 11 and 12 as under:-

“2. Clause 9.11 impugned in this petition is as under:

“9.11 A candidate who selects/is allotted a seat in the last counseling shall have no right to surrender the seat. If he/she does so, he/she shall be debarred from appearing in the subsequent PGMEM till the duration of the course concerned is over.”

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9. We have considered the rival contentions. The hard fact of the matter is that the petitioner took admission in the MS (Ophthalmology) course in the year 2014 knowing fully well of Clause 9.11 aforesaid. The question is, whether she can now be relieved therefrom. We are of the opinion that the petitioner, after applying for appearing in AIPGMEE on the terms and conditions contained in the Bulletin of Information (supra) and after appearing in the examination and securing admission, cannot be heard to contend otherwise. The allegation, of some officials of the respondent having assured the petitioner that upon paying the bond amount she would be entitled to take the examination in the next year, is not only

vague as particulars of any official(s) have not been given but unbelievable too. In fact, if the petitioner had been so assured, she would in her letter dated 17th July, 2014 of resigning from the seat would not have sought the permission of the respondent to appear in the next round of counselling. Admittedly, no such permission was granted to the petitioner.

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11. One of us (Rajiv Sahai Endlaw, J.) in *Jyoti Yadav v. Government of NCT of Delhi* relying on *Gorak Nath Balu Shinde v. State of Maharashtra* and *Amlan Jyoti Borooah v. State of Assam* (2009) 3 SCC 227 held that the terms and conditions of a brochure of admission are binding on all persons in the conduct of examination and all are expected to adhere thereto strictly in order to avoid prejudice to any person and that candidates who take part in selection process knowing fully well the procedure laid down therein, cannot be permitted to turn back and assail the same after having been declared unsuccessful. Mention may also be made of *Madan Lal v. State of Jammu & Kashmir* (1995) 3 SCC 486 also laying down that if a candidate takes a calculated chance and appears at the interview, then only because the result of interview is not palatable, he cannot turn around and subsequently contend that process of interview was unfair or the Selection Committee was not properly constituted; when the petitioner appears at the examination without protest and when he finds that he would not succeed at the examination, he files a petition challenging the examination, the Court should not grant relief to the petitioner. Reference in this regard may also be made to *Manish Kumar Shahi v. State of Bihar* (2010) 12 SCC 576. Recently also in *Chandigarh Administration v. Jasmine Kaur* (2014) 10 SCC 521 it was reiterated that if the candidate takes a calculated

risk/chance by subjecting himself/herself to the selection process, after knowing his/her non-selection cannot turn around and contend that the process of selection was unfair. It was further held that once the candidate is aware that he/she does not fulfil the criteria of the prospectus, he/she cannot be heard to say that he/she chose to challenge the same only after preferring the application and after the same was refused on the ground of eligibility.

12. The Supreme Court in Mabel v. State of Haryana (2002) 6 SCC 318 was concerned with a clause which barred a student who had taken admission in any Medical/Dental College from seeking admission in another course during the period of the course in which the candidate had taken admission. It was held that though such a condition may appear to operate harshly but is meant to ensure that a candidate who has already secured admission should not abandon the studies to seek admission in another course and that such a condition is in public interest for otherwise it would result in the wastage of the seat in the course in which the candidate had taken admission and that further such a change would deprive another eligible candidate from seeking admission to other courses. It was also held that such a condition could not be held unreasonable since the bar was with respect to that university/college only and that too only for the duration of the course in which the admission had been taken.”

(emphasis supplied)

In view of the aforesaid decision, when the clauses of admission process which are 3.4 of the Information Bulletin DNB-PDCET, 2020 and Clauses 2.3 and 4.2 of **the Handbook of Admission, 2020** which are not under challenge, this appellant

(original petitioner) cannot get admission because he was earlier admitted to a seat in medical admission process of the year 2018 and he had wasted the seat.

(xii) Much was argued out by the learned counsel for appellant that one Dr. Himanshu Gupta who was applying consecutively for last three years was never found ineligible by the respondent No.1. The learned counsel for appellant has relied upon the **Annexures 21, 22 and 23** of W.P.(C) 3633/2020 and argued about the discrimination faced by the appellant in this regard. This contention is not accepted by this court for the reason that there is no need to maintain equality in illegality. Even if Dr. Himanshu Gupta was permitted every year to participate in the admission process by the respondent No.1, it cannot be a ground for this appellant (original petitioner) to urge that similar type of illegality should be continued by the respondent No.1 for this appellant (original petitioner). Moreover, as per submission of Respondent No.1, there are as many as three other candidates for the Academic Session 2020, whose candidature has been cancelled for the very same reasons, as those of this appellant (original petitioner). Thus, if this appellant (original petitioner) is allowed to participate in admission process for the Academic Year 2020, it will cause injustice to other candidates.

(xiii) It is submitted by the learned counsel for respondent No.1 that the Second Round of the counseling was conducted by the respondent

No.1 on 30th June, 2020 and the admission process of the Second Round of counseling has already ended on 2nd July, 2020.

30. In view of the above reasons and judicial pronouncements, there is no substance in this Letters Patent Appeal. No error has been committed by the learned Single Judge in deciding W.P.(C) 3633/2020 *vide* judgment and order dated 23rd June, 2020. Hence, the present Letters Patent Appeal is hereby dismissed. The pending application also stands disposed of.

CHIEF JUSTICE

PRATEEK JALAN, J

JULY 03, 2020

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