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

% ***Date of decision:*** 11.08.2020

+ W.P.(C) 4837/2020 & CM APPL. 17455/2020

DR SHILPI PANDEY Petitioner
Through Mr.Kuldeep Rai, Adv.

versus

MINISTRY OF HEALTH AND FAMILY WELFARE
THROUGH ITS SECRETARY & ORS. Respondents
Through Mr.Ajay Digpaul, CGSC with
Mr.Kamal R.Digpaul, Adv. for R-1 &
2/ UOI.
Mr.T.Singhdev, Ms.Michelle B.Das
and Ms.Sumangla Swami, Adv. for
R-3/MCI.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

This hearing is conducted through video conferencing.

1. This writ petition is filed by the petitioner seeking appropriate directions allowing the petitioner to be included in the list published by respondent No.2/Medical Counselling Committee (*hereinafter referred to as the 'MCC'*) for the stray counselling. A direction is also sought to direct respondent No.2 not to forfeit the security deposit as the petitioner has not been allotted any seat in any round.
2. The case of the petitioner is that the petitioner had appeared in the NEET PG 2020 examination conducted by Directorate General of Health

Services(*in short the 'DGHS'*). She secured an All India Rank of 64109 and registered herself for counselling. The DGHS, Ministry of Health & Family Welfare has been entrusted with the responsibility of holding online counselling for 50% All India Quota for Post-Graduate Medical and Dental Seats.

3. It is pointed out that for those who participate in the round-I of main counselling while registering have to pay non-refundable registration fee and refundable security deposit. Similarly, for round-II of counselling registration, those candidates who have registered for round-I and did not get any seat allotted, need not register again. Next round is Mop Up round. It is pleaded that those who registered in round-I and round-II and were not allotted any seat, need not register again. The petitioner states that as per the rules and regulations, she has registered herself for the First round and Second round by depositing of requisite fees of Rs.5,000/- + Rs.2 lakhs tuition fees as security deposit. It is contended by the petitioner that she was not allotted any seat in the First and the Second rounds. Thereafter, she attempted to participate in the Mop Up round but due to technical error, she was not allowed to login the Mop Up round. The petitioner contacted respondent No.2 over the telephone. It is pleaded that as no help came, the petitioner mailed respondent No.2/MCC on 16.07.2020 but did not receive a reply. It is pleaded that the petitioner tried every possible way to solve the problem but on account of the lackadaisical attitude of respondent No.2, no result was forthcoming. It is pleaded that the petitioner for no fault of her is suffering and hence the present writ petition.

4. Respondent No.1/Ministry of Health and Family Welfare have filed a short affidavit. It has been explained in the short affidavit that as per the All

India Quota Scheme approved by the Supreme Court of India, the DGHS, Govt. of India has been entrusted with the responsibility to conduct online counselling for allotment of Post Graduate seats to eligible and qualified candidates in participating Government Medical/Dental Colleges of the country under 50% All India Quota. The allotment of seat is based on the NEET-PG 2020 examination conducted by National Board of Examinations, New Delhi. It is stated that further according to the judgment of the Supreme Court dated 09.05.2017 in W.P.(C) No.267/2017, title '***Dar-Us Slam Educational Trust & Ors. v. Medical Council of India & Ors.***', the DGHS is making allotment of 100% Post Graduate seats for admission to MD/MS/Diploma and MDS courses in Deemed Universities across the country from the academic year 2017-18. It is pointed out that there are three rounds of online counselling, i.e. first round, second round and mop up round. These three rounds are conducted by respondent No.1. After Mop Up round, there is a final stray vacancy round, which is conducted by Deemed/Central Universities as per their rules and regulations.

5. It is further pleaded that the petitioner registered with MCC by depositing Rs.2 lakhs and participated in the first round of counselling. She was not allotted any seat. The petitioner again participated in the second round of counselling. She was allotted MD in Transfusion Medicine/Immuno-Haematology and Blood Transfusion at Institute of Medical Sciences and SUMH, Bhubaneswar against Management Quota Seat in round-II of online counselling as per her ranking and choice. The petitioner did not join/report pursuant to the said seat allotment. Hence, it is pleaded that as the petitioner did not join, her claim for security deposit of Rs.2 lakhs was forfeited and her registration became null and void.

6. It is further stated that the petitioner did apply for Mop Up round for allotment/admission to the PG seat. However, she was required to deposit Rs.2 lakhs with MCC as per the scheme of counselling. She did not deposit the money, as a result of which, the registration process could not be completed. She was hence not able to participate in the Mop Up round and stray vacancy round. It is stated that after filing of this writ petition, a notice regarding reopening of registration has been duly uploaded on 01.08.2020 on MCC websites for information/knowledge of the candidates. The MCC was also reopening registration and payment facilities from 04.08.2020 to 07.08.2020 and the petitioner was given an option to complete her registration by paying the fee applicable for Deemed Universities following which she can participate in the stray vacancy round. Hence, it was prayed that the writ petition be dismissed.

7. I have heard learned counsel for the parties.

8. Learned counsel for the respondents has vehemently urged that as per the terms of the counselling, in case, a seat is allotted in round-I or round-II and the candidate does not avail of the seat, the security deposit is liable to be forfeited. To participate in the Mop Up round, the petitioner was required to file a fresh security deposit, which she failed to do. Learned counsel also relies upon the judgment of a Co-ordinate Bench of this court in the case of ***Dr.Priya Bharti v. Ministry of Health and Family Welfare & Ors.*** being W.P.(C) No.4165/2020, dated 10.08.2020 to plead that in the similar circumstances, forfeiture of the security deposit for the second round of counselling was uphold.

9. Learned counsel for the petitioner submits that he does not dispute the contention of respondents that in case a seat is allotted and the seat is not

accepted, the security deposit is liable to be forfeited. He however, submits that the petitioner never received any intimation from the collage about allotment of the seat. The petitioner also never received any response to various calls made on the helpline and also to the email dated 16.07.2020 that was sent by the petitioner to respondent No.2. On account of these facts, it is stated that the security deposit has been wrongly forfeited and the petitioner should be allowed to participate in the stray round vacancy without any security deposit.

10. I may note that on 06.08.2020 it was pointed out to the learned counsel for the petitioner that the website has been reopened and MCC has also reopened registration and payment facilities from 04.08.2020 to 07.08.2020. The submission of the learned counsel for the respondents was also noted that the petitioner is free to complete the registration by paying applicable fees for Deemed Universities following which she can participate in stray vacancy round.

11. However, the learned counsel for the petitioner pleaded that the petitioner is unable to pay security deposit and will not hence register again.

12. The respondent in the short affidavit has attached as Annexure-1 a provisional allotment letter dated 15.06.2020 whereby the petitioner has been allotted Institute of Medical Science and SUMH, Bhubaneswar. Hence, it is manifest that the seat was allotted to the petitioner in the second rounding of counselling.

13. The plea of the learned counsel for the petitioner was that firstly no intimation was received by the petitioner from the college in question about the allotment of the seat. Similarly, no communication was received from any of the respondents also. It is secondly pleaded that despite several calls

and an email dated 16.07.2020, there was no response from respondent No.2. Hence, this alleged provisional allotment is of no consequence.

14. It was put to the learned counsel for the petitioner to show under what stipulation of the Instructions to Candidates the petitioner would be entitled to claim that the college in question or respondents No.1 and 2 have to separately inform the petitioner about allotment of the college. Admittedly, the learned counsel for the petitioner was unable to show any provision or instructions to candidates which would warrant an inference that the college in question or respondents were obliged to individually intimate about the allotment of the seat to the petitioner. Hence, there is no merit in the first plea of the petitioner.

15. Similarly, the second the plea of the petitioner is also bereft of any merit. The scheme as admitted was duly published and available on the website. The onus on the petitioner to find out the result of the counselling on the website. The petitioner has failed to do so and cannot now claim that the forfeiture of the security deposit by respondent No.2 was illegal or in any way contrary to the stipulated procedure.

16. Reference may also be had to the judgment of the Co-ordinate Bench of this court in the case of ***Dr.Priya Bharti v. Ministry of Health and Family Welfare & Ors.***(supra). In that case, the petitioner had filed the petition praying that she be allowed to participate in the Mop Up round of counselling without depositing the tuition fees as security deposit. It was the case of the petitioner that she had filled up various choices for the second round of counselling of NEET PG 2020 by paying requisite fees and security deposit. Some colleges were inadvertently opted for. The petitioner was eventually allotted a seat in one of the said colleges. The intimation

regarding the same was received by the petitioner on 15.06.2020. She is said to have protested. This court held as follows.

“8. As far as the forfeiture of security deposit for the second round of counselling is concerned, the petitioner does not deserve any relief. The same has been rightly forfeited by the respondents.”

17. The facts of the present case are somewhat identical to the facts of the above case which has already been dismissed by the Co-ordinate Bench of this court.

18. Hence, there is no merit in the pleas of the petitioner. The writ petition is dismissed. All pending applications, if any, are also dismissed.

AUGUST 11, 2020/v

JAYANT NATH, J.

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