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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 29.09.2020

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Judgment Pronounced on: 15.10.2020

+ W.P.(C) 5543/2020

DR DEEPIKA VEERWAL

..... Petitioner

Through Ms. Sonia Mathur, Sr. Adv. with
Mr. Divyesh Pratap Singh, Ms. Deeksha
Gaur, Mr. Shantanu Sharma and Mr. Puneet
Pathak, Advs.

versus

NATIONAL BOARD OF EXAMINATION AND ANR. Respondent

Through Mr. Kirtiman Singh and Mr. Waize
Ali Noor, Advs. for R-1

Mr. Somnath Parashar, Adv. for R-2

Mr. G.K. Kaushik, Mr. Abhinav Kaushik and
Mr. R.K. Gupta, Advs. for R-3

Mrs. Avnish Ahlawat (standing counsel
GNCTD services) with Mr. Nitesh Kumar
Singh, Mr. Rishikesh Kumar ASC GNCTD
and Ms. Palak Rohmetra, Advs. for
Respondent no. 4

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This writ petition is filed by the petitioner as the petitioner was not allowed to participate in the First Round of Counselling for the sponsored DNB seats (Post MBBS). The petitioner seeks the following reliefs:-

“(i) Issue a writ in nature of Mandamus or any other Writ, or
Orders/Directions extending the counselling period of

registration and filling option/choices of available seats (S.No.1 of counselling process mentioned in Annexure P-11), allowing the Petitioner to participate therein and allotting a merit based seat in sponsored DNB seats (Post MBBS), and/or;

(ii) Issue a writ in the nature of Mandamus or any other Writ, or Orders/Directions to Respondent No. 1 to secure a seat in Post MBBS DNB course (Radio-diagnosis) in which a student either equivalent to or immediately lower to the rank of Petitioner has been allotted a seat, and/or;

(iii) Issue a writ in nature of Mandamus or any other Writ, or Orders/Directions to Respondent No. 1 to induct the Petitioner in sponsored DNB seat in Radio-diagnosis as per her merit, and/or;

(iv) Issue a writ in the nature of Mandamus or any other Writ, or Orders/Directions to Respondent No. 1 to allot a seat in Post MBBS DNB Radio-diagnosis course wherever vacant, and/or;

v) Issue a writ in the nature of Mandamus or any other Writ, or Orders/Directions to Respondent No. 1 awarding adequate compensation to the Petitioner for causing monetary as well as mental agony”

2. The case of the petitioner is that she completed her MBBS Course in January 2012 from Krishna Institute of Medical Sciences, Karad, Maharashtra. Upon clearing UPSC, she was appointed as a Medical Officer DHS Cadre (GDMO sub cadre) under the Health & Welfare Dept., NCT of Delhi presently being posted at Lok Nayak Hospital. It is stated that the petitioner had appeared in the NEET PG 2019 Examination, where she secured a rank of 10437. She became eligible for admission in Post Graduate course of Radio-diagnosis at Vivekanand Poly Clinic, Lucknow. However, her application was turned down on the ground that the original certificates

of the petitioner were with Vardhman Mahavir Medical College, Delhi (VMMC). Certain litigations were initiated by the petitioner which may not be relevant for the present petition.

3. The petitioner sought permission from the Competent Authority, namely, Lok Nayak Hospital for appearing for NEET PG, 2020 Examination. The permission was duly granted, and the petitioner secured a rank of 16135.

4. It is further pleaded that respondent No. 1 issued a notice on 10.06.2020 releasing the vacancies in respect to centralized merit-based counselling for admission to sponsored DNB seats (Post MBBS & Post Diploma). These seats were for candidates working in government organizations on a regular basis who were only eligible for sponsored DNB (Post MBBS) seats. The candidates who fulfilled the eligibility criteria were required to submit an online undertaking and a No Objection Certificate (NOC). The counselling commenced from 27.07.2020.

5. The petitioner is said to have emailed a NOC issued by the Competent Authority, being Lok Nayak Hospital and also an undertaking in the prescribed manner on 23.06.2020. The last date for submitting the said documents was 30.06.2020 which was subsequently extended to 10.07.2020.

6. On 14.08.2020, another notice was issued by respondent no.1 with a direction that the selection process would be online and the counselling process and filling options/choices of the available seats would be done from 18.08.2020 to 20.08.2020. The process of allotment and result of allotment were to be done on 21.08.2020. The payment of the first year course fees was to take place from 21st to 27th August, 2020. Physical joining was to start from 21.08.2020 until 31.08.2020.

7. It is the case of the petitioner that the registration process started from 18.08.2020 but the petitioner could not find any link on the website to aid the process of registration. The petitioner received no confirmation from the respondent with regard to the NOC and undertaking to have been processed successfully. The petitioner sent an e-mail to the respondent expressing her concern but there was no response. It is stated that after several attempts, finally on 18.08.2020 the petitioner came across two lists freshly uploaded on the website of respondent no.1. The two lists were of the candidates whose applications were found to be correct and of those candidates whose applications were found to be defective. Unfortunately, the petitioner did not find her name in either of these lists.

8. It is stated that the petitioner went to the office of National Board of Examination, Dwarka (NBE), namely, respondent No. 1. She was denied entry into the premises. On her request, she was allowed to talk through an intercom to an official of NBE who categorically told the petitioner that at times, the concerned official could not read all the emails and there was a possibility of the petitioner's email being skipped from being scrutinized. The petitioner thereafter forwarded the previous mails to respondent No. 1 on the designated email id. The person on the intercom is said to have confirmed receipt of the emails. The petitioner again visited the office of respondent No. 1 on 19.08.2020. On speaking to the concerned person over intercom again, the petitioner was informed that the NOC and undertaking of the petitioner were notified as defective by the authorities on the ground of non-affixing of the stamp of the name of the officer issuing the NOC under the seal of the office issuing the said certificate.

9. The petitioner states that she immediately went to the office of the concerned authority and got his stamp affixed. The petitioner reached back to the office of respondent No.1 at 3.00 P.M with all the purported defects cured after which she got a physical copy sent to the office of the concerned person. Despite the above steps being taken, it is stated that the petitioner received no information whatsoever. The petitioner hoping to get a link as she was at the 5th position of the counselling and was entitled to a sponsored seat in Radio-diagnosis course which stream had only 7 seats in the aforesaid category visited the office of respondent no.1 again. However, the concerned officer is said to have told the petitioner that it is not possible to arrange a link in a short time of 4 hours as it was already 1 PM and the counselling would close at 5 PM. Hence, the petitioner could not participate in the counselling. Hence, the present petition.

10. Respondent No. 1 has filed its counter-affidavit. In the counter-affidavit, it has been stated that vide notice dated 10.06.2020, the seat matrix for the sponsored seats was notified. The candidates who fulfilled the eligibility criteria were to submit an online undertaking and a NOC in the format as mentioned in the notice. On 30.06.2020, another notice was issued whereby it was notified that the last date for submission of NOC and Undertaking was extended up to 10.07.2020. On 18.07.2020, the respondent stated that the Centralized Merit Based counselling for sponsored DNB seats would be conducted through online mode. It is stressed that as per the handbook of counselling as well as the notices dated 10.06.2020 and 30.06.2020, in order to become eligible for the sponsored DNB seats a candidate must fulfill the following conditions:-

“a. The candidate should be a NEET-PG 2020 / DNB PDCET 2020 Examination qualified as applicable for the concerned DNB /FNB course.

b. The candidate should be employed on regular basis with the Sponsoring Government organization.

c. The candidate shall have to obtain a study leave, No Objection Certificate from the Sponsoring Government organization and fulfill other requirements as per the terms and conditions of the organization where the candidate is employed.

d. All such candidates who fulfill the aforesaid eligibility criteria and are desirous for opting the sponsored DNB (Post MBBS and Post Diploma) seat are required to submit an online undertaking and NOC by 10.07.2020.”

11. It is further stressed that the submission of the NOC in the prescribed format as an eligibility condition is an important condition. The reasons for the same are stated as follows:-

“(i) That the Sponsoring Government organization is aware of the fact that its employee is participating in the counselling for Sponsored DNB (Post MBBS and Post Diploma) seats and that it has no objection to his participation in the same.

(ii) That the Sponsoring Government organization shall relieve the candidate from his /her parent office to join DNB training in case of his/her selection for the same.

(iii) That the Sponsoring Government organization will also ensure that the candidate will continue to get his salary from his Sponsoring Government organization for the entire period of DNB training.

(iv) That, in turn, the candidate shall be paid the due salary and necessary allowances as per rules, from Sponsoring Government organization, for the entire period of DNB

training, since the Hospital will not be paying any stipend to the said candidate.

(v) That, therefore, in order to ensure that conditions are adhered to, and the smooth conduct of the course, and to prevent wastage of any seats, a certification is taken from the head of the Sponsoring Government organization who would certify the above under his name signature and seal.”

12. Respondent No. 1 admits that after analysis of the NOC's and undertakings submitted by the candidates, respondent No.1 had on 18.08.2020 published two lists on its website i.e. the correct list and the incorrect list, namely, the correct list containing the names of the candidates whose NOCs and undertakings were in order. It is stated that as per the prescribed format of the NOC, the same has to be issued by the Head of the Office and must bear the official seal with name and designation of the authority issuing the NOC. However, the NOC submitted by the petitioner vide email dated 23.06.2020 neither bears the official seal with name and designation of the authority issuing the NOC nor has been issued by the competent authority. It is stated that the petitioner claims to have cured the defects on 19.08.2020 in the NOC but the same was done after the last date of submission of NOC and Undertaking which was 10.07.2020.

13. The counter-affidavit further reiterates that the present NOC does not establish that it has been issued by the competent authority. Hence, another opportunity was granted to the petitioner to upload the correct undertaking and NOC as per the notice dated 10.06.2020.

14. On 23.08.2020, respondent No. 1 notified the second round of counselling for the sponsored DNB seats for the candidates who could not participate in the first round of counselling and the candidates who could not

submit NOC or undertaking in accordance with the prescribed format were given another opportunity to do so by 31.08.2020. Hence, it is stated that the petitioner could participate in the second round of counselling. It is also pointed out that there were six candidates who were higher in rank than the petitioner who were not considered in the first round of counselling for the DNB sponsored seats due to non-submission of the NOC in the prescribed format.

15. I may note that Lok Nayak Hospital, Govt. of NCT of Delhi has filed a compliance report/status report. In the said report, it is stated that the competent authority had declared Dr. Hem Prakash as the Additional Medical Superintendent and Head of Office. Dr. Hem Prakash issued the NOC in question with respect of the petitioner. It also states that the said NOC issued by Dr. Hem Prakash was not only genuine but within his competence to convey the same. In the counter affidavit filed by respondent No.1, the above facts have been reiterated.

16. I may note that the petitioner had moved CM APPL. 20697/2020 on 28.08.2020. On that date notice was also issued to the proposed respondent No.3. Despite service, none appeared for respondent No.3. On 24.09.2020 respondent No.1 was permitted to re-serve respondent No.3 by email through Apollo Hospital, Chennai where respondent No.3 was working. On 25.09.2020, respondent No.3-Dr. Mahender Reddy had entered appearance. He was advised by the court to take appropriate legal assistance, if he so desired. He had appeared through learned counsel on the next date of hearing and had urged that he would be filing his written submissions. No such written submissions have been filed.

Respondent No. 3 was served notice as it is the case of the petitioner that she deserves to be given the last seat that was given to respondent No. 3. The desired course of the petitioner is Radio-diagnosis which had 7 seats. The petitioner stood at 5th Rank in the merit, her rank being 16135. Persons lower in rank than the petitioner have been given the said seat i.e. rank of 16925, 20592 and 20890 being respondent No. 3.

17. I have heard learned senior counsel for the petitioner and learned counsel for respondent No.1 and respondent No.3, namely, Dr. Mahendra Reddy.

18. Learned senior counsel for the petitioner has strongly urged that the petitioner is being harassed for no fault of hers. She has made the following submissions:-

(i) It is stated that the petitioner had duly submitted her undertaking and a valid NOC on 23.06.2020 whereas the last date for submission of the same was 30.06.2020. It is further stated that the date for counselling was fixed from 18.08.2020 to 20.08.2020. On 18.08.2020 at 2.30 p.m., two lists were released by respondent No.1. One enumerating the candidates having correct undertakings and NOC's and the second enumerating the candidates with incorrect undertaking and NOC. The name of the petitioner did not figure in any of these two lists.

(ii) It is stated that pursuant to this illegal and arbitrary act of respondent No.1, the petitioner has rigorously followed up with respondent No.1. On 18.08.2020, 19.08.2020 and 20.08.2020, the petitioner had visited the office of respondent No.1. She was allowed to meet an officer only once while on the other occasions she had a talk with an officer on the intercom. One of the officers concerned communicated that they had not received her email and

she should send a fresh email. On 19.08.2020 when she followed up again on the intercom in the office of respondent No.1, she was informed that her NOC and Undertaking was defective as the seal of the name of the issuing officer had not been affixed on the form. It is stated that the petitioner again immediately cured the alleged defect and re-filed the same on 19.08.2020 itself. On 20.08.2020 the petitioner kept sitting outside the office of respondent No.1 but to no avail and she was not allowed to participate in the counselling. It is pleaded that for no fault of the petitioner, she has been left out of the counselling process. These material facts, it is stated, have not been denied by respondent No.1 in the counter-affidavit.

(iii) It is stated that on 21.08.2020 for the first time by an email, she was notified about the so called deficiencies. The alleged deficiencies had already been removed by the petitioner.

(iv) It is stated that the desire of the petitioner was always Radio-diagnosis. The said subject had seven seats. The petitioner stood at the 5th position on the merit rank being 16135. Persons lower in rank than the petitioner have been held successful. Hence, it is pleaded that the last person to get the seat was respondent No.3. The petitioner being at the 5th position in the merit deserved to be given the said seat which was given to respondent No.3.

(v) Learned senior counsel for the petitioner has relied upon judgments of the Supreme Court in the case of *Dolly Chhanda v. Chairman, JEE and Others, 2005 (9) SCC 779* and *Asha v. Pt. B.D. Sharma, University of Health Sciences and Others, (2012) 7 SCC 389* to support her contentions.

19. Learned counsel for respondent No.1 has stressed that the official seal of the person who had signed the NOC on behalf of the petitioner was not there in the NOC that was filed by the petitioner. It is stated that this is the

most important document as the organisation giving the NOC would be responsible for granting leave to the petitioner and for paying salary to the petitioner while the petitioner is carrying out the course in question etc. It has been stressed that the last date for submission of NOC was 10.07.2020. It is the petitioner's own case that she had filed a fresh NOC on 20.08.2020 much after the cut off date.

It is hence pleaded that based on the fresh NOC, the petitioner was allowed to participate in the second rounding of counselling which she chose not to.

It is stressed that a lot of candidates who had applied for the sponsored DNB seat, their applications have been rejected on account of similar or somewhat identical grounds.

In the written submissions filed by respondent No.1, it has been confirmed that the last date of joining has been extended to 15.10.2020.

20. Respondent No.3 has entered appearance, rather late. His counsel on the last date of hearing essentially submitted that respondent No.3 is an innocent bona fide applicant. Learned counsel had been allowed to file his written submissions. However, no written submissions have been filed.

21. The essential controversy in this case pertains to the fact as to whether the petitioner was wrongly not allowed to participate in the first round of counselling that took place from 18.08.2020 to 20.08.2020. The first round of counselling was to begin from 18.08.2020. On 18.08.2020, two lists were released, one list containing the names of the candidates who had given correct undertakings and NOC's and the second list containing the name of the candidates who had given incorrect NOC's and undertakings. What stands out is that the name of the petitioner did not figure in any of these

lists though as per her rank she was entitled to participate in the first round of counselling. This aspect is admitted by respondent No.1 in their counter affidavit. There is no explanation given by respondent No. 1 as to why the name of the petitioner was missing from these two lists.

22. What follows is that the name of the petitioner is not in any of the lists that were released on 18.08.2020. It is only subsequently that on 21.08.2020 that she was informed of an alleged defect in the NOC.

23. Respondent No.1 in their counter affidavit states that the NOC submitted by the petitioner was not in the prescribed format inasmuch as it had to be issued by the Head of the Office and was to bear the official seal with the name and designation of the authority issuing the NOC. However, the NOC that was submitted by the petitioner did not bear the official seal with the name and designation of the authority. The petitioner claims to have cured the defects on 19.08.2020 which is also denied by respondent No.1. It is stated that on 21.08.2020, the petitioner was granted another opportunity to upload and submit the correct undertaking and NOC. Thereafter, on 23.08.2020 respondent No.1 notified the second round of counselling for the sponsored DNB seats which included candidates who could not participate in the first round of counselling and for those candidates who had submitted undertaking and NOC not in accordance with the prescribed format.

24. I may look at the NOC in question submitted by the petitioner. The said NOC dated 23.06.2020 is signed by Dr. Hem Prakash. His name has been given in capitals underneath his signatures. A stamp is affixed showing his designation as Additional Medical Superintendent (A), L.N.J.Hospital, New Delhi. Hence the NOC had a Rubber Stamp and had given the designation of the officer signing the NOC.

The changed NOC submitted later on 20.08.2020 now in addition to the above bears a new stamp “Dr. Hem Prakash, Lok Nayak Hospital, Govt. of NCT of Delhi-110002”. In view of the counter affidavit and status report filed by the Government of NCT of Delhi, there is no dispute that Dr. Hem Prakash was duly authorised to sign the NOC. The only addition now done by the petitioner on 20.08.2020 after the objections were raised by respondent No.1 is to affix an additional rubber stamp as noted above. It is not that the original NOC did not contain a rubber stamp.

25. In my opinion, the alleged defects pointed out by respondent No.1 are trivial and meaningless. The alleged defects do not in any manner warrant rejecting the NOC as defective. I cannot help but come to a conclusion that the objection to the NOC, namely, absence of a rubber stamp is a plea cooked up after the faux pas committed by the respondent No.1 in omitting the name of the petitioner from the two lists that were released on 18.08.2020. If the NOC of the petitioner was defective, her name should have found place in the list of candidates who had submitted defective documents. The plea of respondent No.1 lacks bonafide.

26. There is no dispute that had the petitioner been allowed to participate in the first round of counselling, she would have got the seat of Radio-diagnosis. She had a rank of 16135 and stood at the 5th position in merit for the said seat.

27. In the above context reference may be had to the judgment of the Supreme Court in the case of *Dolly Chhanda vs. Chairman, JEE & Ors.(supra)* where the Court held as follows:-

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility

qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.

8. This principle was explained and applied in *Charles K. Skaria v. Dr. C. Mathew* [(1980) 2 SCC 752]. The controversy here related to admission to a postgraduate course in medicine. The relevant rule provided for addition of 10% marks if a candidate possessed a diploma in the relevant subject or subspecialty and this benefit could be given only if the candidate's success in the diploma course was brought to the knowledge of the Selection Committee before completion of selection in an authentic or acceptable manner. The prospectus provided that the attested copies of statement of marks and other documents should be attached with every application. Three such candidates were given admission who had not attached the certificate of having passed the diploma along with their applications. Their admission to postgraduate course was set aside by the High Court on the ground that their applications, wherein they claimed the benefit of diploma, were liable to be rejected as the requisite certificates had not been attached. This Court speaking through Krishna Iyer, J. reversed the judgment of the High Court and held that the admission to the candidates had rightly been given as they had in fact passed the diploma before the date fixed. The relevant parts of paras 20 and 24 of

the judgment, where this principle was highlighted are being reproduced below:

“20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, *in fact*, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is produced only later, *yet before the date of actual selection*. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. ... Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

24. It is notorious that this formalistic, ritualistic approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from overemphasis on the external rather than the essential. We think the Government and the Selection Committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like marklists from universities, why, even bail orders from courts and government orders from public offices.”

(emphasis in original)

9. The appellant undoubtedly belonged to reserved MI category. She comes from a very humble background, her father was only a Naik in the armed forces. He may not have noticed the mistake which had been committed by the Zilla Sainik Board while issuing the first certificate dated 29-6-2003. But it does not mean that the appellant should be denied her due when she produced a correct certificate at the stage of second counselling. Those who secured rank lower than the appellant have already been admitted. The view taken by the authorities in denying admission to the appellant is wholly unjust and illegal.

10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year."

28. Clearly, the act of respondent No. 1 in rejecting the NOC submitted by the petitioner on trivial grounds was an unjust and arbitrary act, especially as respondent No. 2 confirms the validity of the NOC.

29. Similarly, reference may be had to the judgment of the Supreme Court in the case of *Asha vs. Pt. BD Sharma University of Health Sciences Ors.(supra)*. The Supreme Court held as follows:-

“14. We may notice that in the writ petition before the High Court the appellant had specifically averred that she was present in the second counselling at the time of attendance and even subsequent thereto. However, despite such presence, her name and roll number were not declared by the respondents for the purpose of admission to the MBBS course. However, the list of successful candidates revealed that the candidates of merit lower to her had been admitted to the MBBS course. According to her, she instantly raised her claim and even submitted a representation to the respondents but to no avail.

20. It is not necessary for the appellant to plead and prove mala fides, misconduct or favouritism and nepotism on the part of the parties concerned. Failure to do the same could be an error, intentional or otherwise, but in either event, we see no reason why the appellant should be made to suffer despite being a candidate of higher merit.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates

having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission.

37. From the above data, it is clear that the appellant has miserably failed to pursue her BDS course in accordance with rules and, thus, she has not fulfilled even the prerequisites for MBBS course, assuming that the BDS and MBBS courses are similar for the first six months. In these circumstances and finding that the appellant is at fault to this limited extent, we are of the considered view that the only relief the appellant can be granted in the present appeal is a direction to the respondents to give the appellant admission to the MBBS course not in the academic year 2011-2012 but in the current academic year i.e. 2012-2013, that too, subject to the condition that she will pursue her MBBS course right from the beginning without any advantage of her course in the BDS. If any examinations have been held in the meanwhile, it shall be deemed that she had not appeared in those examinations and be treated as such for all intent and purpose. While giving her admission to the MBBS course, preferably and if it is permissible, admission of none of the other candidates to the MBBS course may be disturbed. If for whatever reasons, it is not possible to do so, in that event, the candidate last in the merit who has been granted admission to the MBBS course shall be transferred to the BDS course and the appellant shall be admitted to the MBBS course. We also direct that such candidate would not be required to commence her/his BDS course from the beginning provided the candidate has satisfied the attendance requirements of the Dental Council of India."

30. Keeping in view the above legal and factual position, I have no hesitation in holding that the petitioner's case has been dealt with in a very

arbitrary manner. The petitioner has been wrongly debarred from participating in the first counselling and denied a seat she was entitled to on her merit. This court has no other option but to set aside the admission of respondent No.3 who was lower in rank to the petitioner for the seat of Radio-diagnosis and to direct respondent No.1 to admit the petitioner to the said seat.

31. I may note that a strong objection had been raised by learned counsel for respondent No.1 that respondent No.2, the Authority under which the petitioner is presently working are randomly declining leave to the candidates to whom they have given the NOC earlier. This above direction is subject to respondent No.2 granting leave to the petitioner and relieving her from her present duty. The respondent No.2 will deal with the case of the petitioner forthwith.

32. With the above directions, the petition is disposed of. Pending applications, if any, also stand disposed of.

JAYANT NATH, J

OCTOBER 15, 2020
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