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

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Date of decision: 19.11.2020

+ W.P.(C) 5829/2020 & CM APPL. No.21081/2020

AASTHA RAJ

....Petitioner

Through Mr.Manu Luv Shahalia, Adv.

versus

UNIVERSITY OF DELHI AND ORS. Respondents

Through Mr.Mohinder J.S.Rupal, Standing
Counsel with Mr.Hardik Rupal, Adv.
for R-1 to 3/University of Delhi.

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 to cancel the selection/allotment of respondent No.8 with respondent No.3 college for Post Graduate Courses for the academic year 2020-21 in General Medicine and the petitioner be declared successful for the same by allowing the petitioner to join for the said course.
2. The case of the petitioner is that sometime in March/April, 2020, University of Delhi issued a Bulletin of Information for admission to Post Graduate Courses for the academic year 2020-21. The clause 7.2 of the said Bulletin provided that candidates appearing in last round/mop up round of counselling and offered admission in such last round must carry their original certificates in person and they will have no right to surrender their seats once accepted. Further no extension of time for joining will be granted. The candidates appearing in last round/mop up round of

counselling must produce original certificates to be eligible for allotment of PG seat.

3. The petitioner applied for the said course through online process through NEET PG 2020. Regarding respondent No.8/Ms.Gargee Rattan, it is stated that she applied parallelly for Indira Gandhi Medical College, Shimla for the Post Graduate Courses. Her name appeared in the counselling list for the said degree course with said college.

4. On 22.07.2020 under Himachal Pradesh State Quota PG Degree Courses provisional seat allocation was issued to respondent No.8 after appearing in the counselling. She was allotted seat of MD General Medicine in Dr.Rajendra Prasad Govt. Medical College & Hospital, Kangra (H.P.). On 28.07.2020, University of Delhi issued seat matrix for stray vacancy round wherein seat of MD (General Medicine) was mentioned and specified to be reserved for SC category. University of Delhi also issued notice for stray vacancy round of counselling to be held on 30.07.2020 for PG MD Admission 2020.

5. The grievance of the petitioner is that on 30.07.2020 on the day of the counselling for Delhi University, the petitioner was present and attended in person with all required original documents/certificates for MD-Medicine under 50% Delhi University Quota. The petitioner was at serial No.110 whereas respondent No.8/Ms.Gargee Rattan was at serial No.79. There was no candidate between them present. It is stated that the mandate was that the candidates have to submit their original documents by 28.07.2020 and had to report for joining by 30.07.2020. Ms.Gargee Rattan/respondent No.8 had already taken admission in the above noted

college in Himachal Pradesh. There was no exemption permitted from physical appearances as is evident from various communications placed on record. In the counselling, the name of respondent No.8 was called out and some male candidate went inside the room without the original documents. It is stated that respondent No.8 has been given admission contrary to the stipulated procedure at the cost of the petitioner. Hence, the present writ petition.

6. University of Delhi has filed a short counter affidavit. In the counter affidavit, it has been stated that the writ suffers from delay and laches. The counselling for the stray vacancy round was held on 30.07.2020 while the present petition was filed on 31.08.2020 i.e. the last day when the entire counselling schedule was already over. Hence, it is pleaded that the present writ petition is liable to be dismissed.

7. Without prejudice, it is also stated that the decision to admit respondent No.8 was granted during the counselling held on 30.07.2020 as per the decision of the Admission Committee. The minutes of the meeting have been attached. It is stated that respondent No.8 could not attend the counselling personally on that date due to Covid-19 situation. The admission Committee under those special circumstances was pleased to allow authorised person of respondent No.8 to attend the counselling on behalf of respondent No.8 and provisionally allotted the seat of MD General Medicine to respondent No.8 subject to producing the original certificates/documents to the allotted college and completing all the formalities. The original certificates were produced by respondent No.8 on 31.07.2020 in the college. All the other formalities were also completed on

31.07.2020 as this was the last day of admission as per Guidelines of the MCI. Hence, it is pleaded that the admission granted to respondent No.8 in MD General Medicine does not suffer from any infirmity and is valid and proper. The Admission Committee took steps under special and extraordinary pandemic situation that prevails.

8. It is further stated that this Hon'ble Court while passing the interim order on 31.08.2020 had permitted the petitioner to take admission in the vacant seat of MD Pathology. The petitioner however did not come forward to take admission for the said course and has made the petition infructuous as per law laid down by the Supreme Court of India. Hence, it is pleaded that no relief can be granted to the petitioner.

9. I have heard learned counsel for the parties.

10. The settled legal position is that in terms of the judgment of the Supreme Court in the case of '*Priya Gupta v. State of Chhattisgarh*, AIR 2012 SC 2413, the last date for giving admission for the PG Courses is 31.08.2020. That date is already over. Hence, this court cannot grant relief to the petitioner as is sought.

11. Reference may be had to the minutes of the Faculty of the Medical Science (Admission Committee) that was held on 30.07.2020. The same reads as follows:

“A meeting of the Medical Sciences Course Admission Committee (MCAC) of the Faculty of Medical Sciences was held on Thursday, the 30th July 2020 A.M. in the Committee Room, Faculty of Medical Sciences, 7th Floor V.P. Chest Institute Building, University of Delhi 110007.

The following members were present:

1. Prof. Vandana Roy, Dean Faculty of Ayurveda & Unani – Chairperson
2. Dr Gaurav Agrawal, Registrar (Academic), Lady Hardinge Medical College
3. Dr G S Meena, Maulana Azad Medical College
4. Dr Shivani Agarwal, KH
5. Dr Sonam Spalgals, VPCI
6. Dr Dheervag P Gupta, HRH
7. Dr Vivek Jangira, Professor, MAMC Academic Council Member
8. S K Dogra, Deputy Registrar (Medical), Faculty of Medical Sciences.
9. Dr Pardeep Kumar, Assistant Registrar (Medical), Faculty of Medical Sciences.

At the outset, the Chairperson welcomed the members:

Item No.1	To conduct Stray Vacancy Counselling for admission to PG (MD/MS/Diploma/MDS) Courses 2020
	The Medical Sciences Course Admission Committee (MCAC) successfully conducted Stray Vacancy Round-up Counselling for admission PG (MD/MS/Diploma/MDS) Courses 2020.
	One candidate at Sl.No.79, Rank 20043, Category (SC) Gen. Medicine, MAMC could not attend the stray vacancy round physically due to Covide-19 situation and one candidate at Sl.No.111, Rank 25636, Category (UR), MD Anaesthesiology, LHMC could not physically attend the counselling as the candidate is suffering from Corona Virus. The Committee unanimously decided to allow the authorised persons of these candidates to appear for counselling and to allot seat provisionally subject to submission original certificate at the allotted college and carry out all required formalities.

	The Committee received an email at 3.32 PM from office of ADG(ME) in respect of Writ Petition No.4755 of 2020 in the matter of Dr.Machat Balakrishnan Menon v. MCC & Ors. before the Hon'ble Delhi High Court on 30.07.2020 wherein the University was directed to keep one seat reserved in MD(Pathology) in Maulana Azad Medical College, New Delhi which was allotted to the Candidate in the Mop-up round of NEET PG Counselling 2020 until further orders of the Hon'ble Court. Hence, one seat in MD Pathology, MAMC was kept on hold as per direction of Hon'ble Delhi High Court.
	No Candidate opted the seats in some of the specialities under OBC category, therefore, these seats were converted to UR category as per clause No.3.1(c) of BOI 2020. The Counselling ended at 5.00 PM.

The MCAC unanimously authorised the Dean (Medical) to take any necessary steps as deemed necessary.

The meeting ended with a vote of thanks to the Chair.”

12. In my opinion, the view taken by the Admission Committee is fair and reasonable. Respondent No.8/Ms.Gargee Rattan could not come for counselling on account of restrictions in travel. However, she physically appeared on 31.07.2020 and has given the original documents and completed all the formalities. Her physical absence on 30.07.2020 does not warrant her cancellation of admission. I also cannot help noticing that admittedly, respondent No.8 has higher rank in the merit list than that of the petitioner. It is not as if somebody with a lower rank in the merit list has jumped over the petitioner.

13. There is another aspect in this matter which cannot be ignored. The

Supreme Court in the case of '*Ashish Ranjan v. Union of India*, in M.A.No.1282/2020 in W.P.(C) No.76/2015, vide order dated 30.07.2020 directed that the time for counselling for carrying out PG Medical and Dental Courses is extended from 31.07.2020 to 31.08.2020. I am informed that there has been no further extension thereafter by the Supreme Court.

14. In this context reference may also be had to the judgment of the Supreme Court in the case of '*Priya Gupta v. State of Chhattisgarh & Ors.*', 2012 (7) SCC 433', where the Supreme Court held as follows:

“38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from midstream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.”

15. It would follow from the above judgment that compliance of the schedule fixed is mandatory. The petitioner was permitted to take admission in the course of MD Pathology before the last date. She has failed to do the needful. Now giving her admission would be contrary to the schedule fixed by the Medical Council of India and approved by the Supreme Court. Clearly, no grounds are made out for this court to interfere in the decision taken by the respondents.

16. There is no merit in the present petition. The same is dismissed. All pending applications, if any, are also dismissed.

JAYANT NATH, J.

NOVEMBER 19, 2020/v