

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2224 of 2021**

Kumari Chanchal Verma D/o Het Prasad Verma Aged About 21 Years R/o House No-02 Near Dls College Ashok Nagar, Sarkanda, Bilaspur C.G.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary Department Of Health And Family Welfare And Medical Education Department, Atal Nagar, Nayamantralaya, Naya Raipur C.G. Pin, District : Raipur, Chhattisgarh
2. The Director Department Of Ayurvedic Yoga Naturopathy, Unani Sidha And Homeopathy, Old Mantralaya Campus, Dks Bhawan Raipur Ps Moudapara, District Raipur C.G., District : Raipur, Chhattisgarh
3. The President And Principal Commitee Chhattisgarh Ayurved Univercity Raipur Chhattisgarh, District : Raipur, Chhattisgarh
4. Union Of India Through The Secretary Ministry Of Ayurvedic, Yoga, Naturopathy, Unani Sidha And Homeopathy, Ayush Bhawan B Block Gpo Complex, Ina New Delhi., Delhi
5. Bharti Ayurved College And Hospital Through Its Principal, Pulgaon Chowk Durg, Chhattisgarh, District : Durg, Chhattisgarh
6. Mukul Banchor, S/o Mr Birendra Kumar Banchor, R/o House No. F-20 Cseb Colony, Baloda Bazar Chhattisgarh., District : Balodabazar-Bhathapara, Chhattisgarh
7. Pallove Verma S/o Shri Ajay Verma, R/o House No. 308/a, Vithal Puram, Near Snajeeni Hospital, Umda Road, Bhilai-3, Durg Chhattisgarh, District : Durg, Chhattisgarh
8. Lakesh, S/o Gautam Singh R/o House No. 23, Agesara, Batrel Patan Durg, District : Durg, Chhattisgarh
9. Ayonija Dwiedi, D/o Mr Anil Kumar Dwiedi, R/o Shanti Offset, Civil Line Ward No. 24, Dongargarh, Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh
10. Anjali Verma, D/o Mr Ashwani Kumar Verma R/o C/o Khubchand Baghel, Ward No. 15, Tilda Raipur, Infront Of Nagar Palika, Raipur Chhattisgarh, District : Raipur, Chhattisgarh
11. Tanmay Singh Rajput, S/o Mr Shankar Singh Rajput R/o Bazaar Chowk, Hirmi, Simga, Baloda Bazaar Chhattisgarh, District : Balodabazar-Bhathapara, Chhattisgarh
12. Prashant Sahu, S/o Shri Om Prakash Sahu, Pt Deendayal Upadhyay Nagar, Nagri Ward No. 5 Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh

13. Moksha Sinha, D/o Mr Dani Ram Sinha, R/o Sorid Nagar, Bastar Road Dhamtari Chhattisgarh, District : Dhamtari, Chhattisgarh
14. Smita Chandraker, D/o Mr Sunil Kumar Chandraker, R/o Indira Nagar, South Vasundha Nagar, Bhilai 3, Ward No. 21, Bhilai Charoda Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondents

(Cause-title taken from Case Information System)

For Petitioner	: Mr. P. Acharya, Advocate
For Respondents No.1 to 3	: Mr. Gagan Tiwari, Dy. Govt. Advocate
For Respondent No.4	: Mr. Bhupendra Pandey, Standing Counsel
For Respondent No.5	: Mr. Apurv Goyal, Advocate
For Respondents No.6 to 14	: Mr. Navin Shukla, Advocate

Hon'ble Shri Arup Kumar Goswami, Chief Justice

Hon'ble Shri N.K. Chandravanshi Judge

Order on Board

Per Arup Kumar Goswami, Chief Justice

30.11.2021

Heard Mr. P. Acharya, learned counsel for the petitioner. Also heard Mr. Gagan Tiwari, learned Deputy Government Advocate appearing for the respondents No.1 to 3, Mr. Bhupendra Pandey, learned standing counsel for respondent No.4, Mr. Apurv Goyal, learned counsel for respondent No.5 and Mr. Navin Shukla, learned counsel appearing for respondents No.6 to 14.

2. The petitioner had qualified in the National Eligibility Entrance Test ('NEET') - 2020-2021. The respondent No.2 had issued an advertisement dated 07.12.2020 inviting applications for admission of students to the course of Bachelor of Ayurveda, Medicine and Surgery ('BAMS') in Government and private colleges registered under the affiliation of respondent No.2 and

respondent No.4. The petitioner responded to the said advertisement. A merit-list was prepared on 04.02.2021.

3. The Union of India had granted permission to Bharti Ayurved College and Hospital, respondent No.5, to admit 100 students on 30.03.2021, while the last date for counselling for the academic session 2020-21 was to be over on 31.03.2021. As a result of a very limited time available, 70 out of 100 seats remained vacant. In connection with the unfilled seats, respondent No.5 filed a writ petition, registered as WPC No.4129 of 2021, before the Delhi High Court, praying for a direction to the counselling authority to forward further names to the respondent No.5 herein. It is to be noted that during the pendency of the aforesaid writ petition, the Union of India had addressed a communication dated 03.05.2021 to the respondent No.5, the Central Council of Indian Medicine, State of Chhattisgarh and the Registrar of Chhattisgarh Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy ('AYUSH') i.e., the affiliating University of respondent No.5, by which five working days were allowed to admit the NEET-2020 qualified candidates through the counselling authority of the State Government. Pursuant to the aforesaid communication, a counselling was held on 06.05.2021. 70 names were forwarded and in this exercise, only 61 students reported and took admission, leaving 9 seats vacant.

4. Taking note of the aforesaid factual events as well as the fact that the State of Chhattisgarh, at that relevant point of time, was under lock-down, Delhi High Court disposed of the writ petition vide order dated 11.05.2021 with the following directions :

“5. The petition is therefore disposed of with a direction upon the authorities of the State of Chhattisgarh to the effect that, in the event NEET-2020 qualified candidates are still available, who

have not taken admission in any other college, the names of 15 candidates may be forwarded to the petitioner-college by tomorrow, i.e., 15.05.2021. (In the event 15 such candidates are not available, the name of all available candidates will be forwarded.) The petitioner will be entitled to admit nine students, from the names forwarded by the State, by 14.05.2021.

6. It is made clear that no further opportunity to admit students needs to be afforded to the petitioner, even if seats remain vacant thereafter, so that the process can be brought to a completion expeditiously.

7. The petition is disposed of alongwith pending applications in these terms.”

5. The case projected by the petitioner in the writ petition is that subsequent to the issuance of a notification on 05.05.2021 asking the aspiring candidates to submit necessary application upto 2.00 PM on 06.05.2021, for admission in respondent No.5 college, the petitioner had submitted such application. The grievance expressed in the writ petition is that though the petitioner had secured much higher marks, her name was not forwarded, but instead, the names of candidates who secured lesser marks than the petitioner, were forwarded against the aforesaid 70 seats. A grievance is also expressed that when the question of filling up the balance 9 seats pursuant to the order of the Delhi High Court arose, the respondent authority had again forwarded a list of 15 names on 12.05.2021 to respondent No.5 college and this time also, the name of the petitioner did not figure in the list of 15 candidates. That apart, no further notice was issued asking interested candidates to submit application for admission. Accordingly, the list dated 06.05.2021 and list dated 12.05.2021 had been called into question by the petitioner in the present writ petition.

6. Initially, none of the candidates whose names figured in the list dated 06.05.2021 and list dated 12.05.2021 had been added as party-respondents. However, subsequently, by way of amendment, 9 candidates who ultimately secured admission in the balance 9 seats pursuant to the order of the Delhi High Court, have been added as party-respondents.

7. Mr. P. Acharya, learned counsel for the petitioner has submitted that no notice was issued inviting application from the interested candidates for the purpose of sending 15 names and the respondents adopted a 'pick and choose' policy in forwarding 15 names and therefore, the action of the respondents cannot receive judicial imprimatur. He has relied on Rule 8 of the *Chhattisgarh Ayush Snatak Pathyakram Pravesh Niyam*, 2019 ('for short 'Rules of 2019') in support of his contention that a notice was required to be issued.

8. Respondents No.1 to 3 had filed reply-affidavit. So also by respondent No.5 as well as by respondents No.6 to 14, separately.

9. Mr. Gagan Tiwari, learned State counsel, abiding by the stand taken in the affidavit, submits that the case projected by the petitioner in the writ petition is that as if the petitioner had responded to the notification dated 05.05.2021 on time and in spite of that, her name was not included in the list of 70 candidates, which is factually not correct. Drawing attention to the e-mail sent by the petitioner, he contends that the e-mail was sent in response to the notice dated 05.05.2021 at 10.27 PM on 06.05.2021, whereas the time for registration had already been over at 2.00 PM. It is further submitted that the list of candidates was drawn up by 3.00 PM on 06.05.2021. It is further submitted that when the petitioner had failed to register her name in response to the notice dated 05.05.2021 for the purpose of counselling and when 174 NEET passed candidates had applied, the State Government forwarded the names of 70 and later on, another 15 candidates according to merit and therefore, no

illegality was committed in not sending the name of the petitioner, who failed to register at the first instance.

10. The stand taken by Mr. Tiwari is also endorsed by Mr. Apurv Goyal, learned counsel for respondent No.5 and Mr. Navin Shukla, learned counsel appearing for respondents No.6 to 14.

11. We have considered the submissions made by learned counsel for the parties and have perused the materials on record.

12. No rejoinder-affidavit is filed by the petitioner to contest the averments made in reply-affidavit filed by the respondents that the e-mail was not sent by her within the prescribed period of time and was sent after 2.00 PM of 06.05.2021. The e-mail itself indicates that the e-mail was sent at 10.27 PM, much beyond the time fixed.

13. Rule 8 of the Rules of 2019 reads as under:

(translation as furnished by learned counsel) :

“8. Counselling : (1) The admission process in all Government and Private AYUSH colleges for all seats shall be conducted by the Director on the basis of counselling following the reservation rules.

(2) The Director shall on the basis of the available category wise seats prepare a list of successful candidates in the ratio of 1 : 3 for counselling and publish it in Bulletin/Website/Newspaper/Other Mode of communication mentioning that candidates have to appear for counselling at their own costs. No other invitation letter would be sent to any candidate for this purpose.

(3) A candidate will lose the opportunity for registration if he fails to register on the specified time fixed for registration by the Director for all classes and cadres. In case of vacant seats in future, a candidate would be eligible for participation in counselling if the candidate, upon availability, is successfully registered on such date.”

14. A perusal of the Rule goes to show that admission takes place on the basis of counselling for which a list of successful candidates in the ratio of 1:3 is prepared. For the purpose of counselling, a candidate has to register within the time fixed for registration, failing which the candidate would be ineligible for participation in counselling.

15. Learned counsel for the parties are at *ad idem* that for the academic session 2020-21, initially, permission was granted for admission of 30 candidates and based on the same, 30 names were forwarded and they had taken admission before the last date of counselling on 31.03.2021. It is relevant to state that the petitioner had registered for counselling for filling up of the aforesaid 30 seats, but her name was not forwarded as her rank did not permit her name to be incorporated in the list of 30 candidates.

16. As noticed earlier, to fill up the 70 seats, again a notice was issued inviting applications. It is not the case of the petitioner that she having registered earlier, it was not necessary for her to again respond to the notice dated 05.05.2021. The stand taken is that she had duly responded to the said notice and despite her position being much higher on merit, ignoring her candidature, names of candidates who secured lesser marks were forwarded. The aforesaid assertion of the petitioner is belied by the materials on record inasmuch as the petitioner did not register within the time prescribed.

17. We are not impressed with the argument that to fill up the 9 vacant seats, again a notice had to be issued inviting applications inasmuch as a pool of candidates who had responded to the notice dated 05.05.2021, was existing. The Delhi High Court had made it clear that if available, names of 15 candidates who are NEET-2020 qualified and if 15 such candidates are not available, the names of all available candidates are to be forwarded for the purpose of filling up of 9 seats. The word 'if available' denotes that the names of candidates are to be forwarded from the existing pool of candidates who had already registered pursuant to notice dated 05.05.2021.
18. On due consideration, we find that no case is made out for interference with the list dated 06.05.2021 and list dated 12.05.2021.
19. Accordingly, the writ petition is dismissed. No cost.

Sd/-

(Arup Kumar Goswami)
Chief Justice

Sd/-

(N. K. Chandravanshi)
Judge