

\$~37 (2021 Cause List)

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

Date of Decision 29th July, 2021

+ W.P.(C) 3267/2021

POOJA

..... Petitioner

Through: Mr. Sarfaraz Khan, Advocate.

versus

MINISTRY OF AYUSH & ANR.

..... Respondents

**Through: Mr. Neeraj, Mr. Himanshu, Mr.
Ankit Raj, Mr. Vedansh Anand
and Mr. Rudra Paliwal,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

W.P.(C) 3267/2021 with CM APPL. 9949/2021 (for stay)

1. This petition under Article 226 of the Constitution concerns a challenge to the admission process for post-graduate courses in Ayurveda for the academic year 2020-21.

Facts

2. The petitioner completed an undergraduate degree in Ayurveda, and aspired for admission in post-graduate courses. For this purpose, she took the entrance examination held on 28.09.2020. The results of

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the examination were published on 04.11.2020. The petitioner obtained an All-India Rank of 2708 in the relevant category, being the Unreserved category [“UR category”]. All-India counselling was held in three rounds, with a fourth round of counselling by the States. The petitioner participated in all three rounds of counselling but, unfortunately, was not allotted a seat.

3. The grievance with which she has approached the Court is that 23 candidates were permitted to participate in the third/mop-up round of counselling, contrary to the stipulated eligibility conditions. Her contention is that, had the rules been properly followed, she may have been selected in the counselling process.

4. The petitioner therefore seeks the following relief:

- “(i) *Direct the Respondents to allot one Post Graduation Seat in favour of the Petitioner under All India Ayush Post Graduate Entrance Test, 2020-21; and*
- (ii) pass such other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”*

Submissions of learned counsel

5. In support of the petition, Mr. Sarfraz Khan, learned counsel for the petitioner, relies upon the following answers given to the Frequently Asked Questions [“FAQs”] published by the respondent-Union of India [“the Union”] in respect of admission through the All India quota:-

“Q.No.44. Who will be eligible for AACCC 03rd/Mop Up Round for Government, Government aided, Deemed Universities, Central Universities and National Institutes?

Ans: The Following categories of candidates are eligible for 03rd/Mop Up Round

- a) Candidates who are registering for the first time.*
- b) Candidates who have registered but not been allotted a seat in Round-1 & Round2.*
- c) All candidates admitted in Round I or Round II and want to upgrade their admitted seats (with fresh choice filling).*

Q.No.45. Who will be in-eligible for AACCC 03rd/Mop Up Round for Government, Government aided, Deemed Universitie, Central Universities and National Institutes?

Ans: The Following categories of candidates are in-eligible for 03rd/Mop Up Round:

- a) Candidates who have been allotted seat in Round 1 & 2 and not joined the allotted seat.***
- b) Candidates admitted in Round 1 and avail free exit option after Round-2 result publication.*
- c) Candidates who have been upgraded their Round-1 seat in Round-2 and not joined the upgraded seat.”¹*

6. Mr. Khan contends that the 23 candidates in question were permitted to participate in the third/ mop up round of counselling, despite the fact that they had been allotted seats in the first round but did not join the allotted seats. According to Mr. Khan, they were ineligible for participation in the third/ mop up round by virtue of the answer to FAQ No. 45(a), extracted above.

7. Although the writ petition does not contain details of the 23 candidates to whom seats were so allotted, the example of one candidate was given by Mr. Khan at the first hearing of this petition on 12.03.2021. Referring to the allotment list published by the Union

¹ Emphasis supplied.

after the first two rounds of counselling², Mr. Khan pointed out that the candidate at Serial No. 112 (Rank 140) was allotted a seat in the first round but did not report. That candidate, however, finds place in the list of successful candidates, pursuant to the third/ mop up round of counselling. Mr. Khan states that the grievance with respect to all 23 candidates is of a similar nature.

8. According to Mr. Khan, this constitutes a breach of the conditions stipulated by the Union in the FAQs. He submits that, if the 23 ineligible candidates had not been permitted to participate in the third/ mop up round of counselling, the petitioner, who had participated in all three rounds, would potentially have been successful.

9. Mr. Ankit Raj, learned counsel for the Union, submits that the interpretation placed upon the aforesaid FAQs by Mr. Khan is erroneous. Mr. Raj states that the ineligibility referred to in FAQ No. 45(a) would arise only in respect of a candidate who had been allotted seats, *both* in the first round and second round, but had not joined the allotted seats. He further draws my attention to the answer to FAQ No. 44(c), wherein it is stated that all candidates admitted in the first round or the second round who wish to upgrade their admitted seats with fresh choice filling would be entitled to participate in the third/ mop up round of counselling.

10. Mr. Raj also relies upon the answer to FAQ No. 1, wherein the process of online allotment has been explained as follows:-

² Part of Annexure P-5 to the writ petition

“Q.No.1. What is the process of online allotment?”

Ans: ROUND-1

- a) Main counselling Registration which will include payment of Non- Refundable Registration fee and Refundable Security fee (to be refunded in the account from which payment has been made as per the refund policy and conditions).*
- b) Exercising of Choices and Locking of choices.*
- c) Process of Seat Allotment Round-1*
- d) Publication of result of Round-1*
- e) Reporting at the allotted ASU& H College against 1 Round.*

ROUND-2

(Candidates who registered for Round-1 and did not get any seat allotted need not register again.)

- f) Fresh New Registration for Round-2 for those candidates who
 - Have not registered in Round-1 (with full payment of fees).*
- g) Those candidates, who have Resigned/Not reported in Round-1 can log in again.*
- h) Fresh Choice filling Round-2.*
- i) Publication of result of Round-2.*
- j) Reporting at the allotted ASU& H College against Round-2.*

MOP-UP ROUND

3rd/Mop Up Round

- *Fresh Registration for 3rd/Mop Up Round for candidates who are registering for the first time. (Those who registered but were not allotted a seat in Round-I & Round 2 **and also those candidates, who admitted in Round I or Round II and want to upgrade their admitted seats need not register again).***
- *Fresh choice filling of 3rd/Mop Up Round*
- *Publication of result of 3rd/Mop Up Round*
- *Reporting at the Allotted ASU& H College after 3rd/Mop Up Round*

- *List of the registered eligible candidates for Stray vacancies to be sent to Deemed Universities / Central Universities / National Institutes to be exhausted strictly in order of merit and transfer of Non-Reporting & Non Joining Vacant seats of AIQG, AIQGA to State counselling authorities / Colleges.*
- *Final Stray Vacancy Round to be conducted by Deemed Universities/ Central Universities/ National Institute (There will be no Fresh Registration of Candidates in Final Stray Vacancy Round). ”³*

11. Mr. Raj submits that these conditions also make it clear that a candidate who has been admitted in one of the two prior rounds can join counselling in the third/ mop up round. With regard to the candidate at Serial No. 112 (Rank 140), whose case Mr. Khan has cited, Mr. Raj submits that he/ she appeared in the first round and was allotted a seat but did not report. Although the candidate may have appeared in the second round, no seat was allotted to him/her and he/ she was, therefore, permitted to participate in the third/ mop up round of counselling.

12. Mr. Raj further contends that the petitioner, with a rank of 2708, in any event, is ranked far below the candidates who have been granted admission in the UR category. In the said category, all three rounds of counselling were completed. The last rank-holder to whom a seat was allotted in the third/Mop Up round in the All India quota has been tabulated in paragraph 12 of the Union’s counter affidavit as follows:-

“12. That it is also relevant to mention herein that the seats referred at AIR 1260, 1280, 1414 belongs to SC category and 3245 belongs to ST category, whereas, the Petitioner herein

³ Emphasis supplied

belongs to Unreserved Category. Details of last AIR to which seats has been allotted in the quotas for which candidate has applied under her category in 03rd/ Mop Up Round is as below:

<i>Sr. No.</i>	<i>Quota</i>	<i>Last All India Rank under General category to whom last seat is allotted in 03rd/ Mop Up Round</i>	<i>Candidate Rank</i>
1.	<i>All India quota Government (AIQG) Stipendiary</i>	798	2708
2.	<i>All India quota Government (AIQG) Non-Stipendiary</i>	1202	2708
3.	<i>Central Universities/ National Institutes quota (CU/NI) Stipendiary</i>	408	2708
4.	<i>All India quota Government Aided(AIQGA)</i>	629	2708"

13. The counter affidavit also contains a list of the 15 institutions and courses which had been included by the petitioner in her list of

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preferences for the purposes of counselling, and the last rank at which admissions were made to each of those courses and institutions in the UR category. It appears from the aforesaid list (which is part of paragraph 17 of the counter affidavit) that no candidate below the All-India rank of 531 has been admitted to the UG category in any of the 15 institutions and courses for which the petitioner had signified a preference.⁴

Analysis

14. Having heard learned counsel for the parties, I am of the view that the interpretation placed upon the guidelines for counselling by the Union cannot be characterized as unreasonable or arbitrary, thus inviting the jurisdiction of this Court under Article 226 of the Constitution.

15. The reliance of the petitioner upon the answer to FAQ No. 45 is misconceived, as the ineligibility attaches to a candidate who has not been allotted a seat in the first and second rounds but did not join the allotted seat. The interpretation placed upon this provision by Mr. Khan requires it to be read as a disjunctive provision, wherein allotment of a seat in either of the two rounds of counselling would be sufficient to render the candidate ineligible for the third/mop-up round. Such an interpretation is not only contrary to a plain reading of the stipulation, but would also be inconsistent with the answer to FAQ No. 44. Clause (c) of the said answer makes it clear that candidates

⁴ The petitioner had specifically elected not to file a rejoinder affidavit, as recorded in the order dated 02.06.2021. The factual contents of the counter affidavit, therefore, remain uncontroverted.

who were admitted in the first or second round would be entitled to participate in the third/Mop Up round if they wished to upgrade their admitted seats.

16. Similarly, the detailed process described in the answer to FAQ No. 1 also supports the interpretation advanced by Mr. Raj. It is recorded therein that fresh registration for the third/Mop Up round would be available to candidates who are registering for the first time, to those who registered but were not allotted a seat in the first and second rounds, *and also to those candidates who were admitted in the first and second rounds and want to upgrade.* Other than fresh registrations, the candidates who have participated in the first and/or second round were not required to register again for the third/Mop Up round.

17. The writ petition, as mentioned above, does not contain specific details with regard to the 23 candidates against whose participation the petitioner claims to have a grievance. However, the only example cited by Mr. Khan is of a candidate who was not allotted a seat in the second round. Mr. Khan submits that all the 23 candidates are of the same category. In view of the aforesaid interpretation, the grievance raised by the petitioner is therefore unmerited.

18. The contention of Mr. Raj, borne out by the counter affidavit, is to the effect that the last candidate admitted in the UR category pursuant to the All-India counselling was of a rank much higher than that of the petitioner. The same applies also to the 15 courses and institutions for which the petitioner had indicated her preference. I am, therefore, also satisfied that no candidate lower than the petitioner in

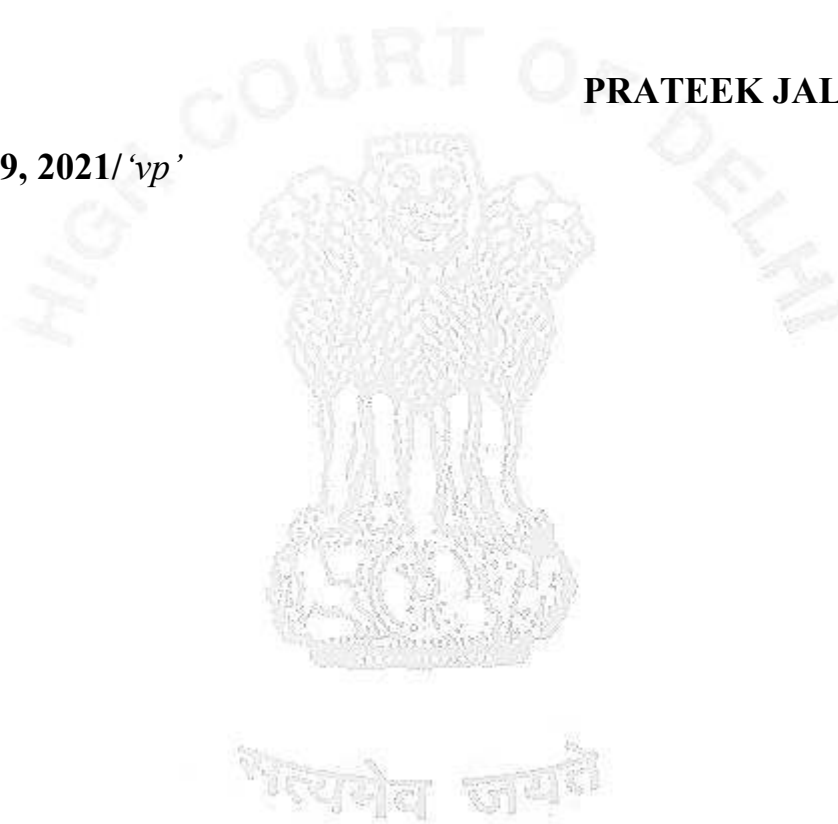
merit has been admitted to her detriment, as a result of which she may have suffered an injustice.

Conclusion

19. For the aforesaid reasons, the petitioner has failed to make out any ground for interference under Article 226 of the Constitution. The writ petition is therefore dismissed, alongwith the pending application.

PRATEEK JALAN, J

JULY 29, 2021/ 'vp'



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