

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/9685/2022

Dr. Arup Mohanta
-Vs-
Union of India & Ors.

For the petitioner: Mr. Subir Sanyal, Adv.,
 Mr. Ratul Biswas, Adv.,
 Mr. Sagnik Roy Chowdhury, Adv.

For National Medical Commission:

 Mr. Indranil Roy, Adv.,
 Mr. Sunit Kumar Roy, Adv.

For the Union of India: Mr. Nilanjan Bhattacharya, Adv.,

For the State: Mr. Nilotpal Chatterjee, Adv.,
 Mr. Amrit Lal Chatterjee, Adv.

Heard on: June 06, 2022.

Judgment on: June 09, 2022.

BIBEK CHAUDHURI, J. : –

1. Affidavit-of-service be kept with the record.
2. The petitioner obtained his post graduate degree in M.S (General Surgery) in the year 2020, subsequently he was qualified for the West Bengal Medical Education Service in the same year and on being selected, he joined as demonstrator/tutor in the department

of Urology and Medical Teaching Institution in IPGME&R, Kolkata on and from 15th February, 2021. While working as such, the petitioner also appeared in National Eligibility Cum Entrance Test-Super Speciality (NEET-SS in Short), 2021 for admission to MCH Course preferably in Urology as a first choice and Neuro Sugery as second choice. He passed NEET –SS examination securing merit position 455. As the petitioner has been working under three years bond applicable in the State of West Bengal after passing NEET-PG examination and thereafter MS Surgery, the petitioner did not take part in counseling process for M.Ch course after being qualified in NEET –SS , the reason being that the IPGME&R, Kolkata has only 18 seats in the department of Urology for MCH. The petitioner after going through merit list and the vacancy position came to know that it would not be possible for him to get chance in MCH Urology in the State of West Bengal. The respondent no.2 declared schedule of online Mop-Up Round of Super Speciality Counselling , 2021 and the date of fresh registration/payment was fixed on 17th and 18th May,2022. It was also stipulated that processing of seat allotment would be made on 19th May, 2022, the result will be published on 20th May,2022 and the selected candidates would report at the allotted college during the period between 21st May to 25th May, 2022. The Seat Matrix for DM/M.Ch Mop-Up Round SCC Counseling-2021 was also published on 16th May 2022. Subsequently on 23th May, 2022 the petitioner came to know that

two selected candidates namely Siddharta Saxena and Perwez Alam had left Super Speciality Course in the Discipline of Urology at IPGME&R, Kolkata on 13th May,2022 and 16th May,2022.However, in the Seat Matrix of Mop-Up Round, the Medical Council Committee, respondent no.2 herein did to mention the said vacancy position. So the petitioner could not register his name for the counseling in the Mop-Up round of Super Speciality admission - 2021.It is contended by the petitioner that had the said two seats which were left out by the above named two doctors, were being published in the Seat Matrix of Mop-Up round, the petitioner could have got the chance to participate in Mop-Up round counseling and in such cases the petitioner would have been selected.

3. For the reasons stated above the petitioner has prayed for issuing a writ in the nature of mandamus commanding the respondent nos. 2,3,4,7 and 8 to forthwith include and publish the said two vacancies and register the petitioner for special Mop-Up counseling against the said two vacancies in NEET Super Specialty course/discipline of Urology 2021-IPGME&R and SSKM Hospital , Kolkata and also to admit the petitioner against any of the said two vacancies in NEET Super Specialty Course /Discipline of Urology, 2021 in IPGME&R and SSKM Hospital Kolkata along with other reliefs.
4. Mr. Subir Sanyal learned counsel on behalf of the petitioners submits that the petitioner passed MS Surgery in the year 2020 as

per West Bengal Medical Council Rules, the petitioner has to remain on bond for three years during the said period of three years he cannot join any Super Speciality course in other State than West Bengal. If he wants to suspend his bond, he requires to deposit a sum of Rs.36 lakhs in favour of the West Bengal University of Health Science or WBMC. Therefore, the petitioner as a domicile candidate had to join in the state to pursue Super Specialty Course. It is not possible for a post-graduate doctor initially working on contractual basis and subsequently as demonstrator for few months to pay the forfeiture amount of Rs.36 lakhs in favour of WBUHS or WBMC as the case may be. Therefore, the petitioner appeared in NEET-SS Examination with a view to pursuing his Super Specialty Course in Urology in IPGME&R, Kolkata.

5. The learned advocate for the petitioner submits final Mop-Up round result for the year 2021. It appears from the said result that the candidate having merit rank of 746, 768 and 1033 were allotted M.Ch Urology seats to different medical colleges. Therefore, it is submitted by Mr. Sanyal that valuable legal right of the petitioner to have a seat in Super Specialty Course in the department of Urology was lost due to failure on the part of the MCC in declaring vacancy position in respect of the seats in the department of Urology at IPGME&R, Kolkata.
6. Learned advocate for the respondent no.2 on the other hand submits that Medical Counselling Committee duly published the

seat matrix for Mop-Up round on 16th May, 2022 on the date of publication of seat matrix. It was not within the knowledge of medical counselling committee that two candidates that namely Dr. Siddharta Saxena and Dr. Perwez Alam would prematurely discontinue their course in Urology and payment of stipulated bond penalty. Formalities of discontinuing of Dr. Siddharta Saxena was completed on 7th May, 2022 and it was informed to ADG (ME) of Ministry of Health and Family Welfare by e-mail on 18th May, 2022. Therefore, the said seat matrix cannot be published in the Mop-Up round counselling of NEET-SS.

7. It is further submitted by the learned advocate for the respondent no.2 that the NEET-SS course does not have any policy of surrender of an allotted seat. After first round there were 10 vacancies and as per merit list the last person having 188 rank and the merit position was allotted with a seat. In the 2nd round, one vacancy accrued and the candidate having secured 176 rank was allotted with a seat. On the date of publication of seat matrix in Mop-Up round there was no vacancy in IPGME&R, Kolkata. Subsequently, vacancy cannot be considered to be filled up after Mop-Up round. In support of his contention he refers to a decision of the Hon'ble Supreme Court in ***Asish Ranjan and others Vs. Union of India and others*** [Misc. Application No.1388/2021 in WP(C) No.76/2015, decided on 19th May, 2022]. In the aforesaid order, the Hon'ble Apex Court held that counselling process must

be completed within the stipulated date and subsequently the process cannot be extended to an unlimited period of time.

8. Therefore, the petitioner cannot claim admission in Super Speciality Course in the department of Urology at IPGME&R, Kolkata.
9. The learned advocate for respondent nos. 4 to 6 has adopted the submission made by the learned advocate for the respondent nos.2 and 3. It is further submitted by the learned counsel for the respondent nos.4 to 6 that counselling process of NEET-SS course postulates only two rounds. The Mop-Up round was conducted by the MMC in view of the order passed in ***Ranjeet Ram Jat and another Vs. Union of India and others*** [Writ Petition (Civil) No.334/2022 dated 9th May, 2022]. The above mentioned writ petition was disposed of with the following order:-

1. We have heard counsel for the parties.

2. Counsel appearing on behalf of State of Tamil Nadu states on instructions that the 92 unfilled seats of the in-service quota of the State shall be surrendered this year to the All India Quota(AIQ). Consequently, MS Aishwarya Bhati, Additional Solicitor General states that a mop up round will be held for completing the process of admission to super specialty medical courses, occasioned by the surrender of 92 seats by the State of Tamil Nadu to the AIQ.

3. The mop up round shall be held for all the unfilled/stray/vacant super specialty seats subject to the

condition that any doctor who has joined a seat in the earlier round shall not be eligible for participating in the mop up round. Since the mop up round is being held, a suitable extension of time may be granted for completing the admissions.

4. The Petition is accordingly disposed of.

5. Pending applications, if any, stand disposed.

10. Thus, it is submitted by the learned Counsel for the respondents that Mop-Up round for NEET-SSC-2021 was conducted to fill up 92 unfilled seats of the In-Service Quota of the State of Tamil Nadu by the order of the Hon'ble Supreme Court. Therefore, the petitioner cannot take advantage of any subsequent vacancy after Mop-Up round.
11. It is also submitted by him that after counselling process is directed to be started again then all the candidates are to be notified. Therefore, this will be an unending process and the authority will not be in a position to start the Super Specialty Course.
12. Learned advocate for the respondent nos.4 to 6 also submits that the order passed by the Division Bench of this Court in A.S.T.A. 16 of 2018, on 2nd July, 2018 is also not applicable under the facts and circumstances of this case. The petitioner did not take part in Mop-Up round counselling. He was a 'fence-sitter'. He waited till a vacancy occurs in Super Specialty course of Urology department in IPGME&R, Kolkata. At this stage, no relief can be granted to him.

13. Learned advocate for IPGME&R, Kolkata (respondent nos. 7 and 8) submits a report stating, inter alia, that one seat in the department of Urology falls vacant as Dr. Siddharta Saxena discontinued his course as he got a chance of having his Super Specialty course at AIIMS, Delhi.
14. Having heard the learned advocates for the petitioner and the respondents and on careful perusal of the entire materials-on-record, I find the following undisputed factual circumstances:
 - a. The petitioner secure 455 rank in NEET-SS examination;
 - b. The petitioner pursued MS (Surgery) from R.G.Kar Medical College and Hospital and passed the post-graduate course in 2020;
 - c. He is serving the state of West Bengal under three years bond;
 - d. The bond can only be forfeited on depositing a sum of Rs.36 lakhs with WBUHS or WBMC;
 - e. The petitioner could only pursue Super Specialty Course in the State of West Bengal if he is not in a position to deposit huge amount of Rs.36 lakhs for forfeiture of bond;
 - f. At least, one post remains vacant in Super Specialty course in the department of Urology at IPGME&R, Kolkata.
15. The petitioner did not participate in counseling process because of the fact that there are 18 seats in the department of Urology in M.Ch. Considering the rank, the petitioner reasonably thought that he had no chance to secure a seat in the State of West Bengal. His

opportunity occurs only when one/two candidates prematurely discontinued their course. Admittedly, the said vacancies were not included in the seat matrix of Mop-Up round. The petitioner came to know about the said fact on the date of publication of result, that is on the date of report at allotted college on 25th May, 2022. The petitioner filed the writ petition on 26th May, 2022. Therefore, he cannot be said to be a 'fence-sitter'.

16. Denial of admission to a meritorious candidate in medical course for no fault of his/her and though he/she approached the court in time and despite the same not granting any choice and equitable right would be denial of justice. In ***Asha vs. Pt. B.D. Sharma University of Health Science*** reported in **(2012) 7 SCC 389** and ***Chandigarh Vs. Jasmin Kaur*** reported in **(2014) 10 SCC 521**, it was held by the Hon'ble Supreme Court that the question is what relief the court can grant by which right to equal and fair treatment to a candidate are protected and at the same time neither there is injustice to other candidate/student and even compromising with the quality education. Therefore a balance is required to be struck. However, at the same time, it can safely be said that the view taken by the Hon'ble Supreme Court in ***Jasmin Kaur*** (supra) that the only relief which can be granted to such a candidate to continue only is not good law and cannot be accepted. Even granting a relief to such a candidate or student in the next academic year and to accommodate him/her in the next year and in the sanctioned

intake may even affect right of some other candidate/student seeking admission in the next academic year and that too, for no fault of his/her. Therefore, the Hon'ble Supreme Court was of the view that in the exceptional and in rarest of rare cases and in case, the court can grant exceptional relief to the candidate by granting admission even after the cut-off date is over. **In A.S.T.A. 16 of 2018 (The West Bengal University of Health Science and others Vs. Dr. Paban Mandal and others).** The Division Bench of this Court consider the case of **Asha (supra)** as to whether a candidate can be admitted in MBBS course after the cut-off date and held as hereunder:

We are conscious of the directions made by the Hon'ble Supreme Court in the aforesaid writ petition; however, prima facie, we are also of the opinion that such direction may not stand in the way of making a direction for admission in a case of the present nature. The Hon'ble Supreme Court may not have intended that a seat, which could not be filled up by admission before 31st May, 2018 because of laches of authorities, should never be filled up; more so, when the writ petitioner is not at fault and the blame for omission to notify the surrendered vacancy for mop up counselling should be shouldered by the appellants who, despite having information inform the writ petitioner on 30th May, 2018 at 3.28 P.M, were in deep slumber and did not take steps to upload such vacancy on its website so that the vacant seat in M.S (General

Surgery) which is in great demand, does not go waste. The view taken by us finds support from the decision of the Hon'ble Supreme Court reported in **(2012) 7 SCC 389: Asha-vs-Pt. B.D Sharma University of Health Sciences.**

17. Learned Advocate for the NMC has heavily relied on a judgment passed by a Coordinate Bench in WPA 8033 of 2022 with WPA 8039 of 2022 on 13th May, 2022.
18. In the aforesaid judgment the writ petitioners prayed for a mandatory order on the respondent authorities to grant provisional admission to the petitioners in Kolkata National Medical College and AIIMS, Kalyani in the MBBS Course, 2021-2022. A Coordinate Bench of this Court refused the prayers of the petitioners on the ground that in the case of **Ashish Ranjan** (supra) the Hon'ble Supreme Court fixed 28th April, 2022 as the cutoff date for MBBS admission to the undergraduate medical course. Secondly, the prayers for the writ petitioners were speculative in nature since the petitioners' ranks in All India Merit List are in the six lakhs and five lakhs (respectively). The court also came to the finding that vide notification dated 25th April, 2022, the Director General of Health Services, Government of India notified that the MBBS seats of All India Quota Colleges of West Bengal have been published in the seat matrix of stray vacancy round of UG Counselling 2021. The notice proceeds to disclose that there were a certain number of

seats in the stray vacancy which have been duly published in the seat matrix. Thus, the petitioners contention that the vacant seats in the above named two colleges were not published in the seat matrix cannot be held to be true. Thirdly, the petitioners approached the court at a belated stage. Fourthly, the medical counselling committee does not have any procedure of manual processing of seats at any stage of counselling. Fifthly, the petitioners are not the sole claimants to the said vacant seats. Sixthly, the interim order passed by the Division Bench of this Court in **West Bengal University of Health Sciences and others vs. Dr. Paban Mandal & Ors (AST 43 of 2018)** dated 2nd July, 2018 is not applicable under the facts and circumstances of the said case on the ground that there was an admitted inaction on the part of WBUHS in the matter of notifying the surrendered vacancies for mop-up counselling.

19. The facts of the instant case is clearly distinguishable from the facts of WPA 8033 of 2022. There is patent inaction on the part of respondent No.2, 3, 7 and 8 as they failed to disclose the vacancy occurred in NEET-SS in the department of urology in IPGME & R, Kolkata. The petitioner could not take part in mop-up counselling because of such failure of the above named respondents. In the instant case the petitioner has not come up with the instant application only to try his luck because the candidate having merit position of 746, 768, 1033 were allotted seats in M.Ch, urology

through All India Counselling. The rank of the petitioner is 455. Therefore, there was every possibility for allotment of vacant seat in IPGME & R, Kolkata in favour of the petitioner had the said vacancy been declared in the seat matrix of mop-up round counselling. In the decision of Ashish Ranjan & Ors. (supra), the Hon'ble Supreme Court fixed the last date for D.M./M.Ch/DNB.SS counselling on 30th April, 2022. In the subsequent judgment in Ranjeet Ram Jat & Anr. dated 9th May, 2022 the Hon'ble Supreme Court only directed the MCC(respondent No.2) to conduct mop-up round for unfilled/stray/vacant super speciality seats. No cut-of date was fixed vide order dated 9th May, 2022 by the Hon'ble Supreme Court.

20. Coming to the instant case I have already found that the petitioner could not take part in Mop-Up round counselling because of the fault of the respondent nos. 7, 8, 2 and 3. Had the seat matrix of Mop-Up Round was correctly published by the MCC after taking all sorts of precaution and due diligence so that no seat of any college might be left out from declaration of seat matrix, the petitioner could have got an opportunity to take part in the Mop-up round.
21. Considering all the above facts and circumstances, this Court is of the view that the decision of a Coordinate Bench of this Court in WPA 8033 of 2022 is not applicable in the instant case.
22. Therefore, the instant writ petition is disposed of directing the respondents No.2 and 3 to publish the latest vacancy position in NEET-SS course available after mop-up round in the same manner

as stray vacancy counselling round within two weeks from the date of communication of this order.

23. The petitioner is permitted to join the said counselling process for the vacant seats available in IPGME & R Kolkata in NEET-SS strictly according to his merit position.
24. The instant writ petition is, thus, disposed of, on contest.
25. There shall be no order as to costs.

(Bibek Chaudhuri, J.)