

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2585 OF 2022

Datta Uttam Pawar,
Aged about 33 years, Occ-Service,
R/o. P.H.C., Loni, Tahsil Arni,
District Yavatmal

..... **PETITIONER**

...VERSUS...

1. The State of Maharashtra,
Through its Secretary,
Department of Public Health Service,
Mantralaya, Mumbai-32.
2. The Director,
Commissionerate Health Services,
Office at 6th Floor, Arogya Bhavan,
Saint George Hospital Compound,
P.D'Mello Road, CSMT,
Mumbai-400 001.
3. Santosh s/o Mohanrao Kamble,
Aged Major, Occ. Service,
PHC, Loanbel, Tahsil Arni,
District Yavatmal.

..... **RESPONDENTS**

Shri Mohammad Ateeque, Advocate for petitioner.
Ms N. P. Mehta, Assistant Government Pleader for respondent nos. 1 & 2.
Shri Harshal Bobde, Advocate for respondent no.3.

CORAM :- A.S.CHANDURKAR AND URMILA S. JOSHI-PHALKE, JJ.
ARGUMENTS WERE HEARD ON 16th JUNE, 2022.
JUDGMENT IS PRONOUNCED ON 20th JUNE, 2022

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties considering the urgency in the proceedings.

2. The petitioner is serving as Medical Officer - Group-A at Primary Health Center, Loni, Tahsil Arni, District Yavatmal having obtained M.B.B.S. Degree in 2013. The Primary Health Center where the petitioner is serving is categorised as a Difficult Primary Health Center. The petitioner appeared in the NEET-PG-2021 examination that was held on 11.09.2021 with a view to pursue DNB Degree/Diploma course. The petitioner secured 270 marks and after considering additional 7% marks per year for rendering service in “Difficult Public Health Center”, his total marks were calculated 345.6. In the final merit list published on 04.03.2022 he was placed at Serial No.33 from the VJ-NT category. While submitting his preferences, it was stated by the petitioner that he would prefer Government Medical College, Akola at Serial No.1 and Dr. R. N. Cooper Municipal General Hospital, Mumbai at Serial No.2. Initially cut of marks were fixed at 265 but on 12.03.2022 the same were reduced to 210. On 07.04.2022 against Serial No.34 the petitioner’s name was shown with the note “choice not available”. Same was the position in the case of the respondent no.3 who was at Serial No.54 and against his name too, it

was stated that the “choice not available”. This position of the select list continued on 26.04.2022. On 06.05.2022 in the selection list it was stated against the name of the petitioner at Serial No.34 that he was “not willing to process”. The respondent no.3 who shown at Serial No.54 was granted admission in the subject DNB Surgery at Dr. R. N. Cooper Municipal General Hospital, Mumbai. Being aggrieved by the refusal to grant admission to the petitioner and the said seat having been granted to the respondent no.3, the petitioner has filed the present writ petition challenging non-inclusion of his name in the final selection list dated 06.05.2022 and grant of that seat to the respondent no.3.

3. Shri Mohammad Ateeque, learned counsel for the petitioner after referring to the aforesaid facts submitted that the petitioner was more meritorious than the respondent no.3 for the reason that the petitioner was shown at Serial No.33 in the State merit list while the respondent no.3 was placed at Serial No.48 therein. In the selection lists published on 07.04.2022 and 26.04.2022 the petitioner’s name was shown at Serial No.34 while the name of the respondent no.3 was shown at Serial No.54. On those two dates it was made clear that the choices given by the petitioner and the respondent no.3 were not available. However to the surprise of the petitioner despite being more meritorious, he was not granted admission as per the choice given

by him and instead the respondent no.3 who was less meritorious than the petitioner was granted admission. The reason indicated as per remark “not willing to process” could not have been the basis for refusing admission to the petitioner. Inviting attention to the Information Brochure published by the State CHS PG Cell, Mumbai and various clauses thereof, it was submitted that it was not stated in the Information Brochure that if the willingness option was not exercised, the admission would be denied. In other words, the petitioner had been denied admission in a manner contrary to the Information Brochure by holding him not eligible for the mop-up round. Since the seat in the subject of DNB Surgery at Dr. R. N. Cooper Municipal General Hospital, Mumbai was available on 26.04.2022, it ought to have been offered to the petitioner first as he was more meritorious than the respondent no.3. It was thus submitted that the petitioner was deprived of being admitted at the said seat for no justifiable reason. In support of his submissions, the learned counsel referred to the decision in *Central Coalfields Limited and Anr. vs. SLL-SML(Joint Venture Consortium) and Ors.* **AIR 2016 SC 3814** to urge that the admission process ought to have been conducted in accordance with the Information Brochure and the respondent nos. 1 and 2 could not have acted in a manner not stipulated by the Information Brochure. It was thus prayed that the petitioner was entitled to the reliefs as prayed for.

4. Ms. N. P. Mehta, learned Assistant Government Pleader for the respondent nos. 1 and 2 opposed the aforesaid submissions by referring to the affidavit in reply filed on behalf of the respondent no.2. It was submitted that the admission process was conducted in the manner indicated in the Information Brochure and the notifications published from time to time. Inviting attention to Clause 3.8 of the Information Brochure, it was submitted that it had been clearly indicated that the information given in the Information Brochure was liable to changes based on decisions of the Competent Authority and other Authorities from time to time. It was then submitted that on 27.04.2022 a notice had been sent to all candidates including the petitioner by e-mail informing the candidates that if those who were not allotted any seat based on their preferences desired to continue in the final mop-up round, they would have to select the option of willingness by 28.04.2022 so as to proceed for the final mop-up round. On 04.05.2022 another e-mail was sent to the candidates informing them that the final mop-up round instructions had been published on the website and details of the same were given to the candidates. It was thus submitted that in accordance with the directions issued by the Commissioner of Health Services and communicated by e-mails, it was necessary to select the option of willingness which was not done by the petitioner. It was for this reason the candidature of the petitioner was not considered eligible. As the respondent no.3 had exercised the necessary option

and had also given the option of willingness, the seat in question was allotted to him. She referred to the document at page 209 of the record to indicate that about 13 candidates in the select list who had not given the willingness option were not granted admission for that reason. It was not the case that the petitioner alone had been denied the admission on that ground. Since the respondent no.3 followed due procedure and complied with the instructions, he was allotted the seat in question. The petitioner himself was responsible for failure to fill up the willingness form. The petitioner being an in service candidate, he was aware of the procedure and hence he could not blame the Authorities for denying the admission to him. It was thus submitted that no interference was called for in the writ petition.

5. Shri Harshal Bobde, learned counsel for the respondent no.3 supported the submissions as made by the learned Assistant Government Pleader. In addition, he submitted that under Clause 2.1 of the Information Brochure the decision of the Authorities if alleged to be in violation of the prescribed Rules could be subjected to appeal before the appellate Authority. That remedy was not availed by the petitioner. He further submitted that by claiming allotment of the seat without submitting the willingness option, the petitioner was seeking deviation from the procedure as prescribed by the Information Brochure. The Information Brochure and the instructions given by

e-mails sent by the Commissioner of Health Services to all candidates ought have been followed. Since the petitioner failed to exercise the willingness option, he was denied the admission. The respondent no.3 followed the prescribed procedure and hence was granted admission. It was not the case of the petitioner that he did not receive the e-mails sent by the Commissioner of Health Services. Only on the basis of merit, the petitioner could not seek admission as he had failed to exercise the willingness option. The learned counsel placed reliance upon the decision in *Ashish Ranjan and others vs. Union of India and others (2016) 11 SCC 225* to submit that the time schedule for completing the admission process was required to be scrupulously followed without making any deviation whatsoever. Hence no interference was called for in the writ petition.

6. The writ petition was circulated in the vacation on 09.05.2022. After hearing the learned counsel for the petitioner, the Court issued notice to the respondents and by way of an ad-interim direction the respondent nos. 1 and 2 were directed to grant provisional admission to the petitioner in terms of the preference mentioned by him in his application form. Pursuant to the aforesaid the petitioner was granted provisional admission making the same subject to final outcome of the writ petition. The writ petition having been entertained on account of the urgency as made out, we have proceeded with

its hearing notwithstanding Clause 2.1 of the Information Brochure.

7. Having heard the learned counsel for the parties and having perused the Information Brochure and other material documents placed on record, we find that the respondent no.2 was justified in denying admission to the petitioner for failure to submit the willingness option as was required to be submitted by the e-mail dated 27.04.2022 issued by the Commissioner of Health Services, Mumbai. As explained by the respondent no.2 in the affidavit in reply, the eligible candidates were required to indicate their “willingness to proceed” for the reason that the same was in the larger interest of all eligible candidates to enable filling up of seats before the cut of date for admission. If a candidate did not indicate his/her “willingness to proceed” the seat in question would not be allotted to such candidate and the seat would be allotted to the next candidate. The object behind the same appears to be that only interested and eligible candidates would participate in the final mop-up round and the seats available for in service candidates do not lapse. It is seen as per Clause 3.8 of the Information Brochure, it was open for the Competent Authority to indicate the compliance to be done by the candidates and the candidates were put to notice that the information furnished was liable to change based on the decisions of the Competent Authorities. It is not the case of the petitioner that he did not receive the e-mail message sent by the

Commissioner of Health Services, Mumbai on 27.04.2022 at his email address. It has been clearly stated therein that a candidate who has not been allotted any seat as per his preference would be required to select the option of willingness if such candidate desired to continue in the final mop-up round. The same was to be done by 28.04.2022 to enable such candidate who had given the option of willingness to proceed for the final mop-up round. Despite such clear instructions being given by the Commissioner of Health Services, Mumbai, the petitioner failed to exercise that option which is thus reflected in the selection list dated 06.05.2022. It is also not the case of the petitioner that despite having given such option of willingness, the petitioner has been deprived of admission. In other words, the petitioner alone is responsible for failure to get admission in the subject DNB Surgery. The respondent no.3 having exercised such option and the seat at Dr. R. N. Cooper Municipal General Hospital, Mumbai being available the same was allotted to him. The candidature of the petitioner after being placed in the merit list was considered but for failure to exercise the option as required, the petitioner has been deprived of such admission.

8. Though it was urged by the learned counsel for the petitioner that the decision of the Commissioner of Health Services, Mumbai to require giving up an option of willingness by a candidate was arbitrary, we do not find that

the said contention can be accepted. Such willingness was sought from all eligible candidates and it has been demonstrated that besides the petitioner, 12 other candidates did not give such option of willingness and hence they too were deprived of admission sought by them. It is also not the grievance of the petitioner that a candidate who had failed to give such option of willingness was still granted admission while the petitioner was denied the same. All candidates have been considered in accordance with the option of willingness given by them and therefore, the process as adopted by the Competent Authority cannot be said to be arbitrary. In these facts, the ratio of the decision in *Central Coalfields Limited and Anr.*(supra) cannot be made applicable to the facts of the present case. The respondent no.2 has found that the petitioner was not eligible to be admitted for failure to exercise the option of willingness to process. We therefore do not find any merit in the challenge as raised by the petitioner.

9. For aforesaid reasons, the writ petition stands dismissed. Rule stands discharged with no order as to costs.

As a consequence of dismissal of the writ petition, the respondent nos. 1 and 2 shall proceed to consider the admission of the respondent no.3 at the DNB Surgery course as per Selection list dated 06.05.2022 to be final.

10. At this stage the learned counsel for the petitioner prays that for a period of one week the effect and operation of the judgment be stayed. His request is opposed by the learned counsel for the respondents.

In the facts of the case, the judgment shall operate after one week from today.

(URMILA S. JOSHI-PHALKE, J.)

(A.S.CHANDURKAR, J.)

Andurkar..