



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 11356/2023 and CM APPL.44149/2023, 44150/2023**

Date of Decision: **28.08.2023**

IN THE MATTERS OF:

DHAIRYA KUMAR JINDAL
AGED ABOUT 19 YEARS
S/O DR. SUNIL KUMAR JINDAL
R/O JINDAL HOSPITAL, 376,
SHIVAJI ROAD, MEERUT, UTTAR
PRADESH - 250001

..... PETITIONER

Through: Mr. Sulaiman Mohd. Khan, Mrs. Taiba Khan, Mr. Madhav Bhatia, Mr. Bhanu Malhotra, Mr. Abhishek Arora, Mr. Gopeshwar Singh Chandel and Mr. Abdul Bari Khan, Advocates.

Versus

UNION OF INDIA THROUGH MINISTRY OF EDUCATION
SHASTRI BHAWAN, NEW DELHI

.....RESPONDENT NO.1

UNIVERSITY GRANTS COMMISSION
BAHADUR SHAH ZAFAR MARG,
NEW DELHI - 110002

.....RESPONDENT NO.2

MEDICAL COUNSELLING COMMITTEE
NIRMAN BHAWAN, RAJPATH
AREA, CENTRAL SECRETARIAT,
NEW DELHI, DELHI 110001

.....RESPONDENT NO.3

**GURU GOBIND SINGH
INDRAPRASTHA UNIVERSITY,
THROUGH ITS VICE CHANCELLOR,
GOLD COURSE ROAD, SECTOR
16C, DWARKA, NEW DELHI -
110078**

.....RESPONDENT NO.4

**DR. BABASAHAB AMBEDKAR
MEDICAL COLLEGE,
THROUGH ITS DEAN/PRINCIPAL
SECTOR 6 ROAD, NEAR METRO
STATION, ROHINI, NEW DELHI
110085**

.....RESPONDENT NO.5

**NORTH DELHI MUNICIPAL
CORPORATION MEDICAL COLLEGE,
THROUGH ITS DEAN/PRINCIPAL
MALKGANJ, KAMLA NEHRU
RIDGE, CIVIL LINES, NEW DELHI
- 110007**

.....RESPONDENT NO.6

Through: Mr.JPN Shahi, SPC with Mr.Vinod,
GP for R-1.
Mr.Apoorv Kurup and Ms.Kirti
Dadheech, Advocates for R-2.
Mr.Tushar Sannu, SC with Mr.Nihar
Ranjan Singh, Advocates for R-MCD.
Mr.Harsh Kaushik and Mr.Arpit
Srivastava, Advocates for R-4.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner, vide the instant writ petition has prayed for the following reliefs:-

“i. Issue a suitable Writ/Direction/Order to Respondent No. 4 to carry on Round 2 Counselling in its affiliated colleges Respondent No. 5 and Respondent No. 6 strictly as per merit;

ii. Issue a suitable Writ/Direction/Order to Respondent No. 4 to reset the choices of colleges to be filled by interested candidates with respect to Round 2 Counselling without automatically carrying forward the choices of colleges submitted by candidates in Round 1 Counselling and to obtain fresh choices by the candidates before declaring the results of selected candidates for Round 2;

iii. Direct Respondent No. 3 to extend the last date for surrender/resignation from the seat allotted to the Petitioner in Round 2 Counselling conducted by Respondent No. 3 beyond 31.08.2023.”

2. Learned counsel appearing for the petitioner submits that the petitioner appeared in the NEET (UG)-2023 Examination and secured 660 marks out of 720 marks. His All India Rank is 4796. Pursuant to the result, the petitioner applied for a seat in MBBS course, 2023 in respondent no.4-University which conducts the counselling for respondents nos.5 and 6-Colleges, affiliated thereto.

3. Learned counsel appearing on behalf of the petitioner points out that the process adopted by respondent no. 4-University for the second round of counselling inasmuch as it relates to automated carrying forward of choices filled by the candidates in the first round of counselling, is illegal and improper and the same is resulting in compromising the merit position of the successful interested candidates. He, therefore, submits that the candidates, who have filled up their choices in the first round of counselling, be again asked to fill their fresh choices.

4. Learned counsel for the petitioner, while placing reliance on the notification for schedule of registration for centralised counselling, dated

17.08.2023 points out that the process for filling/ editing/ modification of choices/ preferences for round two of counselling started on 21.08.2023 and continued till 23.08.2023. According to him, those candidates who had opted for filling of fresh choices/ editing of their choices or modification were entitled to do so and to that extent, there is no anomaly. However, the candidates who did not prefer to edit/ fill/ modify their choices have already had their initial choices automatically carried forward for the subsequent round of counselling.

5. He, further, explains that, according to his information, there are at least five candidates whose names find place in the tentative list of applicants registered with respondent no.4-University who have already been allotted seats in different colleges and if such a mechanism is evolved, those seats may possibly be made available in the second round of counselling to meritorious and deserving candidates. He, therefore, explains that this automatic carrying forward of the choices from the first round to the second round suffers from arbitrariness and therefore, the same deserves to be set aside and unless the candidate, before second round, is asked to fill up the choice, the earlier choice may not be allowed to be carried forward.

6. Learned counsel appearing on behalf of the respondents oppose the submissions and submit that the instructions in the notification dated 17.08.2023 are unequivocally clear that the candidates who are desirous of filling/ editing/ modifying their earlier choices, are entitled to do so between the prescribed time i.e. 21.08.2023 to 23.08.2023. However, for the candidates who did not fill up any fresh choice for the second round of counselling, their earlier choices will be carried forward except the

candidates who opted for the option of 'floating' the seat.

7. I have heard the submissions made by learned counsel appearing on behalf of the parties and perused the record.

8. The prayer clause of the instant petition would indicate that the petitioner seeks for directions for fresh choices to be submitted by the candidates before the second round of counselling takes place. It is also to be noted that the petitioner has already been allotted a seat in Topiwala National Medical College, Mumbai in the second round of counselling conducted by the Medical Counselling Committee (MCC).

9. A perusal of the notification dated 17.08.2023 would show that under the heading of 'Filling/ Editing/ Modification of Choices/Preferences for Round 02', the same has been made optional. There is no binding instruction that all candidates who had given choices/preferences in the first round of counselling, are required to modify/ fill or edit their options for the second round; instead the concerned candidates have been granted the discretion to choose whether they want to avail the said facility or not.

10. Further, clauses of the notification dated 17.08.2023 under the heading of 'Result/ Allocation of Seats in Every Round' would indicate that after the choices are filled up within the prescribed time period, the choices/preferences so filled by the candidate will be considered for online allotment of seat as per their merit and respective category and region.

11. For the sake of clarity, both the relevant clauses of the notification are reproduced as under:-

“

FILLING/EDITING/MODIFICATION OF CHOICES/PREFERENCES FOR ROUND 02				
Sl. No	Category	Activity	Starting Date	Closing Date
1.	Candidates who have filled online Application form, paid the requisite application fee of Rs.1500/- (Non-Refundable) and also paid Counselling Participation fee Rs.1000/- (Non-Refundable)	Fill/Edit/Modify choices (compulsory for allotment of seat)	21.08.2023 (11:30 a.m.)	23.08.2023 (11:30 p.m.)

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V) RESULT/ ALLOCATION OF SEATS IN EVERY ROUND:

After the choice filling period is over, all the choices/preferences filled by the candidate will be considered for online allotment of seat as per merit and respective category and region.

i. All such candidates, as listed below, will not be considered for allotment of seat:

i. Candidates who have not paid the counselling participation fee,

ii. Paid the counselling participation fee but not registered or vice versa,

iii. Paid the counselling participation fee and registered but not filled \ choices/preferences.

iv. Candidates who were allotted a seat in any round but did not pay the part academic fees of 60000/- shall not be considered in subsequent round

of counselling. Also, the candidates who were allotted seat in /riybd 01 Counselling conducted by the University, paid the Part Academic Fee of Rs. 60,000/-, however, opted for withdrawal, did not report to the allotted college and/or reported to the allotted college/institute and subsequently withdrawn his/her admission are not eligible to participate in Round 02 counselling.

v. Any other condition as defined by the communication of the University.

2. Results can be checked by the candidate through his/her account login given during the registration process.

3. Candidate can print Provisional Allotment Letter, if the seat is allotted to him/her.”

4. The option of printing the Provisional Allotment Letter will be available only for the respective round; within the specified period and the record will not be available in the subsequent round of online counselling.”

12. It is, thus, unequivocally clear that if the candidates who have not paid the counselling participation fee; paid the counselling participation fee but did not register or vice versa; paid the counselling participation fee and registered but did not fill choices/preferences and candidates who were allotted a seat in any round but did not pay the part academic fees of Rs.60,000/- etc., shall not be considered in the subsequent round of counselling.

13. It is, thus, seen that the candidates who fall within the aforesaid category, as per the clause related to ‘Result/ Allocation of Seats in Every Round’, would not be entitled for the subsequent round of counselling and the other candidates, who earlier filled up any choice and either have opted for the option to ‘float’ the seat or were not at all allotted the seat in the first round of counselling, are entitled for carrying forward their preferences and raise their claim for admission on the basis of their merit. The mechanism prescribed herein weeds out the non-serious candidates.

14. It is, thus, seen that the procedure being followed by respondent no.4-University does not suffer from any ambiguity and the same cannot be said to be manifestly arbitrary or illegal.

15. It is to be noted that for those candidates who have opted for admission in any other institution and their names still find place in the second round of counselling on the basis of their merit, respondent no.4-University cannot plausibly be expected to take the decision of not allowing those candidates on the basis of their merit.

16. It would be upto the concerned candidate, as to whether in terms of the applicable guidelines, the concerned candidate would prefer to opt for admission in the college allotted by the MCC or the college allotted by respondent no.4-University. The said decision will have to be taken solely by the concerned candidate. The University cannot presuppose as to whether on the basis of the allotment made in other college, the concerned candidate will not opt for the seat to be allotted by respondent no.4-University. In any case, after allotment of a seat, if the candidate fails to complete the required formalities within the prescribed time, the necessary consequences including offering of the seat to the next meritorious candidate will ensue.

17. The manner and method of counselling will have to be devised by the concerned authority. Unless the same is found to be inherently arbitrary, no interference is called for. As has been held by the Hon'ble Supreme Court in a plethora of cases, the courts normally are not well equipped with the knowledge of the nuances of conducting a counselling process and the consequences that may occur on account of avoidable interference.

18. In the present case, the petitioner seems to be agitating this grievance with a view to exercise his option as to whether he should retain the seat in an already allotted college or should wait for the allotment of seat by the respondent no.4-University. A student-centric approach leading to interference with an already established, well planned counselling process may result in creating anomalies and cause more prejudice to many other candidates.

19. In view of the aforesaid, this court does not find any substance in the submissions made on behalf of the petitioner. The instant petition is, therefore, dismissed along with all pending applications.

PURUSHAINDRA KUMAR KAURAV, J

AUGUST 28, 2023

nc/rg