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

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Date of Decision: 27.09.2023

% **LPA 665/2023 & CM APPL. 50495/2023, CM APPL. 50496/2023**

DR RENUKA BULANI PRASAD

..... Appellant

Through: Mr. Aayush Agarwala, Mr. Siddham Nahata and Mr. Auritro Mukherjee, Advocates.

versus

**NATIONAL BOARD OF EXAMINATIONS IN MEDICAL
SCIENCES NBEMS & ORS.**

..... Respondent

Through:

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

SATISH CHANDRA SHARMA, CJ. (ORAL)

1. The present Appeal is arising out of a judgment dated 27.07.2023 passed by the Learned Single Judge in W.P.(C) No. 17332/2022 titled ***Dr. Renuka Bulani Prasad Vs. National Board of Examinations in Medical Sciences (NBEMS) & Ors.*** (the “Writ Petition”), by which the Learned Single Judge has dismissed the Writ Petition filed by the Appellant herein (the “**Impugned Judgement**”).

2. The Appellant appeared for the Diplomate of National Board-Post

LPA 665/2023

Page 1 of 11



2023:DPG:7587:18



Diploma Centralized Entrance Test, 2022 on 24.07.2022 conducted by the National Board of Examinations in Medical Sciences (the “**Examination**”) seeking admission in a post-graduate specialty course in anesthesiology (the “**Specialty Program**”). On 24.08.2022, the results of the Examination were declared, and the Appellant secured 205 (two hundred five) marks out of a maximum of 480 (four hundred eighty) marks, thereby securing a Specialty Specific Merit Position (“**SSMP**”) of 90 (ninety). Accordingly, on the basis of the SSMP secured by the Appellant, it is stated that admission into the counselling sessions in relation Specialty Program conducted by Respondent No. 1 was nearly certain.

3. The Appellant waited for necessary intimation in relation to the registration for the counselling process however it is alleged that no proper information was supplied. After a period of almost 2 (two) months after the declaration of the results of the Examination, the Appellant even contacted Respondent No. 1 via the telephone. Subsequently, pursuant to a complaint dated 6.11.2022, Respondent No. 1 via an email dated 11.11.2022 informed the Appellant that the registration and counselling process pursuant to the Examination had not started and that the Appellant would be intimated of the same in due course by email.

4. Later, the Appellant learnt that a notice dated 22.09.2022 was published on the website of Respondent No. 1 wherein it was stated that (i) the registration process pursuant to the Examination commenced on 30.09.2022 and closed on 05.10.2023; (ii) the final date of joining for a prospective candidate in the third round of admissions would be 22.11.2023; and (iii) the mop-up round of the registration and counselling process is



2023:DPG:7587:18



discretionary and would depend on the number of vacant seats (the “**Notice**”). Aggrieved, the Appellant herein preferred the Writ Petition on 07.12.2022, however, Respondent No. 1 went ahead with the mop-up round of counselling for the academic year 2022-23 on 14.12.2022 and 15.12.2022 respectively.

5. Vide the Impugned Judgement, the Ld. Single Judge dismissed the Writ Petition observing *inter alia* that Clause 2.4 and Clause 4.1 of the Handbook for Admission to DNB (Post Diploma) Courses Admission Session (the “**Handbook**”) read with the Notice categorically stated that registration for the counselling process would take place on a designated website of Respondent No. 1; and that only those candidates who have registered but not been allotted a seat during the first 3 (three) rounds of counselling shall be eligible to participate in the mop-up rounds. In this context, the Learned Single Judge held that as the Appellant herein completely missed the relevant date of and accordingly, in the absence of registration for counselling, the question of grant of relief to the Appellant herein could not arise. In this regard, it was observed that the Appellant herein was not entitled to relief on account of her failure to adhere to the instructions contained in the Handbook, in the absence of any *mala fide* or arbitrary action by Respondent No. 1. The relevant extract(s) of the Impugned Judgement read as under:

“6. I have heard learned counsel appearing for the parties and perused therecord.

7. For the sake of clarity, the relevant clauses of the Handbook are reproduced hereunder. Clause 2.4 of the Handbook reads as under:-



2023-09-10 17:07:37



"To appear in DNB (Post Diploma), 2022 Admission Session counseling, the candidates have to register with NBEMS through the designated website (<http://counseling.nbe.edu.in/>) and also have to fill the choice of preferences during the registration process. A candidate who has not registered with NBEMS shall not be eligible to participate in the counseling process at all."

8. Clause 4.1 of the Handbook reads as under:-

"4.1 The schedule of DNB (Post Diploma) centralized merit-based counseling is available on NBEMS website <https://natboard.edu.in/> and <http://counseling.nbe.edu.in/>"

9. A combined reading of both the clauses makes it clear that the candidates who are desirous of appearing in the counselling process for admission to the DNB (Post Diploma) course, have to register with NBEMS through the designated website. It is also stipulated therein that the candidates will have to fill the choice of preference during the registration process. Clause 2.4 further makes it clear that a candidate who has not registered with NBEMS, shall not be eligible to participate in the counselling process at all.

10. The public notice dated 22.09.2022 is uploaded on the official website. The same unequivocally states that the registration for counselling will have to take place between 30.09.2022 to 05.10.2022. Admittedly, the petitioner failed to keep track of the information uploaded on the official website periodically, which was incumbent upon her to do, as per the instructions of the Handbook. Since the petitioner failed to register herself between 30.09.2022 to 05.10.2022, she was not allowed to sit for the counselling. Further, clause 6.4 of the Handbook specifically lays down that only those candidates who have not been allotted any seat during the first three rounds of counselling will be eligible for the final (mop-up) round, thus excluding the petitioner from the subsequent round



of counselling, which is also not arbitrary or illegal.

11. The petitioner had a duty to follow the instructions easily available to all the candidates on the official website of the respondent(s) and in absence of the same, cannot be allowed to raise any grievance, at this stage, merely on the ground that the petitioner belatedly made a telephone call and communications, which, either were responded vaguely by the respondents or not responded to at all.

12. When the instructions contained in the Handbook were clear and the same were made applicable to all the candidates uniformly, there cannot be any additional expectation from the examining body to cater to a particular individual more than the others. If the examining body resorts to furnish or intimate the candidate by additional information, that is a discretionary act on the part of the examining body, which is to be treated as an additional facility that the examining body is not duty-bound to provide.

13. So far as the decision relied upon by the learned counsel for the petitioner in the case of Dr. Deepika Veerwal (supra) is concerned, the same would not be of any assistance to the petitioner as the factual matrix as well as the issue involved in both the cases is altogether different. The case of Dr. Deepika Veerwal (supra) dealt with the non-production of original documents during the counselling process, a stage that the petitioner herein has not reached due to her inability to register for the counselling process itself.

14. The case of Dr. Shidore Shital Mhatardeo (supra), also relied upon by the petitioner, dealt with the allotment of seat in the final round of counselling. Paragraph no. 63 of the said decision states that:

"In the age of technology, where internet, facsimile, and telephones are available, it amazes me as to how the right of a candidate to seek admission is denied by simply refusing to verify something which is only an e-mail, fax or a phone call away."



2023-09-10 17:07:37



15. *In the instant case, it is not the stand of the petitioner that she had registered online within the stipulated time period provided in the public notice dated 22.09.2022 and despite registration, her candidature is erroneously not being considered. In the instant case, the petitioner has completely missed the relevant date for her registration. It is for this reason, the decision in the case of Dr.Shidore Shital Mhatardeo (supra) will also have no relevance under the facts of the present case.*

16. *Keeping the aforesaid observations in mind, this court is not inclined to entertain the instant writ petition or to grant any relief in favour of the petitioner, as prayed for.*

17. *Accordingly, the instant petition is dismissed along with pending application.”*

6. Accordingly, the Appellant has preferred this Appeal praying for *inter alia* the setting aside of the Impugned Judgement; and a direction to the Respondents to register the Appellant for counselling in the DNB PDCET Academic Session 2023-2024 in the Specialty Program.

7. In this regard, Mr. Aayush Agarwala, Learned Counsel appearing on behalf of the Appellant has contended before this Court that the Appellant is a meritorious student who had secured a respectable SSMP and accordingly, would have secured admission into the Specialty Program had Respondent No.1 not failed to provide clear instructions and / or information to prospective candidates in relation to the registration for the counselling process pursuant to the Examination.

8. Furthermore, it was contended that a prospective student such as the Appellant herein ought not to have been kept in dark in relation to important processes ancillary to the admissions in the Specialty Program by



2023:090:7587-18



Respondent No. 1 i.e., a statutory body. Moreover, it was submitted that in light of the SSMP secured by the Appellant, there is no reason why the Appellant would not have registered for the counselling process if the same had been brought to her notice.

9. Mr. Agarwala, has vehemently contended before this Court that the Appellant reached out to Respondent No. 1 *vide* the telephone and accordingly, was waiting for an intimation for the commencement of registration of counselling process by way of an email as had been communicated to the Appellant vide an email dated 11.11.2022. Additionally, it has been argued that Respondent No.1 provided the Appellant with false information and accordingly, no fault may be ascribed to the Appellant.

10. Further, it has been submitted that there is other similarly placed prospective candidates who have failed to register and subsequently appear for the counselling sessions on account of the mismanagement on behalf of Respondent No. 1. Lastly, reliance has been placed on a decision of this Court in W.P.(C.) No. 1749/1991 titled ***Munish Kumar Khurana v. Director General Health Services***, to contend that the Appellant ought to be granted admission on account vacant seats in the Specialty Program.

11. This Court heard the Ld. Counsel for the Appellant and perused the record. The matter is being disposed of at the stage of admission with the consent of the Ld. Counsel for the Appellant.

12. Undisputedly, the Clause 2.4 read with Clause 4.1 of the Handbook reveals that all prospective candidates were informed to refer to an identified



2023-09-10 17:07:37



designated website hosted by Respondent No. 1 for (i) the schedule for counselling pursuant to the Examination; and (ii) the registration for the counselling. The relevant Clause(s) have been reproduced hereunder:

"2.4 To appear in DNB (Post Diploma), 2022 Admission Session counseling, the candidates have to register with NBEMS through the designated website (<http://counseling.nbe.edu.in/>) and also have to fill the choice of preferences during the registration process. A candidate who has not registered with NBEMS shall not be eligible to participate in the counseling process at all."

"4.1 The schedule of DNB (Post Diploma) centralized merit-based counseling is available on NBEMS website <https://natboard.edu.in/> and <http://counseling.nbe.edu.in/>"

13. Furthermore, the Notice published on the website hosted by Respondent No. 1 categorically laid down the schedule in relation to the admissions into *inter alia* the Specialty Program pursuant to the Examination. Accordingly, the Appellant herein cannot elude from the fact that it failed to register during the requisite period.

14. In this context, the Notice read with Clause 6.4 reveals that participation in the mop-up round of the registration for counselling is contingent on registration for the counselling process. Therefore, in the considered opinion of this Court, in the absence of registration by the Appellant, no equities can be created in favor of the Appellant.

15. Lastly, the Hon'ble Supreme Court of India (the "**Supreme Court**") in *S. Krishna Sradha v. State of Andhra Pradesh*, (2020) 17 SCC 465 formulated certain principles vis-à-vis grant of relief to meritorious students who had been denied admission on account of irrationality by the



2023-09-10 17:07:37



admissions authority. The relevant extracts are reproduced as under:

“13. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the court concerned to dispose of the proceedings by giving priority and at the earliest.

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time i.e. within one month from 30th September i.e. cut-off date and under no circumstances, the Court shall order any admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the



Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain to admission in MBBS course only and we have not dealt with postgraduate medical course.”

16. Therefore, following **S. Krishna Sradha (Supra)** this Court is of the opinion that the case of the Appellant is neither a case wherein the authorities have acted arbitrarily nor a case wherein the Appellant has been



2023:DPG:7587:18



able to make out exceptional circumstances warranting the interference of this Court. Accordingly, the Impugned Judgment passed by the Ld. Single Judge suffers from no infirmity as the Appellant although a meritorious student, failed to register for the counselling process as she did not follow the instructions issued by Respondent No. 1 in the Handbook and accordingly, did not check for the relevant date of registration for counselling pursuant to the Examination, on the website hosted by Respondent No. 1 for reason best known to her.

17. With the observations above, this LPA is dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 27, 2023