



\$~103

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

Date of Decision: 17th October, 2023

+ LPA 708/2023 and CM APPL.54221/2023, CM APPL.54222/2023

DR. (MAJ) SHIVANI DHAKA (RETD.) Appellant

Through: Mr. Amit Dhaka, Ms. Astha Gumber
and Mr. Prateek Chauhan, Advocates
along with appellant in person

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Anshuman Singh, Sr. Panel
Counsel with Mr. Aakash Meena, GP
and Mr. Aiyush Ahluwalia, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. This letters patent appeal (LPA) arises out of the judgment dated 11th October, 2023, passed by the learned Single Judge of this Court, in W.P. (C) 13322/2023 [*hereinafter* “**impugned judgment**”]. In the writ petition, the Appellant contested the methodology employed in the allotment of specific seats during the admission process for postgraduate courses at Armed Forces Medical Services (AFMS) institutions. The crux of the dispute centred on the decision by Respondent No. 2—Director General, Armed Forces Medical Service [“**DGAFMS**”]—to directly allocate ten additional DNB seats at Base Hospital, New Delhi, during the counselling for “Priority-V” category candidates. These seats, it is crucial to note, were not made available in the preceding counselling rounds for candidates in the higher “Priority”



categories, namely Priority-I through IV. The learned Single Judge, however, recognized that reintroducing said seats to candidates from earlier stages would potentially trigger a perpetual cycle of counselling, an outcome deemed impractical. Acknowledging this, the learned Single Judge opted not to intervene in the counselling procedure. The Appellant's challenge, therefore, is narrowly tailored to address the propriety of the allocation process concerning these additional seats, questioning both transparency and equity of the said process.

FACTS AND PETITIONER'S CONTENTIONS

2. The brief facts of the case as laid out in the petition and submissions advanced by learned counsel for Appellant, are as under:

2.1. The Appellant, Dr. (Maj.) Shivani Dhaka (Retd.), is an ex-servicewoman of Short Service Commission (SSC) of AFMS. The Appellant, desirous of pursuing higher education at AFMS Institutions, appeared for NEET-PG exam in March 2023, where she secured 440 marks and an All India Rank of 35917.

2.2. On 26th July, 2023, DGAFMS invited applications for Post Graduate courses from eligible candidates for the session 2023-2026. As per the scheme of counselling, the order of preference of candidates for allotment of seats is specified as under:

- (a) Priority-I: Eligible serving officers of the AFMS.
- (b) Priority-II: Foreign students sponsored by Government.
- (c) Priority-III: Medical officers sponsored by Para Military Forces/ other Government of India organizations.
- (d) Priority-IV: Ex-SSC AFMS officers released from service after completion of contractual service, within three years after the release from service i.e., the date of release should not be before 01st May 2020 and after



the last date of joining into the courses as notified by MCC.

(e) Priority-V: Civilian doctors willing to serve in AFMS for five years after completion of the course subject to fulfilling the eligibility criteria. The candidate will have to execute a bond agreement to pay an amount as sanctioned by the Government of India at the time of admission, in case unwilling to join AFMS, when offered commission on completion of the course.

2.3. The Appellant desirous of attaining postgraduate medical qualification registered on MCC/DGHS (MoHFW) website as a “Priority-IV” candidate. The admission process for postgraduate courses is governed by the terms and conditions laid down in the Information Bulletin, for Post Graduate Courses in AFMS through NEET-PG 2023 [*hereinafter* “**the Information Bulletin**”]. On 10th August, 2023, a seat matrix for AFMS PG counselling 2023 was published on the website of AFMS which reflected a total of 145 seats. However, no seats of Base Hospital, New Delhi – which were sought by the Appellant, were shown in the seat matrix:

Notification no. 2021/NEET PG-2023/DGAFMS/DO-1(Div) dated 18 Aug 2023

SEAT MATRIX FOR AFMS PG COUNSELLING 2023

Sr. No.	Subject	AFMC Pune	Army Hosp (P&R), Delhi	IMIS, Aizawl	CH (CC), Kolkata	CH (WC), Chandimandir	CH (CC), Lucknow	CH (AF), Bangalore	Total seats Avl
1	Anesthesiology	1	1	1	0	1	1	1	6
2	Anatomy	3	0	0	0	0	0	0	3
3	Biochemistry	1	0	0	0	0	0	0	1
4	RT & Immunology	1	0	0	0	0	0	0	1
5	Community Medicine	3	0	0	0	0	0	0	3
6	Dermatology	0	0	0	0	0	0	1	1
7	ENT	4	3	1	2	0	1	2	13
8	General Medicine	10	2	7	1	0	0	1	24
9	General Surgery	14	3	2	0	1	0	1	21
10	Geriatric Medicine	1	0	0	0	0	0	0	1
11	Hospital Administration	4	0	0	0	0	0	0	4
12	Microbiology	0	1	0	0	0	0	0	1
13	Ophthalmology	0	3	2	2	2	0	1	10
14	Paediatrics	3	2	2	1	0	1	1	10
15	Pathology	0	3	2	1	0	0	2	10
16	Physiology	3	0	0	0	0	0	0	3
17	Psychiatry	0	0	2	1	0	0	0	3
18	Radiodiagnosis	1	3	1	0	0	2	4	11
19	Radiotherapy (DRE)	0	1	0	0	0	0	0	1
	TOTAL	72	22	20	08	34	05	14	145

2.4. Subsequently, another notification dated 11th August, 2023 was issued



amending the seat matrix as follows:

Notification no. 3821TNEET PG 2023/DGA/FMS/DG-1(D/V) dated 11 Aug 2023

AMENDED SEAT MATRIX FOR AFMS PG COUNSELLING 2023

Ser No	Subject	AFMC Pune	Army (IISAP) (R&R) Delhi	BHS Aswin	CH (ICL) Kolkata	CH (WC) Chandimandir	CH (CC) Lucknow	CH (AP) Bangalore	Total seats Avl
1	Anaesthetics	1	1	1	0	1	1	1	6
2	Anatomy	3	0	0	0	0	0	0	3
3	Biostatistics	1	0	0	0	0	0	0	1
4	BT & Immunology	1	0	0	0	0	0	0	1
5	Community Medicine	3	0	0	0	0	0	0	3
6	Dermatology	0	0	0	0	0	0	1	1
7	ENT	4	3	1	2	0	1	2	13
8	General Medicine	13	3	7	1	0	0	1	24
9	General Surgery	14	3	2	0	1	0	1	21
10	General Medicine Hospital Administration	1	0	0	0	0	0	0	1
11	Microbiology	6	1	0	0	0	0	0	7
12	Ophthalmology	6	3	2	2	2	0	1	16
13	Pathology	3	2	2	1	0	1	1	10
14	Physiology	0	3	2	1	0	0	2	6
15	Psychology	3	0	0	0	0	0	0	3
16	Psychiatry	0	0	2	1	0	0	0	3
17	Radiodiagnosis	1	3	1	0	0	2	4	11
TOTAL		72	21	28	88	04	88	14	144

2.5. As per the merit list for Priority-IV candidates provisionally eligible for counselling published on 11th August, 2023; Appellant was ranked 21 out of a total of 81 candidates in Priority-IV category. However, no seats of Base Hospital, New Delhi were shown in the seat matrix published on 11th August, 2023. Thus, as her seat of choice was not available, the Appellant did not opt for any of the seats offered in the counselling.

2.6. Subsequently on 14th August, 2023, the seat matrix for Priority-V candidates was published on the website wherein no seats pertaining to Base Hospital, New Delhi were shown. Later, few candidates belonging to Priority-III category, whose names were not included in the merit list published by DGAFMS, preferred a writ petition before this Court which led to certain directions being issued to DGAFMS to consider certain candidates in the Priority-III merit list. An order dated 11th September, 2023 was passed by the learned Single Judge in the said writ petition being W.P.(C) 10856/2023 titled as **Dr. Nithya Nair and Ors. v. Union of India and Ors.**, relevant portions whereof reads as under:

“59. However, in the interest of justice, while not disturbing all the admissions already made by respondent no.2 in Priority-III, some workable



directions need to be issued in larger interest of merit. Therefore, this court finds it appropriate to issue the following directions:-

(i) Two petitioners, who have opted for seats as per interim directions passed by this court, be allowed to continue their courses on their respective allotted seats as opted by them.

(ii) Petitioner nos.10, 13 and 15 shall be granted admission as per the priority of subjects and their merit for which the sponsoring authority had issued the sponsorship certificates to them.

(iii) In case the seats are not vacant in respective courses, the required number of candidates placed at the bottom of the merit list against respective MD/MS seats will have to be ousted. The ousted candidates be offered the remaining available seats, as stated during the course of arguments by respondent no.2. If in order to work out the directions, respondent no.2 has to conduct recounselling for Priority III or IV, let the same be done immediately, as the admissions of the candidates who may likely to be ousted were already made subject to the further directions to be passed by this court. The admitted candidates are parties to this writ petition and were fully aware of the pendency of the present case.

(iv) This court has held that the petitioners have no right to seek an opportunity for rectification of their sponsorship certificate. However, considering the fact that in the previous years the respondents had permitted the candidates to rectify the deficiencies in the respective sponsorship certificates, in the peculiar facts of the present case, the remaining petitioners shall be considered for allotment of vacant seats before offering a seat to any other candidate, subject to providing seven days' time to those petitioners for obtaining a fresh sponsorship certificate from their respective departments in the prescribed format.

(v) This court is also of the view that the respondents should formulate a clear and consistent policy regarding the stage at which the sponsorship certificates are to be scrutinized and whether the candidates should be permitted to rectify their sponsorship certificate, if any technical defect is found. This would ensure uniformity, transparency and avoid unnecessary litigation. Let the respondents take a final view on the aforesaid aspect, well before the commencement of the next academic session and incorporate the same in the subsequent Information Bulletin.

(vi) Let all the steps be taken to complete the counselling and admission process within the stipulated time, as per the directions passed by the Hon'ble Supreme Court in MA 1732/2023 in WP (C) No. 76/2015 titled as 'Ashish Ranjan & Ors. vs Union Of India & Ors'.



2.7. In compliance with the above order, DGAFMS issued letters to the last three candidates in the merit list for Priority-III candidates to inform them that their seats would have to be offered to Petitioners No. 10, 13 and 15. In response, the said last three candidates approached the Court by way of an application [CM APPL. 48794/2023], seeking fresh counselling. On 21st September, 2023, while considering the application, this Court observed that the DGAFMS had ousted the said applicants from Priority-III so as to offer them seats in Priority-V. The applicants were neither considered under Priority-III nor Priority-IV – so as to not disturb counselled seats. However, the learned Single Judge held that the applicants must be offered available seats prior to the same being offered to Priority-IV candidates. It was noted that earlier, on 11th September, 2023, the Court had already directed re-counselling for both categories, Priority-III and IV, as necessary, to honour the merit amongst respective categories. Accordingly, it was directed that re-counselling for Priority-III and Priority-IV category be conducted as per the *inter se* priority of the candidates, and the three applicants be offered seats prior to allotment of seats to Priority-IV category.

2.8. Subsequently, DGAFMS issued notification dated 22nd September, 2023 containing a notice/ intimation of re-counselling to be carried out in respect of Priority-IV candidates for the balance seats. However, immediately prior to the scheduled time of counselling on 25th September, 2023, another notification was issued stating that the re-counselling stood cancelled. Further, on 26th September, 2023, CM APPL. 48794/2023 was withdrawn on the submission of the applicants that their grievance stood addressed.

2.9. Simultaneously, orders dated 11th and 21st September, 2023 passed in ***Dr. Nithya Nair*** were challenged in LPA 661/2023 before this Bench, by candidates from Priority-III category, with respect to the requirements of the



sponsorship certificate annexed to the Information Bulletin at “Appendix-A”, specifically, whether an office seal was required or not. On 26th September, 2023, this Court granted interim relief and allowed the Appellants to participate in the counselling for vacant seats. We must note that in the said proceedings, counsel for Union of India stated that 51 seats were lying vacant and the Appellants therein would be permitted to participate in the counselling for the said seats.

2.10. On 29th September, 2023, notifications were issued for counselling of Priority-V candidates by DGAFMS. Thereafter, on 05th October, 2023 the Appellant came across the notice with the seat matrix for Priority-V which included 10 additional DNB seats in Base Hospital, New Delhi. The said seat matrix is as follows:

SEAT MATRIX FOR PRIORITY-V CANDIDATES : AFMS PG COUNSELING 2023

Ser No	Subject	AFMC Pune	Army Hosp (R&R), Delhi	INHS Asvini, Mumbai	CH (EC), Kolkata	CH (CC), Lucknow	BH Delhi Cantt *	IAM Bangalore	Bas seats
1	Aerospace Medicine	0	0	0	0	0	0	3	03
2	Anaesthesiology	1	0	0	0	1	2	0	04
3	Anatomy	3	0	0	0	0	0	0	03
4	Biochemistry	1	0	0	0	0	0	0	01
5	BT & Immunology	1	0	0	0	0	0	0	01
6	Community Medicine	3	0	0	0	0	0	0	03
7	Dermatology	0	0	0	0	0	1	0	01
8	ENT	2	0	1	2	1	0	0	06
9	General Medicine	0	0	0	0	0	1	0	01
10	General Surgery	3	0	1	0	0	2	0	06
11	Hospital Administration	2	0	0	0	0	0	0	02
12	Microbiology	6	1	0	0	0	0	0	07
13	Obst & Gynae	0	0	0	0	0	2	0	02
14	Ophthalmology	0	0	1	2	0	1	0	04
15	Paediatrics	0	0	0	1	0	1	0	02
16	Pathology	7	0	2	1	0	0	0	10
17	Physiology	3	0	0	0	0	0	0	03
18	Radiotherapy*	0	1	0	0	0	0	0	1
Total		32	02	05	06	02	10	03	60

* DNB Seats

2.11. The aforesaid action of DGAFMS in giving preference to candidates of lower “Priority” category by offering the additional seats rather than to the Appellant – is in direct conflict with rules governing the counselling, contained in Clause 21 of the Information Bulletin, and is also violative of Article 14 of the Constitution of India. It is contended that as per the



Information Bulletin, counselling for NEET (PG) 2023 qualified and eligible candidates under AFMS is to be conducted “Priority” wise and preferred subjects are to be allocated based on a candidate’s merit-cum-choice of subject. A candidate in a higher “Priority” category is entitled to be considered for the choice of subject/ seat before a candidate in a lower category. However, DGAFMS offered 10 additional DNB seats at Base Hospital, New Delhi directly to Priority-V candidates without first offering them to Appellant, who is a Priority-IV candidate. The Appellant is thus entitled to exercise her choice of seats from the impugned seat matrix prior to Priority-V candidates.

2.12. The failure of DGAFMS to communicate any justification for offering the additional seats at Base Hospital, New Delhi to Priority-V candidates clearly indicates that there is no legitimate reason for favouring the Priority-V candidates. It is therefore evident that DGAFMS arbitrarily favoured the Priority-V candidates in an unfair and unjust manner by offering them the additional seats without first offering them to the Appellant at the time of her counselling in Priority-IV.

2.13. The learned Single Judge in paragraph 14 of the impugned judgment has erroneously relied upon the judgment of the Supreme Court in **Arvind Kumar Kankane v. State of U.P. and Ors.**¹ which was in fact in favour of the Appellant, as it holds:

“after the first round of counselling, any subsequent counselling held for allocation of the remaining seats, including those which have fallen vacant subsequent to the first round of counselling, shall be filled in order of merit amongst the waitlisted candidates instead of putting the same back for counselling for all the candidates.”

2.14. Appellant is in fact a waitlisted candidate from Priority-IV and should

¹ (2001) 8 SCC 355.



have been offered the vacant seats, even if the judgment passed in **Arvind Kumar Kankane** is applied to the present facts and circumstances. In the present case, even though the first round of counselling was still going on, the vacant seats of Priority-I candidates, which were first offered to the Appellants in LPA 661/2023 were later directly offered to Priority-V candidates in their first round of counselling itself – without even waiting for the first round of counselling to be over for all categories.

2.15. The learned Single Judge was misled by the counter affidavit dated 11th October, 2023 filed in the underlying writ petition, wherein the Respondents contended that they had to offer the vacant seats of Priority-I candidates to the Appellants in LPA 661/2023 in view of order dated 26th September, 2023, however there was no explanation provided for later offering these vacant seats directly to Priority-V candidates. Said candidates were neither the Appellants in LPA 661/2023 to whom the order dated 26th September, 2023 applied to nor were they waitlisted candidates to whom the judgment of the Supreme Court in **Arvind Kumar Kankane** should be applied. There were also no directions issued by any Court to offer the said seats to Priority-V candidates.

ANALYSIS AND FINDINGS:

3. Having considered the aforementioned contentions, it is imperative that we first delineate the context concerning the 10 additional seats that are central to the current dispute, before delving into our analysis.

4. The orders dated 11th September, 2023 and 21st September 2023, passed by the learned Single Judge in the case of **Dr. Nithya Nair**, were subsequently challenged before this Division Bench, by certain candidates who were denied relief. Upon examining their arguments, this Court, on 26th September 2023, passed the following order, extending interim relief to those appellants as



detailed below:

“1. The present appeal impugns orders dated 11th September, 2023 and 21st September, 2023 passed in writ petition W.P.(C) No. 10856/2023 by the learned Single Judge of this Court. The underlying writ was filed by individuals seeking admission to Post Graduate medical courses in various Armed Forces Medical Services institutions, who were aggrieved on account of their non-inclusion in the merit list for “Priority III” candidates. Under the said category, the candidates were required to have a sponsorship certificate in line with the instructions specified in the concerned information bulletin dated 14th July, 2023. The learned Single Judge inter alia observed that there is only one format for the certificate at “Appendix A” of the said information bulletin, which requires both, a rubber stamp and an office seal. It was found that the candidature of some petitioners was rejected despite submitting appropriate sponsorship certificates and thus, directions were issued towards grant of admission and fresh counselling. The remaining petitioners were granted one week time to rectify their sponsorship certificates per the prescribed format.

2. Mr. Shubham Singh, learned counsel for Appellants challenges the finding of learned Single Judge that candidates holding sponsorship certificates without the requisite office seal are not entitled for their consideration against “Priority-III”. He states that there is no explicit requirement for an office seal specified in the concerned information bulletin, and places reliance on Clauses 16(c) and 20(f) to this effect. Thus, it is contended the lack of an office seal is a mere hyper-technical error, which cannot take away from the merit of the Appellants.

3. Mr. Rajesh Kumar, learned SPC for Union of India, at the outset, states that 51 seats are lying vacant at present and the Appellants will be permitted to participate in the counselling for the said seats.

4. At this juncture, Mr. Singh has pointed out that subject preferences in Appellants’ certificates are at variance from the subjects which have vacant seats. To this, Mr. Kumar has also categorically stated before this Court that Appellants will be admitted against vacant seats irrespective of the subjects mentioned in their sponsorship certificates. He also undertakes to provide the seat matrix to Appellants today itself.

5. Considering the statements put forth by the learned SPC for Union of India, the Appellants shall be permitted to participate in the counselling for the vacant seats. It is clarified that Appellant’s present certificates will be treated as provisional in nature and one weeks’ time is granted to Appellants to furnish proper certificates as per the format prescribed under the said information bulletin. In case, there is no office seal for the sponsoring authority, then an affidavit from the said authority to that effect,



shall be annexed with the sponsorship certificate by the candidate.

6. It goes without saying that the admissions made in pursuance of the above directions will be subject to the outcome of the present appeal.

7. Issue notice. Learned counsel for Respondents mentioned in appearance above accept notice. Let counter affidavit(s) be filed within a period of four weeks from today. Rejoinder thereto, if any, be filed on or before the next date of hearing.

8. Issue notice to the remaining Respondents, by all permissible modes, upon filing of process fee, returnable on the next date of hearing. Said Respondents shall file a reply within a period of four weeks from the date of service.

9. Re-notify on 10th November, 2023”.

5. The afore-noted directions were issued in response to a predicament confronted by this Court, where certain Priority-III candidates were precluded from admission due to an overly stringent application of technical criteria by DGAFMS. In adherence to Court's directives and to facilitate accommodation of the Appellants [in LPA 661/2023], the DGAFMS incorporated supplementary seats into the seat matrix. As per DGAFMS's counter-affidavit filed in response to the underlying writ petition, there existed a total of 41 DNB-accredited seats within the Base Hospital Delhi Cantt and the Army Hospital (R&R), Delhi, exclusively reserved for Priority-I candidates. Subsequent to allocation of these DNB seats in 2023, 12 DNB seats were designated as dormant in line with established practice, encompassing 11 seats within the Base Hospital and a single seat within the Army Hospital (R&R). The counsel for DGAFMS has apprised us that these auxiliary seats were reactivated from the dormant segment to ensure that eligible candidates, those benefitted by this Court's directives in LPA 661/2023, are granted seats and specialisation subjects in accordance with their merit and preferences. The counter-affidavit reveals that one additional DNB seat was selected by a



Priority-III candidate during the counselling session held on the 04th October, 2023. Recognizing that the dormant seats were reinstated, and to maintain the integrity of the counselling procedures previously concluded for other categories, the residual 11 additional DNB seats were introduced into the seat matrix for Priority-V candidates, for whom the initial counselling round is ongoing. Under these conditions, we perceive no arbitrariness in the approach adopted by the DGAFMS.

6. In fact, the Court has been informed that concurrent with the present hearing, the counselling for Priority-V candidates is nearing completion, with candidates actively engaged in submitting necessary documentation for admission. Under these circumstances, where the admission process has progressed to its advanced stages, mandating allocation of the additional seats specifically for Priority-IV candidates, in order to accommodate the Appellant, would necessitate an entire repetition of the counselling process. This is a course of action we are disinclined to pursue, particularly given the imperative for finality in the admission process. The necessity to uphold the integrity and efficiency of the educational admission system precludes us from sanctioning a measure that would induce extensive delays and potentially disrupt the academic progression of numerous candidates already poised to commence their studies.

7. We note that the Appellant did not opt for the seats made available to her in the counselling conducted for her category i.e., Priority-IV, as she was not offered the desirable subject/ location. At the time when the additional seats in-question were made available by DGAFMS for Priority-V category candidates, counselling for Priority IV stood completed. Now, at this stage, offering the additional seats to the Appellant i.e., a candidate from an earlier stage, to redress her grievance, would trigger a perpetual cycle of counselling,



thereby destabilizing the entire admission process. This observation aligns with the principles enunciated by the Supreme Court in *Arvind Kumar Kankane*, which emphasizes the completion of the admission process within a definitive timeframe. Appellant's reliance on the aforesaid ruling does not bear relevance in the present context. The essence of the holding therein primarily concerns the finality and timely conclusion of admissions, a principle that would be contravened by the current plea for an interruption and redirection of the ongoing counselling and admission procedures.

8. In the above circumstances, we are not inclined to entertain the present appeal.

9. Before parting, it is clarified that the Appellant's existing postgraduate qualifications will not come in the way of her applying for admission to AFMS institutions under the same category next year. Said clarification is being issued in respect of the Appellant, with the consent of counsel for Respondent No. 2-DGAFMS, in light of the peculiar facts and circumstances of the case.

10. Dismissed along with pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

OCTOBER 17, 2023

as