



2023:DHC:8099-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19.10.2023

% LPA 716/2023

NEHA YADAV

..... Appellant

Through: Mr. Rajeev Saini, Ms. Aditi Singh,
Rishabh Shukla and Ms. Anisha
Saksena, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajkumar Yadav and
Mr. Abhishek Khanna, Advocates for
respondent No.1 to 4.
Mr. Rohan Malik and Mr. Shantanu
Parashar, Advocates for respondent
No.5.

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 an order dated 11.10.2023 passed by the Learned Single Judge in W.P.(C.) No. 13321/2023
2. The facts of the case reveal that the Appellant before this Court after completing her MBBS Course from SRM Medical College and Research Centre, Chennai, appeared in National Eligibility cum Entrance Test (Post Graduation), 2023 (NEET (PG), 2023) and received 469/800.
3. The facts further reveal that the counseling conducted by Medical Counselling Committee (MCC) took place in the matter and the Appellant was allotted the Post Graduate Seat i.e. MD Hospital and Administration.

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4. The facts also reveal that the Respondent No.5 was allotted a seat in Diploma in Obstetrics and Gynaecology.

5. The Respondent No.2 Director General, Armed Force Medical Services issued a notification dated 03.10.2023 inviting applications in category 5 candidates in respect of various Institutions under the control, and the Respondent No.5 was allotted a seat in DNB Dermatology. The counseling took place on 05.10.2023, and it has been vehemently argued before this Court by the Learned Counsel for the Appellant that the Respondent NO.5 was holding a seat on 05.10.2023, and could not have been given admission keeping in view the NEET (PG), 2023 Counseling Regulations.

6. The Learned Single Judge by an order dated 11.10.2023 has dismissed the writ petition. The aforesaid order passed by the Learned Single Judge reads as under:

“1. Learned counsel appearing on behalf of the petitioner while taking this Court through the Notification dated 05.10.2023, issued by the AFMS submits that any candidate who has already joined an institution/allotted a seat in third round of counselling will not be allotted any seat.

2. He, then, submits that in the instant case, if the Notification regarding allotment of seat, placed at page no.37 of the writ petition is perused, the same would indicate that respondent no.5-Dr. Sakshi, whose All India Rank is 25114 was allotted a seat in autonomous State Medical College. He, therefore, submits that once the seat was allotted to Dr. Sakshi in the third round of counselling, the said respondent is not entitled for allotment of any seat by AFMS.



3. *This Court vide order dated 09.10.2023, directed for issuance of notice to the private respondent. After service of notice, Shri Raj Kumar Yadav, learned counsel appears on behalf of the said respondent. He unequivocally makes a statement that the allotment so referred from page no. 37 is not pertaining to the third round of counselling. Instead, the same relates to the second round of counselling, where the DNB seat in autonomous State Medical College was allotted to respondent no.5.*

4. *He, then, submits that even otherwise, respondent no.5 opted to participate in third round of counselling. He, then, contends that in third round of counselling, the candidature of the said respondent came to be rejected. According to him, since the allotment so referred by the petitioner does not belong to third round of counselling, therefore, the petitioner, at this stage, cannot find any fault with the allotment of the seat by respondent no.2-AFMS.*

5. *Having considered the submissions made by learned counsel for the parties and after perusal of the relevant clause as referred by learned counsel for the petitioner, this Court is of the considered opinion that once the seat is not allotted in third round of counselling to respondent no.5, the respondent no.5 cannot be held to be disentitled for allotment of a seat by respondent no.2-AFMS. Accordingly, this court does not find any substance in the submissions made by learned counsel for the petitioner.*

6. *The petition is, therefore, dismissed alongwith pending application."*

7. The aforesaid order passed by the Learned Single Judge reveals that the Appellant was not able to point out any violation in statutory provisions of law in the matter of allotment of seat to Respondent No. 5. On the contrary, a document has been brought on record by Learned Counsel for the Respondent No.5 which establishes that on 05.10.2023, the Respondent



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No.5 was not holding any seat as she resigned in respect of Diploma in Obstetrics and Gynaecology. The said document produced by Respondent No.5 is as under:



Fwd: NBEMS: Online Portal for Joining and Registration (OPJR) – Update

Dear Sir/Madam,

Following update has been recorded from your login credential at Online Portal for Joining and Registration (OPJR).

Name of the Candidate:	SAKSHI
Roll Number:	23661035212
Admission Session:	2023
Course & Specialty:	NBEMS Diploma in Obstetrics and Gynaecology
Hospital/Institute Name:	AUTONOMOUS STATE MEDICAL COLLEGE, AYODHYA, DARSHAN NAGAR , AYODHYA (FAIZABAD), Uttar Pradesh-224123
Status Update:	Resigned
Date of Leaving/Joining:	05.10.2023

Kindly contact NBEMS if the update has not been submitted at your end or any concern. Kindly contact NBEMS through its communication web portal if the update has not been submitted at your end.

सादर धन्यवाद/ Thanks with regards.

आपूर्तिमान में राष्ट्रीय परीक्षा बोर्ड/ NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES
मेडिकल एन्क्लेव, अंसारी नगर/MEDICAL ENCLAVE, ANSARI NAGAR
नई दिल्ली 110029/ NEW DELHI-110029

8. The Respondent No.5 had also submitted an undertaking dated 05.10.2023 at the time of counseling, and the said undertaking also reveals that she was not holding any PG seats in any Medical Institution. The undertaking given by the Respondent No.5 is also reproduced as under;

“UNDERTAKING/ CERTIFICATE TO BE RENDERED BY THE PRIORITY V CANDIDATE FOR AFMS PG COUNSELLING 2023 HELD ON OCT 2023.

Candidate Roll No (NEET 2023) 23641935212, Name SAKSHI

NEET Score 474 NEET Rank 25114

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Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 07.11.2023
16:16:28

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1. I, SAKSHI hereby accept my choice of speciality for MD/ MS/DNB/MDS as under -

COURSE SUBJECT
INSTITUTION

DNB DERMATOLOGY
DC

AT BASE HOSPITAL,

2. I know that I have to report to allocated institute by 12:00 noon on 10 Oct 2023 for further documentation and joining of the course.

3. At present I am not holding any PG seats in any Medical Institution.

4. I certify that I will register myself with the University accordingly and WILL NOT ask for change of subject or institution at a later date.

5. I, after having accepted the subject of my choice at the counseling for selection to NEET PG/MDS 2023 held on 05 Oct 2023, understand, that if I do not join the course on due date after my detailment, it will be considered as voluntary withdrawal from the course and will be governed by extent policy on the subject for applying / detailment for Mb/MS/MDS/DNB course in future.

6. I certify that I am aware of the rules and regulations of the University. I also undertake that after registration for MD/MS/DNB/MDS course, I shall follow all the rules and regulations as stipulated by the University and teaching Institutions, as amended from time to time and my candidature is liable to be cancelled in the event of any breach of the same on my part. I accept to undergo the said course leading to the award of Degree of MD/MS/DNB/MDS DNB DERMATOLOGY, on successful completion of the course.

7. It is certified that I am also aware of the fact that my final registration for the course is subject to fulfilling the eligibility criteria of the concerned institution and University.

8. I confirm that I belongs to the same priority under which I have registered and allotted seat.

9. I also certify that the information provided by me is correct and true to the best of my knowledge. It at any stage



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during the course, any information given by me is found to be incorrect I suppressed, I am liable to be withdrawn from MD/MS/MDS and my candidature with University will be terminated accordingly.

Place:

Signature: -Sd-

Date: 05/10/2023

Name: SAKSHI'

9. This Court is in agreement with the order passed by the Learned Single Judge, and keeping in view the Regulations governing the field as Respondent No.5 was not allotted seat in third round of counseling, the Respondent No.5 cannot be held to be disentitled for an allotment of a seat by Respondent No.2.

10. In the considered opinion of this Court no case of interference is made out in the present LPA, and, accordingly, the same stands dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

OCTOBER 19, 2023/aks