



2023:DHC:5330

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 17332/2022 and CM APPL. 2322/2023**

Date of Decision: 27.07.2023

IN THE MATTER OF:

DR. RENUKA BULANI PRASAD,
W/O SH. ANAND PRASAD,
D/O SH. KANHIYALAL BULANI,
R/O A-201, SECOND FLOOR,
SAGAR SADAN APARTMENT,
PLOT NO.113, LP EXTENSION,
PATPARGANJ, EAST DELHI-110092 PETITIONER

Through: Ms.Aditi Gupta, Advocate,
(DHCLSC) with petitioner in person.

Versus

NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES
(NBEMS)
THROUGH NOMINATED COUNSEL,
DABRI- GURGAON ROAD, NEAR DWARKA DISTRICT COURT,
SECTOR-9 ROAD, PSP AREA,
NEW DELHI-110075RESPONDENT NO.1

THE NATIONAL BOARD OF EXAMINATIONS,
THROUGH NOMINATED COUNSEL,
MEDICAL ENCLAVE,
ANSARI NAGAR, MAHATMA GANDHI MARG,
NEW DELHI- 110029RESPONDENT NO.2

THE EXECUTIVE DIRECTOR,
NATIONAL BOARD OF EXAMINATIONS,
THROUGH NOMINATED COUNSEL,
MEDICAL ENCLAVE, ANSARI NAGAR,
MAHATMA GANDHI MARG,
NEW DELHI- 110029RESPONDENT NO.3

THE ASSISTANT DIRECTOR,

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By: PURUSHAINDRA
KUMAR KAURAV

NATIONAL BOARD OF EXAMINATIONS,
THROUGH NOMINATED COUNSEL,
MEDICAL ENCLAVE, ANSARI NAGAR,
MAHATMA GANDHI MARG,
NEW DELHI- 110029

.....RESPONDENT NO.4

UNION OF INDIA,
THROUGH MINISTRY OF HEALTH & FAMILY WELFARE,
GOVT. OF INDIA,
ROOM NO. 348; 'A' WING,
NIRMAN BHAVAN,
NEW DELHI- 110011

.....RESPONDENT NO.5

Through: Mr.Sri Harsha Peechara,
Ms.Harshita Gupta and Mr.Shubham
Kumar Mishra, Advocates for R-1 to
4.
Ms.Monika Arora, CGSC and
Mr.Yash Tyagi, Advocates for R-
5/UOI.

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

1. The petitioner in the instant petition filed under Article 226 of the Constitution of India seeks for directions to the respondents to start the mop-up rounds of counselling and initiate the registration and counseling process for obtaining Post Graduate Diploma qualification for all meritorious candidates including the petitioner. The petitioner also prays for directions to initiate an administrative and departmental inquiry against the erring officials of the respondents for their negligence in carrying out their public duties and responsibilities towards the meritorious candidates. In addition, the petitioner has prayed for compensation for the mental harassment suffered and the litigation expenses incurred.

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2. Learned counsel appearing on behalf of the petitioner submits that the petitioner appeared in the Diplomate of National Board- Post Diploma Centralized Entrance Test (DNB PDCET) Exam, 2022 which was conducted on 24.07.2022 for admission in P.G. Course in Anaesthesiology Branch. She states that the petitioner obtained 90th rank and according to her merit position, she was entitled for allotment of the desired seat in the said course. It is also submitted that after declaration of the result on 24.08.2022, the respondent(s) failed to properly intimate the concerned candidate about the timeline to be followed for her registration in the counselling process. Accordingly, the petitioner could not register herself between the duly scheduled dates from 30.09.2022 to 05.10.2022. Resultantly, she was unable to take part in the counselling process.

3. Learned counsel for the petitioner further submits that despite the petitioner making a telephonic call to the respondent(s) before the commencement of the registration process and filing an application asking for the dates of registration of the counselling process, the respondent(s), instead of furnishing the correct information, misled the petitioner to the extent of intimating that as and when the dates for the commencement of registration would be notified, the same would be communicated to the petitioner. The petitioner, therefore, presumed that as and when the dates would be notified for registration, the petitioner would be duly intimated and accordingly, she would register herself for allotment of the seat. Learned counsel has also placed reliance on two decisions of this court, in the cases of *Dr. Deepika Veerwal v. National Board of Examination and Anr.*¹ and *Dr. Shidore Shital Mhatardeo v. National Board of Examination (NBE)*².

4. Learned counsel appearing on behalf of the respondent(s) by way of

¹ W.P.(C) 5543.2020

² W.P.(C) 7255/2019

filing a counter-affidavit has vehemently opposed the submissions made by the petitioner. At the outset, he submits that before the examination is conducted, an Information Bulletin in the form of a Handbook is duly published for the information of all the concerned candidates. The same is also uploaded on the official website. He submits that the Handbook, which was published as early as 22.04.2022, contained all the necessary information and directions required by the candidates for the admission process.

5. While taking this court through various clauses of the Handbook, learned counsel for the respondent(s) states that as per clause 2.4, the candidates have to register on the website of the National Board of Examinations In Medical Sciences (NBEMS). He also states that if clause 4.1 of the Handbook is perused, the same indicates that the schedule of DNB (Post Diploma) Centralised Merit Based counselling would be available on the NBEMS website. In addition to this, he states that for the Academic Year 2022, a public notice was uploaded on 22.09.2022 on the official website, wherein, the dates for registration of counselling were specifically informed to be from 30.09.2022 to 05.10.2022. He, therefore, states that there has been sufficient compliance of the instructions contained in the Handbook. He further submits that the public notice and the Handbook on the official website provide all the necessary information and any communication apart from this is to be treated as additional information, which cannot be made the basis to raise a complaint by any candidate. Precisely, his stand is that in the instant case, the candidate herself is responsible for not adhering to the schedule uploaded on the official website. He, therefore, states that no interference is called for.

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

record.

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

"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

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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."

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.

PURUSHAINDRA KUMAR KAURAV, J

JULY 27, 2023/MJ