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

+ **W.P.(C) 8596/2024**

DR. MADHUR GAIROLA

..... Petitioner

Through: Mr. Lavkesh Bhambhani, Mr. Aman
Uniyal, Advs with petitioner in
person

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Syed Abdul Haseeb, CGSC for
R-1/UOI
Mr. Waize Ali Noor, Adv.for R-2

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

07.06.2024

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CM APPL. 35194/2024 (exemption)

Exemption is allowed subject to all just exceptions.

CM APPL. 35193/2024

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking the following prayers;

“a. Writ of Mandamus or any other appropriate writ / direction / order, directing the Respondents to allow the Petitioner to participate in the FNB (Fellow National Board) Online Centralized Merit Based Counselling for 2023 Admission Session.

b. Striking down of Clause 2.2 of the Handbook for Centralized Merit Based Counselling for 2023 Admissions Session being issued by the Respondent No.2 for being illegal, arbitrary and violative of Article 14 of the Constitution of India.



- c. Consequently, a writ of declaration that the Petitioner who has secured All India Rank 4 in Fellowship Entrance Test 2023 (Minimal Access Surgery / Bariatric Surgery Course) is eligible to participate in the FNB (Fellow National Board) Online Centralized Merit Based Counselling For 2023 Admission Session.”*
2. Learned counsel for the petitioner submits that on 09.01.2024, applications were invited by the National Board of Examination in Medical Science for Fellowship Entrance Test 2023. Learned counsel submits that as per Clause-2.2 and 3.20, the eligibility criteria were as per the information bulletin, as contained clause 5.1, was that the students should have a degree of M.D./M.S./D.M./M.C.H. Learned counsel for the petitioner further submits that as per information bulletine, the petitioner was eligible as he was having post graduate degree. Learned counsel submits that except this, there was no other eligibility criteria.
 3. Learned counsel for the petitioner submits that the petitioner duly appeared in the examination and was declared successful and secured All India Rank 4 in the Fellowship Course of Minimal Access Surgery. Learned counsel submits that however, on 01.06.2024, handbook for FNB Counseling with respect to admission session – 2023 was published by the respondent No.2. In the said handbook, in clause- 2.2, the candidates who had resigned/discontinued another super specialty course to another institutions were held to be ineligible.
 4. Learned counsel for the petitioner submits that this condition was never in place in the information bulletin and was declared only in the Handbook released after the results were declared in April 2024.



Learned counsel submits that petitioner is being seriously prejudiced by the manner in which the additional eligibility criteria has been incorporated in the handbook for counseling with respect to the admission session of 2023. Learned counsel submits that it is contrary to the principles of natural justice and amounts to changing the goal post. Learned counsel submits that, therefore, this is liable to be struck down.

5. Issue notice.
6. Learned counsels have accepted the notice on behalf of respondents.
7. Learned counsel for the respondent No.2 submits that such question has come up for the consideration before the Apex Court in ***Mabel V. State of Haryana*** 2002 6 SCC 318, The identical clause was held to be valid. Learned counsel submits that this Court also in ***Dr. Nidhi Goyal v. Faculty of Medical Science*** 2015 SCC OnLine Del 8347, has followed the ***Mabel*** (supra). Learned counsel has also submitted that the Courts have also repeatedly inter alia held that if the grant of interim orders amounts to grant of final order, such interim order should be discouraged.
8. Learned counsel for the respondent No.2 states that the National Board of Examination has the power to modify the terms and conditions of the proceedings. Learned counsel also submits that in educational matter there cannot be any legitimate expectations on parts of applicant.
9. In ***Mebel*** (supra), the Apex Court while considering an identical provisions has inter alia held as under;

“4. It will b useful to refer to clause 18 which reads as under:



“18. The candidates already admitted in any medical/dental colleges will not be considered eligible for admission to the course”

5. A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission, and further, such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the authority concerned in framing clause 18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4/5 years, as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under clause 18 in this case will cease after the BDS course for the academic year 2000-01, in which the petitioner has taken admission comes to an end after 5 years. In the light of the above observations the petitioner will be free to seek admission in the course of her choice after the end of the BDS course which commenced in 2000-01.”

10. This was followed by the Division Bench of this in **Dr. Nidhi** (Surpa) in which it was inter alia held as under;

“12. The Supreme Court in Mabel v. State of Haryana (2002) 6 SCC 318 was concerned with a clause which barred a student who had taken admission in any Medical/Dental College from seeking



admission in another course during the period of the course in which the candidate had taken admission. It was held that though such a condition may appear to operate harshly but is meant to ensure that a candidate who has already secured admission should not abandon the studies to seek admission in another course and that such a condition is in public interest for otherwise it would result in the wastage of the seat in the course in which the candidate had taken admission and that further such a change would deprive another eligible candidate from seeking admission to other courses. It was also held that such a condition could not be held unreasonable since the bar was with respect to that university/college only and that too only for the duration of the course in which the admission had been taken.”

11. Learned counsel for the respondent No.2 has also submitted that Doctrine of Legitimate expectations cannot be invoked in educational matters. It is also pertinent to mention that in ***Divyansh J Pathak v. National Board of Examination*** MANU/DE/1095/2020, the Coordinate Bench of this Court inter alia held that there can be no blanket embargo on modification of Information Bulletins with regard to their contents. It is also settled proposition that the principle of promissory estoppel is inapplicable to academic pursuits.
12. In ***Dr Rajat Duhan & Ors vs All India Institute Of Medical Sciences and others***, 2019 SCC OnLine Del 11437 it was inter alia held as under;

“.....Otherwise, it would mean that the admission criteria, once declared, would remain an absolute rule and prospectuses would become unamendable, precluding institutions from aiming at a higher scholastic and academic excellence. Institutions are built over a period of time and if a particular institution has worked hard enough to provide exclusive academic opportunities to the students studying there, with a reasonable expectation that the students would



be able to meet those standards for the courses provided, it could never be that the initial eligibility criteria could never be modified down the line, to make the entry more stringent so as to take the best into its portals. Such a situation cannot be allowed."

13. In ***National Board of examination v. G. Anand Ramaurthy and Ors.***

2006 5 SCC 515, the Supreme Court while discussing the powers of the NBE to modify the Information Bulletins, inter alia observed as follows:

"Our attention was also drawn to the Bulletin of Information of 2003. In view of categorical and explicit disclosures made in the Bulletin, all candidates were made aware that instructions contained in the Information Bulletin including but not limited to examination schedule were liable to changes based on decisions taken by the Board of the petitioner from time to time. In the said Bulletin of Information, candidates are requested to refer to the latest bulletin or corrigendum that may be issued to incorporate these changes. Thus, it is seen that the petitioner has categorically reserved its rights in the Bulletin of Information to change instructions as aforesaid which would encompass and include all instructions relating to schedule of examinations. It is also mentioned in the Bulletin in no uncertain terms that the instructions contained in the Bulletin including the schedule of examinations were liable to changes based on the decisions taken by the Governing Body of the petitioner from time to time.

8. Likewise, the bare perusal of clause 4 of the Bulletin of Information, June 2006, it manifest that the petitioner has reserved right to change the guidelines/practice and further it has been made absolutely clear that the candidate shall be governed by the Bulletin of Information for the session in which the candidate appears."

(emphasis added)

14. Therefore, it seems to be settled proposition that the NBE not only has the power to change the exam schedule, but it can also alter the other



contents of the Information Bulletin including guidelines and practice as the Governing Body may find necessary. Therefore, the reliance of respondent No.2, on the Information Bulletin issued before the conduct of the exams cannot be sustained, as the respondent No.2 has the power to modify its contents.

15. Thus, there is no merit in the contention of the petitioner. NBE/respondent No. 2 is fully empowered to vary the terms and contents of the Information Bulletins that are issued by it from time to time. As stated earlier, the doctrines of promissory estoppel and legitimate expectation are inapplicable to educational/academic matters. Thus, this Court cannot interfere with as this is the decision of the very body that has been created to regulate the standard of post-graduate medical education and is a decision by the experts in the field. It is also pertinent to mention that there is a complete absence of malafide in the decision of respondent No.2

16. Therefore, in view of the discussion, there is no substance in the present petition. Hence, dismissed.

DINESH KUMAR SHARMA, J
(VACATION JUDGE)

JUNE 07, 2024
Pallavi