



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 7436/2024

(KALYANI VIJAY CHAKRAWAR **VERSUS** ALL INDIA INSTITUTE OF MEDICAL SCIENCES,
NEW DELHI & OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri A.A. Kathane, counsel for the petitioner.
Shri N.S. Deshpande, Deputy Solicitor General of India for the respondents.

CORAM : NITIN W. SAMBRE AND VRUSHALI V. JOSHI, JJ.

DATE : JANUARY 02, 2025

P. C.

Heard.

2. Leave is granted to amend so as to add AIIMS, Nagpur as a party respondent no.3. We further direct Shri N.S. Deshpande, learned Deputy Solicitor General of India to waive service of notice for newly added respondent.

3. The prayers in the petition are as under :

"I. Allow the present petition and quash and set aside Conditions 3.3.3(1) and 3.2.2(ii) of INI-CET Counselling rules; AND

II. Direct the respondents to allow the petitioner to retain her allotment of AIIMS Kalyani in General Medicine in Unreserved category allotted to her in 1st Round of Counselling of INI-CET dated 19.12.2024; OR

III. Direct the respondents to allow the petitioner to participate in the 2nd round and any other additional rounds of INI-CET Counselling for the January 2023 session conducted by the respondents; AND

IV. Grant interim reliefs in terms of prayer clause I and II; AND

V. Grant ex-parte ad-interim reliefs in terms of prayer clause I and II; AND

VI. Grant such other relief(s) that this Hon'ble Court may deem just and necessary in the facts and circumstances of the case, in the interest of justice and equity”.

4. The prayer is restricted to the prayer clause -II and III as the petitioner has given-up the claim *qua* the challenge to the conditions No.3.2.2(i) and 3.2.2(ii) of INI-CET Counselling Rules.

5. After completing MBBS, the petitioner got admission in Radio Diagnostics Branch in respondent no.3-All India Institute of Medical Sciences, Nagpur having cleared INI-CET at the relevant time.

6. The petitioner since was aspirant of getting admission in the Medicine, again appeared for the following session of INI-CET conducted by AIIMS, Delhi in accordance with the prescribed procedure. In the qualifying examination, the petitioner secured All India Ranking of 119 and calendar for the admission to P.G. Medical Courses to be adopted is as under :

“Schedule for 1st Round of Online Seat Allocation (including Mock Round)

1	<i>Exercising of Choices (Institute and subject/specialty) for Mock Round</i>	<i>From : 05.12.2024 (Thursday) to 07.12.2024 upto 05.00 pm (Saturday)</i>
2	<i>Announcement of Seat allocation of Mock of 1st Round</i>	<i>10.12.2024 (Tuesday)</i>
3	<i>Exercising of Choices (Institute and subject /specialty) for First Round</i>	<i>From : 10.12.2024 (Tuesday) to 13.12.2024 upto 05:00 pm</i>

4	<i>Announcement of seat allocation of 1st Round</i>	<i>19.12.2024 (Thursday)</i>
5	<i>Online Acceptance of allocated seat</i>	<i>*From : 20.12.2024, 11.00 am (Friday) to 24.12.2024 upto 05:00 pm (Tuesday)</i>
6	<i>Reporting & submission of Document/Security Deposit</i>	<i>*From: 20.12.2024, 11.00 am (Friday) to 24.12.2024 up to 05.00 pm (Tuesday)</i>

Schedule for 2nd Round of Online Seat Allocation

1	<i>Announcement of seat allocation of 2nd Round</i>	<i>03.01.2025 (Friday)</i>
2	<i>Online Acceptance of allocated seat</i>	<i>*From : 04.01.2025, 11.00 am (Saturday) to 09.01.2025 upto 05.00 pm (Thursday).</i>
3	<i>Reporting & Submission of Documents / Security Deposit</i>	<i>*From : 04.01.2025, 11.00 am (Saturday) to 09.01.2025 up to 05.00 pm (Thursday)</i>

**Sundays & Gazetted Holidays will be holiday.*

The link for the portal will be activated only for eligible candidates on "MyPage" accessible by logging in using the credentials that have been used for filing completion of application form and other process related to INI-CET for admission to PG courses for January 2025 session in www.aiimsexams.ac.in

please visit the website www.aiimsexams.ac.in all Important Notices/Corrigendum/Addendum/Updates etc. will only be uploaded on the website."

7. It appears that considering All India Ranking of the petitioner which is 119 in the category of Economically Weaker Section (EWS), the petitioner was allotted All India Institute of Medical Sciences, Kalyani, West Bengal.

Such allotment of institute was during the very first round which was communicated and notified by evening of 19.12.2024 to the petitioner.

8. The petitioner in view of Clause 3 of the Admission Rules referred above, was required to report in person by 5.00 p.m. on 24.12.2024 along with original documents or self attested photo copies of certificates with demand draft of Rs.3,00,000/-, which shall be refunded on the original certificates being deposited as security deposit.

9. It appears that the petitioner who was already perusing her Post Graduate Course at AIIMS Nagpur is respondent no.3 in the branch of Radio Diagnostic, requested the said institution for return of original documents on 20.12.2024. The petitioner's persuasion with her college viz. AIIMS at Nagpur for return of original document was not processed, as within such short time by cancelling her admission in Radio Diagnostics Branch, the original documents could not have been returned, the petitioner started making arrangements for the deposit of demand draft of Rs.3,00,000/- as a security deposit and also kept the self attested copies of all requisite documents ready.

10. It is informed that the petitioner since belonging to EWS category and completely dependent on her mother, having lost her father during Covid, was pursuing with respondent no.3 AIIMS, Nagpur so as to get original documents returned as it was difficult for her to arrange an amount of Rs.3,00,000/- in addition to the amount of Rs.5,00,000/- to be deposited with AIIMS, Nagpur, towards charges for cancelation of admission.

11. The aforesaid unsuccessful attempt has led the petitioner to draw a demand draft of Rs.3,00,000/- in favour of respondent no.1 AIIMS Main Grant Account on 23.12.2024. After making arrangement of the aforesaid amount of Rs.3,00,000/-, which was in addition to the amount of Rs.5,00,000/- to be arranged towards

the cancellation of admission with AIIMS Nagpur, the petitioner has booked on 23.12.2024 air ticket for traveling to Kolkata so as to report to AIIMS, Kalyani for confirming her admission to P.G. General Medicine. When she was about to board flight on 24.12.2024, however, for the reasons beyond her control, she has missed the said flight. As a sequel of which, she established a communication with the office of the respondent No.1 with a request to permit her to deposit the demand draft through authorized representative instead of her visiting in-person thereby carving out an exception to provision of Rule 3.2.2 which mandates a candidate to report in-person.

12. It appears that the petitioner received a message through whatsapp from the respondent No.1 on 24.12.2024 during afternoon viz. post one O'clock, whereby it was communicated to her that she can send the authorized person with the said demand draft along with the photo copies of the documents. The petitioner was armed with all the photo copies of the requisite documents which were duly self attested, however another message was received by the petitioner by which she was informed that she has to report in-person which led to she having lost her claim to the seat in question though a meritorious candidate. The same has prompted the petitioner to approach before this Court seeking relief.

13. This Court on 27.12.2024 having regard to meritorious status of the petitioner, her social and family condition caused notice in the matter and the learned Deputy Solicitor General of India has accepted the notice on behalf of the respondents.

The matter was thereafter posted on 31.12.2024. The learned Deputy Solicitor General of India sought an adjournment as he had not received instructions in the matter and this is how we are required to take up the petition today upon mentioning.

14. The learned Counsel for the petitioner has made following submissions :

a] That the petitioner, belonging to Economically Weaker Section (EWS) securing 119 All India Rank can be inferred from record.

b] That pursuant to having secured 119 All India Rank in the first round of Admission, she was allotted AIIMS, Kalyani, that too in the subject of General Medicine is also not a disputed fact.

15. The petitioner thereafter, approached the Institution viz AIIMS, Nagpur for cancellation of her admission and accordingly, has drawn a demand draft of Rs.5,00,000/- immediately from Punjab National Bank, Pusad, District Yavatmal, payable to the Executive Director, AIIMS, Nagpur for an amount of Rs.5,00,000/- on 20.12.2024. The said amount was required to be deposited mandatorily by the petitioner as the procedure in the matter of cancellation so as to have admission in the choice of subject contemplates such deposit towards the cancellation charge. Accordingly, the petitioner along with the said demand draft of Rs.5,00,000/- approached the respondent No.3 AIIMS, Nagpur with a request for cancellation of admission and return of original documents. The petitioner was orally informed that it is not possible to cancel the admission of the petitioner at such a short notice and handing over of original documents which led the petitioner being forced to exercise other option as is provided in clause 3.2.2(i). Rule 3 of the relevant Rules for governing the

procedure to be followed by the candidate which have been allotted PG course in the first round of seat allocation reads thus:

“3. PROCEDURE TO BE FOLLOWED BY CANDIDATES WHO HAVE BEEN ALLOTTED PG COURSE/SUBJECT IN THE 1ST ROUND OF SEAT ALLOCATION

3.1. All candidates who have been allotted a seat (Institute & Subject/Specialty) in the 1st Round of Seat Allocation are required to login through the portal by visiting at the website www.aiimsexams.ac.in and actively exercise one of the following options by 5.00 PM on 24th December, 2024. Failure to select any of the option as below will lead to forfeiture of the allocated Institute & Subject/Specialty and the candidate will become ineligible to participate in 2nd Round: -

Option 1. ACCEPT allotted seat and DO NOT WISH TO PARTICIPATE in further rounds of Seat Allocation.

Option 2. ACCEPT allotted seat and WANT TO PARTICIPATE in 2nd ROUND of Seat Allocation

[If You choose Option-2 and participate in 2nd Round and you are allocated another seat (better choice) as per your choice exercised in 01st round, then you will have to accept the seat allocated during 2nd Round. The seat allocated in first round shall be considered vacated and the same shall be automatically allocated to other candidates in order of merit. Failure to join seat allotted in 1st round or upgraded seat shall lead to impositions of penalty of Rs. 3.00 Lakh.

3.1.1. If a candidate upgrades his/her seat in further round of online seat allocation (including Open/Spot/Stray Round) of INICET January 2025 Session, he/she is required to complete the tenure at the upgraded Institute. In this case previous allocation/joining will not be considered for tenure/experience.

3.2. Instruction for each option is as follows:

3.2.1. Option 1: If the Option 1 i.e. ACCEPT allotted Seat and DO NOT WISH TO PARTICIPATE in further rounds of Seat Allocation is selected then,

i. It must be noted that by exercising this choice the candidate is OPTING NOT TO PARTICIPATE IN FURTHER ROUNDS OF SEAT ALLOCATION.

ii. The candidate will have to report at Institute (as per point 9, 10 of information brochure for 1st Round of Seat Allocation dated 28.11.2024) by 5.00 PM on 24th December, 2024 (except Holiday and Sunday) with the Offer Letter (downloaded from the MyPage after login at www.aiimsexams.ac.in), Seat Allocation Letter/Slip from Portal and deposit original certificates along with one set of self-attested photocopies of all certificate OR self-attested photocopies of certificates with a Demand Draft (DD) of Rs. 3 Lakhs only (Rupees Three Lakhs only) in the name of the "AIIMS MAIN GRANT ACCOUNT". The DD will be refunded/returned when original certificates are deposited within five days.

iii. If original certificates are not deposited, these will have to be submitted within five days otherwise admission will be cancelled, the deposited money will be forfeited, and the candidate will not be eligible for any further participation in Seat Allocation.

iv. In the event that a candidate who has exercised this option but does not report in person by 5.00PM on 24th December, 2024, the admission will stand cancelled and he/she shall become ineligible for participating in all further rounds of Seat Allocation. No further correspondence shall be entertained in this regard. However, these candidates can participate in the Open Round of Seat Allocation, if any.

3.2.2. Option 2: If the option of "ACCEPT allotted Seat and WANT TO PARTICIPATE in 2nd ROUND of Seat Allocation" is selected then

i. The candidate will have report to the Institute (as per point 9,10 of information brochure for 1st Round of Seat Allocation dated 28.11.2024) by 5.00 PM on 24th December, 2024(except Holiday and Sunday) with the Offer Letter (downloaded from the "MyPage" after login at www.aiimsexams.ac.in), Seat Allocation Letter/ Slip from online Portal and deposit original certificates along with one set of self-attested photocopies of all certificate OR self-attested photocopies of certificates with a Demand Draft (DD) of Rs. 3 Lakhs only (Rupees Three Lakhs only) in the name of the "AIIMS MAIN GRANT ACCOUNT". The DD will be refunded when original certificates are deposited.

ii. In the event of a candidate who has exercised this option but does not report in-person (as per Information Brochure) by 5.00 PM on 24th December, 2024 (except Holiday and Sunday) the offer of allocated seat will stand cancelled and he/she shall become ineligible for participating in all further rounds of Seat Allocation. No further correspondence shall be entertained in this regard. However, these candidates can participate in the Open Round of Seat Allocation, if any.

iii. The candidate shall be eligible for the 2nd Round of Seat Allocation subject to terms and conditions mentioned above in point no.3.2.2.(ii).

iv. If in the 2nd Round of seat allocation, a candidate who has chosen option 2 is allocated another seat (better/higher choice seat) as per choice made, then the candidate will have to accept the seat allocated in 2nd Round and the seat allocated in the 1st shall stand released automatically. Such candidates cannot retain seat allotted in 1st Round and failure to join the seat allocated in 2nd Round shall lead to imposition of penalty of Rs. 3 lakhs.

Note: If any candidate who has been allocated a seat in the 1st Round of Seat Allocation does not respond in any of the above manner, his/her seat allocation shall stand cancelled and he/she shall be ineligible for 2nd Round of Seat Allocation.”

16. The petitioner since was financially not sound took substantial time for arranging an amount of Rs.3,00,000/- to be deposited with the respondent No.2 towards the security deposit for confirming admission in the allotted subject and accordingly she has not only drawn a demand draft of Rs.3,00,000/- as required under the aforesaid Rule but has also booked air ticket on 23.12.2024 which is reflected at Annexure-5 with an intention to travel Kolkata so as to confirm her admission in the allotted subject at AIIMS, Kalyani, West Bengal.

17. It is claimed that the petitioner while in an attempt to catch her flight, for reasons beyond her control, missed the same

which led to the communication being issued to the respondent No.1 that she may be permitted to submit the demand draft along with self attested photo copies of relevant documents through authorized person which was in fact responded by the respondent No.1 in a positive manner. However, subsequently it appears that the respondent No.1 has not entertained the request which has led to injustice being caused to the petitioner.

18. According to the learned counsel for the petitioner the procedure as has been contemplated under Rule 3 of the Rules, in fact in toto has been followed by the petitioner as she has shown her bonafides not only by drawing demand draft of Rs.5,00,000/- on 20.12.2024 thereby seeking cancellation of admission with the respondent No.3 but also the attempt on the part of the petitioner to collect the original documents from the respondent No.3 so as to enable her to submit the same to the respondent No.2- Institution as well as the demand draft of Rs.3,00,000/- drawn on 23.12.2024 along with an air travel ticket on 23.12.2024 from Nagpur to Kokata so as to report to show her bonafides to the respondent no.2 for confirming her admission.

19. In such an eventuality, it is claimed that the circumstances which led to the petitioner not being personally present before the respondent No.2 for confirmation of her admission were beyond her control and as such, she cannot be penalized being a meritorious candidate belonging to economically weaker section.

20. As against above, the learned Deputy Solicitor General of India appearing for the respondents would make two fold submissions :

a] That the Rules contemplate that a candidate who is selected must report in person and in such an eventuality, the petitioner tried to report to respondent No.2 – Institution so as to secure her admission through authorized person thereby submitting the demand draft and photo copies of the documents however, the request was rejected by stating that it cannot be accepted as the respondents shall be conducting themselves contrary to the Rules.

b] Mr. Deshpande further contends that 500 and odd students missed the first round and in case if the petitioner is shown indulgence by the respondents, similar criteria will be required to be adopted for another 500 and odd students whose cases are also required to be considered.

As such, he would claim that the petition is liable to be dismissed.

21. We have considered the rival claim.

22. From the record it is apparent that the petitioner's All India Ranking is 119 from economically weaker section category. In the first round of allotment, she was allotted AIIMS Kalyani i.e. respondent No.2 in the subject of General Medicine. Pursuant to the mandate provided under the Rules, in case if she wanted to participate in the second round of seat allocation, she is required to conduct herself in accordance with Rule 3.2.2 referred above. It is not in dispute that the petitioner has exercised option No.2 of the aforesaid option available to her. In such an eventuality, the petitioner was required to report to the respondent no.2 Institute as per point Nos.9 and 10 of the Information Brochure after first round of seat allocation by 5.00 p.m. on 24.12.2024 the petitioner was required to report in person with the offer letter downloaded

from the website of AIIMS, the seat allocation letter from online portal and original certificates along with one set of self attested photocopies of all the certificates and in case, if the original documents are not available then the self attested photocopies of documents with the demand draft of Rs.3,00,000/- in the name of AIIMS Main Grant Account, which was to be refunded when the original certificates were deposited had to be kept ready. Clause 2 of Rule 3.2.2 contemplates the candidate who has exercised the aforesaid option and has failed to report in person by 24.12.2024 except holidays and Sunday. The said clause further provides that the offer of allotted seat was to be cancelled and in such an eventuality, the candidate becomes ineligible for participating in all further rounds of the said allocation. It is made clear in the said Rule that no further correspondence will be entertained in this regard, however, such candidate is given option in the open round in seat allocation, if any.

23. In the backdrop of above referred rules, if we consider the conduct of the petitioner as to whether she can be penalized for having failed to report in person on 24.12.2024, we are required to be sensitive to the mitigating circumstances and factual matrix of the case in hand. It is borne out of record that the petitioner was admitted to Radio Diagnostic Course in AIIMS Nagpur in earlier Academic year. The Rules contemplate that a candidate who intends to change the branch may again appear for the aforesaid examination and accordingly, the petitioner after having secured All India Ranking 119 from Economically Weaker Section Category, in All India quota was allotted a seat in the subject of General Medicine with the respondent no.2 College.

24. It was incumbent on the part of the petitioner pursuant to Rule 3.2.2 to submit original documents which she was required to collect from the respondent No.3 – Institute by cancelling her admission. The process of cancellation contemplates deposit of mandatory fees of Rs.5,00,000/- for which she has already made an arrangement by drawing a demand draft of Rs.5,00,000/- on 20.12.2024 from Punjab National Bank, Pusad, District Yavatmal. The place from where the demand draft is drawn is located almost around 250 Kilometers from the city of Nagpur where the petitioner was studying. Such arrangement was made by the petitioner on 20.12.2024 after she was informed in the evening of 19.12.2024 about her selection with the respondent No.2 college in the General Medicine branch.

25. The petitioner thereafter, appears to have approached the respondent no.3 college seeking not only cancellation by depositing the aforesaid demand draft but also sought return of documents. Having met the respondent No.3 on 21.12.2024, she was orally informed that her request cannot be processed, with such jet speed and accordingly, the petitioner was required to wait till 23.12.2024 as 22.12.2024 was Sunday and a non-working day. The petitioner on 23.12.2024 accordingly has drawn a demand draft of Rs.3,00,000/- again from her native place i.e. Pusad and has also booked an air ticket on same day for travel from Nagpur to Kolkata so as to report for her admission in person in the respondent no.2 Institute.

26. The petitioner, who was studying in respondent no.3 college is residing at the Campus of AIIMS i.e. respondent No.3. Considering the location of said institute which is on the outskirts of the main city, it is difficult to commute from the said place to the

airport for want of public transport or by any other means. The petitioner is informed to have already booked a cab however said booking was cancelled by the agency at the eleventh hour and as such she was required to rush to the airport after facing such cancellation which facts are duly narrated by her in para 13 and 14 of the petition.

27. Though the petitioner somehow managed to reach to the airport, however, since she reported late in point of time, she missed her flight to Kolkata. If someone intends to reach Kolkata by road or by rail from Nagpur, it require almost twenty four hours. As an alternative, the petitioner entered into the mobile communication with the representative of the respondent no.1 in the afternoon on 24.12.2024 as she had no other option to travel to Kolkata since the Nagpur Airport remain closed for operational reasons from 10 am to 6 pm. In response to the petitioner's message as to whether she can submit the self-attested documents and demand draft afterwards, she received the message on her WhatsApp after 1 pm on the very same day that she can do so. However, it appears that such accommodation offered to the petitioner was subsequently withdrawn which led to the cancellation of the admission of the petitioner.

28. The bona fides of the petitioner about her communications to ensure her admission to the respondent no.2-College can be inferred in view of she having drawn demand draft of Rs.5,00,000/-, her pursuit to get her original documents in return, which effort was not materialized. She had also prepared to submit the amount of Rs.3,00,000/- through a demand draft which was drawn on 23.12.2024 from Pusad which is her native place. The air travel ticket to Kolkata so as to report on 24.12.2024 by afternoon

sufficiently led to the aforesaid inference of she having established her bona fides.

29. The petitioner as such has made all possible efforts to ensure her admission in the respondent-Medical College in General Medicine branch. The petitioner was made to understand by the respondent no.1 as can be inferred from WhatsApp message that her admission will be processed based on the demand draft to be submitted by the authorized person alongwith the self-attested documents. We fail to understand as to what prompted the respondent no.1 not to adhere to such request of the petitioner though she was assured so. The petitioner was not asking any undue favour from the respondent no.1 as this Court is required to be sensitive to the fact that it was well within the knowledge of the respondents that the petitioner was pursuing her studies in Radio-Diagnostics which also function under the aegis of the respondent no.1. As such it cannot be said that the petitioner intentionally created circumstances which led to her failure to report for admission on 24.12.2024 to the respondent-Institute. Rather the short period to make arrangements viz. Cancellation of admission, collection of original documents, drawing of demand draft of Rs.3,00,000/- towards security deposit and making travel arrangements to Kolkata from Nagpur has consumed more than sufficient time.

30. We are required to be sensitive to the fact that the petitioner is dependent on her mother after the demise of her father. She belongs to economically weaker section. In spite of aforesaid social condition of the petitioner, she has secured All India Ranking 119 from EWS category and she is not seeking any backdoor entry. However, circumstances narrated above which in

our opinion were beyond her control warrants us to infer that the petitioner cannot be said to be debarred from participating in the second round and all subsequent rounds for admission to Post Graduate course on her merit. The aforesaid exception to the admission rule is carved out having regard to the factual matrix narrated above and the conduct of the respondent no.1 of initially willing to accommodate the petitioner's request for submission of demand draft and certified documents through authorized person.

31. We are sensitive to the fact that we are not supposed to interfere in academic discipline and for the said reason we are not directing the respondents to consider the claim of the petitioner for the first round for which she was otherwise selected. The petitioner in case is permitted to participate in the second round, same shall be based on the meritorious condition and in any case such opportunity to the petitioner will not be causing any prejudice to the other meritorious candidates.

32. In this background, we allow the writ petition with a direction to the respondents to allow the petitioner to participate in the second round for the Post Graduate course to be conducted from 03.01.2025. The writ petition stands allowed in aforesaid terms. No costs.

(VRUSHALI V. JOSHI, J.)

(NITIN W. SAMBRE, J.)