
(2017) 04 J&K CK 0018
In the Jammu And Kashmir High Court
Case No : 367 of 2017 with MP no 01 of 2017

Dr. Mujtaba Waris & ors.

APPELLANT

Vs

State of J&K & ors.

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

[Post Graduate Medical Education Regulations, 2000](#), [Regulation 9](#)

Citation : 2017 0 AIR(J&K) 98

Hon'ble Judges : Ali Mohammad Magrey

Bench : SINGLE BENCH

Advocate : M. Y. Bhat, Jehangir Iqbal Ganai, M. A. Baigh

Final Decision : Dismissed

Judgement

1. The grievance projected by the petitioners in this petition characterizes the phrase, "digging oneself into a hole".

2. The three petitioners, who are young medical doctors, aspired Postgraduation studies and, in fact, had succeeded in securing admissions during

the year 2016. Petitioner no.1 had got admission in the Speciality of General Surgery in Sher-i-Kashmir Institute of Medical Sciences, Soura,

Srinagar (SKIMS); petitioner no.2 had been admitted in the Department of Orthopaedics in Government Medical College, Srinagar; whereas

petitioner no.3 had been admitted in the department of Anaesthesiology, Government Medical College, Srinagar. However, all the three

abandoned their respective courses of study midway after having taken the admissions. Petitioner no.1 abandoned the course with effect from

09.10.2016. His admission, at his request, was cancelled in terms of order dated 19.12.2016 and his Caution Money of Rs.50,000/- deposited by

him at the time of admission was confiscated. The other two petitioners resigned from their respective courses by written applications made by them with effect from 22.06.2016 and 08.08.2016, respectively.

3. Thereafter, the petitioners applied for, and competed in the National Eligibility-cum-Entrance Test (Post Graduate) for admission to MD/MS/

Post Graduate Diploma Courses 2017 (for short, NEET-PG 2017) conducted by the National Board of Examinations (NBE). The petitioners,

respectively, secured 69th, 30th and 37th rank at State level and 7801th, 3564th and 4482nd rank at the national level in the aforesaid

Examination.

4. Consequent to the declaration of results of NEET-PG 2017 by the NBE, it is averred in the petition that the J&K Board of Professional

Entrance Examinations (BOPEE) scheduled counseling of the candidates for allocation of seats/disciplines and in respect of Kashmir Division it

was held from 13.03.2017 to 18.03.2017. In-between, the BOPEE issued public notice under no.009-BOPEE of 2017 dated 14.03.2017 to the

effect that it had received representations from some NEET-2017 candidates complaining that some competing candidates were already

undergoing Post-graduation in different colleges or had resigned from such courses after seeking admission from the concerned Colleges, and that

they had sought disqualification of such candidates from the current process of selection for admission to MD/MS/PG Diploma/MDS in

accordance with SRO 8 of 2005 read with the conditions contained in the e-Information Brochure. The BOPEE notified the names of 26 such

candidates in annexure to the above notice and required them to submit their status within 03 days positively, i.e., upto 17.03.2017.

5. The petitioners challenged the above notice dated 14.03.2014 in OWP no.302/2017 which came up before the Court on 17.03.2017 and the

Court passed an ad interim direction that the Board shall allow the petitioners to take part in the counseling subject to further orders from the

Court. That petition is still pending decision.

6. The petitioners state that, pursuant to the above Court order, they appeared in the counseling. However, the BOPEE, thereafter, issued

notification no.015-BOPEE of 2017 dated 19.03.2017 whereby it said that the petitioners were not eligible in terms of SRO 8 of 2005 read with

the condition laid down in the Information Brochure of 2016. The petitioners were asked to file representation to respondent no.3 within three

days, i.e., upto 22.03.2017. It is pertinent to mention here that in the aforesaid notice the name of petitioner no.1 was shown at serial no.3, and

against his name, the following remarks were recorded in the notice:

The candidate, who was admitted to SMGS, Jammu vide Notification No.14-BOPEE of 2016 dated 29.03.2016 was subsequently

upgraded for MS Surgery vide Notification No.30- BOPEE of 2016 dated 20.05.2016 in SKIMS and his admission was cancelled

by SKIMS after joining the Institution in view of his resignation submitted by him on 19.12.2016 after he had appeared in NEET

Examination, 2017, therefore, not eligible during 2017.

As against the name of petitioner no.2, which figured at serial no.01 of the above notice, the following remarks were recorded:

Candidate was admitted to the GMC, Srinagar in the year 2016 under MS Orthopedics vide Notification No.13-BOPEE of 2016

dated 28.03.2016, but left the course after last date of admission for the Session 2016 viz. after 31st May, 2016, as such not eligible

during 2017.

Similarly, as against the name of petitioner no.3, figuring at serial no.02 of the notice, the following remarks were recorded:

Was admitted under Notification No.32-BOPEE of 2016 dated 26.05.2016 in GMC, Srinagar with discipline as MD, Anaesthesia

but left the College after last date of admission viz. after 31.05.2016, as such not eligible during 2017.

7. Notwithstanding the above, the petitioners by the aforesaid notice, as mentioned above, were asked to make representations to the BOPEE

with documentary evidence in support of their claim within three days, i.e., upto 22.03.2017. The petitioners state that they made the requisite

representation, but the BOPEE in terms of its notification no.018-BOPEE of 2017 dated 21.03.2017 rejected the same and notified that they shall

not be eligible for admission in the medical colleges for the current selection process. This notice, however, was subsequently withdrawn ab initio

vide notification no.019-BOPEE of 2017 dated 22.03.2017. Simultaneously, the BOPEE issued public notice no.013-BOPEE of 2017 dated

22.03.2017 reiterating that the candidates who are pursuing MD/MS/PG Diploma & MDS Courses or have left the course midway after

admission are not eligible for admission in 2017 in pursuance of SRO 8 of 2005 read with conditions contained in the information Brochure and

also in condition 4.9 of NEET Information Brochure 2016. The notice impressed upon all the competing candidates to make voluntary disclosure

with regard to pursuing of PG courses or having left the same midway after admission as otherwise such candidates as conceal the information shall

be liable for action in terms of Rule 12 of SRO 158 dated 12.07.1995. The notice required the candidates to inform the Board about their status in

their own interest and the selected candidates were also required to furnish affidavits to the effect that they were not pursuing any PG course nor

had left it midway after admission.

8. The petitioners have filed this fresh writ petition with the following prayers:

It is therefore prayed that by issuance of a writ of certiorari all the three notifications bearing No.009-BOPEE of 2017 dated

14.03.2017, No.009-BOPEE of 2017 dated 19.03.2017 and notification no.013-BOPEE of 2017 dated 22.03.2017 be quashed

and respondents be also directed counseling of the petitioners shall remain stand and consequently grant them the seats in view of

their merits and rank attained in result notification dated 25.02.2017.

The petitioners be allowed to join the Post Graduate Course in the stream they are selected in view of their merit and rank and

respondents be directed to allow the petitioners to complete the selection process and join the course as same shall serve the interests

of justice.

That by issuance of a writ of declaration the impugned SRO No.08 of 2005 dated 18.01.2005 be declared to be ultra vires to the

Constitution and be quashed being arbitrary and unreasonable and without authority;

Or in the alternative the said SRO be declared to be inapplicable to the petitioner as same shall be in the interest of justice.

Any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case may also be passed in

favour of the petitioners against the respondents in the interest of justice and

equity.

9. The above reliefs are sought by the petitioners on the grounds that NEET has been introduced only to maintain uniformity in standard throughout

the country and that the admission to all the colleges in the country in terms of NEET are governed by the rules and regulations of MCI, particularly

the Post Graduate Medical Education Regulations of 2000 (for short, the Regulations of 2000). The case of the petitioners is that the State has no

power or authority to frame its own criteria or to apply its own notifications as well as the conditions laid down in the Brochure to the selections

made in terms of NEET. According to the petitioners, the SRO 08 of 2005 is not even applicable to the NEET and, even if the same was

applicable, the petitioners are eligible in terms of the said SRO as well. It is further pleaded that the State Rules are not applicable to the NEET

and that the interpretation of law placed by the respondents is arbitrary and their action is founded on their mala fide intentions and extraneous

considerations. It is also pleaded by the petitioners that SRO 08 of 2005 is also not applicable to them as the same bars such candidates who are

undergoing PG course, but the petitioners have left/resigned the PG courses some 6 months back and one of the petitioner has paid heavy

damages on that count. Therefore, further punishment cannot be imposed upon the petitioners.

10. The petitioners have further stated that the respondents have been allowing candidates to join new streams in subsequent selections when

candidates have been already undergoing PG courses. Instances in this connection are cited firstly of one Dr. Jawad Nazir Wani. It is stated that he

appeared in 2015 JK CET and secured 32nd rank under Roll no.110724. He was selected for PG in Internal Medicine in SKIMS Soura. Next

year, in 2016, he again appeared in the Entrance Examination and secured 33rd rank under Roll no.110130. He was selected for undergoing MD

in Paediatrics in GMC, Srinagar, and he abandoned the earlier course. Similarly, one Dr. Jasima Javeed had secured 171st rank in 2015 Entrance

Examination under Roll no.211210. She joined the stream of General Surgery at GMC, Srinagar. Next year, in 2016, she again participated in the

Entrance Examination under Roll no.211410 and scored 138th rank. She was admitted to MD Anaesthesia course in SKIMS Soura. Again, one

Dr. Feroz Ahmad Bandy secured 174th rank in 2015 Entrance Examination under Roll no.211509. He is stated to have joined the General

Surgery Department at GMC, Srinagar. Next year, in 2016, he is stated to have again participated in the Entrance Examination under Roll

no.211401 and scored 88th rank. Pursuant thereto, he is said to have joined MD Medicine in GMC, Srinagar. In this connection, when query was

raised by the Principal, GMC, Srinagar, the BOPEE communicated vide its letter dated 11.04.2016 that the selection of the candidate was in

conformity with MCI and other relevant Rules.

11. It is also stated that some other persons, who were undergoing PG in other streams applied for NEET-PG of 2017, but they have not been

declared ineligible and have been allowed to participate in the selection process without any hindrance. In this connection, case of one Dr. Javaid

Iqbal having Roll no.110664 in 2016 is quoted as an example. He is stated to have been undergoing MS General Surgery in GMC and is now having

205th rank in NEET-PG of 2017. Similarly, one Dr. Zakir Ahmad Bhat having Roll no.211215 had appeared in Entrance Examination in 2016.

He secured 371st rank and is undergoing PG in Surgery in SKIMS. He appeared in NEET-PG 2017 and secured rank 688th. It is pleaded that

the petitioners have been singled out and discriminated.

12. It is next pleaded that the Brochure of 2016 is not based on any reasonable classification and deserves to be quashed. Similarly, it is the case

of the petitioner that the impugned notifications as well as the SRO 8 of 2005 deserve to be quashed, being unconstitutional.

13. It may be observed here that the learned counsel for the petitioners pressed hard for hearing of the case on emergent basis, for, according to

him since the counseling and admission process has to be concluded by the BOPEE within a scheduled time, the petitioners are likely to suffer

irreparable loss in case their petition remains pending and is not decided immediately. Faced with the urgency expressed by the learned counsel for

the petitioners, Mr. Jehangir Iqbal Ganai, learned Advocate General, assisted by Mr. M. A. Baigh, learned AAG, opted not to file any returns and,

instead expressed his readiness to argue the case on legal issues involved, which course was readily accepted by Mr. M. Y. Bhat, learned counsel

for the petitioners.

14. The matter was accordingly heard at admission stage for final disposal without any written objections from the respondents on the legal issues, of course, with reference to the material placed by the petitioners on record of the writ petition.

15. At the hearing, the first argument of Mr. M. Y. Bhat, learned counsel for the petitioners, which, in fact, is the main point raised by the

petitioners, of course, with different limbs, was that in terms of Regulation 9 of the Regulations of 2000, a candidate who competes in NEET has a

right to be considered for admission to the Post Graduation Course on the basis of his ranking/merit obtained in NEET and that the State / BOPEE

has no power or authority to frame its own criteria or to apply its own notifications and conditions laid down in the previous year's Brochure to the

selections made by NBE. The other limb of this argument, as put forward by Mr. Bhat, is that in terms of the Information Bulletin for NEET 2017,

once the NBE declares a candidate eligible and qualified in the NEET, there is no scope for JKBOPEE to declare him ineligible, that too, when the

candidate has successfully participated in the selection process. To buttress his argument that the State has no authority to enact any law, muchless

by executive instructions, concerning the procedure to be followed for admission to PG courses, Mr. Bhat cited and relied upon the decision of the

Supreme Court in *State of UP v. Dinesh Singh Chauhan*, 2016 STPL (LE) 52474 SC : 2016 AIR (SCW) 3841 : 2016(8) Scale 16 : AIR 2016

SC 3841. In support of his argument that the petitioners have a right to pursue a course of their choice, Mr. Bhat relied upon and cited the

judgment of a Coordinate Bench of this Court in *Dr. Ashwani Kumar Sharma v State of J&K*, 2005 (1) SLJ 156.

16. On the other hand, the learned Advocate General submitted that while conducting the NEET the NBE does not ascertain or determine the

eligibility of competing candidates and that the same is to be ascertained and determined by the respective States / designated authority / University

as per the applicable Regulations and/or their eligibility criteria, reservation policy, benefit for in-service candidates, rural posting etc. The learned

Advocate General submitted that merely because the NBE conducted a single window Entrance Test for PG Courses at the national level, the

responsibility of the BOPEE to check and determine the eligibility of the competing candidates of the State during the course of counseling,

whatever be their rank in the NEET, on the basis of the applicable criteria is not lost by BOPEE. He submitted that it is not only the relevant

provision of SRO 08 of 2005 which prescribes such eligibility criteria, even the provisions of the Information Bulletin issued by the NBE contains

similar provisions. The learned Advocate General submitted that the petitioners were rightly declared ineligible by applying the second proviso

introduced by SRO 08 of 2005, as they were undergoing the PG course and abandoned the same midway on account of which the relevant seats

against which they had been selected were wasted. He submitted that the State also took up this matter with the NBE who in terms of their

communication no. NBE/NEET-PG (2017)/Result/0044/11290 dated 10.02.2017 clarified the position by saying that the NBE has no role in

determining the eligibility of competing candidates of the State.

17. The selection of candidates for Post-graduate Degree / Diploma Courses in the State is governed by the Jammu and Kashmir Government

Medical Colleges (Selection of Candidates for Post-graduate Degree / Diploma Courses) Procedure Order 1995 issued vide Notification SRO

158 dated 12.07.1995 as amended vide Notification SRO 57 dated 31.01.2002 and SRO 364 dated 21.10.2003. The aforesaid Procedure

Order of 1995 was further amended by notification SRO 08 dated 18.01.2005 whereby the provisos to sub-clause (v) of clause 3 of the above

Procedure Order were substituted by two new provisos, which read as under:

Provided that Doctors who have done their Post Graduation or Diploma Courses in any speciality at the Government expenses shall

be entitled to seek admission for undergoing further Post Graduation or Diploma in another speciality in the State Medical Institution

on payment of such fee as may be notified by the Government from time to time;

Provided further that the Doctors who are doing Post Graduation / Diploma Courses in any speciality at the Government expenses

shall not be eligible to apply for undergoing Post Graduate Course in any other speciality in the State Medical Institutions till

completion of their Post Graduation / Diploma Courses, as the case may be.

18. As is seen, the first of the above two provisos makes it permissible for a Doctor, who has done his Post-graduation or Diploma Course in any

speciality at the Government expenses, to seek admission for undergoing further

Post-graduation or Diploma in another speciality in the State

Medical Institution, of course, on payment of such fee as may be notified by the Government from time to time. Hitherto, the pre-amended proviso

provided that the Doctors who were employed in the State and/or had done their Postgraduation in any speciality at the Government expenses or

were doing Postgraduation in any speciality on Government expenses at the time of applying shall not be eligible to undergo Post-graduation in any

other speciality in the State Medical Institutions at the State expenses. The second proviso existed even then and it provide that the Doctors who

were doing Diploma course in any speciality at the Government expenses at the time of applying shall also not be eligible to undergo Post-

graduation courses in any other speciality in the State Medical Institutions until such time as they complete their Diploma courses.

19. The first of the above pre-amended provisos was challenged in Dr. Ashwani Kumar Sharma v State of J&K (*supra*), cited and relied upon by

the learned counsel for the petitioners. Therein the Court in paragraphs 5, 6, 7 and 8 of the judgment observed and held as under:

...SRO 364 has created three categories of candidates who have been rendered ineligible for pursuing post-graduation course in

medical: (i) any Doctor employed in the State who has done post graduation in a speciality at the government expenses; (ii) any

doctor employed in the State who is doing any post graduation in any speciality on government expenses; and (iii) any doctor who is

doing diploma course in any speciality at the Government expenses.

6. As far first two categories are concerned if a doctor has already undergone post graduation course in any discipline or is

undergoing any post graduation course in any discipline, he shall not be entitled to seek admission for post graduation course in any

other speciality in the State Medical Institutions at the State expenses. As far third category is concerned, any doctor who is

undergoing diploma course in any speciality will not be entitled to seek admission to any post graduation course in any other speciality

in the State Medical Institution until he completes such course.

7. Insofar as the candidates who are undergoing degree or diploma course in any speciality at government expenses are concerned,

there seems to be a reasonable logic for debarring them from seeking admission to any speciality leaving the course midway. If such

candidates are permitted to leave the course in between, resultant vacancies cannot be utilized by any other person for the rest of the

period and are rendered waste. Not only this, the candidate who was next in the merit at the time of admission has also been

deprived of the right of admission for the course. This view has sanction of the Apex Court in case *Mabel vs. State of Haryana and*

ors, reported in AIR 2002 SC 2773, wherein it is held as under:

"Clause in the information brochure regarding admission to MBBS/BDS courses which read that the candidates already

admitted in any Medical / Dental Colleges will not be considered eligible for admission to the course clearly 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 is meant to ensure that a candidate who has already secured admission should not abandon the

studies after the commencement of the course to seek admission in another course which is in public interest, for

otherwise it would result in the waste 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

concerned authority in framing Cl.18 of the information Brochure of Kurushetra University of Haryana for BDS / MBBS

entrance examination 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 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 years/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."

8. Taking into consideration the ratio laid down by the Apex Court in the aforesaid judgment, no fault can be found with the

conditions incorporated in the SRO 364 which debar the candidates undergoing any degree / diploma course from seeking admission

to any other course in subsequent selection. However, same principle cannot be applied to such candidate who has already

completed either diploma or degree course in any speciality. The right to education has not been specifically incorporated as a

fundamental right in Part-III of the Constitution of India...

20. The Court after referring to Articles 41 and 45 of the Constitution of India and Section 20 of the Constitution of the Jammu and Kashmir and

throwing light on the place of education in the constitutional scheme under the aforesaid provisions, in paragraph 11 of the judgment held that the

restriction contained in SRO 364 debarring a candidate who has already completed any course of study in one discipline from seeking admission in

any other speciality cannot be justified and is not sustainable both on touch stone of law and on probity. The Court, accordingly quashed the said

SRO to the extent it created an embargo on the right of candidates who have already completed post graduation course in one subject to seek

admission in any other specialty. However, taking into consideration the ratio laid down by the Apex Court in Mabel vs. State of Haryana, the

Court held that no fault can be found with the conditions incorporated in the SRO 364 which debarred the candidates undergoing any degree /

diploma course from seeking admission to any other course in subsequent selection.

21. It appears that it was consequent to the above judgment of the Court that the Government incorporated the amendment in the 1995 Procedure

Order, in terms of SRO 08 of 18.01.2005. Thus the second proviso, providing that the doctors who are doing Post-graduation / Diploma courses

in any speciality at the Government expenses shall not be eligible to apply for undergoing Postgraduate course in any other speciality in the State

Medical Institutions till completion of their Post-graduation / Diploma course, as the case may be, based on the ratio of the judgment of the

Supreme Court in *Mabel vs. State of Haryana*, AIR 2002 SC 2773, is founded on the decision of the Court in *Dr. Ashwani Kumar Sharma v*

State of J&K (supra) and this Court sitting singly cannot proceed to upset something that is founded on the judgment of a Bench of equal strength

and more so on the ration of the Supreme Court judgment.

22. Mr. M. Y. Bhat, learned counsel for the petitioners, however, referring to the decision of the Supreme Court in *State of UP v. Dinesh Singh*

Chauhan (supra), submitted that since admissions to the Post-graduation / Diploma courses have to be made in accordance with the Regulations of

2000 on the basis of a combined National Eligibility cum Entrance Test conducted by National Board of Examinations, it has been settled that the

State has no authority to enact any law, muchless by executive instructions, that may undermine the procedure for admission to such courses

enunciated by the Central Legislation and Regulations framed thereunder, being a subject falling within the Entry 66 of List 1 to the Seventh

Schedule of the Constitution of India. He submitted that even if it be assumed that the 1995 Procedure Order, as amended from time to time,

including the amendment made in terms of SRO 08 dated 18.01.2005, had any relevance or application, the same cannot be imported and applied

in the selections made under and governed by Regulation 9 of the Regulations of 2000 framed by the Medical Council of India. The learned

counsel in this connection, specifically referred to and relied upon paragraph 20 of the Supreme Court judgment in *State of UP v. Dinesh Singh*

Chauhan (supra).

23. It is true that the Supreme Court in the above judgment has held that Regulation 9 is a self-contained Code regarding the procedure to be

followed for admissions to medical courses and that the State has no authority to enact any law, muchless by executive instructions, that may

undermine the procedure for admission to the courses in question. However, it is seen that the Information Bulletin for National Eligibility cum

Entrance Test (Post Graduate) for admission to MD/MS/Post Graduate Diploma Courses 2017 Admission Session formulated and issued by the

National Board of Examinations did contain provisions which informed the candidates about being cautious while filling in the Online registration

forms, furnishing of information about them and applicability of the eligibility

criteria of the respective States/Institutions. In the disclaimer clause (a),

(e) and (f) issued by NBE, contained at page 6 of the Information Bulletin, the following was stipulated:

a) Candidates are advised to read the Information Bulletin and carefully go through the instructions regarding filing of online

application form given on NEET-PG 2017 website www.nbe.edu.in before starting online registration and scheduling process for

NEET-PG 2017;

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e) Online information provided by candidates like name of candidate, contact / address details, category, PWD status, educational

qualification details, date of birth, domicile etc. during online registration and scheduling process for NEET-PG 2017 will be treated

as correct and NBE will not entertain, under any circumstances, any request for change in information provided by the candidates

after the registration window i.e. 31st October 2016;

f) NBE disclaims any liability that may arise to a candidate(s) due to incorrect information provided by the candidate during online

registration and scheduling process.

24. Describing the Scope of NEET-PG 2017 at page 9 of the Information Bulletin, it has been provided that NEET-PG 2017 is for admission to

Postgraduate Courses, including, against State quota seats (seats in Government Medical Colleges owned and controlled by State Government)

and that admission process for such seats is to be undertaken and completed by the concerned States / designated authority / University using

NEET-PG scores and as per applicable Regulations and/or their eligibility criteria, reservation policy, benefit for in-service candidates, rural

posting etc. So far as MD/MS/PG Diploma Seats in private Colleges / Universities are concerned, it has been provided at the very same page ""to

be filled at the Institute level using NEET-PG scores and as per applicable Regulations and/or their eligibility criteria, reservation policy etc.

25. Then in clause 3 at page 11, the Information Bulletin has prescribed and

delineated the General instructions, terms and conditions of the Examination. Few of these instructions, terms and conditions, which are relevant for the purpose of resolving the controversy raised herein are quoted hereunder:

3.1 NEET-PG 2017 is a qualifying-cum-ranking examination for admission to MD/MS/Post Graduate Diploma courses of 2017 admission session.

3.2 Applicant may kindly note that appearance in NEET-PG does not confer any automatic rights to secure a Post graduate

MD/MS/Post Graduate Diploma seat. The selection and admission to Postgraduate seats in any medical institutions recognized for

running MD/MS/Post Graduate Diploma courses as per Indian Medical Council Act, 1956 is subject to fulfilling the admission

criteria, eligibility, medical fitness and such criteria as may be prescribed by the respective universities, medical institutions, Medical

Council of India, State / Central Government.

...

...

3.5 Candidates should go through the information Bulletin carefully for eligibility criteria, scheme, and pattern of examination etc.

before contacting NBE for any queries. Queries pertaining to eligibility and other issues will only be entertained if the information

requested is not given in the Information Bulletin or on NEET-PG website www.nbe.edu.in.

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3.10. Candidates' eligibility is purely provisional and is subject to the fulfillment of applicable Regulation, eligibility criteria as

prescribed by the NBE / MCI / University / Medical College or Institute.

...

3.12. In case of any ambiguity in interpretation of any of the instructions /

terms / rules / criteria regarding the determination of eligibility / conduct of examination / registration of candidates / information contained herein, the interpretation of the National Board of Examinations will be final and binding.

...

...

3.24. Candidates are deemed to have read, agreed and accepted the Information Bulletin and the terms and conditions in the

information bulletin for NEET-PG on completing the registration / application form by the candidates.

...

...

3.27 The jurisdiction for court cases / disputes shall be within the exclusive jurisdiction of competent courts at Delhi / New Delhi

only.

26. Then clause 4 of the Information Bulletin at page 14 prescribes the eligibility criteria for NEET-PG 2017. Few of the sub-clauses, which are

relevant for our purpose, are quoted hereunder:

4.3 Candidates found to be ineligible at any stage of NEET-PG 2017 will not be permitted to appear in the examination and/or

counseling. In an unlikely event of any ineligible candidate appearing and/or being successful in the NEET-PG 2017, the results /

candidature of such candidate shall be cancelled and/or are deemed to be cancelled.

4.5 Registration and / or appearance in NEET-PG 2017 do not confer any automatic rights upon the candidate for admission at

medical institute / college for MD/MS or PG Diploma Courses.

4.9 Some of the Universities / Institutions are having regulations that candidates who are already pursuing any PG Course in their

University or in another University are not eligible for admission till they complete the course. The candidates who are already

pursuing PG Courses either through All India Quota or State Quota and are applying for a seat under All India Quota / State quota

seats may confirm the eligibility conditions of that University in this regard. NBE/

MCC/MoHFW shall not be responsible if such

candidates are refused for admission. Such candidates may opt for the subject and the college at their own risk and cost.

(Underlining supplied)

27. It is thus seen that the various clauses, instructions, terms and conditions, and eligibility criteria prescribed in the Information Bulletin for NEET

conducted by NBE for admission to MD/MS/Post Graduate Diploma Courses 2017 axiomatically brought home to the candidates, inter alia, that

admissions to State quota seats, i.e. Seats in Government Medical Colleges owned and controlled by the State Government shall be undertaken

and completed by the concerned States / Universities using NEET-PG scores and as per the applicable Regulations and/or their eligibility criteria,

etc. and that the candidates, on completing the registration/application forms, shall be deemed to have read, agreed and accepted the Information

Bulletin and the terms and conditions contained therein which, naturally, would including the clauses thereof as quoted above. Therefore, apart

from the fact that the above provisions of the Information Bulletin of the NBE clearly establish that the eligibility criteria provided by the 1995

Procedure Order, as amended from time to time, including the amendment carried out by SRO 08 dated 18.01.2005, are very much applicable as

being the eligibility criteria laid down by the State, the Information Bulletin itself contained a provision in the shape of clause 4.9 under the heading

"Eligibility Criteria for NEETPG 2017" that some of the Universities / Institutions are having regulations that candidates who are already pursuing

any PG course in their University or in another University are not eligible for admission till they complete the course and that the candidates who

are already pursuing PG Courses either through All India Quota or State Quota and are applying for a seat under All India Quota / State Quota

seats may confirm the eligibility conditions of that University in this regard and that NBE/MCC/MoHFW shall not be responsible if such candidates

are refused admission. Furthermore, when approached by the State Government, the NBE has itself clarified the matter vide their Reference

No.NBE/NEET-PG (2017)/Result/0044/11290 dated 10.02.2017 in the following words:

Please refer to your letter no. BOPEE/Exam-14/2017 dated 08/02/2017

regarding eligibility of candidates who have appeared in
NEET-PG 2017.

2. The result data of NEET-PG 2017 provided to you includes data of all appeared candidates (116388) in NEET-PG 2017,
irrespective of their scores. You are requested to prepare the result data for your State as per the eligibility criteria of your State. The
final merit list / category wise merit list shall be generated by your state as per the qualifying / eligibility criteria, applicable guidelines /
Regulations & reservation policy of your state.

3. NBE has no role in determining eligibility of candidates of your state. However, NBE has no objection if these candidates are
considered for J&K State quota seats provided they fulfill the eligibility criteria of your State.

So, the NBE has made two things clear: first, that it has no role in determining the eligibility of candidates; and second, that the final merit list /
category wise merit list has to be generated by the State as per the qualifying / eligibility criteria, applicable guidelines / Regulations and reservation
policy of the State.

28. The petitioners have not challenged the relevant provisions of the Information Bulletin issued by the NBE for the NEET 2017, especially those
quoted above and these give a rebuff to the fundamental pleas raised by the petitioners in the writ petition, or by their counsel during the course of
arguments.

29. Losing site of the Scope of NEET-PG 2017 contained at page 9 of the Information Bulletin, laying down that Admission process against State
quota seats is to be undertaken and completed using NEET-PG scores and as per applicable Regulations and/or their eligibility criteria etc., the
learned counsel for the petitioners sought to put forward an argument that clause 4.9 under the heading "Eligibility Criteria for NEET-PG 2017"
uses the words "candidates who are already pursuing any PG course" and that the petitioners, admittedly, had abandoned their respective PG
courses long before registering themselves for NEET-PG 2017. The argument put forward is wholly fallacious. The Information Bulletin on page 4
under the heading "Important Dates" indicates that online registration for NEET-PG 2017 had started from 26.09.2016. Petitioner no.1

abandoned the course with effect from 09.10.2016, i.e., after the date registration for NEET PG 2017 had already started and, in fact, he made his written request on 19.12.2016, when he had already appeared in NEET-PG 2017 which, as per the Information Bulletin, was scheduled to be held with effect from 5.12.2016 to 13.12.2016. The submission of the learned counsel is wholly belied. Similarly, petitioner no.2 abandoned his PG course with effect from 22.06.2016 and petitioner no.3 with effect from 08.08.2016. In any case, all the three petitioners had abandoned their respective courses much after the admission for the Session 2016 viz. 31.05.2016 had expired and passed by. Apart from that, applying the ratio of the judgment of the Supreme Court in *Mabel vs. State of Haryana* (supra) [(2002)6 SCC 318], wherein it has been laid down that 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 is to ensure that a candidate who has already secured admission with his free will in any course 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 the course or in the event of abandoning the course and not studying for the normal period, 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 will cease after the course in which the person had taken admission comes to an end. In light of the above law laid down by the Supreme Court, it is immaterial whether the petitioners were pursuing any PG course at the time they appeared in the NEET-PG 2017, the fact remains that they abandoned their respective courses midstream, after the admissions thereto had been closed by the BOPEE and that the three PG seats against which the petitioners had secured their admissions and commenced their studies had been wasted. In that view of the matter, the argument put forward by Mr. Bhat, looking at the controversy through any conceivable angle is not tenable. The judgments cited and relied upon

by the learned counsel for the petitioner, too, do not help him.

30. Mr. Bhat next sought to raise an argument that in terms of Regulation 9(3) of the Regulations, Universities and other authorities are bound to

organize admission process in such a way that teaching in Post Graduate courses starts by 2nd May and by 1st August for super speciality courses

each year. He submitted that had this Regulation been strictly followed by the State Authorities, the seats left by the petitioners would not have

gone waste and that the fault on that count is attributable to the respondents, not to the petitioners and, therefore, they cannot be punished. He

submitted that the petitioners have a right to education and such right cannot be taken away from them. In that regard the petitioners' counsel again

referred to the decision of this Court in *Dr. Ashwani Kumar Sharma v State of J&K* (supra).

31. It is, rather, admitted by the petitioners in paragraph 3 of the petition that they had acquired admission in the said streams in view of their merit

and rank obtained in the JK CET of 2016 and that the seats are allocated in terms of merit and rank, and students with less merit have the least say

and choice for getting admissions in particular streams. In the same breath, it is stated by them in the very same paragraph that they left the said

course(s) after a few months only and they could not continue the courses forcibly when they had no interest for that particular branch. The point is

that the petitioners would have known about their interest right before appearing in the Entrance Test. They ought to have refused to take

admission in the streams they were entitled to get admission in on the basis of their performance and ranking in the Entrance Test. Then it is not the

question when did the courses actually commence, the real question is whether the petitioners refused the admissions before or after the last date

scheduled for admissions. Admittedly, they have abandoned their respective courses midstream, not before the closing date of admissions, at a

time when the BOPEE could not have admitted any other candidate against the three seats. Therefore, the attempt of the petitioners' counsel to

shift the fall out of their midstream abandonment of the seats to the respondents is nothing more than trying to catch a straw while the petitioners

have willingly drowned themselves.

32. Mr. Bhat also sought to raise an argument of double jeopardy vis-?-vis

petitioner no.1 whose Caution Money was confiscated by SKIMS on acceptance of his application on his abandonment of his course of study. Confiscation of Caution Money is not a condition imposed by either the Information Bulletin of the NBE or the criteria prescribed in 1995 Procedure Order, as amended from time to time; it may be a regulatory condition of the SKIMS itself, and it is not debarred from laying down any such condition in its Regulations. In fact, application of such Regulations is conceded by the MCI, as becomes axiomatic from the contents of the Information Bulletin. The condition of confiscation of Caution Money by the SKIMS and the condition of ineligibility to be entitled to admission to the MD/MS/Post Graduate Diploma Courses are two different aspects, operating in two different fields and governed by two different criteria. Confiscation of Caution Money will not melt away the rigor of the ineligibility clauses contained in the Information Bulletin issued by the NBE and/or the eligibility criteria prescribed by the State, particularly in terms of SRO 8 of 2005. The argument is noted only to be rejected.

33. So far as instances have been given by the petitioners of Doctors who had taken admission in the year 2015 and were allowed to participate in the subsequent Entrance Examination in 2016 as well as admitted in other courses, since the learned counsel for the petitioners agreed to argue the case on the aforesaid legal issues without seeking a response to the factual assertions from the respondents, such factual averments given by the petitioners cannot be determined by the Court in absence of a response from the respondents. In any case, even if it be assumed that wrong was committed by the BOPEE or the State, the Court cannot be asked to perpetuate the wrong, when the same is found to be certainly not permissible under the Rules. So far as the instances of Dr. Javaid Iqbal and Dr. Zakir Ahmad Bhat are concerned, they may have also appeared in the NEET-PG 2017 like the petitioners, but it is not the case of the petitioners that they have, in fact, abandoned their seats and have been admitted during the current Session as well.

34. In light of all what has been discussed above, I do not find any merit in the case put forth by the petitioners in the writ petition. It, therefore, deserves dismissal in limine. It is so dismissed. This also dismisses the connected MP.

35. As mentioned earlier, the petitioners, prior to this writ petition, have filed another writ petition, OWP no.302/2017, on the same cause. In fact, therein the Court has also passed an order of ad interim relief on 17.03.2017. Since this Court has recorded definite findings on all issues raised and involved in the matter, it is likely nothing has remained to be decided in the earlier writ petition of the writ petitions. The Registry is, therefore, directed to list the earlier writ petition, OWP no.302/2017, of the petitioners before this Bench on the next immediate working day for appropriate orders.

36. No order as to costs.