

(2011) 08 DEL CK 0030

In the Delhi High Court

Case No : Writ Petition (C) No. 6125 of 2011 and C.M. No's. 12365-12366 of 2011

Dr. Shikha Aggarwal

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 DEL CK 0030

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : Sushant Kumar and Shikha Singh, for the Appellant; Rakesh Gosain, for the Respondent No. 2 and Sachin Dutta, for the Respondent/UOI, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—By this petition filed under Article 226 of the Constitution of India, the Petitioner seeks quashing of the counseling procedure adopted by the Respondent No. 2 in DNB CET in terms of the guidelines laid down by the Respondent No. 2-Board. The Petitioner also seeks directions to direct the Respondent No. 2 to allow the Petitioner to participate in the second round of counseling which is now scheduled from 25.8.2011 to 29.8.2011.

2 Counsel appearing for the Petitioner submits that the counseling procedure laid down by the Respondent No. 2 in the prospectus is not at parity with the procedure laid down for admission in PG medical courses in AIIMS and the counseling process laid down by All India Entrance Examination for admission to PG Medical and Dental courses. Counsel also submits that the Petitioner had duly qualified the DNB-CET and, therefore, was eligible to participate in the counseling process to seek admission in the DNB programme in the stream and college/institute/hospital of her choice. Counsel further submits that the Petitioner in fact had participated in the first round of counseling and as per her rank in the merit

list the Petitioner was allotted a seat in DNB (Psychiatry) in Deva Medical College, Varanasi and in fact the Petitioner had also joined the said institute for the said course after her admission. Counsel further submits that the Petitioner had No. option but to join the said course as in the event of not joining the said course, the Petitioner would have lost her right to get admission in the said DNB programme. Counsel thus submits that the counseling process laid down by the Respondent No. 2 deprives a meritorious candidate with a higher rank of an opportunity to participate in the second round of counseling to opt for a course and institute/hospital as per her/his choice as the drop outs of the first round of counseling certainly will be included in the second round of counseling and then chance will be available to the less meritorious candidates to opt for seats and institutes of their choice in preference to the meritorious candidates. Counsel thus states that there should be No. compromise with the merit as in the academics merit can be the only criteria for selection and allocation of seats for these courses and the institutes/hospitals.

3. Dr. Rakesh Gosain, counsel for the Respondent No. 2, on the other hand, submits that before a candidate participates in the actual counseling, not only the candidate but also his parents are counseled by a team of experts so that a candidate later on may not repent her/his decision and hence the students have an opportunity to decide which course to undertake. The counsel also submits that No. fault can be found with the procedure laid down by the Board and the petition thus deserves to be dismissed at this stage itself.

4. I have heard learned Counsel for the parties at considerable length.

5. Indisputably, after qualifying the DNB CET, the Petitioner had participated in the first round of counseling and was granted admission in DNB (Psychiatry) in Deva Medical College, Varanasi according to her rank in the merit list. The Petitioner after taking admission in the said course, now at this stage seeks to challenge the counseling procedure to get a chance to participate in the second round of counseling on the ground that the procedure of counseling laid down by the Respondent No. 2-Board is not fair and is not at parity with the procedure laid down for admission in PG medical courses in AIIMS and the counseling process laid down by All India Entrance Examination for admission to PG medical and dental courses.

6. The cause of heartburn of the Petitioner is that the first round of counseling is held for the top in the merit list to pick the stream and college/institute/hospital of his choice and the second round is held for the next in the merit list alongwith the opportunity to the ones who have already participated in the first round to change their stream in case some seats fall vacant, but the Respondent board does not envisage the participation of the students who have already participated in the first round to again participate in the second round and thus robs the candidate the opportunity to take up another stream which could be available in the second round and was not available at the first. The contention of the counsel for the Petitioner is that the premier Institute such as AIIMS and Ors.

give provisional admissions in the first round leaving the window of opportunity open for them to change their choice in the second round and thus the same should be the procedure followed by the Respondent Board. The National Board of Examinations administering the DNB degree has the liberty to frame its own rules and Regulations and the rules of counseling or any other cannot be termed as unreasonable by comparing with the rules set forth by the AIIMS or any other body conducting examinations.

7. It is also a settled legal position that a candidate after participating in the selection process of taking the entrance examination and the counseling process cannot turn around and challenge the same as the rules and guidelines framed by the Respondent-Board were within the knowledge of the Petitioner before participating in the same and therefore, the Petitioner thus waives off her right to challenge the said counseling procedure once having taken the said examination. It would be relevant here to refer to the judgment of the Apex Court in the case of Dhananjay Malik and Others Vs. State of Uttaranchal and Others, which has reiterated the said legal position in the following words:

In the present case, as already pointed out, the writ Petitioners-Respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

9. In a recent judgment in the case of Marripati Nagaraja and Others Vs. The Government of Andhra Pradesh and Others, this Court has succinctly held that the Appellants had appeared at the examination without any demur. They did not question the validity of fixing the said date before the appropriate authority. They are, therefore, estopped and precluded from questioning the selection process.

Therefore the Petitioner is estopped to challenge the said procedure after participating in the same without any demur. Therefore, this Court is of the considered view that any indulgence by this Court at this stage will reverse the entire clock and lead to a chaos, as it will not be the case of the Petitioner alone, but other similarly situated candidates with higher rank in the merit list will also be entitled to seek their participation in the second round of counseling. Rules were laid down by the Board well prior to the starting of counseling process and the same were well within the knowledge of the Petitioner and as per the counsel for the Respondent a well thought and conscious decision is taken by the candidate to not only opt for a particular stream but for a particular institute/hospital in a particular region. Although merit should always be the criteria but this is not the right stage to interfere with the counseling procedure laid down by the Respondent -Board.

8. Hence without commenting upon the merits of the matter, this Court does not

deem it proper to interfere in the procedure for the present session. The petition is hereby dismissed.