

(2020) 07 SHI CK 0257

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 2239 Of 2020

Gunjan Ahuja & Others

APPELLANT

Vs

State Of Himachal Pradesh & Others

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 16
Postgraduate Medical Education Regulations, 2000 — Regulation 9

Citation : (2020) 07 SHI CK 0257

Hon'ble Judges : Tarlok Singh Chauhan, J; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Dilip Sharma, Deven K. Khanna, Ajay Vaidya, Ravi Sharma

Final Decision : Allowed

Judgement

Tarlok Singh Chauha, J

1. The petitioners could not participate in the 1st round of counselling for admission to MD/MS/Post Graduate Diploma Courses 2020-2021. Thereafter, they applied for consideration of their candidature in the 2nd round of counselling, which according to them, is being considered wrongly and illegally, after giving undue advantage to non-meritorious candidates, who have applied for 1st round of counselling, over and above them, solely on the basis that they did not apply in the 1st round of counselling and aggrieved thereby, they have filed the instant petition for grant of following substantive reliefs:-

"i. To quash and set aside the stipulation "Hence, appearance in the 1st round of Centralized Counselling is mandatory for consideration of candidature for subsequent rounds of counselling" contained in condition No. 7.1 of the NEET PG Prospectus, 2020 (Annexure P-4).

ii. To quash and set aside the stipulation stating "During the 2nd round of Centralized Counselling and subsequent rounds/MOP up round of counseling, seats shall be allotted from 1st State merit. After exhaustion of 1st merit

completely, 2nd merit will be considered for allotment of seats (if seats available)" contained in condition No. 7.5 of the NEET PG Prospectus, 2020 annexed vide Annexure P-4.

iii. That the respondents may be directed to allot seats in second round of counselling and subsequent rounds of counselling strictly as per merit of the eligible candidates i.e. as per academic merit of the candidates determined on the basis of All India NEET Examination."

2. The petitioners appeared in the Combined All India Entrance Test NEET, 2020, wherein they applied in General Category and after having qualified found the place in the merit list.

3. The Scheme of Online 50% All India Quota PG counselling was issued, which provided for the mechanism which needs to be adopted during the counselling process.

4. This Scheme has been formulated in compliance to the orders of the Hon'ble Supreme Court. In terms thereof, 50% of the seats are required to be filled-up by All India counselling and the remaining 50% seats are to be filled up by the State Government by conducting the counselling for the State seats as well as seats of Private Medical Colleges.

5. The Court herein is concerned with the seats for private medical colleges. The procedure for filling whereof is laid down in clauses 7.1 and 7.5 of the prospectus issued by the respondents, which read as under:-

"7.1. The Centralized Counselling shall be held on dates mentioned in the Prospectus as per the time schedule. On the day of counselling, the allotment of available seats to the eligible candidates shall be made in order of merit on the basis of General combined merit drawn by the Principal Indira Gandhi Medical College, Shimla-cum-Member Secretary Counselling Committee on the basis of ranking /marks of NEET- PG-2020 of those candidates who have applied on the prescribed application form within stipulated date as mentioned in the prospectus for admission to PG(MD/MS) degree courses to the Principal Indira Gandhi Medical College & Hospital Shimla-cum Member Secretary Counselling Committee . All the eligible candidates or their authorized representatives will have to bring their original documents alongwith required documents at the time of Centralized Counselling. NO SEPARATE COMMUNICATION WILL BE ISSUED TO THE CANDIDATES FOR ATTENDING THE CENTRALIZED COUNSELLING. The candidate/ authorized person do not reporting for Counselling as per schedule will forfeit their claim for admission without any further notice. No further opportunity will be given. Hence, appearance in the 1st round of Centralized Counselling is mandatory for consideration of candidature for subsequent rounds of Counselling. Joining time is as per schedule prescribed in the prospectus. The selected candidates will be required to join in the prescribed joining time after completing all codal formalities failing which his/her admission stand cancelled and seat will be allotted to the next candidate in order of merit during the next

round of Counselling. In case any vacancy arising after 12.05.2020 for any reason, the vacancy position will be displayed on the college notice board and uploaded on official website on 16.5.2020 (afternoon). The available vacancies will be filled- up purely from waitlisted candidates. However a candidate who opted seat during the 2nd round of Counselling but not joined the course will also be considered for MOP UP/ Subsequent round of Counselling in order of merit. The interested waitlisted candidates as well as the candidate who do not join the course after the allotment of 2nd round of Counselling will report to the Principal Indira Gandhi Govt. Medical College, Shimla-cum-Member Secretary Counselling Committee on 18.5.2020 at 11:0 A.M. alongwith original documents and requisite fees as prescribed in the Prospectus . No admission will be made after 18.5. 2020 (including change of course) and seats still remaining vacant will not be filled-up in compliance of directions of MCI."

Note : If later on , any directions will be received from the Govt. of India , Asstt. Director General (ME) DGHS, Govt. of India , MOH&FW, New Delhi/Medical Council of India with regard to allow Centralized Counselling / admission after 18.5.2020 , then wide publicity will be made accordingly .

7.5. In case minimum percentile of NEET-PG-2020 will be revised by the Govt. of India, Ministry of Health & Family Welfare , New Delhi as per past practice , then fresh application will be invited from the desirous candidates who will become eligible as per revised NEET-PG-2020 percentile and fresh merit will be drawn by the Principal, IGMCI, Shimla_Cum-Member Secretary Centralized Counselling Committee. During the 2nd round of Centralized Counselling and subsequent rounds/Mop up round of Counseling, seats shall be allotted from 1st State merit.

After exhaustion of 1st merit completely, 2nd merit will be considered for allotment of seats (if seats available)"

6. It is urged by the petitioners that the aforesaid provisions are not only unreasonable but are illegal in teeth of the regulations framed by the Medical Council of India (for short, "the MCI").

7. We have heard learned counsel for the parties and gone through the material placed on record.

8. It is no longer res integra that regulations framed by the MCI are binding and these standards cannot be deviated from.

9. Reference in this regard can conveniently be made to the judgments of the Hon'ble Supreme Court in State of M.P. & ors. vs. Gopal D. Tirthani & ors. {(2003) 7 SCC, 83 paras 24 and 26}; Bharati Vidyapeeth (Deemed University) & ors. vs. State of Maharashtra & anr. {(2004) 11 SCC 755, para 20}; Chowdhury Navin Hemabhai & ors. vs. State of Gujarat & ors., {(2011) 3 SCC 617, paras 7, 11, 12, 14 and 18} and Harish Verma & ors. vs. Ajay Srivastava & ors. {(2003) 8 SCC 69, paras 14 to 21}.

10. In the matter of Medical Council of India vs. State of Karnataka & ors. (1998)

6 SCC 131, the Hon'ble Supreme Court held that the regulations of MCI are binding and mandatory.

11. The principle of law laid down in the aforesaid case with reference to medical courses was re-emphasized by the Constitution Bench of the Hon'ble Supreme Court in Dr. Preeti Srivastava & anr. vs. State of M.P. & ors. (1999) 7 SCC 120; and thereafter reiterated in Dr. Narayan Sharma & anr. vs. Dr. Pankaj Kr. Lehar & ors. (2000) 1 SCC 44; State of Punjab vs. Dayanand Medical College and Hospital & ors. (2001) 8 SCC 664; and Harish Verma & ors. vs. Ajay Srivastava & anr., W.P.(C) No. 1409/2018.

12. As per regulations of MCI, appended with the petition as Annexure P-1, the respondents were required to draw an All India Merit List as well as State-wise merit list of the eligible candidates on the basis of marks obtained in the National Eligibility-cum-Entrance Test and thereafter, the candidates were required to be admitted to Post Graduate Courses from the said merit lists only. This is so provided in clause 7 of Regulation 9 of the Postgraduate Medical Education Regulations, 2000, which is extracted below:-

"(7) In non-Governmental medical colleges/institutions, 50% (Fifty Percent) of the total seats shall be filled by State Government or the Authority appointed by them, and the remaining 50% (Fifty Percent) of the seats shall be filled by the concerned medical colleges/ institutions on the basis of merit list prepared as per the marks obtained in National Eligibility-cum-Entrance Test."

13. A bare perusal of the aforesaid clause, makes it evidently clear that filling up of the seats whether non- governmental or medical colleges/institutions, shall be on the basis of the merit list prepared as per the marks obtained in the National Eligibility-cum-Entrance Test.

14. It is thereafter provided in clause 11 of the Regulation 9 that no authority/ institution shall admit any candidate to any Post Graduate Medicine Course in contravention of the criteria/procedure as laid down by these regulations and the admissions are required to be made strictly in accordance with the merit.

15. The National Board of Examination, has been entrusted with the task of laying down the provisions for admission for conducting National Eligibility-cum-Entrance Test (Post Graduate) for admission to MD/MS/Post Graduate Diploma Courses. The procedure for counselling is set out in a flowchart extracted below:-

16. A perusal of the aforesaid Flow Chart makes it amply clear that after 1st round ends, fresh registration for 2nd round will be conducted, for which new candidates and free-exit candidates of 1st round are also eligible. The candidates of 1st round already registered need not register again. It is further provided that fresh choice for filling and locking shall be invited. Choices filled by the candidates in 1st round will be treated as null and void. The candidates of 1st round, who are already registered, are not required to be registered again and fresh options are not required to be called for in 2nd round of counselling.

17. This is further clarified in answer given to the Question No.1 relating to the Scheme of PG Counseling, 2020, after the Flow Chart, which reads as under:-

"Q. No. 1: What is the process of online allotment?Ans:

ROUND-1

- a) Main counseling Registration which will include payment of Non-Refundable Registration fee and Refundable Security Deposit (to be refunded only in the account from which payment has been made).
- b) Exercising of Choices and Locking of choices.
- c) Process of Seat Allotment Round-1
- d) Publication of result of Round-1 on MCC website
- e) Reporting at the allotted Medical/Dental College against 1 Round.

ROUND-2

(Candidates who registered for Round-1 and did not get any seat allotted need not register again.)

- f) Fresh New Registration for Round-2 for those candidates who
 - ? Have not registered in Round-1 (with full payment of fees).
 - ? Have Resigned / Not reported in Round-1 can log in again.
 - ? Fresh Choice filling Round-2.
- g) Publication of result of Round-2 on MCC website.
- h) Reporting at the allotted Medical/Dental College against Round 2

End of AIQ Quota Round

MOP -UP ROUND

- i) Mop Up Round (Only for Deemed/ Central Universities & ESIC)

Fresh Registration for Mop Up Round for following candidates :

- i. Those who registered in Round-1 & exited availing Free Exit
- ii. Who registered in Round-2 & exited with Forfeiture of fees.

However, candidates who have already joined and taken admission in Round-2 of AIQ/ Deemed/ Central Universities will not be eligible to participate in Mop Up Round. (Those who registered but were not allotted a seat in Round-1 & Round-2 need not register again).

Ø Fresh choice filling of Mop Up Round

Ø Publication of result of Mop Up Round on MCC website Reporting at the

Allotted Medical/ Dental College after Mop Up Round

• List of Registered Candidates ten times the number of Stray vacancies to be sent to Deemed / Central Universities to be exhausted strictly in order of merit.

iii. Final Stray Vacancy Round to be conducted by Deemed/ Central Universities/ ESIC

(There will be no Fresh Registration of Candidates in Final Stray Vacancy Round)"

18. Now, in case we advert to the prospectus issued by the respondents then as per clause 7 thereof appearance in the 1st round of Centralized Counselling is mandatory for consideration of candidature for subsequent rounds of Counselling. The selected candidate is required to join in the prescribed joining time after completing all codal formalities, failing which his/her admission shall stand cancelled and seat will be allotted to the next candidate in order of merit during the next round of Counselling. The provisions contained in clauses 7.1 and 7.5 of the prospectus are clearly in violation of the regulations framed by the MCI and are, thus, liable to be set aside.

19. Even otherwise, a student, who owing to his/her brilliant or sheer dent of hard work has achieved success and entrance to a coveted Medical College, if for such reasons is prevented from attending counselling cannot be dealt a double blow by denying him/her even chance of admission in the wait listed category i.e. 2nd and 3rd counselling as the case may be. It is not as if the Court is unseating student who has already been admitted or in whom rights have accrued. The Court would only be putting such student ahead of other students, lower in rank and who as of today have not secured admission and in whom no rights have accrued and who as of now have a mere chance of admission. Additionally, chance of admission of the lesser meritorious candidates cannot be placed at a higher pedestal than the meritorious candidates.

20. The prohibition envisaged in the provisions, referred to here-in-above, sacrifices merit inasmuch as it prevents meritorious candidates from obtaining a course of their choice solely on the ground that they have not participated in the 1st round of counselling, while at the same time affording greater avenues and choices; and placing lesser meritorious candidates on a higher pedestal than the meritorious candidates, which obviously cannot be countenanced muchless upheld.

21 . he seats in Medical Colleges are highly coveted and, therefore, every endeavour has to be made to fill up these seats solely on the basis of the merit.

22. In *Priya Gupta vs. State of Chattisgarh and ors.* (2012) 7 SCC 433, the Hon'ble Supreme Court has held as under:-

"37. What is of greater significance is that this Court has not so far considered or stated as a principle, what consequences should follow where the Central

Government, or the State Government or Medical Council of India or the College itself, with impunity, violate the time schedule, regulations and order of merit to give admission to students in an arbitrary and nepotistic manner. Also, we must consider what preventive steps can be taken to avoid such repetitive and intentional defaults, as well as undue exploitation of the class of students. Admissions based on favouritism necessarily breach the rule of merit on the one hand, while on the other, they create frustration in the minds of the students who have attained higher rank in the competitive entrance examinations, but have not been admitted. We propose to specifically address this concern in this judgment.

38. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme."

23 In *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh and ors.* (2016) 7 SCC 353, the Hon'ble Supreme Court has observed as under:-

"166. It is well known that study of medicine is much sought after by students in India. Due to the high demand for admission in Medical Colleges and limited number of seats, selection and/or screening methods have evolved to select the *crème de la crème*. Given the surfeit of academically well-qualified applicants, the selection method ought to become highly competitive by placing exceptionally high academic thresholds. It is in this context that 'merit' comes into play in determining the parameters for admissions in institutions of higher education.

167. Merit is the cumulative assessment of worth of any individual based on different screening methods. Ideally, there should be one common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure efficacy, fairness and public confidence. As rightly contended by Mr. Purushendra Kaurav, Addl. Advocate General for the State of Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.:-

(i) having adhered to the time schedule as laid down in *Mridul Dhar case* (2005) 2 SCC 65;

(ii) multiple centres of examination and counselling throughout the State and a single window system for admission;

(iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair evaluation and

(iv) minimal litigation.

That apart, procedure for preparation of merit list, counselling and allotments to various colleges is subject to Right to Information Act and thus ensures fairness and transparency in the entire process.

168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the Legislature in its wisdom has taken the view that merit based admissions can be ensured only through a common entrance test followed by centralized counselling either by the State or by an agency authorized by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of Common Entrance Test (CET) to secure merit based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admissions in such educational institutions. Common Entrance Test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects:-

(i) fairness and transparency and

(ii) merit apart from preventing mal-administration.

Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb mal-practices, it would be permissible for the State to regulate admissions by providing a centralized and single window procedure. Holding such CET followed by centralized counselling or single window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a 'right of occupation' in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community."

24. Apart from above, we find that the practice being adopted by the respondents in excluding the candidates, who have failed to participate in 1st counselling being higher in merit and placing these candidates below the candidates, who have applied in 1st counselling despite being lower in merit, is only peculiar to the State, whereas in PAN India, the States are conducting 2nd round of counselling as per MCI notification dated 5.4.2018, relevant extract of which reads as under:-

..XXXX... "Regulation 9- Procedure for selection of candidate for Postgraduate courses

9(1). (a) Students for Post Graduate medical courses shall be selected strictly on the basis of their Inter-se Academic Merit.

9(2). For determining the academic merit, the university/institution

may adopt any one of the following procedures both for degree and diploma courses:

i. On the basis of merit as determined by the competitive test conducted by the State Government or by the competent authority appointed by the State Government or by the university/group of universities in the same state; or ii. On the basis of merit as determined by a centralized competitive test held at the national level; or iii. On the basis of the individual cumulative performance at the first, second and their MBBS examination, if such examination have been passed from the same university; or iv. Combination of (i) and (iii):.XXXXX...

25. In coming to such conclusion, we draw support from the Public Notice issued by the Directorate of Medical Education and Research, Haryana, regarding counselling for admission to MD/MS/MDS Courses in all Government/Government Aided/Private Unaided Medical/Dental Institutes, for the academic Session 2020-21, copy whereof has been appended as Annexure P-11 with the petition.

26. In clause (c) of the Public Notice (supra), it is clearly provided that the candidates, who have joined on the allotted seat in the first round shall have a right to already allotted seat and this shall be changed only if, he/she gets an updated and opted seat during second round. It is further provided that the candidates, who wish to participate in the second round of online counselling will have to submit their preferences/choices afresh. Lastly, it is provided that the candidates, who have been allotted seat in the first round, should give the first choices in order of preferences for the seats, in which they wish to upgrade themselves.

27. The aforesaid provision is clearly in tune with the regulations framed by the MCI and the respondents should have made similar provision(s) not only in the Public Notice but also in the prospectus that was issued by them.

28. In view of aforesaid discussion, we find merit in this petition and the same is accordingly allowed. Consequently, we quash and set aside the stipulations "hence, appearance in the 1st round of Centralized Counselling is mandatory for consideration of candidature for subsequent rounds of counselling" and "during the 2nd round of Centralized Counselling and subsequent rounds/MOP up round of counseling, seats shall be allotted from 1 st State merit. After exhaustion of 1st merit completely, 2 nd merit will be considered for allotment of seats (if seats available)" as contained in conditions No. 7.1 and 7.5, respectively, of the NEET PG Prospectus, 2020(Annexure P-4) and direct the respondents to allot seats in second round of counselling and subsequent rounds of counselling strictly as per merit of the eligible candidates i.e. as per academic merit of the candidates determined on the basis of All India NEET Examination.

29. Before parting, at this stage, it is clarified that the respondents shall not disturb registration of the Round 1 of counselling; save and except where the candidates have applied/will apply for up gradation in Round 2 of counselling.

30. Pending application(s), if any, also stands disposed of. The parties are left to bear their own costs.