
(2020) 07 J&K CK 0005

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1060 Of 2020, Civil Miscellaneous No. 2863 Of 2020

Isha Sharma

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 29-07-2020

Acts Referred:

Citation : (2020) 07 J&K CK 0005

Hon'ble Judges : Ali Mohammad Magrey, J; Vinod Chatterji Koul, J

Bench : Single Bench

Advocate : Abhinav Sharma, F. A. Natnoo, Aditya Gupta

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. The petitioner, a NEET-PG 2020 qualified Doctor, who, on the basis of her merit position in the NEET 2020, aspired for MD in the discipline of Ophthalmology at Government Medical College (GMC), Jammu, but got admission to MD in Pathology, has challenged Notification no.015-BOPEE of 2020 dated 04.06.2020 issued by the Board of Professional Entrance Examination (BOPEE), to the extent thereby respondent no.5, who possessed lower merit than the petitioner, has been allotted the discipline of Ophthalmology. She has sought the consequential reliefs as well.

2. Before narrating the facts of the case, it needs to be stated that by order dated 25.06.2020 this writ petition had been ordered to be listed before the Division Bench to be heard alongwith LPA no.59/2020. On examination, it was noticed that the issues involved in the said LPA have no connection or relevance to the grievance projected in the present writ petition. On 20.07.2020, when the matter came up before the Court, the Court suggested that it should go back to the Writ Court for its decision. However, given the time schedule for closure of the admission process and the last date being 31.07.2020, the learned counsel

for the petitioner prayed that it may be decided by the Division Bench itself instead of sending it down to the Writ Court. On the insistence of the learned counsel, this Court decided to retain the writ petition and proceeded to hear it. Consequently, by order dated 27.07.2020, after concluding the hearing of this writ petition, this Court ordered its delinking from LPA no.59/2020 and WP(C) no.992/2020 and WP(C) no.992/2020 was ordered to be listed before the learned Writ Court.

3. Precisely, the relevant facts are these: In the provisional select list issued by the BOPEE pursuant to NEET-PG 2020 (hereinafter the NEET), vide Notification no.007-BOPEE of 2020 dated 10.04.2020, the petitioner figured at serial no.322 with a total score of 570. Her UT Rank was 322. Vide notification no.008-BOPEE of 2020 dated 17.04.2020, the BOPEE notified the schedule for online filling up of preference for allotment of seats. The relevant portion of the aforesaid notification read as under:

- a) Mock exercise 19.04.2020 to 20.04.2020
- b) Filling up of preferences 21.04.2020 to 27.04.2020
- c) Updating / changing of preferences, only on request, on mobile no.94194/9469012295 on 28.04.2020 (upto 02.00 p.m.).

It is not expressly stated what preferences did the petitioner give, but it is her case that during the first round of counselling, she was allotted a seat for undergoing MD in the discipline of Pathology, in GMC, Jammu. In consequence thereof, the BOPEE issued Notification no.009-BOPEE of 2020 dated 03.05.2020 regarding admission of the candidates to MD/MS/PG Diploma Course 2020. It is averred that name of the petitioner figured at serial no.314 of the notification with the discipline of MD, Pathology allotted to her. According to the petitioner, in the first round of counselling, one Paramvir Singh Chib, who was figuring at serial no.322 with UT Rank 332 under RBA category, was allotted the discipline of Ophthalmology.

4. It is further averred in the petition that, thereafter, the BOPEE in terms of Notification no.011-BOPEE of 2020 dated 14.05.2020 decided to conduct the second round of counselling (up-gradation / allotment) through physical mode and it was notified that the Board shall invite tentatively only 100 candidates per day as per their UT Rank. This notification also required the candidates to fill up fresh preference forms.

5. According to the petitioner, she filled up her preference form and mentioned MD, Radio Diagnosis (GMC Jammu), as her first preference; MD, Radio Diagnosis (ASCOMS SIDHRA), as 2nd preference; MD, Dermatology (GMC Jammu), as 3rd preference; MD, Paediatrics (GMC Jammu), as 4th preference; and MD/MS, Ophthalmology (CMC Jammu), as her 5th preference.

6. Furthermore, it is stated that the BOPEE by virtue of subsequent notification no.032-BOPEE of 2020 dated 22.05.2020, issued in continuation to notification

no.009-BOPEE of 2020 dated 03.05.2020 read with Notification No.011-BOPEE of 2020 dated 14.05.2020 and Notification No.012-BOPEE of 2020 dated 19.05.2020, decided to conduct 2nd round of physical counselling (Up-gradation / allotment) with effect from 28.05.2020 to 03.06.2020 through Video Conference as per the schedule given in the said notification. According to this schedule, the 2nd physical counselling for the candidates possessing UT Ranks 201 to 325 was fixed as 29.05.2020 and for the candidates with UT Ranks from 326 to 450 it was 30.05.2020.

7. The petitioner states that, due to lockdown, she was stuck at Dehradun. On 29.05.2020 she received a telephonic call from BOPEE informing her that there was no seat vacant in the disciplines as per the preferences filled up by her, and that Pathology was the only discipline wherein a seat was available for the petitioner on the basis of her merit. According to the petitioner, thereafter, the BOPEE issued the list of candidates who were allotted seats / upgraded disciplines vide notification no.015-BOPEE of 2020 dated 04.06.2020. From there, she came to know that Dr. Paramvir Singh Chib, who was earlier allotted MD/MS Ophthalmology in GMC Jammu, by application of Rule 17 of the Reservation Rules, had been upgraded to MS, Orthopaedics in GMC, Jammu; whereas respondent no.5 herein was granted MD/MS, Ophthalmology in GMC, Jammu, under OM category. According to the petitioner, respondent no.5 was having a rank much below her, i.e., having UT Rank 341.

8. The grievance of the petitioner, thus, is that since she had higher merit and higher UT Rank than respondent no.5, and had given her preference for MD, Ophthalmology; whereas respondent no.5 possessed lower merit and lower UT Rank than her, she was entitled to be given admission for MD in Ophthalmology, and that the action of the BOPEE in this regard is illogical, unreasonable and without any basis. According to the petitioner, the BOPEE's Brochure for 2020 provided that a seat vacated by a candidate during the up-gradation process shall be automatically added to the seats available and shall be allotted on the basis of merit-cum-preference. To buttress the claim of the petitioner, specific reference is further made to Clauses (iv) and (v) of Notification no.011-BOPEE of 2020 dated 14.05.2020, which, according to the petitioner, in categorical terms provides that the seat shall be allotted to the candidate, who participates in the counselling at the relevant point of time, on the basis of merit-cum-preference. The claim of the petitioner, in nutshell, is that the MD seat in the discipline of Ophthalmology that became available on 30.05.2020 on account of up-gradation of Dr. Paramvir Singh Chib to the discipline of Orthopaedics ought to have been allotted to her, since she had higher merit and UT Rank than respondent no.5, notwithstanding the fact that her counselling had taken place on the previous day, i.e., on 29.05.2020. This precisely is the grievance of the petitioner raised in the petition.

9. Respondents 2 and 3 in their objections have stated that as per the scheme, up-gradation / allotment of seats through counselling by the BOPEE to the

candidates is being done on merit-cum-preference basis of the candidates on day to day basis. In this regard, it is stated that after receiving the short fall of seats from various Colleges, the BOPEE issued notification no.032-BOPEE of 2020 dated 22.05.2020 for conduct of 2nd counselling (physical as well as online to facilitate the candidates, who could not be present in view of the spread of Covid-19 pandemic) whereby designated number of candidates were called for counselling on different dates with effect from 28.05.2020 to 03.06.2020 as per the schedule published in that regard. It is further stated that petitioner's counselling was scheduled on 29.05.2020 and on that day she had all the opportunity available to her to upgrade her seat out of the available seats till the conclusion of the process on that day, which she availed and exhausted in full through online mode. It is averred that had the seat in Ophthalmology fallen vacant on 29.05.2020, it would have been offered to the petitioner for exercising her option even after she had availed her turn on that day. But, the fact is that no seat became available on that day in the discipline of Ophthalmology; it became available on the following day viz. on 30.05.2020 and was, therefore, offered to the candidate on that day on the basis of his merit and preference made by him for the same. In this behalf, it is further submitted that, in fact, this seat in the discipline of Ophthalmology was allotted to Dr. Paramvir Singh Chib, but during the course of counselling on 30.05.2020 itself, he got upgraded to the discipline of Orthopaedics, thereby the seat in the discipline of Ophthalmology got vacated by him and became available on 30.05.2020. It is submitted that there was no question of recalling the petitioner on 30.05.2020, once her counselling had concluded on 29.05.2020. It is stated that the petitioner has no case.

10. On the crucial point, private respondent no.5 has made similar averments in his objections. He has further averred that he has joined the course and has been pursuing MD, Ophthalmology, since 30.05.2020.

11. We heard learned counsel for the parties, perused the record and considered the matter.

12. As seen above, the controversy raised in the petition is very short and precise. During the course of arguments, the learned counsel for the parties reiterated their respective stands taken by them in their pleadings. The learned counsels took this Court through various notifications issued by the BOPEE. Mr. Abhinav Sharma, learned counsel for the petitioner, however, also cited and relied upon the Supreme Court judgment in *Asha v. Pt. B. D. Sharma University of Health Sciences*, AIR 2012 SC 3396, and submitted that criteria for selection to such courses has been held to be merit alone. He submitted that once a seat in the discipline of Ophthalmology had cropped up on 30.05.2020, it was incumbent upon the BOPEE to track the candidate having given preference for the discipline of Ophthalmology possessing higher merit than the candidate whose counselling was scheduled on the relevant date and at the point of time. He submitted that the rule of merit has been defeated by an improper method of

admission and, therefore, the respondent BOPEE is liable to be directed to allot the seat in question in the discipline of Ophthalmology to the petitioner. He submitted that in the aforesaid judgment, the Supreme Court has gone to the extent of laying down that cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious student.

13. It is seen that the Information Brochure, 2020, issued by the BOPEE for counselling and preference form filling and admission, contains the procedure for selection and admission to Medical Postgraduate Courses (MD/MS/PG Diploma/ MDS) in Government / Private Medical Colleges of UT of Jammu and Kashmir. Few of the clauses of the Information Brochure, which are relevant in context of the controversy raised herein, are noticed hereunder.

14. Clauses 18 and 19 of the Brochure provide for online registration / verification / scrutiny of documents / production of original certificates; and general and technical instructions for online registration. Clause 20 provides for declaration of provisional merit list by the BOPEE. Clause 21 provides for online filling up of preference forms / online counselling. Clause 22 provides for procedure to be followed during counselling. It states that a tentative schedule for filling up of the online preference forms has already been indicated in the Information Brochure but the final schedule shall be notified in this regard for information of the candidates. Clause 24 provides the general and technical instructions for filling up online preference forms. Clause 25 of the Brochure prescribes the selection process. It reads as under:

"25. SELECTION PROCESS:

Notwithstanding number of candidates who have actually qualified the examination, Board may restrict number of candidates to fill in Preference Forms to at least 2.5 times number of seats available. However, a final decision in this regard shall be taken after the Provisional Merit List notified by the Board is notified and candidates would be informed also. This shall also enable Board to fill up seats as may remain vacant due to various reasons, including non-joining, resignation etc. by candidates. Intention is to ensure that all seats available in the colleges are filled up and no seat remains vacant on completion of the selection process.

Subject to any other conditions contained hereinabove, the selection to a course/ college of a candidate will be made considering his/her position in Merit List, the preferences given by candidate and by adhering to the reservation rules.

After completion of the first round of counselling (filling up the preference form) and completion of the allotment process by the Board, a Notification indicating the allotment of seats to the candidates will be displayed on website of BOPEE i.e. www.jkbopee.gov.in / www.jakbopee.org and shall be published in the leading English dailies also.

All candidates to whom a seat has been allotted in the 1st round on the basis of

Merit-cum-Preference will have to compulsorily join college and course so allotted, within prescribed period by completing requisite formalities. i.e. submission of original documents as per list given in check-list and by submission of such other documents/undertakings as may further be required.

CLARIFICATION:-

A candidate, to whom a seat has been allotted in 1st round, who stakes a claim for betterment of his/her choice, must initially accept allotment and join College by completing necessary formalities as set out by Rules, failing which such a candidate(s) will not be eligible to participate in second round of counselling, but may be allowed subsequently to compete against such category seats which may remain vacant and the Board may decide to fill the same from OM category candidates.

Seat so allotted to such a candidate who does not join, will be presumed to be a vacant seat as on and immediately after the date set out as last date for joining college in terms of such allotment. Such a vacant seat will be allotted in next round of admission process within prescribed period.

Any up-gradation or revision in the allotment of seats/colleges as may become necessary due to resultant seats caused due to non-joining/resignation etc. of a seat etc. will be considered, on the basis of merit-cum-preference only."

15. Then Clause 26 of the Brochure, which contains crucial provisions in context of the present controversy, provides for up-gradation / allotment round (2nd round of counselling). It reads as under:

"26. UPGADATION / ALLOTMENT ROUND (2ND ROUND OF COUNSELLING)

The following procedure shall be followed in case it is decided by the Board to conduct upgradation/allotment (second round) through online counselling:

(i) The candidates, who have been allotted a seat during first round and have joined the College/Institution, will be eligible to participate in the upgradation round of counselling;

(ii) The candidates who participated in the first round of counselling but could not get a seat due to (SNA) / or CNA shall be eligible to participate in the counselling;

(iii) The candidates eligible/desirous to participate in the upgradation/allotment round shall be required to indicate the fresh preferences for the seats proposed to be filled up (to be notified) during the said round of counselling caused due to non joining of the candidates / resignation etc;

(iv) The preferences indicated by the candidates earlier during the first round of counselling shall, therefore, be deemed to be cancelled and shall not be applicable for this round of upgradation / allotment;

(v) The seats vacated by the candidates during the upgradation process shall automatically be added to the seats available and allotted simultaneously on the

basis of merit-cum-preference.

(vi) The candidate applying for upgradation shall have to submit an online willingness to the effect that he/she shall participate in the upgradation round;

(vii) The seat allotted to a candidate in the first round, who is participating in the upgradation round shall be deemed to have been surrendered by him/her, and shall be added to the seat matrix to be filled up during second round only if he/she is upgraded and allotted a seat on the basis of upgradation. In absence of his/her upgradation, the candidate shall retain the seat allotted to him/her during the 1st round of counselling;

(viii) The seats left out by the OM candidate during the first round shall be allotted to the OM candidate and those left by the category candidates shall be allotted to the category candidates only during this round of counselling, provided that the seat left by the category candidate belonging to a particular category shall be allotted to the candidate belonging to that category only from which it has become available. For example if a seat in SC category is available, it will be allotted to an SC candidate only;

(ix) The seats additionally allowed to be filled by the MCI/Government of India, after the completion of first round of counselling and before the filling up of fresh preferences for second round of counseling shall be added to the seat matrix and filled up along with the other seats being filled up during such round.

Note:- Rule 17 shall not apply during the upgradation/allotment round. The candidates upgraded/allotted a seat shall be required to join the college within the stipulated time as may be notified by the Board.

Note:-

(i) The candidates who join the college on the basis of first round of counselling and wish to participate in the second round of counselling should, therefore, take a very conscious decision for participation in the second round, as unnecessary participation in the process only causes delay in completion of the process.

(ii) Board may, if it is expedient to do so, display or notify the list of candidates participating in the second round of counselling along-with the seats allotted during 1st round of counselling.

Following procedure shall be followed in case it is decided by the Board to conduct upgradation/allotment round (2nd round of counselling) through physical counselling:-

i. The seats available due to non joining, resignation etc. shall be notified by the BOPEE. All candidates who have joined the course/college and those to whom a seat could not be allotted during the first round of counselling due to SNA/CNA shall be eligible to participate in the process of counselling/upgradation and those who have not joined on allotment of the seat during the first round shall not be eligible;

ii. The candidates eligible and desirous of participating in the physical round of upgradation/allotment shall be required to fill in fresh preference forms and the preference forms filled online during first round shall be deemed to be cancelled;

iii. The candidates shall have to appear during the upgradation/physical round in person before the counselling committee/Board as per the schedule notified by it. The candidates shall have to register themselves in the Board office in the morning and shall have to participate in the counselling process on their turn. The seat shall be allotted to the candidates who participate in the counselling at relevant point of time on the basis of merit-cum-preference. In case any candidate fails to appear in the counselling at his/her turn he/she shall lose claim on the seat available, which shall be allotted to the next available candidate in order of merit. However, such a candidate who misses the counselling on his/her turn and reports at a later date/time than of his/her turn during the counselling period as notified, shall be considered only against the seat(s), which are available at that point of time; and

iv. The seats vacated by the candidates due to upgradation etc. shall be added to the seat matrix and allotted during the day on minute to minute basis and the seat matrix shall undergo change on minute to minute basis, which shall be displayed on the monitors available in the BOPEE office.

Note:- (i) Rule 17 shall not apply during the upgradation/allotment round. The candidates upgraded/allotted a seat shall be required to join the college within the stipulated time as may be notified by the Board; and

(ii) The physical round of counselling may either be conducted on a single day or on different dates/days as may be notified by the Board. Such seats remaining unfilled at the conclusion of first days of counselling may be carried to the next day/date of counselling as may be decided by the Board. However, the candidates who did not participate in the counselling process on a particular date/day notwithstanding his/her higher merit shall subject to the above conditions be eligible to compete for the seats as are carried forward to the next day/date of counselling. Such candidates shall have no claim on a seat which was allotted to a candidate during the previous day/date of counselling on the basis of his/her merit, preference and availability of seat at the time of counselling. In other words the candidates cannot stake a claim on a seat which has been allotted to another candidate on the grounds that the candidate could not participate in the physical round of counselling earlier when the seat was available. Such a process, if allowed would mean re-opening of admission/allotment process and thereby result in non completion of admissions within the stipulated/prescribed time limit by the MCI/Hon'ble Supreme Court of India;

(iii) The candidates participating in the physical round of counselling and allotted a seat, should in their own interest not leave the Board office as there is a possibility that a seat of his/her choice, which was not available on his/her turn of counselling, may become available in the process. He/she can stake a claim on

such a seat immediately once the seat is displayed on the monitor of the Board, consequent upon its vacation by a candidate so that such a candidate is considered for allotment of the seat on merit cum preference basis. The seat allotted to him/her earlier shall become vacant and added to the seat matrix. Board shall not be responsible in case a candidate leaves the Board office and he/she fails to stake a claim on a seat as may become available as above;

(iv) The seats additionally allowed to be filled by the MCI/Government of India, after the completion of first round of counselling and before the filling up of fresh preferences for second round of counselling shall be added to the seat matrix and filled up along with the other seats being filled up during such round."

16. The prospectus issued by the BOPEE, thus, clearly lays down and prescribes the procedure for selection and admission of the candidates to the course in question. It is seen that Clause 26 provides separate procedures to be adopted for up-gradation / allotment in 2nd round of counselling: one regarding online counselling and the other regarding physical counselling. So far as online counselling is concerned, sub-clause (v) thereunder provides that the seats vacated by the candidates during the upgradation process shall automatically be added to the seats available and allotted simultaneously on the basis of merit-cum-preference. As regards 2nd round physical counselling, sub-clause (iv) thereunder provides that the seats vacated by the candidates due to up-gradation etc. shall be added to the seat matrix and allotted during the day on minute to minute basis and the seat matrix shall undergo change on minute to minute basis, which shall be displayed on the monitors available in the BOPEE office.

17. It is the admitted case of the petitioner that she was held up at Dehradun and, therefore, could not physically participate in the 2nd round of counselling, and she participated in online mode. Notwithstanding whether the petitioner participated in the 2nd round of counselling online or physically, strictly speaking there is no difference in the procedure so prescribed in the two modes of counselling. The words used in sub-clause (v) under the online counseling are 'that the seats vacated by the candidates during the upgradation process shall automatically be added to the seats available and allotted simultaneously on the basis of merit'. The adverb 'simultaneously' is derived from its adjective form 'simultaneous' which means occurring, operating, or done at the same time [The Concise Oxford Dictionary, Tenth Edition, Edited by Judy Pearsall, p. 1338]. The online Merriam Webster Dictionary gives the meaning of the word 'simultaneous' as 'existing or occurring at the same time; exactly coincident'. 'Coincident' means 'occurring together in space and time'. So, in terms of the procedure given for online counselling under sub-clause (v) of Clause 26, a seat vacated by a candidate during the up-gradation process has to be allotted at the time of its occurrence itself, i.e., coincident with its occurrence. Exactly, the same procedure is provided for physical counselling, inasmuch as it is provided thereunder that the seats vacated by the candidates due to up-gradation etc. shall be added to

the seat matrix and 'allotted during the day on minute to minute basis' and 'the seat matrix shall undergo change on minute to minute basis'.

18. The learned counsel for the petitioner laid a great stress on clauses (iv) and (v) of BOPEE Notification no.011-BOPEE of 2020 dated 14.05.2020 which are akin to the provisions contained in sub-clause (v) under Clause 26 in relation to online counselling and sub-clause (iv) of the said Clause in relation to physical counselling of the Brochure quoted and discussed hereinabove. The words 'added to the seats available' and 'added to the seat matrix', in context of the scheme of things so prescribed, mean nothing more than keeping account of these seats in the respective categories and disciplines. These words do not mean as if the seats have to be put in storage and utilized subsequently, at ease. Instead, the relevant provisions of the Brochure are specific that these seats are to be utilized on minute to minute basis each hour and each day. In fact, the two documents depicting up-gradation of seats in consequence of physical counselling dated 30.05.2020 of Dr. Paramvir Singh Chib and respondent no.5 herein demonstrate the timing at which the former vacated the seat in Ophthalmology and accepted the upgraded seat in Orthopaedics, and the latter accepted the seat so vacated by the former. The document at page 10 concerning Dr. Paramvir Singh Chib, bearing UT Rank 332, indicates that his seat was upgraded to Orthopaedics at 11.45 am on 30.05.2020 and thus at the very same time he vacated the seat in Ophthalmology. The document at page 11 concerning respondent no.5 indicates that he accepted the said vacant seat in Ophthalmology at 11.50 am. So, the procedure prescribed by the BOPEE is not only clear and unambiguous, but, it is seen that the same has been strictly followed and adhered to. Thus analysing clauses (iv) and (v) of BOPEE Notification no.011-BOPEE of 2020 dated 14.05.2020, reliance thereon by the petitioner has serious boomeranging effect on her.

19. It is to be noted that there is no provision contained in the procedure providing for reopening the admission that has once been closed after following the above process, except to the extent if candidates in consequence of 2nd round of counselling do not join against the upgraded seats. This is clearly established by the procedure so prescribed by the BOPEE and fortified by the provision contained in Clause 27 of the Brochure which provides for subsequent round of counselling, and states that the Board may, if required, conduct subsequent round of online counselling/physical round of counselling in the same manner as prescribed for 2nd round of counselling; provided, that the candidates, who did not join the college on allotment of a seat after first round of counselling or on upgradation of seat and or allotment of seat during second round shall not be eligible to participate in the subsequent round of counselling, and that those candidates, who have been upgraded during the second round shall not be eligible to participate in this round, notwithstanding their joining the College. Obviously, the reason being to bring the selection and admission process to a logical end; otherwise, as rightly argued by the learned counsel for the respondents, it would be an unending process at the cost of the fixed schedule.

20. Coming to the judgment of the Supreme Court in *Asha v. Pt. B. D. Sharma* University of Health Sciences (*supra*), cited by the learned counsel for the petitioner, there is no doubt that therein the Supreme Court, referring to a catena of its earlier judgments on the point, has laid down that the criteria for selection has to be merit alone and that merit, fairness and transparency are the ethos of the process for admission to such courses. The Supreme Court therein has observed that it will be travesty of the scheme formulated by the Court and duly notified by the States, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission, and that there cannot be any circumstance where the Rule of Merit can be compromised. The fact, however, attendant in the instant case is that the procedure prescribed by the BOPEE on the basis of which the impugned selection/admission process has been completed is not under challenge. If the petitioner was aggrieved of the procedure so prescribed and adopted by the BOPEE, he ought to have challenged the same. Instead of challenging the said procedure, the petitioner is, rather, relying on clauses (iv) and (v) of BOPEE Notification no.011-BOPEE of 2020 dated 14.05.2020 which are based on the relevant sub-clauses under Clause 26 of the Brochure. In the circumstances, neither can it lie in the mouth of the petitioner that the BOPEE has adopted an unreasonable procedure, nor can this Court go into the legality/correctness or otherwise of the procedure so prescribed and adopted by the BOPEE. The judgment, therefore, is of no help to the petitioner. It may further be observed here that, having regard to the procedure so prescribed, there was no question of the BOPEE tracking the candidate whose counselling had taken place and concluded on the previous day, notwithstanding that he might have been possessing higher merit than the candidate whose counselling was scheduled and done on the relevant date and at the relevant point of time.

21. In light of what has been discussed above, there is no merit in this writ petition. It, therefore, deserves to be dismissed. It is, accordingly, dismissed as being without any merit. All connected CMs shall abide by the decision in the main petition. If there is any interim direction in operation, the same shall stand vacated.

22. However, no order as to costs is made.