

(2021) 02 J&K CK 0045

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2029 Of 2020, CM No. 7948 Of 2020

Navkiran Kour

APPELLANT

Vs

J&K Bopee And Ors

RESPONDENT

Date of Decision : 03-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 02 J&K CK 0045

Hon'ble Judges : Sindhu Sharma, J

Bench : Single Bench

Advocate : Vishal Goel, F. A. Natnoo

Final Decision : Dismissed

Judgement

1. Petitioner appeared in the National Eligibility Entrance Test (NEET) for MBBS Course and as per the result declared on 16.10.2020, secured 479

marks. The Competent Authority vide its Notification No. 45-BOPEE of 2020 dated 05.11.2020 with a view to upgrade the category status and

preparation of Provisional UT merit list, called upon the eligible candidates having cut off marks of 147 under Open, JKPM, CDP, Sports, EWS

category to register themselves online by uploading of requisite documents from 07.11.2020 to 12.11.2020. The petitioner possessing the requisite

eligibility under Jammu and Kashmir Para Military Force (JKPM) category and possessing the merit of 479 marks registered her candidature with the

online portal in the said category.

2. The Board of Professional Entrance Examinations (hereinafter to be referred to as BOPEE) vide its Notice No. 67-BOPEE of 2020 dated

28.11.2020, directed the registered candidates to submit their respective preferences for allotment of Colleges/Courses from 31.11.2020 to 03.12.2020

and also to deposit the requisite counselling fees. Accordingly, the petitioner also submitted her preference on 07.12.2020 for allocation of College and

Course. The petitioner opted and submitted for the following preferences for the available courses:-

- i) MBBS Course in Government Medical College, Jammu;
- ii) MBBS Course in Government Medical College, Kathua;
- iii) MBBS Course in Government Medical College, Srinagar;
- iv) MBBS Course in Government Medical College, Baramulla;
- v) MBBS Course in Government Medical College, Rajouri;
- vi) MBBS Course in Government Medical College, Doda;
- vii) MBBS Course in Government Medical College, Anantnag;
- viii) BDS Course in Government Indira Gandhi Dental College, Jammu;
- ix) BDS Course in Government Dental College, Srinagar;

3. The provisional select list of candidates for undergoing MBBS/BDS courses 2020 in various Colleges of UT of J&K was issued on 07.12.2020 vide

notification No. 59-BOPEE of 2020. The petitioner figured at serial No. 909 of the said list and was allotted the BDS Course in Government Dental

College, Srinagar which she did not choose to join. The BOPEE vide Notification No. 060-BOPEE of 2020 dated 16.12.2020 announced upgradation

of seats as shortfall on account of the candidates who did not join. The candidates were advised to come for counselling only in case seats are vacant

on each day of counselling. The second round of upgradation counseling was scheduled from 19.12.2020 to 23.12.2020.

4. The grievance of the petitioner is that as per the merit list uploaded on 20.12.2020 two vacancies arose in MBBS Course against the category of

JKPM for female candidates in GMC Srinagar and GMC Rajouri due to non-joining of candidates in the category holding superior merit. The

petitioner possessing the requisite merit approached the office of the respondents as per schedule for participating in the second round of counselling

and requested the respondents/BOPEE for her consideration against the same. The respondents, however, have declined to entertain her request for

participation in second round of counselling for up gradation of her MBBS course and allotment of College. The respondents, according to her, on the

contrary have revealed their intentions of transferring these two vacancies to the

open merit category. This refusal of the respondents to entertain petitioner's candidature for upgradation of the course for the seats available in JKPM Category is illegal, arbitrary, beside being actuated with bias and malice.

5. It is also urged that as vacancy is available in MBBS course in GMC Srinagar and GMC Rajouri against the JKPM Category, therefore, the

petitioner cannot be denied participation for upgradation in the second round of physical counselling. These vacant seats having been created due to

non-joining of the candidates and the petitioner possessing the requisite merit is available and willing to undergo the MBBS course in the aforesaid

institution being meritorious, therefore, has a right of participation in the counseling and consequently, allotment of the said seat in the aforesaid

category. The shifting of the vacant seats of JKPM category to the Open Merit category without considering the candidature of the petitioner is

infringement of her right. It is submitted that the entire process is unfair as merit in the selection is required to be maintained. This MBBS Course has

already stand marked in the list of preferences given by the petitioner, who is meritorious, therefore, this non-consideration and allotment to the

petitioner only reflects the mala fide intention of the respondents to manipulate the seats and allot the same to the favourable candidate of the BOPEE.

6. The petitioner, therefore, seeks a direction to the respondents for allowing her to participate in the second round of counselling. She also submits

that the respondents be restrained from transferring the JKPM category seat to Open Merit category which had fallen vacant in GMC Srinagar. The

petitioner seeks a writ of mandamus directing the respondents to permit her to exercise her option of upgrading her seat from the allocated BDS

course to MBBS Course in view of the vacancy available on account of non-joining of the candidate higher in merit to the petitioner.

7. According to respondents, the petitioner had applied under JKPM Female category candidate under Roll No. 2501011209 in NEET (UT)-2020. As

per her merit and category and in terms of the preferences filled up by the petitioner and she was selected for BDS course in GMC Srinagar vide

Notification No. 59-BOPEE of 2020 dated 07.12.2020 as per her merit, category and preference. The petitioner, however, choose not to join the

allotted course and college as such was not eligible to participate in second round

of counselling. She only approached the respondents for her consideration after the Notification dated 16.12.2020 was issued on account of non-joining of the candidates. Learned counsel for the respondents submitted that the MBBS seat under JKPM Category in GMC Srinagar is reserved only for PWD candidate and only one seat i.e., GMC Rajouri was available as a result of shortfall under JKPM category, which also stands allotted.

8. The respondents have placed reliance on Clause-(21)(A)(i) of Information Brochure which provides that only those eligible candidates, who have been allotted seats during first round of counseling and have joined the college/institution would be eligible to participate in the upgraded round of counselling. As the petitioner has failed to join the allotted course, therefore, she was not eligible for participation in the upgradation round counseling.

9. The petitioner's stand on the contrary is that she was not given her initial preference for allocation of MBBS Course but was allotted BDS course in GDC Srinagar, which was last in her choice of preference and since she did not want to pursue the same, therefore, she did not join. Therefore, her non-joining of the BDS course cannot be construed to deny her participation and admission in MBBS course as per her merit. It is submitted that the petitioner in terms of the said information brochure having failed to join the allotted seat during first round of counselling, therefore, she was not eligible to participate in the upgradation round of counselling. This clause was also repeated in the notification for upgradation of the Course i.e., Notification dated 07.12.2020. Thus, the petitioner having failed to join the allotted seats could not be considered for second round of counselling.

10. Learned counsel for the petitioner has also submitted that for allotment of seat of MBBS course the merit alone must be of paramount consideration and by denying the same to her, a less meritorious candidate be allotted admission to MBBS course, and the petitioner despite being meritorious would be denied admission to MBBS course. In support of his contention, learned counsel for the petitioner has relied on the judgment of this Court in 2014 (3) JKJ 166, J&K BOPEE & ors. versus Sunandani Sharma & others.

11. The issue which arises for consideration is whether the petitioner was eligible for participation in the second round of counseling and consequently allotment of seats. The respondents have held the petitioner ineligible in terms of

Clause-21(A)(i) of the Information Brochure. Clause-(21)(A)(i)

reads as under:

21. Upgradation Round(S):

(i) the seats available due to non-joining, resignation or remained vacant during first round etc. shall be notified by the Board. Only such 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 counseling.

12. Thus only those candidates who have participated and were allotted seats in the first round of counseling and had joined the college/institution were eligible to participate in upgraded round of counselling. This was also notified in Notification No. 59-BOPEE dated 07.12.2020 vide which rest of candidates provisionally selected for undergoing MBBS/BDS courses 2020. Relevant extract of the same is as under:

“The Candidates allotted Government/Private Colleges in accordance with their online preferences in order of merit, shall have to join against their seat(s) upto 14th December,2020 positively and in case any candidate fails to join against his/her allotted seat(s) shall not be eligible to participate in 2nd round of physical upgradation/allotment counseling under any circumstances.”

13. The petitioner admittedly did not join her allotted BDS seat in Government Dental College, Srinagar, therefore, she would not be eligible for participation in the upgraded round of counseling and consequently allotment. The petitioner may be more meritorious than candidates who are eligible for participation and consequently selection but by not accepting allotted BDS course, she become ineligible for participation in counseling for admission to MBBS course. The BOPEE has to make admission as per the procedure set out in the Information Brochure and cannot deviate from the same as it would create difficulty and chaos and would reopen the entire admission process and the Board will not be able to bring the selection to logical end. They have, accordingly, rightly considered the petitioner ineligible for participation and allotted the same to the next selected candidate.

14. This issue was considered by this Court in Dr. Isha Sharma vs. Union Territory of J&K & Ors. 2020 (4) JKJ 38, while considering the similar provision for MD Entrance it has been held as under :-

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.

15. The next issue relevant for consideration regarding what would be the scope of prospectus as contained in Information Brochure and whether the same would be binding on the candidates. I am of the opinion that the provisions contained in the prospectus would be binding on the candidates. The candidates seek admission only after agreeing to all the provisions as contained in Information Brochure. The petitioner having applied as per the Information Brochure cannot seek participation in counseling without adhering to the provisions as given in Clause-21(A)(i) and in Notification No. 59-BOPEE of 2020 dated 07.12.2020. This issue was considered in Dr. S. Bhuvaneshwar Karthik & another versus The Tamil Nadu Public Service Commission, 2008 0 Supreme (Mad) 4180, the Madras High Court has held as under :-

â??A Full Bench of this Court in Amardeep Singh Sahota vs. State of Punjab (1993 (4) Serv LR 673) had to consider the scope and binding force of the provisions contained in the prospectus. The Bench took the view that the prospectus issued for admission to a course, has the force of law and it was not open to alteration. In Raj Singh vs. Maharshi Dayanand University (1994 (4) R.S.J. 289) another Full Bench of this Court took the view that a

candidate will have to be taken to be bound by the information supplied in the admission form and cannot be allowed to take a stand that suits him at a given time. The Full Bench approved the view expressed in earlier Full Bench that eligibility for admission to a course has to be seen according to the prospectus issued before the Entrance Examination and that the admission has to be made on the basis of instructions given in the prospectus, having the force of law. Again Full Bench of this Court in Sachin Gaur vs. Punjab University (1996 (1) RSJ 1: AIR 1996 Punj & Har 109) took the view that there has to be a cut off date provided for admission and the same cannot be changed afterwards. These views expressed by earlier Full Benches have been followed in CWP.No.6756 of 1996 by the three of us constituting another Full Bench. Thus, it is settled law that the provisions contained in the information brochure for the Common Entrance Test 1997 have the force of law and have to be strictly complied with. No modification can be made by the court in exercise of powers under Article 226 of the Constitution of India. Whenever a notification calling for applications, fixes date and time within which applications are to be received whether sent through post or by any other mode that time schedule has to be complied with in letter and spirit. If the application has not reached the co-ordinator or the competent authority as the case may be the same cannot be considered as having been filed in terms of the provisions contained in the prospectus or Information Brochure. Applications filed in violation of the terms of the brochure have only to be rejected.â??

16. Thus, the learned counsel for the petitioner has placed reliance on J&K BOPEE & ors. versus Sunandani Sharma & others 2014 (3) JKJ 166.

However, the issue in this case was that the BOPEE issued a notification for upgrading the other two candidates for BDS seats and this mistake of the BOPEE was accepted and set aside.

17. The aforesaid judgments in both the cases are not applicable to the facts and circumstances of the present case. Respondents/BOPEE have to conclude the process of admission to the MBBS course within the stipulated time for the course to start and the same can only be done in time bound manner provided the candidates are serious for the same. Once the Notification No. 54-BOPEE of 2020 dated 30.11.2020 notified that candidates should go through Information Brochure which stipulated that the candidature

had to join the allocated course to be eligible for upgradation of the course as it would affect all other candidates who are lesser in merit or were subsequently eligible. Petitioner having participated cannot claim either that same is arbitrary and affects her harshly. The procedure prescribed by the BOPEE to give finality to the proceedings and to being the same to its logical end the petitioner knowing fully well the provisions participated in the selection process and cannot now claim the same to be unreasonable. It is well settled that this Court cannot go into the correctness and legality of the procedure adopted by the BOPEE when the entire process has been completed.

18. In view of aforesaid discussion, there is no merit in this petition and the same is, accordingly, dismissed alongwith all connected application(s).