
(2019) 11 J&K CK 0021
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 4223 Of 2019

Pardeep Kumar

APPELLANT

Vs

Union Territory Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:

Citation : (2019) 11 J&K CK 0021

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : F. A. Natnoo, Anjali Bala

Final Decision : Dismissed

Judgement

Rajesh Bindal, J

1. The petitioner has approached this Court praying for quashing of notification No. 114-BOPEE of 2019 dated 16.11.2019, by virtue of which, the respondent No.3 has been admitted to MBBS course.

2. The petitioner, who appears in person, submitted that she had secured 1,64,039 rank in National Eligibility-cum-Entrance Test (NEET) examination. She belongs to the Schedule Caste (SC) category. She got herself registered with J&K Board of Professional Entrance Examinations (BOPEE), in June, 2019, for admission to MBBS/BDS courses in the State of J&K (now Union Territory). As she was interested in the MBBS course only, she did not apply for BDS course. In the application form filed by her, she had submitted her Mobile Phone Number as also her Email ID. Earlier the respondent No.2 - The J&K Board of Professional Entrance Examinations (BOPEE), had been sending the text messages to the petitioner and all other candidates. Once the petitioner had submitted her options at the time of submission of the application form, the BOPEE was required to prepare merit list only on the basis thereof without holding any fresh counseling.

3. It was further submitted that on 18.11.2019, the petitioner came to know that the list of candidates, who had been granted admission to various medical courses, has been amended and a fresh list has been published on 16.11.2019. On enquiry from the Office of the respondent No.2 - BOPEE, the petitioner came to know that fresh counseling was held on November, 14 & 16, 2019, in which the respondent No.3 was selected for undergoing the MBBS course at Government Medical College, Anantnag, in spite of the fact she was having rank lower than the petitioner in NEET examination. Though it was claimed by BOPEE that due publication was given to the notification for counseling, however, the same was never brought to the notice of the petitioner as she is living in a remote village. There is no internet facility available in the UT of J&K. It was also submitted that no text message was forwarded to the petitioner regarding fresh counseling. The argument is that the candidate, lower in merit, having been admitted to the MBBS course, the petitioner deserves to be granted admission by setting aside the admission of respondent No.3, as she is more meritorious.

4. On the other hand, learned counsel for the respondent No.2 - BOPEE, submitted that the first round of process of admission of the sanctioned seats was completed on August, 15, 2019. As per merit, the petitioner could not get seat for MBBS course. Subsequently, there was increase in the intake capacity of three Medical Colleges in the UT of J&K for MBBS and BDS courses, vide notification dated 02.09.2019 issued by Government of India. To apprise the prospective candidates, various notices were published in the news papers having circulation in different areas in Jammu & Kashmir. The candidates were informed that fresh counseling will be held on November, 14 & 16, 2019 at BOPEE Office, Jammu/Srinagar. Information was also disseminated through Radio Kashmir/Jammu/Leh & Kargil and also through various TV channels. Three notices were published in the news papers on 11.09.2019, 21.10.2019 & 4.11.2019. Large number of candidates participated in the counseling. As a result of this some of the candidates got their courses upgraded from BDS to MBBS, whereas some new candidates also got admission. As the petitioner had not participated in the process of counseling, she cannot raise any grievance now. It was further submitted that, as a matter of concession, Hon'ble the Supreme Court had extended the last date for admissions for the UT of J&K to November, 30, 2019 and the period is expiring on this Saturday.

5. The issue, sought to be raised by the petitioner regarding the process adopted by the respondent No.2 - BOPEE for carrying out admissions, will require response and arguments in detail as the admission of large number of candidates, who are not party before the Court, will be affected. It is further submitted that service of text messages was also barred in Kashmir. BOPEE was required to follow same process for all the candidates and not different for different candidates, as some of the candidates were living in Kashmir province whereas some in Jammu province. Once the petitioner has failed to participate in the counseling process, she cannot raise any hue and cry at this stage.

6. Heard the petitioner in person and the learned counsel for the respondent No.2 - BOPEE.

7. Notice in the petition was issued on 26.11.2019 for 27.11.2019. Considering the fact that last date fixed for admissions is November, 30, 2019, the petition is being decided after hearing the arguments raised by the petitioner, who appeared in person and the counsel appearing for the respondent No.2 - BOPEE, who has produced certain record before the Court.

8. As not disputed by both the parties, the first round of admissions to the Medical Colleges, conducting MBBS and BDS courses, was over on August, 15, 2019. Certain seats were increased by the Government of India for MBBS & BDS courses vide notification dated 02.09.2019. The same were required to be filled up. The last cut off date fixed by the Apex Court for admissions to the MBBS & BDS courses had expired. On an application filed by the then State of J&K, Hon'ble the Supreme Court extended the last date to November, 30, 2019. To fill up the newly created seats, the respondent No.2 published three notices on 11.09.2019, 21.10.2019 & 4.11.2019 and claimed that these were given due publicity through print media in different news papers having circulation through out the then State of J&K. Publicity was also given through Door Darshan Kendras of Kashmir/Jammu/Leh & Kargil as also through Radio Kashmir/Jammu/Leh & Kargil. As a result of the aforesaid notices, whereby the candidates were called for counseling, 636 candidates got themselves registered up to 31.10.2019 for taking part in the counseling process to be held on 14th and 16th November, 2019. Last date of joining was 22.11.2019. For the unfilled seats, second counseling was to be held on 25.11.2019. Fresh list was issued thereafter to fill up the vacancies along with the waiting list with the last date of joining fixed as November, 30, 2019. The candidates, who got themselves registered for the counseling, either got their courses upgraded from BDS to MBBS or got admission afresh. As claimed, the petitioner did not come to know about the aforesaid notices or about the increase of seats by the Government of India. She came to know only on 18.11.2019 and thereafter has approached this Court on 21.11.2019.

9. Considering the time gap, which is left between today and the last cut off date for admissions to the medical courses, i.e. November, 30, 2019, it will not be possible to get the written response from the respondent - BOPEE and dispose of the petition in case the arguments of the petitioner, that the process of fresh counseling adopted by the BOPEE was unreasonable, as for the purpose, detailed arguments will be required and even the candidates, who have already been admitted, may have to be heard, as the net effect of setting aside of the process of counseling would be on their admissions. It may not only be the respondent No.3 who ranked below the petitioner in the NEET examination and was admitted for the MBBS course, there may be other candidates also who may have similar grievances. But the fact remains that the respondent - BOPEE had issued three notices and published the same in different news papers having circulation

through out the then State of J&K. Further, as claimed, wide circulation was given through electronic media as the information was disseminated through the Door Darshan Kendras and Radio Kashmir/Jammu/Leh & Kargil. 636 candidates, some of them living in far flung areas, participated in the counseling. May be some of the candidates did not come to know about the fresh notification and had not participated in the process of counseling but it will be too late to go into this entire process at this stage considering the last date of admissions, which is November, 30, 2019.

10. No doubt, it is a hard case and any meritorious candidates will feel agitated in case he/she does not get admission according to his/her merit and the candidate, lower in merit, gets it. But once the opportunity given is not availed of, the Court will not be able to come to the rescue of such a candidate.

11. For the reasons mentioned above, I do not find reason to interfere in the present petition. It is, accordingly, dismissed.

12. However, before parting with the order, this Court would like to observe that the respondent No.2 - The J&K Board of Professional Entrance Examinations (BOPEE), Jammu, should have been more vigilant and proactive in its approach in intimating or notifying the prospective candidates to seek admission against the increased seats but as usual the process here moves at a very slow speed. Admittedly, the notification of the Government of India, increasing the seats of MBBS & BDS courses for various Medical Colleges is dated 02.09.2019. The first notice, as is claimed to have been published, is dated 11.09.2019 and the second one is more than a month thereafter on 21.10.2019. The process of admission was taken to the last dates. The authorities were well within knowledge of the fact of lack of communication facilities in the then State of J&K at that time. No doubt the claim is that all possible modes were adopted but wherever possible, additional modes could have also been adopted. The text messages could have been flashed on mobile phones, wherever possible. If the service was not available in Kashmir, needful could have been done from Jammu. At least the candidates living in the Jammu region would have benefited from the additional source of information. The same would have shown fairness on the part of the BOPEE to provide opportunity to more and more candidates to participate in the process of admission against the increased number of seats. Had the process been initiated and completed early, instead of waiting for the last date of admission to come closer, even the studies of the candidates, who had to get admission, would not have suffered. The authorities involved in the process of admission have to be more sensitive.