
(2018) 08 UK CK 0131

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2560 of 2018

Upanshu Mehrishi

APPELLANT

Vs

State of Uttarakhand & Others

RESPONDENT

Date of Decision : 24-08-2018

Acts Referred:

Citation : (2018) 08 UK CK 0131

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Shivanand Bhatt, Anurag Bisaria, Akshay Latwal, Shailendra Nauriyal, Rajendra Dobhal, Shubhang Dobhal, Parikshit Saini

Final Decision : List this case on 04.09.2018 in the daily cause li

Judgement

Sudhanshu Dhulia, J.

1. Petitioner had secured admission on a medical seat in MBBS course at Sri Guru Ram Rai Medical and Health Sciences Institute, Dehradun under

the Management quota in the second round of counselling. As the petitioner had also appeared in entrance examination for admission in MBBS course

in All India Institutes of Medical Sciences (AIIMS) in the year 2018 and has qualified the same and has also been allotted a seat in the open

counselling, therefore, the petitioner wants to take admission in MBBS at AIIMS, Nagpur where he has been allotted the seat for which his original

educational certificates/papers are required. But the original educational certificates/papers are not being returned by the Sri Guru Ram Rai Medical

and Health Sciences Institute, Dehradun where the petitioner has presently taken admission. Hence, the present writ petition.

2. This Court has been informed that presently 9 such AIIMS are established in

Delhi, Nagpur, Rishikesh and other places, where MBBS degree is given. The petitioner informed the State Centralised Counselling Board i.e. Hemwati Nandan Bahuguna Uttarakhand Medical Education University that he is withdrawing from the seat as he has been allotted a seat in AIIMS at Nagpur at the time when the mop up round was underway in Uttarakhand.

3. This Court on the last occasion i.e. on 23.08.2018 had asked the learned counsel for the respondent no. 2 Mr. Shailendra Nauriyal to get instructions in the matter as though there was an urgency in the matter but there was some doubts raised at the Bar as to whether the relief sought by the petitioner would not be contrary to the directions given by the Honâ??ble Apex Court in the case of Dar-Us-Slam Educational Trust and others vs. Medical Council of India and other, i.e. in Writ Petition (s) (Civil) No(s). 267/2017. In paragraph nos. 3 and 4 the Honâ??ble Apex Court has directed as under:-

â??3. As per the judgment of this Honâ??ble Court in the case of Ashish Ranjan vs. Union of India & others, [(2016) 11 SCC 225], there shall be only two rounds of common counselling each conducted by the DGHS/State Government or authority designated by the State Government for All India Quota (including Deemed University) and State Quota seats respectively.

4. After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from the all India merit list only. The students who take admission and secure admission in Deemed Universities pursuant to the second round of counselling conducted by the DGHS shall not be eligible to participate in any other counselling.â??

4. The petitioner, however, would argue that these directions of the Honâ??ble Apex Court will not be applicable in his case for the reason that the petitioner had not secured the MBBS seat in Uttarakhand under the All India Quota, and had secured the same under the Management Quota, whereas the directions in paragraph nos. 3 and 4 of the above order are for All India seats. Moreover, these directions were given by the Honâ??ble Apex Court while dealing with National Eligibility and Entrance Test examination

(in short NEET), whereas the petitioner has got admission at AIIMS, Nagpur which is not included in NEET but is a separate entrance examination which is held separately for admission in the MBBS course in All India Institute of Medical Sciences. Furthermore, the petitioner has not violated any law by appearing in the said examination of AIIMS as the Rules for examination of AIIMS permit the petitioner to do that. Petitioner has relied upon condition no. 10 of the process of counselling which was advertised by AIIMS. Condition no. 10 of the notice dated 16.08.2018 reads as under:-

10. Similarly those candidates who have joined anywhere else (other than any AIIMS) and have registered themselves for Open round Seat Allocation/counseling but do not surrender/resign by 20/08/2018 (1.00PM) in their respective Institution/Universities are also eligible for this Open Round of Seat Allocation/Counselling subject to submission of a Bonafide Certificate stating that he/she hold the seat in the respective Institution/University/College and his/her originals are deposited with them. They have also to produce a set of Photocopies of all certificates and also submit DD of Rs.1 Lakh in favour of Director, AIIMS, New Delhi as a security deposit subject to submission of Original Certificates and Seat surrender/resignation letter in original within five days from the allotment of the seat at spot counseling in respective AIIMS whichever is earlier otherwise the same will be forfeited and allotted seat will stand cancelled.

5. In view of the above, prima facie the petitioner has been able to make out a case for himself. The only question that remains is as to what will be the fate of the seat which would become vacant if the petitioner is permitted to vacate this seat at Sri Guru Ram Rai Medical and Health Sciences Institute, Dehradun?

6. Learned counsel for the respondent no. 2 has referred to paragraph no. 7 of the judgment of Hon'ble Apex Court rendered in the case of Dar-Us-Slam Educational Trust and others Vs. Medical Council of India and others, which takes care of situations such as the one before this Court.

Paragraph no. 7 of the aforesaid judgment reads as under:-

7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students.

After the completion counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.â??

7. This Court has been informed that presently admission under the mop up round is going on in the State and the last date of admission is 26.08.2018.

On 26.08.2018 itself, each of the medical colleges which are in the State of Uttarakhand will inform to the State Centralised Counselling Board about

the number of seats which have remained vacant with them. Thereafter, in terms of the directions given by the Honâ??ble Apex Court in the

aforesaid case in paragraph no. 7 of the judgment, those seats will be filled strictly in accordance with merit.

8. The concerned medical colleges shall advertise the number of vacant seats in these colleges and also inform the State Centralised Counselling

Board. It is made clear that only such seats the vacancy of which has been informed to the State Centralised Counselling Board shall be allowed to be

filled by the concerned medical colleges in the stray round, which shall be done strictly in accordance with paragraph no. 7 of Dar-Us-Slam

Educational Trust case i.e. in accordance with the merit list sent by the State Centralised Counselling Board. No other seat shall be allowed to be filled

by the colleges under any condition as this Court has been informed that for certain reasons medical colleges, even though aware of the vacancy or

possible vacancy of these seats, do not announce/publish these vacancies till the last moment and then these seats are allotted to less deserving

students in total disregard of merit. This needs to be checked.

9. Let counter affidavit be filed by the respondents within a period of ten days.

10. List this case on 04.09.2018 in the daily cause list.

11. Meanwhile, considering the above facts and circumstances, an interim mandamus is hereby issued to the respondents to return original

certificates/papers of the petitioner forthwith. Interim relief application stands disposed accordingly.

12. Let a certified copy of this order be given today itself on payment of usual charges.