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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 18th October, 2023

+ LPA 712/2023, CM APPLs. 54627/2023, 54628/2023, 54629/2023

SAKSHI RATHORE AND ORS Appellants

Through: Mr. Mrinal Harshvardhan, Mr. Sushant Dogra and Mr. Aayush Kumar, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC with Mr. Kushagra Kumar, Advocate along with Col. M. K. Mishra and Brig. V. Srivastava for Respondent/ UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The present letters patent appeal (LPA) impugns order dated 11th February, 2023 passed by the learned Single Judge in W.P.(C) 13350/2023 [*hereinafter* “**impugned order**”]. The Appellant herein filed the underlying writ petition being W.P.(C) 13350/2023 seeking quashing of notification dated 05th October, 2023, bearing No. 38217/NEET PG-2023/DGAFMS/DG-1D(xiv) [*hereinafter* “**impugned notification**”] issued by Respondent No. 2– Director General of Armed Forces Medical Service [“**DGAFMS**”] on the ground that it abruptly changed the eligibility criteria right before the



counselling session for admission to Post Graduate courses in Armed Forces Medical Services [“AFMS”] institution. The petition sought directions for reconducting the entire counselling process afresh based upon the original merit list as also the original counselling rules advertised in the information bulletin. However, the said challenge was dismissed by the learned Single Judge by way of the impugned decision.

FACTS AND CONTENTIONS

2. To set out the context, we will briefly take note of the background facts provided in the petition and the grounds urged by the Appellant:

2.1. On 07th January, 2023, an Information Bulletin was published by Respondent No. 4–National Board of Examination in Medical Sciences (NBEMS) inviting applications from prospective applicants for admissions in postgraduate courses through NEET-PG examination. The results were declared on 14th March, 2023 whereafter the Appellants registered for participation in counselling process on the portal of Respondent No. 3–Medical Counselling Committee [“MCC”] and opted for seats offered for AFMS under the “Priority-V” category.

2.2. On 27th July, 2023, DGAFMS issued the notice for admission to Post Graduate courses in AFMS institutions for the session 2023-2026. Said notification clearly prescribed that candidates desirous of admission to postgraduate courses at AFMS institutions and fulfilling the initial eligibility criteria as mentioned above have to register for AFMS institutes on MCC’s website for the centralized counselling. The MCC conducted the first round of counselling on 27th July, 2023 for allotment of seats in medical colleges administered by Central Government, State Governments and Private Colleges.



2.3. Shortly thereafter, on 14th August, 2023, a notification was issued by DGAFMS which postponed the counselling session for admissions to AFMS institutes to 21st August, 2023. Prior to the commencement of counselling for AFMS institutes, the MCC conducted the second round of counselling for allotment of seats from 17th August, 2023.

2.4. In pursuance of the requirement prescribed in the admission notice issued by DGAFMS which mandated that that seats shall be offered to only those candidates who are found medically fit for induction – a medical test was conducted by the Medical Board at AFMS Pune on 21st August, 2023, which was attended by the Appellants herein. In the meantime, before the announcement of list of candidates who were found medically fit by DGAFMS, the third round of counselling was conducted by MCC for allotment of seats from 07th September, 2023.

2.5. Thereafter, due to pending litigation before this Court and CAT Ernakulum and Kolkata, the AFMS PG counselling for Priority III, IV and V candidates was put on hold pending further directions of the Court/Tribunal, by way of notification dated 11th September, 2023,¹ issued by DGAFMS.

2.6. Fresh counselling dates were notified in respect of PG counselling for Priority-V candidates by DGAFMS on 29th September, 2023.² The said notification specified that counselling for Priority-V candidates whose medical examination was conducted on 21st August, 2023 at AFMC, Pune was scheduled to be held on 05th October 2023 *via* video conferencing. It was further specified that the candidates, who are allotted seats, would have to report directly to their institutes for admission on 10th October, 2023.

¹ Notification No 38217/NEET PG-2023/DGAFMS/DG-1D (vii).

² Notification No. 38217/NEET PG-2023/DGAFMS/DG-1D (xi).



2.7. It is pertinent to state here that till this stage there was no condition which barred the candidates, who were allotted a seat under parallel counselling conducted by MCC, from participating in the counselling process for AFMS institutes. On 03rd October, 2023, Appellants received an email from the Priority-V Counselling Board, AFMC Pune, seeking an update on the status of their seat allotment and whether they had joined any course following the MCC counselling. Thereafter, on 04th October, 2023, a notification with the eligibility criteria seat matrix and merit list was published on the website of AFMS institutions, and on the same day, a mock counselling session was also conducted. However, just 45 minutes prior to the actual counselling session scheduled on 05th October, 2023 at 10AM, the impugned notification came to be issued by DGAFMS.

2.8. The Appellants are aggrieved by the impugned notification, which prescribes that any candidate who has already joined an institution / allocated a seat in Round 3 of counselling conducted by MCC will not be allotted any seat in AFMS institutes. The Appellants contend that they have been arbitrarily denied the right to participate and take admission in the counselling session due to last minute change in the counselling rules. It is further contended that the rules of the game cannot be changed at a belated stage i.e., the eligibility criteria cannot be changed immediately prior to commencement of counselling rounds.

2.9. The impugned order fails to account for the fact that counselling conducted by MCC is completely distinct and separate from counselling conducted by DGAFMS and there is no composite counselling scheme in this regard. Counselling conducted by MCC and AFMS are governed by separate information bulletins and as such there is no overlapping of the same.



2.10. DGAFMS' adoption of the third round of MCC counselling as the base round for its own counselling is arbitrary and *mala fide*. It is submitted that if a counselling round is sought to be relied upon by DGAFMS, it ought to have been applied in a wholesome manner by including candidates from the first and second round of MCC counselling. Once applications are received following an advertisement inviting applications, a rule cannot be brought in to disqualify an applicant from the selection process. On this aspect, reliance is placed on the judgment rendered by the Supreme Court in *State of Uttar Pradesh v. Karunesh Kumar & Ors.*³

2.11. DGAFMS failed to intimate the Appellants about the change of counselling rules concerning eligibility criteria at the time of advertisement while inviting applications and no change was notified even at the time of commencement of MCC counselling rounds. If the amended counselling rules were notified at the time of inviting applications, the Appellant may not have participated in the MCC counselling and instead, opted to wait for commencement of AFMS counselling rounds.

2.12. MCC counselling is completely different from AFMS counselling. It is pertinent to state here that the point of difference between the two is that declaration of NEET rank does not automatically entitle a candidate for admission to AFMS as a separate medical test is conducted to satisfy the eligibility of a candidate. Once a candidate is found medically fit a merit list is accordingly drawn by DGAFMS inviting such candidates for counselling. In the present case, the Appellants were declared successful based upon the merit list drawn from medically fit candidates. Further, at the time that the

³ 2022 SCC OnLine SC 1706.



merit list was drawn up 04th October, 2023, the DGAFMS had already been informed by the Appellants that they had been allotted a seat in the MCC counselling round. Therefore, the principle of acquiescence can easily be attributed on part of DGAFMS and they cannot deviate from the same.

2.13. Two of the Appellants in the present appeal are similarly placed with one of the admitted candidates in DNB course as is evident from order dated 11th October, 2023 passed by the learned Single Judge in the W.P. (C) No. 13321/2023 titled *Neha Yadav v. Union of India & Ors.*. Therefore, assigning differential treatment to similarly placed candidates amounts to grave violation of principles of equality as prescribed under Article 14 of the Constitution of India.

ANALYSIS AND FINDINGS

3. We have considered the aforementioned contentions, yet we are not disposed to intervene. In essence, the arguments put forth before us mirror those previously presented to the learned Single Judge and were rejected through the impugned order, the relevant section whereof is quoted below:

6. A bare perusal of the original instructions contained in Annexure P-13 i.e. Information Bulletin clearly demonstrates that there is a prohibition on the allotment of a seat to a candidate who was already allotted a seat in the third round of counselling but did not join the concerned seat.

7. In the instant case, it is not disputed that on 28.09.2023, the seat was allotted to the petitioner. The petitioner, on the basis of allotment in the third round of counselling, may not have taken admission as on 05.10.2023. However, the admission being taken is not the factor to be considered, rather what needs to be considered is the allotment of seat in the third round of counselling and subsequently, not joining against the said allotment.

8. In the instant case, the petitioner, as stated across the bar, joined the said seat on 06.10.2023.

9. The submissions made by learned counsel for the petitioner that on 05.10.2023, the petitioner did not hold a seat, cannot be the sole reason to



allow the petitioner to participate in further round of counselling by AFMS as admittedly, on 28.09.2023, the seat was allotted to the petitioner in the third round of counselling and the applicable clause of the Information Bulletin clearly debars a candidate of such a category for allotment of a seat.

10. It is a categorical stand taken by the respondent-AFMS that no candidate who was already allotted a seat in the third round of counselling and who did not join the concerned seat, has been allowed to participate in the further round of counselling. It is thus, seen that the rule has been uniformly made applicable to all the candidates and therefore, the same cannot be held to be arbitrary.

10. This court, therefore, does not find any arbitrariness or illegality in the aforesaid rule and hence, the instant petition is bereft of merit. Accordingly, the same is, dismissed alongwith the pending application.”

4. Appellant’s challenge primarily lies in the contention that the impugned order fails to acknowledge the distinct and separate nature of the counselling processes conducted by the MCC and the DGAFMS, with no composite counselling scheme binding the two. They argue that the counselling undertaken by the MCC and the DGAFMS is undertaken by separate information bulletins, precluding any overlap between the two systems. In this context, it is pertinent to examine the Information Bulletin issued by the DGAFMS, which includes the following relevant clauses:

“3. Candidates may kindly note that appearance in NEET-PG does not confer any automatic rights to secure a Post graduate MD/MS seat in AFMS institution. Candidates who have registered for AFMS PG counselling on the MCC/ DGHS(MoHFW) website only will be considered for PG seats at AFMS institutes through AFMS counselling subject to fulfilling the admission criteria, eligibility, medical fitness and any such criteria as may be prescribed by the respective universities, AFMS institutions, National Medical Council and State/Central Government.”

xxx ... xxx ... xxx

“7. AFMS reserves the right to withdraw permission to participate in AFMS counseling, to any candidate who is not eligible to appear in the AFMS counseling.



8. *Candidates' eligibility is purely provisional and is subject to the fulfilment of eligibility criteria as prescribed in this Information Bulletin.*”

xxx ... xxx ... xxx

“13. *Candidates may note that by registering for AFMS PG counseling on the MCC website, the candidate is deemed to have read, agreed and accepted the terms and conditions in the Information Bulletin of AFMS for admission to PG courses for year 2023.*”

xxx ... xxx ... xxx

“**METHODOLOGY FOR APPLYING**

20. *The following methodology will be adopted by candidates: -*

xxx ... xxx ... xxx

(e) *The AFMS rounds of counseling will be as per the MCC PG counseling.*
[Emphasis Supplied]

5. The stipulations in the DGAFMS Information Bulletin unambiguously state that the counselling procedures for AFMS shall adhere to the protocols established by the MCC for postgraduate courses. It further mandates that candidates must comply with the prerequisites and conditions delineated in the DGAFMS Information Bulletin. In harmony with this directive, the impugned notification issued by the DGAFMS resonates with the MCC guidelines, particularly the provision stipulating that candidates who have either joined an institution or been allocated a seat during the third round of counselling are ineligible for subsequent seat allotment or participation in ensuing rounds. These provisions maintain consistency of rules and eligibility criteria throughout the admission process, and do not amount to changing of any rules or eligibility criteria, post the commencement of the admission process. As such the reliance of the Appellants on the judgment rendered by



the Supreme Court in *State of UP v. Karunesh Kumar (supra)* is misplaced. The said ruling reiterated that the principles governing changing the rules of game would apply to changes in qualification and eligibility criteria, but not in respect to the selection process. Therefore, this case is not applicable to the facts of the present case, as there has neither been any change in the qualification/ eligibility criteria, nor in the selection process.

6. Appellant's reliance on the order passed in *Neha Yadav*, is also misplaced. Therein, this Court, while examining the impugned notification, observed that if a candidate is not allotted a seat in the third round of counselling, then such a candidate cannot be held to be disentitled for allotment of a seat by DGAFMS. However, in the present case, as regards Appellant No. 2 and Appellant No. 6, who are claiming parity with the observation in *Neha Yadav*, no foundational facts have been pleaded in the LPA. There is also no clarity as to their current status. There is also no discussion in this regard in the impugned order and therefore, we refrain from delving into this aspect. That apart, the impugned notification has been uniformly applied to all candidates and therefore, the same cannot be held to be arbitrary.

7. Given the considerations outlined above, we find no basis to fault in the decision of DGAFMS to stipulate a condition preventing candidates from participating in subsequent rounds of counselling, should they commence attendance at an institution or be allotted seats by the MCC in the third round of counselling. This provision, in our assessment, is neither arbitrary nor capricious. Instead, it reflects a systematic approach to maintaining the integrity and efficiency of the counselling process, ensuring that all participants are subject to the same rules and expectations. Finally, we must



underscore that the admission procedure for medical seats is constrained by stringent timelines. Allowing candidates to engage in perpetual participation in subsequent rounds of counselling, even after seats have been allotted, would inexorably lead to an interminable admission process, thereby undermining the efficacy and purpose of a time-bound system.

8. In view of the above, we are not inclined to interfere with the impugned order.
9. Dismissed along with the pending applications.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

OCTOBER 18, 2023

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