

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA****ON THE 23rd DAY OF MAY, 2022****BEFORE****HON'BLE MS. JUSTICE SABINA****&****HON'BLE MR. JUSTICE SATYEN VAIDYA****CIVIL WRIT PETITION No.1651 of 2022****Between:-**

**ASHISH KUMAR, AGED 31 YEARS,
SON OF SHRI JAGDISH CHAND,
RESIDENT OF VILLAGE RIPLI, POST
OFFICE, DARWAR, TEHSIL DHARAMPUR,
DISTRICT MANDI, H.P.PETITIONER**

(BY MR. AJAY CHANDEL, ADVOCATE)**AND**

- 1. STATE OF HIMACHAL PRADESH
THROUGH SECRETARY (HEALTH)
TO THE GOVERNMENT OF HIMACHAL
PRADESH, SHIMLA-171002.**
- 2. DEPARTMENT OF MEDICAL EDUCATION
& RESEARCH, THROUGH ITS DIRECTOR
(MEDICAL EDUCATION), SDA COMPLEX,
KASUMPTI, SHIMLA-171009.**
- 3. PRINCIPAL, INDIRA GANDHI MEDICAL
COLLEGE SHIMLA-MEMBER SECRETARY,
COMMON/CENTRALIZED COUNSELLING
COMMITTEE, I.G.M.C. SHIMLA-
171001.RESPONDENTS**

**(BY MR. AJAY VAIDYA, SENIOR ADDITIONAL
ADVOCATE GENERAL)**

This Civil Writ Petition coming on for admission this day, Hon'ble Ms. Justice Sabina, passed the following:

ORDER

Petitioner has filed this petition under Article 226 of the Constitution of India, seeking mainly the following relief:-

“(i) That the notice dated 19.03.2022 (Annexure P-7) may kindly be quashed and set aside and the respondents may kindly be directed to allow the petitioner to participate in the Mop Up round/Extended Mop Up round (if any) counseling.”

2. Mr. Ajay Chandel, learned counsel for the petitioner has submitted that the petitioner had appeared in the test for taking admission to Post Graduate (MD/MS) course in September 2021 and had qualified the same. As per the Prospectus for admission in Government Medical Colleges of the State issued in December, 2021, 50% of the seats were to be filled up from State Quota. Petitioner was selected against 50% State Quota for PG (MD/MS) seat. Petitioner could not get any seat in the first counselling. Thereafter, petitioner appeared in the second counselling, which was held in February, 2022 and was allocated seat in Indira Gandhi Medical College (IGMC), Shimla under State Quota in MD (Anesthesia). A notice was issued by respondent No.3 on 15.3.2022 directing that the candidates who had occupied a seat in the first or second round of counselling and intend to

participate in the Mop Up round of counselling against the vacant/unfilled PG seats, to surrender their allocated seat as per Clause 2.3 of the Prospectus. On 16.3.2022, petitioner surrendered his seat in MD (Anesthesia) as he intended to participate in the Mop Up round. However, vide notice dated 19.3.2022, respondents held that the candidates who had been allocated PG seats in previous round of State counselling, were ineligible for participating in further rounds of counselling including Mop Up round in view of the advisory dated 16.3.2022. However, the notice dated 19.3.2022 was in violation of Clause 2.3 of the Prospectus and was liable to be set aside.

3. Mr. Ajay Vaidya, learned Senior Additional Advocate General, on the other hand, has opposed the petition and has submitted that in view of the advisory issued on 16.3.2022, petitioner was not entitled to participate in the Mop Up round as he had already been allocated seat in the second counselling.

4. In the present case, admittedly, petitioner sought admission in Post Graduate course under State Quota. Respondents had issued Prospectus (Annexure P-1) for the year, 2021-2022. Clause 2.2 and 2.3 of the said Prospectus read as under:-

“2.2. As per the directions of the Hon’ble Supreme Court of India on 9.5.2017 passed in writ petition (Civil) No.267/2017-DAR-US-SIAM Educational Trust and ors. Vs. Medical Council of India “After 2nd round of Counselling for All India Quota seats, the students who

take the admission in All India Quota seats should not be allowed/permitted to vacate the seats. Keeping in view of the said directions, candidates are advised to take a calculated decision of continuing in 2nd round of All India Quota as they would not be permitted to resign from 2nd round of AIQ. They will also not be allowed to participate in any Counselling after joining the Course.

2.3. *Similarly the candidates are admitted under 50% State Quota in Govt. Medical Colleges of the State and intend to participate in Mop Up round/Extend Mop Up round (if any) are required to surrender PG seat (already occupied) within stipulated period as specified by the Common/Centralized Counselling Committee separately through notice. In case candidate do not surrender the seat within stipulated period, he/she will not be eligible to participated in the Mop Up round/Extend up round (if any).”*

5. Thus, as per above provisions, candidates who were admitted in 50% State Quota, intend to participate in Mop Up round/Extended Mop Up round, were required to surrender PG seat already occupied by them within the stipulated period. So far as the petitioner is concerned, he had been admitted under 50% State Quota and had been allocated seat in Indira Gandhi Medical College (IGMC), Shimla in MD (Anesthesia) course. In terms of Clause 2.3 of the Prospectus, petitioner surrendered his seat in order to appear in the Mop Up round.

6. The respondents, on the other hand, have placed reliance upon advisory dated 16.3.2022 (Annexure P-8). The said advisory reads as under:-

“ADVISORY

Kind Attention: States Counselling Authorities and participating candidates in NEET-PG Counselling.

Medical Counselling Committee (MCC) of DGHS, MoHFW is in receipt of representations from candidates seeking advice regarding their eligibility to participate in the Mop-Up round conducted by MCC after the completion of Round 2 conducted by the State Authorities.

In this regard it is informed that vide MCI/NMC Gazette Notification No.MCI-18(1)2018-Med./100818 dated 5th April, 2018 it has been provided as under: (copy attached)

Round	Free Exit	Exit with forfeiture of Fees	Ineligible for further counseling	Amount of Refundable Security Deposit
AIQ I Deemed/Central Universities	√			
AIQ II/Deemed/Central Universities		If not joined	If joined	Government -Rs.25,000 & Rs.10,000 for SC/ST/OBC Deemed-Rs.2,00,000
State Quota I	√			
State Quota II		If not joined	If joined	Government -Rs.25,000 (half for SC/ST/OBC) Private-Rs.2,00,000
State Quota Mop Up			√	
Mop Up Round of DGHS for Deemed/Central Universities		If allotted any seat, ineligible for further rounds of counseling	If joined	
Stray Vacancy Round at			√	

Institute level				
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The candidates holding a seat in Round 2 of State Counselling are advised to not to take part in the Mop-Up round of AIQ counselling and the participating State authorities are advised that the Candidates who have been allotted and joined a seat in Round 2 of the State Counselling may not be allowed to resign in compliance of the Gazette Notification NO.MCI-18 (1)/2018-Med./100818 dated 5th April, 2018.

It is also informed that the Mop-Up round is only for those candidates who have not joined/holding any seat during the previous rounds of counselling.

The participating States as well as the candidates are advised to kindly adhere to the policies/counselling scheme for enabling the candidates who are not holding any seat to be allotted a seat."

7. A perusal of the above advisory reveals that the same relates to all India Quota and does not deal with the State Quota. Medical Counselling Committee (MCC) admittedly conducts counselling for All India Quota. The reliance placed by Mr. Ajay Vaidya, learned Senior Additional Advocate General, on the mention of State Quota in advisory, is misplaced to contend that advisory also relates to State Quota. The State Quota, mentioned in the advisory, in fact, relates to All India Quota. It is the advisory to State counselling qua All India Quota and does not deal with 50% State Quota described in Clause 2.3 of the Prospectus. A perusal of Clause 2.2 and 2.3 of the

Prospectus reveal that these are separate guidelines for All India quota and State Quota.

8. Notice dated 19.3.2022 (Annexure P-7) reads as under:-

*"INDIRA GANDHI MEDICAL COLLEGE, SHIMLA
No.HFW(MC-II)B(12)1/21 (PG-Counseling Dated 19.03.2022*

NOTICE

In compliance to the MCC Notice No.U-12021/06/2021-MEC dated 16-3-2022 all the candidates who are participating/intend to participate in the ensuing PG MD/MS mop up round of counseling are informed that the candidates who had been allocated PG seats in previous round of State Counseling are ineligible for participating in further rounds of counseling including this mop up round.

The candidates who have sent resignations from their previously allocated seats are not eligible to participate in mop up round. No such resignation has been/will be accepted, however, they will continue to occupy their previously allocated PG seats.

*Principal-cum-Member Secretary
PG Centralized Counseling Committee
Shimla*

Endst. No. as above

Dated

Copy to the Principal PRGMC Tanda, SLBGMC B Ner Chowk, Mandi for information and necessary action.

*Principal-cum-Member Secretary
PG Centralized Counseling Committee
Shimla"*

9. By participating in the Mop Up round, petitioner wanted to surrender his seat in MD (Anesthesia) and wanted to specialize in another field up to his liking.

10. During the course of arguments, Mr. Ajay Vaidya, learned Senior Additional Advocate General, has placed reliance upon the orders passed by the Hon'ble Supreme Court, but admittedly, the said orders relate to All India Quota and do not deal with the State Quota. So far as the seats relating to State Quota are concerned, they were to be governed by Clause 2.3 of the Prospectus. Admittedly, the litigation, pending before the Hon'ble Supreme Court, in other cases, does not relate to Clause 2.3 of the Prospectus.

11. The respondents were legally bound to honour the terms of the Prospectus and could not take shelter of advisory issued *vis-à-vis* All India Quota. So far as the seats falling within the State Quota are concerned, they were to be filled up in terms of Clause 2.3 of the Prospectus. The advisory dated 16.3.2022 (Annexure P-8) did not relate to the State Quota and the respondents cannot take shelter of the said advisory to deny opportunity to the petitioner to appear in the Mop Up round in terms of Clause 2.3 of the Prospectus.

12. Admittedly, petitioner has surrendered his seat allocated to him in second counselling within the stipulated period as per Clause 2.3 of the Prospectus.

13. The instructions issued *vis-à-vis* All India Quota cannot be *ipso facto* applied to the State Quota. So far as the filling up the seats with regard to the State Quota are concerned, the same were to be governed by Clause 2.3 of the Prospectus.

14. In view of the above discussed circumstances, we are of the opinion that the action of the respondents in denying the opportunity to the petitioner to appear in the Mop Up round, in terms of Clause 2.3 of the Prospectus, is illegal and without any basis and the impugned notice dated 19.3.2022 (Annexure P-7) is liable to be set aside as the same runs contrary to Clause 2.3 of the Prospectus.

15. Accordingly, the petition is allowed. Impugned notice dated 19.3.2022 (Annexure P-7), is set aside.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

**(Sabina)
Judge**

**(Satyen Vaidya)
Judge**

May 23, 2022 (ks)