



IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.482 of 2023

Reserved on: 27.06.2023

Pronounced on:13.07.2023

Sanjna Thakur

.....Petitioner

Versus

Union of India & Others

...Respondents

Coram:

Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice.

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?

For the petitioner : Ms. Madhurika Sekhon, Advocate.

For the respondents : Mr. Rajinder Thakur, Central Government Counsel, for respondent No.1/Union of India.

Mr. B.C. Negi, Sr. Advocate with Mr. Ganesh Barowalia, Advocate, for respondent No.2.

Anup Rattan, Advocate General with Mr. Pranay Pratap Singh, Mr. Rakesh Dhaulta, Additional Advocate Generals and Mr. Sidharth Jalta, Mr. Gautam Sood & Mr. Arsh Rattan, Deputy Advocate Generals, for respondents No.3, 5 & 6.

Mr. Dinesh Thakur, Advocate, for respondent No.4.

M.S. Ramachandra Rao, Chief Justice.

The petitioner had appeared for the All India Pre Medical Entrance Test, also known as National Eligibility-cum-Entrance Test (NEET Under Graduate) for the year 2022 with the application no.22011144 and had secured 508 marks in General category.

- 2) According to the petitioner, two students by name Shivani Sharma (General Category) (having NEET Roll no.3812010067) and Kartik Sharma (EWS category) (having NEET Roll no.1601070485), who were granted admission in PTJLN Government Medical College (respondent no.6), Chamba and in IGMC (respondent no.5), Shimla respectively in the 2nd round of counseling which took place between 7.11.2022 and 18.11.2022, had forged their NEET Mark sheet and admission given to them was cancelled on the ground that the documents submitted by them did not match the available information on the National Medical Counsel Portal.
- 3) These facts are admitted by the counsel for the National Medical Commission (respondent no.2) and Atal Medical and Research University, Himachal Pradesh (respondent no.4) which had conducted the State counseling for State Medical Colleges in the State of Himachal Pradesh.
- 4) Thus, two seats in the Undergraduate MBBS course became vacant in IGMC (respondent no.5), Shimla and in Pt. JLNGMC (respondent no.6), Chamba.

- 5) Thereupon the respondent No.4 through its Registrar, wrote to the respondent No.2 on 17.1.2023 informing that Shivani Sharma and Kartik Sharma had committed forgery with regard to their NEET score card; that the details of said students did not match the data available on the NMC portal; that those students have been suspended by the respective colleges; F.I.Rs. have been lodged; and that one seat in General category and another seat in EWS category had thus fallen vacant. The respondent no.4 requested the respondent No.2 to grant the necessary permission/directions to it to fill-up those two vacant seats at the earliest.
- 6) By that time, classes for this Academic Session 2022-2023 had started from 15th November, 2023, though for students who got admitted in Mopup round counseling which took place between 6.12.2022 to 12.12.2022, date of joining the course was allowed till 29.12.2022.
- 7) Petitioner contends that the last candidate, who had been selected for the MBBS course is Ms. Riya Singh, having merit Sr. no.479 in the Final Overall Merit List of the HPMBBS/BDS Second Round of Counseling 2022 as per **Annexure P-3**; that the petitioner was next rank holder at Sr. no.480 in the General Category; that Ms. Riya Singh had already been given a seat in Dr. Y.S. Parmar Government Medical College, Sirmour at Nahan; and so the petitioner should be given the vacant seat in the General Category, which has fallen vacant in the respondent No.6 Medical College.

8) After complaining to various authorities, including the Hon'ble Chief Minister of Himachal Pradesh, which did not yield any result, petitioner filed the instant Writ petition on 28.01.2023 seeking the following relief(s):-

- “(i). *That the respondents may kindly be directed to consider the case of the petitioner for admission in MBBS Course during the academic Session 2022-2023 and respondents may be directed to fill up the vacant seats on account of suspension of two students who have been lodged in forgery by considering the petitioner being next in the merit list of general category vide Annexure P-3.*
- (ii) *That the petitioner may kindly be allowed to join the classes for the course of MBBS which have been started w.e.f. December, 2022 and any shortage of lectures may be condoned.”*

Events after filing of the Writ Petition

- 9) Notice was issued by this Court on 30.01.2023 to all the respondents and the Sri Rajinder Thakur and Sri Senior Baldev Negi, Advocates appeared and *waived service of notice on behalf of respondent no.1 and respondents no.2 to 6*, respectively. Matter was directed to be listed on 01.02.2023.
- 10) We may point out that though notice was accepted for respondent no.2 by Sri Baldev Negi, Counsel on 30.1.2023, on the ground that no instructions were received from respondent no.2 by respondent no.4, notice was again issued to respondent no.2 on 2.2.2023 for 9.2.2023. Dasti summons was also permitted.

- 11) These notices were not served on respondent no.2 and again fresh notice was ordered on 9.2.2023 for 17.2.2023. Again Dasti summons were issued.
- 12) Sri B.C.Negi, and Sri Nitin Thakur, Counsel appeared for respondent no.2 on 17.2.2023 and sought time to file reply /obtain instructions and the case was then adjourned to 27.2.2023.
- 13) No reply was filed on 27.2.2023 by counsel for respondent no.2, though both counsel were present on that day in the Court. At the request of State Government counsel, matter was adjourned to 9.3.2023.
- 14) On 10.3.2023, matter was adjourned to 22.3.2023 as name of counsel for Respondent no.2 was not printed in the list and there was no representation on it's behalf.
- 15) On 22.3.2023, time was sought for filing of reply by counsel for respondents including respondents no. 2 and 4. So case was adjourned to 1.4.2023.
- 16) On 10.4.2023, time was sought by counsel for respondent no.2 for filing reply and case was adjourned to 24.7.2023.
- 17) A mention was made before this Court on 14.6.2023 and so the case was preponed and listed on 22.6.2023. On that day it was adjourned to 23.6.2023 and on that day to 27.6.2023. On 27.6.2023, the case was heard and orders were reserved.

Consideration by the Court

- 18) We are shocked that in the matter of admission to MBBS Course, for which the Academic Session had commenced in November 2022, no reply had been filed by the respondent no.2 and respondent No.4. Some documents had only been placed on record by them by the date of hearing by this Court.
- 19) In spite of Sri Baldev Negi, Counsel having entered appearance and waived notice on 30.1.2023, strangely time was sought twice for issuance of fresh notice to respondent no.2 on 2.2.2023 and again on 9.2.2023 for no apparent reason. Even thereafter repeated adjournments had been sought for filing replies on several occasions by respondents no. 2 and 4.
- 20) This indicates the totally callous nature and the irresponsible behavior on the part of the respondent no.2, thereby depriving the petitioner of her valuable right to join the MBBS Course and undergo classes.
- 21) The fact that the respondent no.4 had written to the respondent no.2 on 17.01.2023 about the existence of vacant seats in the respondents no.5 & 6 Medical Colleges, is not denied by the said counsel.
- 22) The counsel for the respondent no.2 has placed before us a letter dt. 19.06.2023 issued by the respondent no.2 to the respondent no.4 in response to the letter dt. 17.01.2023, stating that the last date for admission to the Under Graduate Medical Course of 2022 was over on 29.12.2022, that the said schedule was approved by the Supreme Court of India through an

order passed on 08.05.2023 and no admission can be allowed beyond the schedule for MBBS admission in any circumstances. It therefore refused to permit the respondent No.4 University to admit the petitioner in the MBBS Course in the vacant seats for the Academic Year 2022.

- 23) Why the respondent no.2 had not immediately responded to letter dt.17.1.2023 of respondent no.4 till 19.6.2023 and not even filed a reply in this Court from 30.1.2023 is not explained by respondent no.2. Unless the respondent no.2 allows the admission of petitioner, respondent no.4 cannot permit respondent no.6 to admit petitioner to the MBBS course.
- 24) Coming to the conduct of respondent no.4, if at the time of the 2nd counseling which took place between 7.11.2022 and 18.11.2022, admission was granted to the two candidates Shivani Sharma and Kartik Sharma, it could not have waited till 17.1.2023 to inform the respondent no.2 about the fraud /forgery committed by the said students because the last date of admission was 29.12.2022 for admitting students. Had respondent no.4 acted with more alacrity, and informed respondent no.4 in last week of November,2022 or first week of December, 2022, petitioner could have been admitted to the course before 29.12.2022 and would not have lost a valuable benefit.
- 25) In the light of these facts and circumstances, we have to consider the nature of relief to be granted to the petitioner.

- 26) Similar issue fell for consideration in the judgment of Supreme Court in *Asha v Pt. B.D. Sharma University of Health Sciences and Others*.¹

In that case, the Supreme Court had an occasion to consider whether the cut-off date of 30th September for the relevant Academic Year for admission to MBBS/BDS Courses is a date which admits any exception or not.

The Supreme Court held that though 30th September is the cut-off date and authorities cannot grant admission beyond the said cut-off date, which is specifically postulated, but where no fault is attributable to a candidate and he/she is denied admission for arbitrary reasons, the cut-off date *per se* cannot be permitted to operate as a bar to admission to such student, when it would result in complete ruining of the professional career of a meritorious candidate. It observed that if the student is not at fault and she or he had pursued their remedies and rights as expeditiously as possible, the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious student since the rule of merit stands completely defeated in such situations.

It held that before granting relief to students for grant of admission beyond the cut-off date, the Court must first return a finding that no fault is attributable to the candidate, that the candidate had pursued her rights and

¹ 2012 (7) SCC 389.

legal remedies expeditiously without any delay and that there is fault on the part of the authorities.

It held that even if these conditions are satisfied, still the Court would be called upon to decide whether relief should or should not be granted and if granted, should it be with or without compensation.

27) The said issue again fell for consideration in the case of **S. Krishna Sradha versus State of Andhra Pradesh & Others**², wherein the Supreme Court considered the previous decision in *Asha's case (supra-1)*. The Supreme Court framed the following question:-

“12. However, the question is with respect to a student, a meritorious candidate for no fault of his/her has been denied admission illegally and who has pursued his/her legal rights expeditiously without delay is entitled to any relief of admission more particularly in the courses like MBBS the relief of compensation as held by this Court in Asha? The aforesaid question is required to be considered only to the cases where (i) no fault is attributable to the candidate; (ii) the candidate has pursued her rights and legal remedies expeditiously and without delay; (iii) where there is fault on the part of the authorities and apparent breach of rules and regulations; and (iv) candidate is found to be more meritorious than the last candidate who has been given admission.”

It then concluded as under:-

“13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with

² 2020(17) SCC 465,

respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

13.2. *Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.*

13.3. *In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been*

arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

(emphasis supplied)

28) The petitioner is undoubtedly meritorious and is immediately next in the merit list of the candidates prepared by the respondent No.4-University after the Second Round of Counseling of 2022 to the last admitted candidate

Ms.Riya Singh; and is otherwise entitled to be admitted in the General Category MBBS Seat available in the respondent No.6-College consequent to the cancellation of admission to Shivani Sharma because of forgery committed by the latter.

- 29) The petitioner had approached the Court on 28.01.2023 itself within 11 days of issuance of **Annexure P-2** letter dt. 17.01.2023 issued by the 4th respondent-University to the respondent no.2.
- 30) We hold that in the instant case firstly no fault is attributable to the petitioner and that she had pursued her rights and legal remedies expeditiously and without delay.
- 31) There is also fault on the part of the respondent no.4 University in not disclosing to petitioner and to respondent no.4 before the last date of admission i.e 29.12.2022 that one General Category Seat had fallen vacant on account of an act of forgery committed by Shivani Sharma, who got admission in the respondent No.6-College and that in the consequent vacancy the petitioner can be accommodated and admitted to the MBBS Course.
- 32) Had the respondent No.4 acted immediately and before the last date for admission in conveying this information to the respondent no.2, may be the respondent no.2 would have granted permission to fill up the said vacancy.

- 33) Also, we are unable to appreciate why the respondent no.2 took time repeatedly before this Court and ultimately informed about its decision only on 19.06.2023 to the respondent No.4, 5 months later, rejecting permission to admit the petitioner in the MBBS course in respondent no.6 college.
- 34) The unreasonable attitude of the respondent no.2 and respondent no.4 in not allowing the Writ petition to be decided quickly and dragging it on for six months, has resulted in denial of admission to a meritorious candidate like the petitioner.
- 35) As held in *S. Krishan Shardha's* case (supra-2), if admission is directed to be ordered in exceptional circumstances to a meritorious candidate, it has to be done within one month from the cut-off date; and under no circumstances, can it be directed to be done by the Court beyond the period of one month from the last date of admission. Since the one month period beyond 29.12.2022 (last date for admission) got over by 28.1.2023, *after the Writ Petition was filed*, due to the delay caused by respondent no.2, petitioner could not be granted relief of admission to the MBBS course in respondent no.6 college in the academic year 2022-23.
- 36) In this view of the matter, and in the facts and circumstances of the case, and having regard to the conduct of the petitioner as well as the respondents, we direct that admission in respondent no.6 college be granted to the petitioner in the Academic Year 2023-2024 to the MBBS Course and respondents no.2

& 4 shall increase the number of seats allotted to the said College by one seat for that academic year. The respondents no.2 & 4 shall also pay Rs.2,00,000/- (Rupees Two Lacs) each as compensation to petitioner within 4 weeks for making the petitioner lose one full academic year and making it impossible for this Court to grant relief to the petitioner in the Academic Year 2022-2023. The respondents no.2 & 4 shall also pay costs of Rs.10,000/- each to the petitioner within four weeks.

- 37) The instant writ petition stands allowed in the above terms.
- 38) Pending miscellaneous application(s), if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

July 13, 2023
(Yashwant)