

\$~7

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

Date of decision: 25th August, 2020

+

W.P.(C) 4755/2020

DR. MACHAT BALAKRISHNAN MENON Petitioner

Through: Mr. John Mathew and Mr. Karthik
SD, Advocates. (M:9891278195)

versus

MEDICAL COUNCIL COMMITTEE & ORS. Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr.
Rohan Anand, Mr. Waize Ali Noor,
Advocates for R-1. With Mr.
Srinivas, DG, MCC.

Mr. Sanjay Dewan and Ms. Nishima
Arora, Advocates for R-2.
(M:9953221778)

Mr. T. Singhdev and Mr. Ahijit
Chakravarty, Adocate for R-4.

Mr. G. Prakash, Standing Counsel for
Kerala.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL.17161/2020 (exemption from filing court fee and attested affidavits)

1. This is an application seeking exemption from filing court fee and duly attested affidavits. Binding the deponent of the affidavit to the contents of the application, the exemption is granted. Insofar as the court fee is concerned, the same be deposited within one week. Application is disposed of. Registry to submit a report in case the court fees is not filed after a month.

W.P.(C) 4755/2020 & CM APPLs.17160/2020 (for stay)

2. This hearing has been held through video conferencing.
3. The Petitioner is a qualified doctor who finished his M.B.B.S. from Travancore Medical College, Kollam, which is affiliated to the Kerala University of Health Sciences. He has filed the present writ petition with a prayer to preserve his admission at the Maulana Azad Medical College (*hereinafter* “MAMC”) for MD (Pathology).
4. The Petitioner belongs to the Economically Weaker Section (*hereinafter*, “EWS”) and holds an EWS certificate from the State of Kerala. He appeared in the National Eligibility Entrance Test (NEET) examination, conducted by the National Board of Examination (NBE), on 5th January, 2020. The results of the examination were published on 29th January, 2020 and the Petitioner obtained rank No.35948.
5. As per procedure, the Petitioner had to register himself for counselling for various quotas. The counselling is conducted by the Medical Counseling Committee (*hereinafter*, “MCC”). For the said purpose, he registered himself with the MCC. In the registration form, he applied for the All India Quota, Central Inst. Quota and the Delhi University Quota.
6. The Petitioner was initially allotted a seat in MD (Community Health) at the National Institute of Community Health, New Delhi in the first round of counselling. He, however, did not take up the same and awaited the second round of counselling. In the second round of counselling, it is the Petitioner’s case that he was not allotted any seat, however in the mop-up round, he was allotted a seat for MD (Pathology) in MAMC. He received an e-mail on 25th July, 2020 asking him to report to MAMC along with all the necessary documents. He thereafter, travelled and reported at MAMC on

26th July, 2020 and took admission. However, sometime in the evening, after the admission process was completed, he was informed by the college staff that he had been wrongfully allotted a seat under the Delhi University Quota and thus, his admission could not be confirmed. He, thereafter, visited the office of the Registrar, MAMC but did not get any clarity from him. The Petitioner even met Dr. B. Srinivas, ADGME, Directorate General of Health Services, Ministry of Health and Family Welfare in New Delhi and wrote an e-mail on 27th July, 2020 to MCC, however, there was no clarity. Accordingly, he preferred the present petition.

7. On 30th July, 2020 Id. counsels for Respondent Nos.1 and 4 were present on advance notice. On the said date, after taking a *prima facie* view, this Court had directed that the seat allotted to the Petitioner would not be filled in further counselling sessions till the next date of hearing. Thereafter, the matter has been heard on 19th August, 2020 and today. Replies have been filed by Respondent No.1 and the Petitioner has filed additional documents. Respondent No.3 i.e. the University of Delhi (*hereinafter*, “DU”) has also filed its counter-affidavit. These documents are taken on record.

8. Mr. John Mathew, Id. counsel appearing for the Petitioner submits that the Petitioner never intended to apply under the Delhi University Quota without being eligible. He submits that in the initial registration itself, when he registered with DU, he fairly disclosed the college from where he completed his M.B.B.S. It is his submission that the MCC and the MAMC are aware of the college from where he passed his M.B.B.S. Thus, there is no intention to mislead. He submits that the Petitioner was also allotted a seat in State Quota in the mop-up round. However, because he had been allotted a seat in MAMC, he opted not to take admission in the MD

Psychiatry (PS) programme at Dr. Somervell Memorial CSI Medical College, Karakonam, Thiruvananthapuram (*hereinafter*, “SMC”) under the private self-financing category. The last date for him to accept admission in the said college was 28th July, 2020. Since he had already been allotted MAMC by then, he had travelled to Delhi and the seat at SMC was forgone by him.

9. Ld. counsel submits that the authorities owe a duty to the candidates to verify the information so that confusion is not created in the minds of candidates who are applying for counselling. He submits that MCC also knew that the Petitioner had studied from Travancore Medical College, Kollam, Kerala. Thus, even if the candidate makes a mistake, the authorities ought to have some re-verification procedure, failing which, the candidates would be deprived of such valuable seats. Ld. counsel submits that the Petitioner has obtained a seat in MAMC in a *bona fide* manner and, in any event, a student from DU with a lesser rank would be able to take his seat. Accordingly, he submits that in view of the fact that counselling is completed, the Petitioner may not be deprived of his seat in MAMC.

10. Ld. counsel for the Petitioner has also relied upon the judgment in ***Duddugunta Vishnu Priya v. Directorate General of Health Services & Anr [W.P. (C) 3636/2020, decided on 3rd July, 2020]*** to argue that the Petitioner should not be made to suffer due to a *bona fide* human error.

11. On behalf of Respondent No.1 - Mr. Kirtiman Singh, ld. CGSC, duly instructed by Prof. Mr. Srinivas from the MCC, has placed on record the various forms which were filled by the candidates. Ld. counsel has also taken the Court through the various stages for filling of the counselling form. He submits that the candidates are well aware that only those

candidates who complete their M.B.B.S. from DU are eligible for the Delhi University Quota. Thus, he submits that the Petitioner was conscious of the fact that his allotment itself was a mistake in view of the mistaken quota in which he had applied. It is further submitted that upon seeing the documents of the Petitioner, when MAMC realised that the Petitioner had completed his M.B.B.S. from Kerala, he was immediately informed that his admission cannot be confirmed.

12. On the last date, considering this predicament of the Petitioner, notice was issued to the State of Kerala. Mr. G. Prakash, Id. standing counsel has appeared for the State of Kerala and submits that the Petitioner did not make it in the first few rounds of counseling in Kerala and was only allotted a seat in the mop-up round. However, since the Petitioner has given up his seat, the said seat may have reverted to the Medical College itself. Id. counsel however submits that if there are any seats available, the State of Kerala would endeavour to allot a seat to the Petitioner under the private self-financing category.

13. Heard Id. Counsel for the parties. A perusal of the various documents filed on record shows that the Petitioner had registered in the counselling form for the All India Quota/Delhi University Quota/Central Inst. Quota. This was a clear mistake. There was no doubt about the fact that the Petitioner ought to have been conscious of the fact that he would not have been eligible under the Delhi University Quota.

14. As per question No. 57 of the FAQs circulated to all the candidates prior to registration for counselling, the eligibility criteria for each of the institutional quotas is set out below. The said FAQ reads as under:-

“Q.No. 57: What will be the eligibility criteria for 50%”

Institutional seats of Central Universities which is being conducted by DGHS?

***Ans:** The eligibility conditions of the 50% Institutional Quota of the Central Universities will be as per the following eligibility criteria given by the respective institutions. For additional information please contact the concerned University.*

AMU	An Institutional (Internal) candidate is one who has passed the qualifying examination conducted by THIS University as a regular student not earlier than THREE (03) academic years from the date of admission to the Course he/she is seeking admission to. And all other candidates shall be treated as External .
BHU	For Admission to M.D/M.S./M.D.S/ PG Diploma course 2020 in the faculty of medicine, candidates who complete their internship between April 01, 2017 and March 31, 2020 (both dates inclusive) shall be considered ,Internal Candidates. Further, it is pointed out that for Stray Vacancy Round, only Institutional (Internal) candidates are eligible to participate. Only those Candidates who have passed MBBS from Institute of Medical Sciences. BHU in December-2018 (Supplementary Batch by 31.3.2019) and have completed compulsory rotatory internship before 31.3.2020 will be considered for admission to M.D./ M.S. Course-2020 in IMS, BHU under internal (Institutional) quota pool, provided the candidate has appeared and qualified in NEET -PG 2020

	<p>examination.</p> <p>Candidates who are already pursuing M.D./M.S. course in IMS, BHU through internal (Institutional) quota OR passed MBBS from institute of Medical Sciences, BHU in earlier academic years (i.e. before December 2018) are not eligible for admission to PG Course-20 20 under BHU internal (Institutional) quota.</p>
DU	<p>a) For Delhi University Quota :</p> <p><u>The candidate must have passed final M.B.B.S examination</u> (for MD/MS/ Diploma Course) and BDS examination (for MDS Course) from the University of Delhi and must have completed satisfactorily one-year compulsory rotating internship as on 31.03.2020 and must have submit their internship completion certificate at the time of admission.</p>
Central Institutes Affiliated to IP University (ABVIMS, VMMS,ES IC)	<p>The eligibility for Central Institutes will be as per admission brochure 2020 -21 of Guru Gobind Singh Indraprastha University. For more information please refer to their website www.ipu.ac.in .</p>

As per the above, it is clear that in order to avail of a PG seat in Delhi University Quota, the candidate must have passed his/her final M.B.B.S. from Delhi University.

15. Insofar as the registration form itself is concerned, unfortunately, the registration form of the MCC merely asks for the quota in which the candidate is applying and there is no field available for the candidate to

mention the college and the University from where he/she has completed their M.B.B.S. In the absence of such a field, there is a responsibility on the candidates as also the authorities to ensure that the candidates who apply for the quota are eligible before allotments are made. This, however, has not happened in the present case.

16. The Delhi University Quota is available to students who have completed their M.B.B.S. from DU. The Petitioner is clearly not qualified for the Delhi University Quota. The Petitioner, at best, was entitled to a seat in the All India Quota or in the State Quota for Kerala, depending upon his rank. In the All India Quota, the Petitioner was not allotted any seat owing to the fact that his rank was beyond 35,000. In the State Quota, he was allotted a seat in the mop-up round, however, owing to his seat in MAMC, he gave up the State Quota allotment. The conclusion of this conundrum is that the Petitioner has not been able to obtain any seat in any medical college for his post graduate studies. Owing to the fact that the Petitioner does not satisfy the eligibility for being considered in DU quota, the relief sought is not tenable.

17. The judgement in *Duddugunta Vishnu Priya (supra)* is clearly distinguishable inasmuch as in the said judgment the Court held that the Petitioner therein had been offered a seat strictly as per her rank. There was a technical glitch due to which the Petitioner therein was not allotted the course of her choice. Under such circumstances the Court held that due to the technical error the Petitioner should not be made to suffer. She was a high-ranking student to whom the seat was directed to be allotted as per her rank. However, this is not so in the present case. Clearly, as per the rank of the Petitioner, the Petitioner would not be entitled to a seat in MAMC.

18. In addition, this Court is of the opinion that this confusion could have been averted if there were proper checks in place at different levels of counselling. The checks ought to have been installed at the time of registration and prior to allotment in the first round. Since there were no checks, and partly due to the Petitioner's fault, he has been put in this situation. The Court while being empathetic with the position in which the Petitioner currently finds himself, however cannot direct confirmation of his admission in MAMC under the Delhi University Quota. Accordingly, the relief sought for, for confirming the Petitioner's admission in MD (Pathology) in MAMC cannot be granted.

19. However, the additional documents which have been placed on record clearly show that the Petitioner was allotted a seat in SMC under the private self-financing quota in MD Psychiatry (PS), which is a seat in a clinical course. The State of Kerala is represented before this Court. It is submitted by ld. counsels for parties that the last date of counselling has been extended to 31st August, 2020. Owing to the predicament of the Petitioner and the peculiar facts of this case, the State of Kerala shall allot any unfilled seat to the Petitioner in a post graduate medical course to enable him to take admission on or before 31st August, 2020.

20. For the future, in order to avoid a situation as has arisen in the present case, the following directions are passed:-

- (i) At the time of registration for counselling there shall be a specific field which candidates would be required to fill up with details of the college and the University from where they have completed their M.B.B.S. course.
- (ii) Upon the said field being incorporated, the system should be

designed in such a manner that only those quotas for which the candidates are eligible would be made available to the candidates. For example, if the candidate has completed the M.B.B.S. course from Kerala and the name of the college is filed up along with the name of the University, the Delhi University quota should not be made available to such a candidate. This would ensure that the complexity created due to the presence of various quotas in counselling is eliminated. This would also ensure that candidates are not put through gruelling circumstances in the course of the counselling, which takes place over a period of three to four months every year.

(iii) After registration, prior to allotment of seats, the data submitted by candidates shall be cross-verified with the data available with MCC so that wrong allotments are not made.

21. Mr. G. Prakash, Id. counsel shall communicate this order today itself so that the Petitioner can be allotted any vacant seat within the State of Kerala under the State Quota.

22. With these observations, the present petition and all pending applications are disposed of. This order is passed in the peculiar facts of this case and shall not be treated as a precedent.

PRATHIBA M. SINGH
JUDGE

AUGUST 25, 2020

dj/T