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

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Reserved on : 31.07.2020

Date of judgment: 28.08.2020

+ W.P.(C) 3944/2020

DR.NAVROZ MEHTA

..... Petitioner

Through

Mr.Rakesh Kumar, Adv.

versus

UNION OF INDIA & ANR

..... Respondent

Through

Mr. Virender Pratap Singh Charak,

Ms. Shubhra Parashar, Mr. Pushpender Singh Charak,

Mr. Kapil Gaur and Mr. Vaishnav Kirti Singh, Advs. for

UOI with Major Arjun Katoch and Lt. Col. J.K. Sharma

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (JUDGMENT)

1. This Writ Petition is filed by the petitioner seeking an appropriate direction to direct the respondents to allow the petitioner to participate in Post Graduate (PG) counselling to be held on 09.07.2020 for admission to Post Graduate courses at any of the eight medical colleges as per petitioner's merit without insistence upon production of original certificates under clause 20(f) and 21(f) of The Information Bulletin which debars the petitioner's candidature because of his admission in a PG Medical course elsewhere.

2. It is the case of the petitioner that he had in the previous year appeared for counselling for the Post Graduate course in one of the 8 colleges run by respondent No.2 i.e. Director General, Armed Forces Medical Services. However, the petitioner's candidature for counselling was rejected on the ground that his weight

was over 11.5 kg more than the maximum permissible. As a result it is stated that 6 candidates with lower ranks got selected and the petitioner was rejected. The petitioner states that he had worked hard and brought his weight within the permissible range to fulfil the dream of joining PG at Respondent No.2's Medical College.

3. The petitioner appeared for the NEET-PG-2020 held by National Board of Examination on 5.1.2020. In the said examination he secured an All India Rank of 13122, Petitioner registered for AFMS Counseling. Among the eligible candidates he has a rank of 2515. On 13.5.2020 a notice regarding AFMS PG counselling was issued calling upon candidates whose name figured in the List of Eligibility to report for medical examination alongwith their documents.

The grievance of the petitioner is that respondent No.2's Information Bulletin in paragraph 20(f) denies eligibility to any candidate who has taken admission in some other medical college in a PG course. The Petitioner had taken admission in Guwahati Medical College as the PG counselling of respondent No.2 was inordinately delayed. It is pleaded that the mere fact of taking admission there cannot deny the petitioner of his right for being considered for admission at Respondent No.2's college.

Further, the Information Bulletin in paragraph 21(f) requires the eligible candidates to produce certificates in original of the educational record at the time of counselling. Paragraph 23(f) also states that where candidates are unable to submit their original certificates, they will not be considered for admission to the counselling irrespective of the merit or entitlement. The petitioner, however, states that he will not be in a position to produce the said documents at the counselling on 09.07.2020 in original as the documents have been submitted to Govt. Medical College, Guwahati as the petitioner is already admitted in a PG course there.

4. It is the grievance of the petitioner that the petitioner is being denied admission although he satisfies all the criteria of rank or eligibility for admission to Respondent No.2's Medical College. It is pleaded that this is contrary to the settled legal position stated by this court in ***Dr. Shivam Chugh vs. National Board Examinations & Ors, MANU/DE/3345/2019.***

5. Respondent No.3 Directorate General of Health Services, Medical Counselling Committee, Ministry of Health and Family Welfare has filed a short affidavit. In the affidavit it has been pointed out that the Directorate General of Health Services has been entrusted with the responsibility to conduct online counselling for allotment of Post Graduate (MD/MS/Diploma and MDS) seats to eligible and qualified candidates in participating Government Medical/Dental Colleges of India under 50% of All India Quota every year in terms of the judgment of the Supreme Court in ***Anand S. BIJI vs. State of Kerala, (1993) 3 SCC 80.*** Further, in terms of the directions of the Supreme Court in ***Dar-Us-Slam Educational Trust and Others vs. Medical Council of India and Others, MANU/SCOR/22417/2017*** the Directorate General of Health Services is also conducting online counselling for allotment of 100% Post Graduate (MD/MS/Diploma and MDS) with All India character in participating deemed Universities across the country. The allotment of seats is being made to eligible and qualified candidates as per their merit and rank based in the NEET examinations conducted by National Board of Examination for PG-NEET for the Academic Year 2017-18 onwards. It is also stated that pursuant to the directions issued by the Supreme Court of India in ***Dar-Us-Slam Educational Trust and Ors. vs Medical Council of India and Ors. (Supra)*** the following policy is followed:-

“After the second round of counseling 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 the 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 counseling conducted by the DGHS shall not be eligible to participate in any other counseling.”

It is stated that the same is also mentioned in the counselling scheme of the NEET PG 20 uploaded in the MCC Website on 12.3.2020.

6. The affidavit further states that in view of the fact that the petitioner has been allotted a seat in round II of counselling and has reported to the allotted college, he stands admitted in the said college and holds a seat. In view of the stated policy, he is not eligible to take part in any other counselling. It is further stated that regarding candidates who participate in AFMS screening, they are required to register under AFMS at the time of registration and fulfil their eligibility criteria.

7. Respondent No.2 has filed its counter affidavit. It is stated that the Director General, Armed Forces Medical Services are only carrying out physical admission to the PG course under the direction of DG Health Services and Medical Counselling Committee. It is reiterated that the process of admission is carried out as per the Information Bulletin for PG Courses in AFMS Institutions through NEET- PG 2020 counselling/ online allotment process. The eligibility criteria for PG Medical/Dental seats conducted by the Medical Counselling Committee, was

strictly applicable. It is also stated that the eligibility criteria as stated in the Information Bulletin in Clause 20(f) specially mandates that a candidate who is already pursuing any PG course shall not be eligible for PG course. This has also been clarified in Clause 21(f)(vi) to (x), (xiv), (xv). Clause 23(f) specially provides that if a candidate fails to provide all the necessary original certificates at the time of admission, he will not be eligible for admission. Apex B which is a declaration also states in clause 8 that “I am not pursuing any PG course at present”. The observations of the Supreme Court in the case of *Dar Us-Slam Educational Trust v. MCI & Ors. (Supra)* are reiterated.

It is further stated that due to inadvertent delay in conducting of AFMS PG Counselling owing to Covid-19 pandemic and lockdown situation this year, many candidates have already joined the PG seats in various colleges in round II of All India Quota Counselling. Allowing the petitioner to attend the AFMS PG Counselling with only the photocopies of the documents would attract representations from all such candidates who would be willing to join the AFMS and such an exemption will not be fair to the petitioner only. It is further spelt out that there may be multiple issues if such candidates who have already taken admission in PG courses in other institutions are allowed to participate in the Counselling. The multiples issues are stated as follows:

“(a). The college where the candidate has deposited the original documents may not return the same in view of the MCC notice referred above and the same may be seen as contempt of the directions of the Hon’ble Supreme Court.

(b). Even if some of the students are able to resign from their respective institutions to join the AFMS colleges, it will lead to

representations by candidates lower in merit who have not joined any other college and were waiting for AFMS PG counselling.

(c). The resignation of any candidate to join AFMS institutes is also likely to cause representation from candidates lower in merit from the AIQ allotment asking for an up gradation. There is otherwise likely to be a wastage of these PG seats.

(d). AFMS may be required to hold multiple rounds of counselling to fill all PG seats even if one such candidate is unable to bring the original documents. This is not feasible due to the scarcity of time and movement of candidates involved.

(e). Despite the fact that AFMS is likely to get candidates lower in merit this year due to the exceptional circumstances, the provision of producing the original documents at the time of PG Counselling is required to ensure that the counselling is conducted with allotment of maximum number of PG Seats in AFMS as well as to avoid the wastage of any seats of AIQ allotted by the MCC to abide by the directions of the Hon'ble Supreme Court of India.”

8. It is also pointed out that this court had on 07.07.2020 declined to pass an interim order in favour of the petitioner. The petitioner had preferred an appeal before the Division Bench of this court, which was dismissed by the Division Bench.

9. I have heard learned counsel for the parties. Learned counsel for the petitioner has strongly urged as follows:

i) He submits that it is the duty of this court to uphold the issue of merit on principles. It is pleaded that the petitioner on merits is entitled to participate in the counselling for the AFMS PG courses and hence should be entitled to participate in the said counselling. It is further stated that respondent No.3

should have done All India Quota Counselling only after DG AFMS, respondent No.2 had completed its Counselling. Last year this was the pattern followed. So, it is pleaded that clause 20(f) of the Admission Brochure be quashed.

- ii) It is further pleaded that the principles of estoppel as stated under Section 115 of the Evidence Act would apply. A meritorious candidate cannot be left out on the stated basis.
- iii) It is further pleaded that the criteria imposed by AFMS is impossible for performance. The petitioner would have to give up his confirmed seat for a PG course allotted in The All India Quota Counselling for a chance to participate in the counselling to be held by respondent No.2. Thus, it is pleaded that this is impractical and arbitrary. It is further stated that most of those who are selected would be lower in merit than the petitioner.
- iv) It is further pleaded that the judgment of the Supreme Court in *Dar- Us-Slam Educational Trust v. MCI & Ors.* (supra) does not apply to the facts of this case.
- v) It is further pleaded that there is no delay on the part of the petitioner in approaching this court. Up to 26.06.2020, the petitioner did not have any admission in any PG course. The last date to confirm the seat was 30.06.2020. It is further stated that the petitioner joined the course of PG in Guwahati Medical College out of compulsion and not by choice. So, the cause of action essentially arose on 26.06.2020. Hence, there is no delay on the part of the petitioner.

10. I may look at the Information Bulletin for PG Courses in AFMS NEET 2020. Clause 20(f) of the Information Bulletin reads as follows:

“20(f) A candidate who is already pursuing any PG course shall not be eligible for admission to PG course.”

Similarly, reference may be had to the clause 21(f) of the Information Bulletin, which reads as follows:

“21(f)List of certificates to be submitted in original by selected candidates at the college on the day of admission:-

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Applicants without the above documents will be summarily rejected.”

Similarly reference may be had to the clause 23(f) of the Information Bulletin, which reads as follows:

“23(f) The candidates who have been issued the admission letter shall produce all the original certificates for verification as applicable. Candidates without documents in original at the time of admission will not be eligible for admission to the college even if he/she has got the necessary merit.”

Appendix B of the Information Bulletin which details the format of a declaration to be given by the candidates states in clause 8 of the format as follows:

“I am not pursuing any PG course at present.”

A perusal of the above clauses of the Information Bulletin which binds the candidates clearly shows that where a candidate had taken admission in a PG course in any other institutions and he is pursuing the said course, he is

ineligible to be considered for the counselling to be held for the aforesaid PG courses in AFMS Institutions. The admitted fact is that the petitioner had taken admission in the Guwahati Medical College for the PG course. He was hence ineligible to attend the counseling in question. Further candidates at the counseling also had to submit the original documents. The Petitioner was not in possession of the original documents. The documents are in possession of the Guwahati Medical College. Petitioner is not in a position to supply the original documents to respondent No.2 at the time of counselling. Hence the petitioner was ineligible under the provisions of the aforesaid Information Bulletin for a PG seat with AFMS Colleges.

11. I may look at the legal position regarding the Status of the terms of the Information Bulletin. Reference may be had to the judgment of a co-ordinate Bench of this court in the case of *Priyanka Chaudhary vs National Board of Examinations, 2016 SCC OnLine Del 5691* where it was held as follows:-

“1. The petitioners are candidates, who applied for admission to the Diplomate of National Board Centralized Entrance Test. It is contended that in the entrance test, the petitioners got ranks between 29 to 119. Based on their merit all the petitioners were invited for the first round of counseling and petitioners as per the then available seats exercised their option and took confirmed seats in different disciplines.

2. It is contended that post the first round of counseling certain candidates, who had taken admission opted out and accordingly the seats opted by those candidates fell vacant and are now included in the second round of counseling which would commence from 21st October, 2016.

3. It is contended that the petitioners who are far higher in merit should also be eligible for participating in the second round of counseling and given an opportunity to opt for the seats which have fallen vacant. One example that has been cited is that a seat in radiology in Artemis Hospital, Gurgaon was opted by a candidate who ranked 24 in the entrance examination. The said candidate has not joined the course and accordingly the said seat is now available and has been included in the second round of counseling. It is submitted that the said seat is a much sought after seat and is being offered to candidates who rank about 6001.

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9. Clause 13.7 of the Information Bulletin reads as under:

“Candidates opting for a confirmed seat are NOT eligible to participate in subsequent round(s) of counseling irrespective of their joining/nonjoining/resignation from the seat already opted for.”

10. The petitioners had participated in the first round of counseling without demur. Perusal of the information bulleting shows that candidates had the option not to appear in the first round of counseling and could have chosen to wait for the subsequent rounds. However, once the candidate has exercised the option to participate in counseling and has opted for a confirmed seat, as per the information bulletin, the candidate is not eligible for participation in subsequent rounds of counseling.

11. The petitioners were well aware of the rules laid down by the information bulletin and despite the same the petitioners participated in the counseling process without any demur. The petitioners have opted for confirmed seats and have taken admission. No doubt that the petitioners are meritorious, but on account of the application of the rules as laid down by the information bulletin, which is clear in terms of its application, the petitioners are clearly ineligible to participate in the second round of counseling commencing from 21st October, 2016.

12. Similar view has been expressed by the co-ordinate bench in *Shikha Aggarwal* (supra) wherein it is held as under:

“6. The cause of heartburn of the petitioner is that the first round of counseling is held for the top in the merit list to pick the stream and college/institute/hospital of his choice and the second round is held for the next in the merit list alongwith the opportunity to the ones who have already participated in the first round to change their stream in case some seats fall vacant, but the respondent board does not envisage the participation of the students who have already participated in the first round to again participate in the second round and thus robs the candidate the opportunity to take up another stream which could be available in the second round and was not available at the first. The contention of the counsel for the petitioner is that the premier Institute such as AIIMS and others give provisional admissions in the first round leaving the window of opportunity open for them to change their choice in the second round and thus the same should be the procedure followed by the respondent Board. The National Board of Examinations administering the DNB degree has the liberty to frame its own rules and regulations and the rules of counseling or any other cannot be termed as unreasonable by comparing with the rules set forth by the AIIMS or any other body conducting examinations.

*7. It is also a settled legal position that a candidate after participating in the selection process of taking the entrance examination and the counseling process cannot turn around and challenge the same as the rules and guidelines framed by the respondent-Board were within the knowledge of the petitioner before participating in the same and therefore, the petitioner thus waives off her right to challenge the said counseling procedure once having taken the said examination. It would be relevant here to refer to the judgment of the Apex Court in the case of *Dhananjay Malik v. State of Uttranchal* (2008) 4 SCC 171 which has reiterated the said legal position in the following words:*

“In the present case, as already pointed out, the writ petitioners-respondents herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.”
(Underlining supplied)

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14. The Supreme Court in *Arvind Kumar Kankane* (supra) has held as under:

“2. A learned Single Judge of the High Court interpreting the rules directed that when after the first counselling any subsequent counselling is decided to be held for allocation of remaining seats including those which have fallen vacant subsequent to the first counselling, the same shall be notified to the public and the first date of each subsequent counselling will be reserved for the candidates who were allotted seats at the earlier counselling and who wish to change their seats and out of the candidates, who were allotted seats at the first counselling, who turn up for subsequent counselling on the first date which is served for such students, distribution of seats which have fallen vacant subsequent to the first or earlier counselling will be done according to merit. The change of seat to these students who have been allotted seats during the first and earlier counselling will be permitted only in respect of seats which have fallen vacant after the first counselling and not of the left over seats.

3. Aggrieved by these directions, an appeal was preferred by the Director General of Medical Education and Training. The Division Bench, after considering the scheme of admission and conditions imposed therein and the decisions of the Full Bench of Delhi High Court in *Veena Gupta (Dr.) v. University of Delhi* and of High Court of Punjab & Haryana in *Anil Jain v. Controller of Examinations*, held that any seat which is available and which has not been included in any of the three counselling by mistake should be filled in, in order of merit amongst the wait listed candidates. Normally, when a seat is available, the same should be included in the initial counselling. If by mistake a seat is not included in the initial counselling then the effect is that nobody opts for the same. If now the said seat is sought to be offered to all the candidates for counselling, the result would be that all the candidates who took part in the first counselling should be given a chance, in order of merit, to opt for the same seat. This will start a chain reaction and ultimately there will be one seat more, which would become available for the second counselling. There again a chain reaction will start leading to the third counselling. The effect of putting the seat back for counselling for all candidates would, therefore, be to upset the entire counselling which had already taken place. Prima facie though it appears to be somewhat unfair, there is no alternative, apart from leaving the seat unfilled, but to offer the said seat to the wait listed candidates. It was also noticed that once the academic course commences the same will have to be completed within a period of three years and if the counselling goes on continuously for a long period then it may not be possible to fulfill that condition and thereby upset the course of study itself. On this basis, the Division Bench set aside the order made by the learned Single

Judge and allowed the appeal. It is against this order and connected matters that the present appeals are filed by special leave.

4. We have carefully examined the contentions put forth before the High Court and before us and we are of the view that the finding recorded by the Division Bench and Delhi High Court in Dr. Veena Gupta case and the High Court of Punjab & Haryana in Anil Jain case is in accordance with the reason and stands the test of rationality. It is clear that once an option is exercised by a candidate on the basis of which he is allotted the subject and thereafter that candidate is allowed to participate in subsequent counselling and his seat becomes vacant, the process of counselling will be endless and, as apprehended by the High Court, it may not be possible to complete the academic course within the stipulated period.

5. The grievance made is that if a choice subject like surgery and medicine is given up by a candidate and that seat becomes vacant it may go to a candidate who is lower in rank in the merit list. This is only a fortuitous circumstance dependent on so many contingencies like the student, who has been allotted a seat in medicine, giving up the said seat and that seat falling vacant and thereafter the same is allotted to a candidate who is lower in rank in the merit list. Such freak circumstances cannot be the test of reasonableness of the Rule.”(Underlining supplied)”

12. Reference may also be had to the judgment of the Madras High Court in the case of **Dr. Sandeep P.S. vs Government of India, 2020 SCC OnLine Mad 1263** where the court held as follows:-

“32. I have considered the rival submissions. I must, at the outset, point out that *Clause 4.5* of the handbook which is under challenge does in fact affect the right of candidates who are allotted seats in the first round of counselling as per their choice to retain the seat and participate in the second round of counselling also in order to better their chances. The moot question therefore is as to whether such a provision could be subject matter of challenge by way of a writ petition under Article 226 of the Constitution of India. Various statistics have been relied upon by the respective counsel to justify their respective stand. Be that as it may, as pointed out by the Honourable Supreme Court in various decisions the attempt of the court should be to ensure that merit is not sacrificed while framing rules or procedure for counselling and admission to such super speciality courses particularly in the field of medicine. While the petitioners would contend that the second respondent which is offering super speciality postgraduate courses in medicine is bound to follow the procedure that is suggested by the Medical Council of India for admission to such postgraduate courses, the second respondent would claim that it is an autonomous body and it is free to adopt its own procedure.

33. It is settled law that the prospectus is the vital document which governs the admission procedure. A candidate who participates in the selection process based on the prospectus cannot turn around and challenge the very prospectus or a clause in the prospectus unless it is shown to be illegal or irrational. This court had in a number of cases relating to admissions to postgraduate Medical education has consistently held that the candidates who had applied for admission based on the conditions set out in the prospectus cannot challenge the conditions. Of course in the case on hand the petitioners had approached the court before the first round of counselling had commenced. However the counselling in effect commenced on 01-05-2020 and the candidates were required to furnish their online choices by 08-05-2020. The first counselling was done on 22-05-2020. The petitioners had filed the first writ petition on 17-05-2020 and were favoured with an interim order on 26-05-2020. The petitioners were aware of the existence of *Clause 4.5* in the handbook even when they had applied for admission. They had chosen to apply and also indicate their choices in compliance with the requirements of the instructions in the handbook. Only after exercising their choices the petitioners chose

to challenge *Clause 4.5* on 17-05-2020. Mr. G. Sankaran, would vehemently contend that since the petitioners had approached the court before the first round of counselling itself, there is no delay and they cannot be non-suited on the ground of delay. I am unable to accept the said submission of the learned counsel for the petitioner for more than one reason. As rightly pointed out by the learned Senior Counsel appearing for the second respondent if the petitioners' challenge is accepted the entire counselling process will have to be restarted in the sense all the candidates who had been allotted a seat in the first round of counselling and who had frozen their seats should also be given an opportunity to take part in the second round of counselling which would necessarily result in further delay in the process which has already been delayed by the pandemic. There are about 700 candidates who had frozen the seats allotted to them in the first round of counselling. If *Clause 4.5* is tweaked and they are also allowed to participate in the second round of counselling while retaining the seats allotted to them in the first round those 700 seats should also be shown as seats available in the second round of counselling. The second respondent in its counter affidavit has explained as to how this process accumulates more seats in the mop up round of counselling which go to candidates with lesser comparative merit. The Honourable Supreme Court in *Alapati Jyostna* (Supra) has considered the prevalent situation and after taking note of the fact that nearly 700 candidates had been allotted seats and have frozen their seats had refused to issue any directions for the present year. The Honourable Supreme Court in the said decision has also recorded the assertions made in the response filed by the Medical Council of India that a common counselling or a single online counselling in the coming years would definitely take care of the grievances. I am therefore of the considered view that it would not be appropriate for this court to interfere with the counselling at this stage for the present year.

34. Even on the merits of the challenge, as pointed out by the Honourable Supreme Court in *Arvind Kumar Kankane*, a freak circumstance by which a candidate with a lesser comparative merit gets a better choice by virtue of operation of *Clause 4.5* cannot be the test for reasonableness of the rule itself. Apart from the above observation of the Honourable Supreme Court, the Delhi High Court in at least two judgements referred to supra namely in *Reema Chawala v. University*

of *Delhi 2003* SCC OnLine Del 127 and *Priyanka Chaudhary v. National Board of Examinations*, 2016 SCC OnLine Del 5691, has upheld a similar clause found in the handbooks issued by the second respondent for the relevant academic years. I am unable to persuade myself to disagree with the reasons assigned by the Honourable Delhi High Court in support of its conclusions reached in the above two decisions. I must point out that the decisions relied upon by Mr. G. Sankaran relate to the Rules or Regulations framed by the Medical Council of India in respect of admissions to graduate and postgraduate courses offered by institutions and universities under the control of the Medical Council of India. Therefore the principles laid down in those decisions cannot be applied to test the reasonableness of the rule adopted by the second respondent. In *Dr. Divyesh J. Pathak v. National Board of Examination*, the Delhi High Court has concluded that the second respondent herein is an independent body and it cannot be contended that it is bound by the advisories of the Medical Council of India. It has also been pointed out that the Medical Council of India and the National Board of Examinations are independent and autonomous bodies, neither can be made bound by the policy decisions taken by the other. I am therefore constrained to conclude that the challenge to **Clause 4.5** of the handbook cannot succeed and both the writ petitions deserve to be dismissed.”

13. In view of the above, the settled legal position is that the terms of the Admission brochure are binding on the candidates. The petitioner participated in the NEET-PG counseling in the second round and took admission in the Guwahati Medical College. When he took the admission he knew fully well that he is opting out of participating in the counseling for AFMS seats. He has deliberately knowingly taken the decision to forego his right in participating in the AFMS counseling. Later on, after the result of AFMS the petitioner cannot be allowed to turn around and say that the bar on a person who is already admitted in another post-graduate seats to participate in the counseling by the respondents is illegal and unfounded.

That apart, the restriction as stipulated in Clause 20(f) and 21 (f) of The Information Bulletin cannot said to be unreasonable as it ensures orderly and timely Selection of Candidates.

14. There is no merit in the petition and the same is dismissed. All pending applications, if any, also stand disposed of.

**JAYANT NATH
(JUDGE)**

AUGUST , 2020/n/v

