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

+ **WPC 3023/2020**

**ABHISHEK V**

..... Petitioner

Through: Mr.P.V. Dinesh, Adv.

versus

**UNION OF INDIA & ANR.**

..... Respondents

Through: Ms.Maninder Acharya, ASG with  
Mr.Kirtiman Singh, Adv. for UOI.  
Mr.Rohan Anand, Adv. for R-2.

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI**

**ORDER**

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**30.04.2020**

1. The present petition has been taken up for hearing through video conferencing.

**CM No.10531/2020 (for exemption)**

2. Exemption allowed, subject to all just exceptions. The application is disposed of.

**WPC 3023/2020 & CM No.10530/2020 (for interim relief)**

3. The present petition preferred under Article 226 of the Constitution of India has been filed by a candidate who had participated in the National Entrance Eligibility Test 2020 for admissions to post graduate medical courses ('NEET-PG 2020' for short). The petitioner seeks a direction to the respondent no.2, i.e., Medical Counselling Committee, to permit him to submit his medical college preferences within the first round of counselling of NEET-PG

2020.

4. The petitioner, who is a resident of Thiruvananthapuram, Kerala, appeared in the NEET-PG 2020 on 05.01.2020, the results whereof were declared on 30.01.2020. The petitioner claims that he had registered on the website of respondent no.2 on 10.03.2020 for the first round of all-India counselling, and for completion of registration, he was required to pay a sum of Rs.2.05 lakhs to respondent no.2 through bank transfer on or before 23.03.2020, which deadline was subsequently extended to 24.03.2020.

5. It is the petitioner's case that he had duly remitted this amount to the respondent no.2 on 19.03.2020 and the same was debited from his bank account bearing no.20350620899 with the State Bank of India, Kochalumoodu Branch, Alappuzha District, Kerala. However, the petitioner was not permitted to login as a registered candidate in the respondent's website, whereafter he sent two consecutive e-mails on 20.03.2020 and 21.03.2020 to one Dr.B.D.Athani at the e-mail address provided in the official notice issued by respondent no.2. It is further his case that since he did not receive any response to his e-mails, as a precautionary measure he remitted a further sum of Rs.2.05 lakhs to the respondent's account on 21.03.2020, but to no avail. When he was still refused access as a registered candidate, the petitioner sent four successive mails to different officials of the respondent no.2 raising his grievances, which also remained unanswered.

6. On 27.03.2020, after the Central Government announced a nation-wide lockdown on account of COVID-19, the respondent no.2

issued a public notice to the effect that the process of counselling was being deferred till further orders. Learned counsel for the petitioner submits that in view of this public notice, the process of counselling ought not to have initiated till recall of the lockdown; however, on 09.04.2020, the respondent no.2 issued a notice declaring the results of the first round of all-India Counselling, which did not include the petitioner's name. Subsequently, the petitioner received an e-mail from the respondent no.2 on 11.04.2020 informing him that the excess amount received from him at the time of registration will be duly refunded. At this stage, the petitioner preferred a petition before the Hon'ble Supreme Court on 15.04.2020 seeking the same reliefs as sought in the present petition. However, the petitioner's request for urgent mentioning was rejected on 23.04.2020, whereafter the petitioner sought withdrawal of his petition from the Supreme Court. In these circumstances, the present petition has been preferred before this Court.

7. Learned counsel for the petitioner submits that evidently, the amount remitted by the petitioner had duly been received by the respondent no.2, which is supported by its own email dated 11.04.2020. It is, therefore, apparent that the respondents were at fault for the technical glitch leading to the petitioner's inability to login and register for the first round of counselling. This would cost him an opportunity to pursue his post graduate studies in the most coveted medical institutions in the country. He, therefore, prays that the respondents be directed to permit the petitioner to submit his option for first round of counselling.

8. Issue notice. Mr. Kirtiman Singh, Advocate, who is led by Ms.Maninder Acharya, Additional Solicitor General accepts notice on behalf of respondent no.1. Mr.Rohan Anand, Advocate accepts notice on behalf of respondent no.2.

10. Ms. Acharya, while stating that the first round of all-India counselling has already concluded on 11.04.2020, submits that notwithstanding any purported technical glitches, the petitioner is himself at fault for approaching the Court after such a substantial delay when third party rights have already crystallised. She submits that granting any relief to the petitioner as prayed for would cause grave prejudice to the other candidates, who are not before this Court. After some arguments, she fairly submits that in the peculiar facts of this case, the respondent has no objection to the petitioner participating in the 2<sup>nd</sup> round or any other subsequent rounds of all India counselling, on the basis of his eligibility. She further assures the Court that the factum of the petitioner's non-participation in the first round of all-India counselling will neither be held against him nor will it be a ground to reject him from being considered on merit in the 2<sup>nd</sup> and subsequent rounds of all-India counselling. She further submits, on instructions, that out of the amount of Rs.4,10,000/- remitted by the petitioner, a sum of Rs.2.05 lakhs already stands refunded to him and the remaining amount of Rs.2.05 lakhs will also be refunded to him in due course. She, therefore, submits that while the petitioner will be eligible to participate in the subsequent rounds of all-India counselling, notwithstanding his non-participation in the first round of counselling, he would still be required to comply with

all the other applicable conditions of registration and payment of fees, if any.

11. Having considered the rival contentions of the parties, it is an undisputed position that the first round of all-India counselling for NEET-PG 2020 stood completed on 11.04.2020 pursuant whereeto, a large number of successful applicants had already enrolled themselves for postgraduate studies in medicine in various colleges across the country. Now, the entire basis of the petitioner's claim rests on the fact that a technical glitch on the website of respondent no.2 was responsible for his inability to register and participate in the first round of counselling and, therefore, the said respondent ought to retrospectively accommodate him in the first round of counselling itself. The petitioner had duly remitted the necessary amount to the respondent no.2, for registration in the first round of counselling and that too well before the cut-off date. Notwithstanding any technical issues on the concerned website, it was incumbent on the respondents and their officials to, at the very least, respond to the various e-mails sent by the petitioner expressing his grievances.

12. However, the petitioner's claim has to be examined against the fact that he knew his name would not be included in the list for the first round of counselling on 20.03.2020 itself, i.e., the date on which he sent the first e-mail complaining of the technical glitch, yet he only approached the Supreme Court on 15.04.2020. Therefore, barring his emails which went unanswered, the petitioner waited 26 days, during which period the first round of counselling was completed, to take any concrete steps complaining of the technical glitch or to raise his

grievance before a court of law. In fact, the petitioner has approached this Court after the expiry of an entire fortnight from the date of the first round of counselling. This Court, therefore, cannot ignore the petitioner's delayed recourse to action or the fact that since the first round of counselling stands completed at this stage, it will not be appropriate to tinker with the results thereof in any manner. In this regard, I find merit in the submission of Ms.Acharya that retrospectively accommodating the petitioner in the first round of all-India counselling would cause grave prejudice to the other meritorious candidates of the NEET-PG 2020 who have already joined their preferred medical colleges pursuant to the results of the said first round. For the aforesaid reasons, even though the petitioner may not have been able to login before the cut-off date for no fault of his own, the results of the first round of all-India counselling for NEET-PG 2020 cannot be interfered with at this belated stage.

13. Keeping in view the amount of preparation and hard work which goes into qualifying for examinations of such nature, the respondent's willingness to accommodate the petitioner in this regard and the sheer effort invested by the petitioner in securing a meritorious position on an all-India basis, interest of justice requires the petitioner to be permitted to participate in the 2<sup>nd</sup> round and other subsequent rounds, if any, of all-India counselling for NEET-PG 2020 organised by the respondents. It is, therefore, directed that the petitioner be allowed to participate in any future rounds of counselling organised by the respondents for NEET-PG 2020, notwithstanding his non-participation in the first round. It is also directed that his non-

participation in the first round of counselling shall not be held as a ground to prejudice his chances to secure admission to a college of his preference, in these subsequent rounds. It is further directed that the petitioner will also be entitled to participate in any state counselling, as per his eligibility conditions and domicile.

14. The petition is disposed of along with the pending application in the aforesaid terms.

15. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

**REKHA PALLI, J**

**APRIL 30, 2020**

sdp/gm