

Court No. - 17

Case :- WRIT - C No. - 6606 of 2023

Petitioner :- Shivangi Sharma

Respondent :- State Of U.P. Thru. Prin. Secy. Ayush Deptt. U.P.
Civil Secrett. Lko. And 2 Others

Counsel for Petitioner :- Shiv Prakash Dwivedi, Ashish Kumar
Dwivedi

Counsel for Respondent :- C.S.C., Abhinav Trivedi

Hon'ble Manish Mathur, J.

1. Heard learned counsel for petitioner, learned State Counsel for opposite party no.1 and Mr. Abhinav N. Trivedi, learned counsel for opposite party no.2. In view of order being passed, notices to opposite party no.3 stand dispensed with.

2. Petition has been filed seeking a direction to opposite parties to refund an amount of Rs.8,25,000/- and security amount of Rs.2,00,000/- deposited at the time of first counselling for the purposes of allotment of a medical college to petitioner.

3. It is submitted that petitioner participated in the National Eligibility-cum-Entrance Test (NEET) for the under-graduate programme in year 2022 and was allotted F.H. Medical College, Agra in the first counselling. It is submitted that at the same time, petitioner was also participating in the counselling pertaining to NIMS University, Jaipur under the general category but prior to conclusion of counselling in Jaipur, F.H. Medical College, Agra was allotted to petitioner in the first counselling.

4. Learned counsel for petitioner submits that subsequently on 26.11.2022, petitioner was allotted NIMS University, Jaipur in the second counselling. In the intervening period, petitioner submitted resignation with regard to first counselling vide letter

dated 13.11.2022 on the ground that petitioner was dissatisfied with the College allotted and sought refund of the fees already deposited by petitioner.

5. Learned counsel for petitioner places reliance on paragraph 7(a) of Government Order dated 21.10.2022 to submit that petitioner is entitled for refund in terms thereof.

6. Learned counsel appearing on behalf of opposite party no.2 has refuted the submissions advanced by learned counsel for petitioner with the submission that petitioner in fact submitted her resignation on 17.11.2022.

7. It is submitted that petitioner's case instead of being covered by paragraph 7(a) of aforesaid Government Order is in fact covered by second Proviso to paragraph 7(a) of the Government Order.

8. For purposes of adjudication of present dispute, it would be necessary to advert to provisions of paragraph 7 of Government Order dated 21.10.2022, which is as follows:-

."7- त्याग-पत्र दिये जाने के संबंध में-

अभ्यर्थी को मात्र सीट का आवंटन (Allotment) प्रवेश नहीं माना जायेगा। आवंटन के पश्चात् अभ्यर्थी को संबंधित कालेज/नोडल सेंटर पर उपस्थित होकर प्रवेश प्रक्रिया सम्पन्न करने के पश्चात् ही प्रवेश माना जायेगा। तत्पश्चात् ही प्रवेशित अभ्यर्थी प्रवेशित सीट से त्यागपत्र दे सकेगा।

(क) यदि अभ्यर्थी शैक्षणिक सत्र 2022-23 की प्रथम काउंसिलिंग से आवंटित होकर प्रदेश के किसी भी मेडिकल/डेंटल की सीट पर प्रवेश प्राप्त कर लेता है तत्पश्चात् अभ्यर्थी आल इण्डिया या अन्य प्रदेश की काउंसिलिंग के माध्यम से किसी अन्य सीट पर आवंटन

प्राप्त करता है और वह प्रदेश की प्रथम काउंसिलिंग से प्रवेशित सीट से त्यागपत्र देना चाहता है (त्यागपत्र के समय अन्य काउंसिलिंग से आवंटन का प्रमाण पत्र प्रस्तुत करना अनिवार्य होगा) तो ऐसे अभ्यर्थी उ0प्र0 राज्य की द्वितीय काउंसिलिंग की च्वाइस फिलिंग से दो दिन पूर्व तक (उदाहरणार्थ यदि द्वितीय चक्र की काउंसिलिंग दिनांक 24.11.2022 से प्रारम्भ होनी है, तो अभ्यर्थी 21.11.2022 को सांय 04.00 बजे तक) अपनी सीट से त्यागपत्र दे सकता है। ऐसी स्थिति में अभ्यर्थी द्वारा जमा की गयी सिक्योरिटी धनराशि तथा शिक्षण शुल्क से निम्नानुसार कटौती करते हुए शेष धनराशि वापस की जायेगी:—

— राजकीय तथा निजी क्षेत्र के मेडिकल/डेण्टल कालेजों में प्रवेशित अभ्यर्थियों की जमा शिक्षण शुल्क से 10 प्रतिशत की कटौती करते हुए शेष धनराशि तथा धरोहर धनराशि (Security Money) वापस देय होगी।

— प्रथम चक्र की काउंसिलिंग से आवंटन के पश्चात यदि अभ्यर्थी द्वारा आवंटित कालेज में प्रवेश ले लिया जाता है तथा अभ्यर्थी को आल इण्डिया/अन्य प्रदेशों की काउंसिलिंग से कोई भी आवंटन प्राप्त नहीं होता है, फिर भी अभ्यर्थी व्यक्तिगत कारणों से निर्धारित तिथि (द्वितीय चक्र की च्वाइस फिलिंग से दो दिन पहले तक) से पूर्व त्याग पत्र देता है तो ऐसी दशा में शिक्षण शुल्क में से 50 प्रतिशत की कटौती करते हुये शेष धनराशि एवं धरोहर धनराशि (Security Money) वापस किया जायगा।

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9. A perusal of aforesaid provisions makes it evident that there is provision for refund of fees in case a student participates in the counselling in the first round but subsequently forsakes the seat which has been allotted. While paragraph 7(a) states that such

resignation from the College allotted in the first counselling is permissible subject to a student being allocated a Medical College in the second counselling but such a fact is required to be indicated specifically in the resignation letter and by annexing a certificate regarding his allotment made in the second counselling.

10. In the considered opinion of this Court, although it has been couched in mandatory terms that at the time of resignation from allotment made in first counseling, reasons thereof and annexing of certificate pertaining to allotment in the second counselling has been made but in view of the beneficial provision pertaining to refund of fees, such a mandatory condition can be read down to be directory in nature particularly in case where the student subsequently also indicates allotment of a seat in the second counselling and indicates reasons for forsaking the allotment made in the first counselling. The reason for reading down aforesaid condition although couched in mandatory terms, is quite evident that fees is deposited as a consideration for studies imparted by a College. In case a student resigns from the allotment made in the first counselling itself, clearly no studies have been imparted to such a student and therefore permitting such a College to retain fees deposited by a student would in fact amount to unjust enrichment. It is the opinion of this Court, that fees deposited by a student is as a quid pro quo for studies imparted to such student. This is more so, as in the present case where subsequent rounds of counselling including mop up rounds of counselling have taken place.

11. In the present case, it is quite evident from resignation letters submitted by petitioner either on 13.11.2022 or 17.11.2022 that reasons for resigning the allotment made in first counselling have

been clearly indicated by petitioner. It is also evident that at the time of resignation, allotment as per the second counselling had not been made, which was subsequently done on 26.11.2022 and has been brought on record as annexure-7 to writ petition.

12. The opposite parties have not denied the fact that petitioner has in fact been allotted a Medical College in her home state in the second round of counselling. The reason therefore for resigning from allotment made in the first counseling is evident as is the fact that petitioner has definitely been allotted a Medical College in the second counselling.

13. In the considered opinion of this Court, conditions indicated in paragraph 7(a) are therefore substantially complied with. It is also the opinion of this Court that provisions of paragraph 7(a) of Government Order dated 21.10.2022 have been specifically inserted so as not to permit unjust enrichment by a College for retaining fees without imparting studies to a student.

14. So far as reliance placed by learned counsel for opposite party no.2 upon second proviso to paragraph 7(a) is concerned, it is evident that the same will be inapplicable in the present case since it pertains to those situation where a student has not been provided any seat allocation even in second counselling.

15. In view of discussions made herein above, it is evident that case of petitioner is covered under paragraph 7(a) of Government Order dated 21.10.2022.

16. Therefore, a writ in nature of Mandamus is issued commanding opposite party no.2 to refund the permissible amount as per 7(a) of Government Order dated 21.10.2022 to petitioner

within a period of two weeks from the date of certified copy of this order is produced before the said authority.

17. Consequently, the writ petition succeeds and is allowed. Parties to bear their own cost.

Order Date :- 25.1.2024

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