

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF FEBRUARY, 2024

PRESENT

THE HON'BLE MR. P.S. DINESH KUMAR, CHIEF JUSTICE

R

AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

WRIT PETITION NO.7951 OF 2022 (EDN-RES)

BETWEEN:

...PETITIONER

(BY SMT. AKKAMAHADEVI HIREMATH, ADVOCATE)

[THROUGH VIDEO CONFERENCE]

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF MEDICAL EDUCATION
VIKASA SOUDHA
BENGALURU-560 001
REPRESENTED BY ITS SECRETARY
2. THE DIRECTOR
DIRECTORATE OF MEDICAL EDUCATION
ANAND RAO CIRCLE
BENGALURU-560 009
3. KARNATAKA EXAMINATION AUTHORITY
SAMPIGE ROAD, 18TH CROSS

MALLESWARAM
BENGALURU-560 012
REPRESENTED BY ITS
EXECUTIVE DIRECTOR

4. NATIONAL MEDICAL COMMISSION
(ERSTWHILE MEDICAL COUNCIL OF INDIA)
POCKET-14, SECTOR-8, DWARKA
NEW DELHI-110 007
REPRESENTED BY ITS SECRETARY

5. SRI. JAYADEVA INSTITUTE OF
CARDIOVASCULAR
SCIENCES AND RESEARCH
JAYANAGAR 9TH BLOCK
BANNERGHATTA ROAD
BANGALORE-560 069
REPRESENTED BY ITS DIRECTOR

7. SDS TUBERCULOSIS RESEARCH CENTER
& RAJIV GANDHI UNIVERSITY OF
CHEST DISEASES
SOMESHWARA NAGAR
DHARMAM COLLEGE POST
1ST MAIN ROAD
NEAR NIMHANS
BANGALORE-560 029
BY ITS DEAN

...RESPONDENTS

(BY SHRI. SUDEV HEDGE, AGA FOR R1 & R2;
SHRI. N.K. RAMESH, ADVOCATE FOR R3;
SHRI. N. KHETTY, ADVOCATE FOR R4;
SHRI. D.J. RAKSHITHA, ADVOCATE FOR R5;
SHRI. S.B. MUKKANNAPPA, ADVOCATE FOR R6;
R7-SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS, DIRECTING THE RESPONDENTS NO.2 AND 3 TO RESTORE THE SEAT OF THE PETITIONER IN MD RESPIRATORY MEDICINE AT THE RAJIV GANDHI INSTITUTE OF RESPIRATORY AND CHEST DISEASES, BANGALORE, SECURED IN THE FIRST ROUND OF COUNSELING AND ISSUE A WRIT OF CERTIORARI, QUASHING THE IMPUGNED COMMUNICATION/LETTER DATED 25.02.2022 IN NO.DME/PS/189/2021-22, ISSUED BY THE 2ND RESPONDENT, PRODUCED AS ANNEXURE-Q AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.01.2024, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **CHIEF JUSTICE**, PRONOUNCED THE FOLLOWING:-

ORDER

This writ petition is presented with following prayers:

- a) *Issue a Writ of Mandamus, directing the Respondents 2 and 3 to restore the seat of the Petitioner in MD Respiratory medicine at the Rajiv Gandhi Institute of Respiratory and Chest Diseases, Bangalore secured in the first round of counseling.*
- b) *Issue a Writ of Certiorari, quashing the impugned communication/letter dated 25.02.2022 in No.DME/PS/189/2021-22, issued by the 2nd respondent, produced as ANNEXURE Q.*
- c) *Issue a writ of Certiorari, quashing the allotment of seat to the 6th Respondent in MD Respiratory medicine, allotted in RGICD, Bangalore, dated 3-3-2022 , No.Nil produced as Annexure U.*

- d) *Alternatively, allot the seat of MD Respiratory medicine available at the KIMS, Bangalore, which is shown by the Respondent No.3 for the Mop Up Round.*
- e) *Issue a Writ of Mandamus, directing the Respondents 2 and 3 to restore the seat of the Petitioner in MD Respiratory medicine at the Rajiv Gandhi Institute of Respiratory and Chest Diseases, Bangalore, secured in the first round of counseling.*
- f) *Such other writs or orders as this Hon'ble Court deems fit in the circumstances of the case.*

2. We have heard Smt. Akkamahadevi Hiremath, learned Advocate for the petitioner, Shri. Sudev Hegde, learned AGA for the State, Shri. N.K. Ramesh learned Advocate for the KEA¹, Shri. N. Ketty, learned Advocate for the NMC² and Shri. Rakshitha D.J, learned Advocate for respondent No.5 and Shri. Mukkannappa, learned Advocate for respondent No.6.

¹ Karnataka Education Authority

² National Medical Commission

3. Brief facts of petitioner's case are, petitioner is an in-service Doctor working as Assistant Surgeon in Jayadeva Institute of Cardiovascular Sciences and Research (respondent No.5)³. He appeared for NEET-PG 2021 held on 11.09.2021. Out of total number of Government PG seats, 30% seats are reserved for in-service candidates, and out of them, 77% seats are for candidates working in the HFW Department⁴, 12% seats for autonomous Institutions, 6% seats for BBMP and 5% seats for Boards & Corporations.

4. Petitioner claims a seat as in-service category under SC quota working in an Autonomous Institution. He approached the Institute for an NOC to pursue PG studies and the same was issued.

5. Petitioner was allotted in MD in Respiratory Medicine in Rajiv Gandhi Institute of Chest Diseases in first round counselling on 02.02.2022. He got admitted in the said course.

³ Hereinafter referred to as 'Jayadeva Institute'

⁴ Health and Family Welfare Department

6. After one month i.e., on 02.03.2022, the KEA sent a copy of a letter dated 25.02.2022 written by DME⁵, through WhatsApp calling upon the Executive Director, KEA, to cancel petitioner's seat. However, the seat was not shown in the second round of counselling but clandestinely allotted to the sixth respondent. Aggrieved, petitioner filed this writ petition.

7. Smt. Akkamahadevi, for the petitioner, praying to allow the writ petition, submitted that:

- DME's instruction to the KEA to cancel the seat without issuing notice and hearing petitioner is violative of principles of natural justice.;
- petitioner had submitted the NOC issued by the Jayadeva Institute and the same was accepted by the KEA. It was the duty of Jayadeva Institute to forward petitioner's name in the list of in-service quota. In any event, cancellation of

⁵ Director of Medical Education

petitioner's seat without recording any reason is illegal;

- petitioner has paid the fee and attending the classes;
- allotment of seat without showing the availability of cancelled seat in the second round of counselling is illegal and arbitrary.

8. Shri. N.K. Ramesh, for KEA, submitted that petitioner has been allotted a seat under in-service quota. At the time of document verification, petitioner had stated that he would submit the NOC, however, he did not submit the same though petitioner was given enough opportunity. All candidates have been allotted seats strictly in accordance with their ranking.

9. Shri. Khetty, for NMC, submitted that the KEA has not allotted the seats in accordance with law. He assailed the manner in which KEA has been allotting the seats. He contended that malpractice has taken place in the

allotment of seat to the sixth respondent. He prayed that a thorough investigation has to be conducted with the affairs of the KEA.

10. We have carefully considered rival contentions and perused the records.

11. Undisputed facts of the case are, petitioner an in-service Doctor. He appeared for NEET-PG 2021 and participated in the first-round of counselling on 02.02.2022. He was allotted a seat for MD in Respiratory Medicine in Rajiv Gandhi Institute of Chest Diseases and got admitted. After a month, the KEA through WhatsApp shared a copy of a letter written by DME to the KEA dated 25.02.2022. By the said letter, the DME has called upon the KEA to cancel petitioner's seat. The said seat was not shown in the second round of counselling but allotted to the sixth respondent.

12. Annexure Q is the letter dated 25.02.2022 written by the DME. We have called for and perused the original file maintained by the DME. It contains more than

one original letter dated 25.02.2022. The Deputy Director of Medical education who appeared in Court sought to explain that more than one original letter is prepared and all are signed by the DME. We may record that the signature contained in Annexure-Q does not tally with the signature contained on the letter dated 25.02.2022 found in the original file.

13. Annexure G is the document verification slip issued by the KEA. A careful perusal of the same shows that petitioner had submitted the NOC issued by his employer. During the course of argument, Shri. Ramesh submitted that the NOC produced was for DNB course and petitioner was required to submit the NOC for MD course. It is relevant to note that the KEA is a statutory body to conduct examination. The document verification slip (Annexure G) contains various documents and the verifying officer is required to note that whether the correct document was produced or not. The NOC for in-service candidate is at Sl.No.06. In the column reserved for the entry by the

Verifying Officer, it is mentioned as 'Y'. Admittedly, petitioner was admitted on 02.02.2022. He has remitted the fees and attending classes. It is very relevant to record that Ms. Rakshita, learned Advocate for the Jayadeva Institute categorically stated that the Institute stands by the NOC issued to petitioner.

14. The submission of N.K.Ramesh on behalf of the KEA is untenable for more than one reason:

- firstly, the verification of the genuineness and correctness of the documents must be completed at the verification stage itself. Once the Verifying Officer has acknowledged that NOC has been submitted and testified the verification slip, it is presumed that all documents submitted were in order. If the NOC was for DNB Course and not for the MD Course, the KEA ought to have rejected petitioner's candidature at that stage itself;

- secondly, even if it is assumed that the NOC was found defective at a later stage, as rightly contended by the learned Advocate for the Petitioner, the KEA ought to have obtained a clarification from Jayadeva Institute.
- thirdly, petitioner's seat has been cancelled without issuing notice to him.

15. The original file maintained by the DME contains a letter from sixth respondent. We have perused the original file of DME. It contains the original letter written by the sixth respondent-Dr. Pradeep, dated 23.02.2022. The said letter does not bear any endorsement by DME marking it to a subordinate Officer. We are shocked to note that the DME has issued the cancellation letter on the very same day on which he has received the letter submitted by Dr. Pradeep/sixth respondent. In normal circumstances, a complaint/representation received by the DME is marked to the concerned section. The hireracy of officials right from the Dealing Assistant till the DME record their findings in the

note sheet. It is only thereafter that an appropriate order is issued based on the file notings.

16. It is also surprising to note that the letter (Annexure-Q) is dated 25.02.2022 and it was conveyed through whatsapp to the petitioner on 02.03.2022 after a lapse of seven days. The communication as per Annexure-Q has the effect of cancellation of petitioner's seat in Medical PG Course and meets him with civil consequences. It is regrettable to note that an High Officer of the rank of DME has choosen to direct cancellation of petitioner's seat without following any standard official procedure and without issuing any notice to petitioner.

17. Notification dated 23.11.2023 provides a set of Rules for selection and admission to PG medial courses. Rule 9 reads thus:

"9. Verification of information furnished in application of categories:-

The Certificates produced by any candidate under rule 4 and 10 shall be verified by making reference to the appropriate authorities and on such verification and on the

basis of information received, the Karnataka Examination Authority may reject the application of any candidate after giving him a reasonable opportunity of being heard in the matter."

18. In the instant case, petitioner's seat has been cancelled without giving any reasonable opportunity and it is contrary to the Rule extracted above.

19. As per the letter (Annexure-Q), after petitioner's seat was cancelled, the seat was required to be made available in the next round of counselling. Surprisingly, the seat was not shown available in the next round, but it was allotted to the sixth respondent. The KEA has failed to demonstrate as to how the seat was allotted to the sixth respondent in the second round of counselling without there being any seat available.

20. This Bench has dealt with a case of similar nature *in Dr. Rajini C.K vs. The State of Karnataka* ⁶ wherein we have held thus:

⁶ W.P. No. 24070 of 2023

"KEA is an instrumentality of the State Government. Candidates desirous of obtaining seats for the under-graduation and post-graduation repose immense trust with the KEA. Therefore, the KEA is bound to practice a fair and transparent method of allotment of seats."

21. Shri. Mukkannappa, for the sixth respondent submitted that since, the NOC of petitioner was incorrect, his seat was cancelled and allotted to the sixth respondent. It was argued both on behalf of the KEA and the sixth respondent that even if allotment in favour of sixth respondent is held to be bad in law, the same cannot inure to the benefit of the petitioner because the sixth respondent had already completed one year of the course. Shri. N.K Ramesh offered to allot a vacant seat in the same course and in the same institution to the petitioner. In our view, this argument is to be noted only to be rejected because, the collective stand of the KEA and the sixth respondent is to defeat petitioner's claim and to cover up the mis-management and illegal allotment to sixth respondent.

22. Therefore, we are of the opinion that the unilateral cancelling of seat allotted to petitioner and allotment of the seat in favour of the sixth respondent are bad in law.

23. In the light of the above discussion, the following:

ORDER

- a) Writ petition is ***allowed*** with cost of Rs.1,00,000/- payable by the KEA, holding that allotment of MD in Respiratory Medicine seat in favour sixth respondent is wholly illegal and accordingly, it is set-aside;
- b) The KEA shall allot the MD in Respiratory Medicine seat in favour of the petitioner and issue necessary orders in that behalf within two weeks from today;
- c) The cancellation order dated 25.02.2022 is *set-aside*;

d) Out of the cost of Rs.1,00,000/- imposed, a sum of Rs.50,000/- shall be payable to the petitioner and the remaining sum shall be deposited with the Registrar General of this Court.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

SPS