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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.35926 of 2022

Aryan Swarup Parida, S/o- Sri Dilip Kumar Parida, residing at Plot No.2130/5074 Nageswar Tangi, Bhubaneswar, Old Town, Khordha, Odisha 751002

...Petitioner

-Versus-

1. **Union of India**, represented through its Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi, 110011.
2. **Medical Counselling Committee**, Nirman Bhawan, New Delhi, 110011.
3. **Directorate General of Health Services**, Nirman Bhawan, New Delhi, 110011.
4. **National Testing Agency**, SIC-MDBP Building, Okhla Industrial Estate, New Delhi, 110020.
5. **Hi-Tech Medical College & Hospital**, through its Professor & Dean, Pandara, Rasulgarh, Bhubaneswar, Odisha-751025

...Opposite Parties

Advocates appeared in the case:

For the Petitioner : Mr. A. Tripathy, Advocate

For Opposite Parties : Mr. B. Moharana,
Central Government Counsel



CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MISS JUSTICE SAVITRI RATHO

JUDGMENT
15.01.2025

Chakradhari Sharan Singh, C.J.

The dispute in the present application relates to admission to UG Medical Stream-MBBS/BDS based on NEET-2022. The petitioner had secured All-India Rank of 16,663, Category rank of 7185 and All State Rank of 599. He has a grievance that he was prevented from participating in the All-India Quota (AIQ in short)-Mop-up and Stray Vacancy Rounds of counselling. The petitioner has filed the present writ application seeking a direction to grant a Government College MBBS seat, which would have certainly been granted had he not been prevented from participating in AIQ Mop-up Round and AIQ Stray Vacancy Round.

2. The petitioner's relief for grant of admission to UGC-MBBS/BDS course in a Government College based on UGC NEET-2022 cannot be entertained now. It is in that background a submission has been advanced by Mr. A. Tripathy, learned counsel appearing for the petitioner that the petitioner should be directed to be duly compensated for the lapses on the part of the opposite parties because



of which the petitioner missed to get a Government College MBBS seat for medical studies.

3. Briefly narrated, it is the petitioner's case that AIQ Counselling was to be conducted in 4 online rounds, namely, AIQ Round 1, AIQ Round 2, AIQ Mop-up Round and AIQ Stray Vacancy Round. The petitioner was unsuccessful in the first and second round of Counselling. It is the petitioner's case that in the AIQ Mop-up Counselling Round, a technical glitch had occasioned on the web portal hosted by opposite party No.2, which prevented the petitioner from selecting and locking the desired choices of medical institutes. Consequently, out of total 377 available medical institutes choices, the petitioner could select and lock '0' choice and this is how the petitioner stood disabled from participating in AIQ Mop-up Counselling Round as well as AIQ Stray Counselling Round. It is the petitioner's further case that candidates below the rank of the petitioner secured Government College seats based on AIQ Mop-up Counselling Round. The petitioner's right to be considered against the Government College MBBS seats stood infringed. He has also argued that because of non-registration by non-selection and locking of choices in the AIQ Mop-up Counselling Round, the petitioner stood debarred from participating in the AIQ Stray Counselling Round also. In the AIQ Stray

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Counselling Round also the students, who ranked way below the petitioner, were allocated Government College MBBS seats.

4. It is evident that the petitioner has been admitted to a UG course in a private Hi-Tech Medical College, Bhubaneswar. It is the petitioner's case that he is paying exorbitant sum of Rs.6.5 lakh per year as tuition fee as against Rs.37,950/- per year tuition fee payable in the State Government Medical Colleges. The petitioner has relied on a Supreme Court's decision in the case of *S. Krishna Sradha v. State of Andhra Pradesh & Ors*, reported in (2020) 17 SCC 465 (Paragraph 13). Reliance has also been placed on the decisions of Chhattisgarh High Court in the case of *Soumya Sahu v. Union of India & Ors.*, reported in 2022 SCC Online Chh 704 and Patna High Court in the case of *Adhishree v. Union of India & Ors.* (decision dated 29.06.2017 in Civil Writ Jurisdiction Case No. 17708 of 2016).

5. In the counter affidavit filed on behalf of opposite party No.2, the petitioner's assertion that there was any glitch with the software of the answering respondent has been denied. It has been stated that on the said scheduled date more than 36,402 participating candidates had successfully filled and locked their choices. Reliance has been placed on an order passed by the Supreme Court dated 31.03.2022 in W.P.(C) No.174 of 2022 (*Anjana Chari v. the Medical Counselling Committee* W.P.(C) No.35926 of 2022



(MCC) and others) that a candidate who has been allotted a seat in round 1 and 2 of AIQ or the State Quota Counselling, he / she is not eligible to participate in AIQ Mop-up Round and subsequent Rounds. The stand taken on behalf of opposite party No.2 in the counter affidavit on the point of technical glitch has been disputed by the petitioner in the rejoinder affidavit.

6. Apparently, there is a disputed question of fact as to whether it was because of the technical glitch that the petitioner could not participate in AIQ Mop-up Round of Counselling.

7. We are not inclined to enter into such disputed question of fact in a proceeding under Article 226 of the Constitution of India for considering the petitioner's claim for award of compensation.

8. Resultantly, we do not find any merit in this application, which is dismissed.

(Chakradhari Sharan Singh)
Chief Justice

Savitri Ratho, J. *I agree.*

(Savitri Ratho)
Judge

M. Panda