

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**  
(Through Video Conference)

*Reserved on : 20.05.2020.*

*Pronounced on : 26.05.2020.*

EMG-WP(C) No. 20-A/2020  
EMG-CM No. 06-A/2020

Dr. Showkat Ahmad Bhat

.....Petitioner (s)

Through :- Mr. M. Y. Bhat, Advocate  
(on Video Call from High Court Srinagar)

V/s

Union Territory of J&K and others

.....Respondent(s)

Through :- Mr. Shah Aamir, AAG with  
Ms. Sharaf Wani, Advocate for  
respondent Nos. 1 & 2  
(on Video Call from High Court Srinagar)

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGEMENT**

01. The petitioner joined the course of MD Radio Diagnosis/Radiology in the year 2017 and pursuant to his application, his admission was cancelled by the SKIMS Soura vide order No. SIMS/ACAD/362 of 2018 dated 10.07.2018. The petitioner thereafter participated in the NEET PG-2020 examination for selection and admission for MD/MS PG courses. The petitioner qualified the examination but the J&K BOPEE issued a notification bearing No.19-BOPEE of 2020 dated 17.04.2020 by virtue of which the petitioner was declared ineligible for admission in PG course. The petitioner has impugned the said notification and has sought the directions to allow the

petitioner for counseling and consequently grant him the seat in PG in view of his merit and rank attained in the selection process on the following grounds:-

- a) That no opportunity of being heard has been granted to the petitioner and just a couple of days before counseling, the notice impugned has been issued.
- b) That the impugned notification is illegal, as the petitioner has been deprived of his right to undergo higher education, that is his fundamental right.
- c) That SRO-48 of 2018 simply bars the candidates for two sessions after first admission and the date of resignation is absolutely irrelevant and also the course of this year would begin in June, 2020 by which time the petitioner would have obviously completed the course, had he not left the earlier course of 2017.
- d) That he has been punished twice because earlier Rs. 50,000/- was imposed as penalty for abandoning the course and now for the same reason, he is being deprived to participate in the counseling process.
- e) That the respondents have earlier allowed the candidates to join the new streams in terms of subsequent selection even when candidates were already undergoing PG course. More so, in the year 2019 only candidates of year 2017 & 2018 were barred and as such he is entitled to seek admission for the year 2020.

02. The respondent No. 2 has filed objections as well as counter affidavit in which it is stated that the petitioner having left the course after seeking admission in 2017, midway is not eligible to seek admission in the year 2020 as per SRO-48 of 2018 dated 30.01.2018. It is further stated that vide

communication bearing No. BOPEE/Exam-12/2020 dated 28.04.2020, the respondent No. 2 consulted the Director, SKIMS regarding the status of the candidates admitted in the year 2017 pursuing the course of PG Radiology. The communication was responded vide communication No. SIMS/Acad/305 05/PG/17-20-3498-3505 by SKIMS Soura, whereby it has been intimated that the candidates pursuing PG in Radiology from this Institute are still pursuing the course. The batch is expected to complete the course by the end of May, 2020. It is further stated that the petitioner cannot seek admission again until he would have normally completed the course had he not left it midway, which is end of May, 2020 and the petitioner by virtue of SRO-48 of 2018 is rendered ineligible for admission in the year 2020. The J&K BOPEE has further stated that after the declaration of result of PG-2020 by the NBE, the J&K BOPEE notified the merit list of the eligible and willing candidate vide notification No. 07-BOPEE of 2020 dated 10.04.2020 and the candidates were asked to submit the objections, if any, within four days. Some objections were received including against the petitioner and after examination it was found that the petitioner was not eligible for counseling as per SRO-48 of 2018. It is contended that the petitioner is guilty of suppressing and concealing the material facts, which are otherwise in contravention to the spirit of SRO-48 of 2018. So far as the allegations of permitting the other candidates to participate in the selection process despite undergoing PG courses are concerned, the respondent no:2 has stated that the instances pertained to the year when SRO-48 of 2018 was not in vogue. It is also stated that SRO-48 of 2018 was already in public domain and there was no need to inform the candidates individually

about the said SRO. The respondent No. 2 lastly has prayed for the dismissal of the writ petition.

03. Heard the learned counsel for the parties and I have also perused the documents annexed by all the parties with their pleadings. The learned counsel for the respondent No. 2 has argued that the process of NEET examination was started in the month of November, 2019 by the NBE when the applications from the candidates were invited and last date was fixed for 21.11.2019 and thereafter examination was held on 05.01.2020 and result was declared on 30.01.2020. The said facts are not disputed by the learned counsel for the petitioner.

04. SRO-48 of 2018 substituted the 2<sup>nd</sup> proviso to sub-clause(v) of clause 3 of J&K Government Medical Colleges (Selection of candidates for Post Graduation Degree and Diploma Courses) Procedure Order 1995 and it would be profitable to reproduce the relevant part of provisions of SRO-48 dated 30.01.2018 and the same is reproduced as under:-

*“provided further that the doctors who are doing post-graduation/diploma courses in any specialty at the Government expenses including those who leave the course midway after cut-off date of admission shall not be eligible to apply for undergoing post-graduation courses in any other specialty in the State Medical Institutions till completion of their Post-Graduation/Diploma courses, as the case may be. In case of candidates having left the course midway after taking admission they shall be barred from seeking admission again until they would have normally completed the course had they not left it midway.”*

05. Before adjudicating upon the other grounds, it is proper to first of all consider the ground c). The petitioner's case is that the SRO bars the candidates from seeking admission for two subsequent sessions after the year of admission, thereby making the total period to three years, the time required for completion of PG degree and by the time the new Session would begin from June 2020, his course of the year 2017 would obviously have completed. The contention of the petitioner is based upon misinterpretation of the proviso of SRO-48 of 2018. This Court has already held in case titled "**Dr. Sovia Anand Vs B.O.P.E.E. and another**" bearing EMG-WP(C) No. 11/2020 that a candidate who would have normally completed his PG course in the month of April-May, 2020 had he not left the PG course midway without completing the course, has no right to apply and seek admission for MD/MS/PG courses for the year 2020. The relevant paras 8,9,10 and 11 of the judgement are reproduced as under:-

*“(08) The literal interpretation of the first part of the proviso in question makes it clear that it makes both categories of doctors, who are either doing Post Graduation / Diploma courses in any specialty at the Government expenses or who have left the course midway after the cut-off date of admission, ineligible to apply for undergoing Post Graduation courses in any other specialty till the completion of their course for which they had sought admission. The duration of disqualification for applying again for PG Course, exists in the first part of the proviso, so far as the doctors who are undergoing Post Graduation or Diploma course in any specialty are concerned. But in order to provide the duration of disqualification for seeking admission again for the candidates who have left the course midway after the cut-off date in more explicit manner, the later part of the proviso in question has been added. The proviso in*

*question is required to be read in its entirety and not in parts. Thus it is clear that the doctors who are undergoing MD/MS/PG courses in any discipline cannot apply for undergoing Post Graduation courses in any other specialty till the completion of the course and likewise, the candidates who have left the course midway after the cut-off date, without completing the MD/MS Diploma for which they had taken admission, also cannot apply and seek admission till the period by which candidate's course that he left would have completed. Thus, the bar as contemplated by the proviso in question is co-terminus with the duration of the course, is for both categories of doctors, who are either doing PG/Diploma course in any specialty or who have left the course midway.*

*(09) The purposive interpretation of the proviso in question of SRO-48 of 2018 would reveal that the proviso was introduced to discourage/prevent the candidates from abandoning the Course without completing it and also otherwise it would deprive the other eligible candidates to seek admission. In this context the judgment of Apex Court in case titled "Mabel v/s State of Haryana" reported in 2002(6) SCC 318 is required to be taken note of, in which while interpreting the particular Clause of Information Brochure, the Supreme Court has held.*

*It will be useful to refer to Cl. 18 which reads as under :-*

*18. The candidates already admitted in any Medical/Dental Colleges will not be considered eligible for admission to the course."*

*A plain reading of the aforementioned clause shows that a candidate who was already admitted in a medical or dental college would be ineligible for admission in the other course. The said clause at times will operate harshly as in the*

*case of the petitioner but it is meant to ensure that a candidate who has already secured admission should not abandon the studies after the commencement of that course to seek admission in another course which is in public interest, for otherwise it would result in the wastage of the seat in the course in which he has taken admission and further such a change would deprive another eligible candidate from seeking admission to the other course. Obviously, the intention of the concerned authority in framing Cl.18 appears to be to ensure that a candidate who has already secured admission with his free will in any course (MBBS or BDS) should complete that course and should not change his mind in midstream. It, therefore, follows that the bar is intended to be operative during the period of the course in which a candidate has taken admission. After completing that course or in the event of abandoning the course (MBBS/BDS) and not studying for the normal period (4 years/5 years as the case may be) the candidate would become eligible after the end of such period of the course to seek admission in the course of his choice provided other conditions of admission are satisfied. In other words, the bar under Cl. 18 in this case will cease after the BDS course for the academic year 2000-2001, in which the petitioner has taken admission comes to an end after 5 years.*

*Thus any other interpretation would be contrary to the spirit behind the proviso.*

- (10) *In the present case, the NBE initiated selection process in the month of November, 2019 and last date for filing of application was 21.11.2019. The examination was held on 05.01.2020 and the result was declared on 30.01.2020. The note 5 of the notice dated 30.01.2020 for declaration of results by the NBE is reproduced as under:-*

*“The merit position for All India 50% quota seats shall be declared separately. The final merit list/category wise merit list for State quota seats shall be generated by the States/UT as per their qualifying/eligibility criteria, applicable guidelines, regulations and reservation policy.”*

- (11) *The note makes it clear that so far as State quota seats are concerned, they are required to be filled as per their qualifying/eligibility criteria of States/UTs. The petitioner as such is bound by the qualifying/eligibility criteria of the UT of Jammu & Kashmir. SRO-48 dated 30.01.2018 was in vogue when the selection process was started in the month of November, 2019 and the petitioner as such was not competent to apply in the year 2019 to seek admission for MD/MS/PG Diploma for Session 2020 so far as Medical Institutions of UT of J&K are concerned, because her course was to be completed in the month of April-May, 2020, had she not left the course midway. The petitioner was not even eligible to apply and seek admission even when the BOPEE after the declaration of the result by the NBE, asked the candidates belonging to UTs of J&K and Ladakh to keep all the relevant documents ready for registration vide notification bearing No. 001-BOPEE of 2020 dated 25.02.2020 and also when the eligible candidates were called for online registration for preparation of Provisional Merit List vide Notification no: 008-BOPEE of 2020 dated 6-3-2020 by J&K BOPEE, because her course was to be completed in the month of April-May, 2020, had she not left the course midway”.*

06. On same analogy, it becomes clear that the petitioner had no right to participate in the selection process and seek admission for undergoing MD/MS/PG Diploma Courses – 2020 in the Medical Institutions of UT of



Jammu & Kashmir, as per the mandate of SRO-48 of 2018 as he would have normally completed his course by the end of May, 2020, had he not left the course without completing it.

07. The ground a) that has been raised by the petitioner that no opportunity of being heard was granted to him before passing the notice/order impugned is misconceived, as from the documents annexed with the petition in the form of notification **No. 007-BOPEE of 2020 dated 10.04.2020** (Annexure-II), it is evident that proper notice was given to all the candidates which included the petitioner as well, that any candidate figuring in the provisional merit list, but not eligible in terms of SRO-8 of 2005 read with SRO-48 of 2018 shall not be eligible and be liable to further action for concealing the material facts before the BOPEE. The note 6 on page 1 and note 5 on page 3 of the notification **No. 007-BOPEE of 2020 dated 10.04.2020** is reproduced as under:-

*“6. Any other candidate figuring in the Provisional Merit List, but not eligible in terms of SRO 8 of 2005 read with SRO-48 of 2018, shall also not be eligible and be liable to further action for concealing the material facts before the Board.”*

*“5. Mere figuring in the Provisional Merit List shall not confer any right to any of the candidate(s) to participate in the admission process further, like in the online filling up of preferences or allotment of a seat and shall be on the basis of eligibility of the candidates and the number of the candidates as may be allowed to participate in the further process in accordance with the conditions contained in the Information Brochure notified by the Board. Any candidate(s) found ineligible at any stage of admission process will be debarred from the process”*

*without any opportunity/notice whatsoever may be the reasons.*

08. The petitioner as such before passing the notice/order impugned was well aware that he was not eligible under SRO-48 of 2018 but on the basis of wrong interpretation of SRO in question, he assumed himself to be the eligible and on the basis of mere self-assumed eligibility, no right accrues to the petitioner. Merely figuring of the name in the Provisional Merit List does not confer any right upon the candidate to participate further in the admission process, if the candidate is otherwise found to be ineligible later on. More so, SRO-48 of 2018 was in vogue at the time of initiation of selection process and the same was in public domain and despite knowing well he participated in the selection process and appeared in examination on 05.01.2020 at his own risk. As such the ground of not providing any opportunity of bearing heard is misconceived.

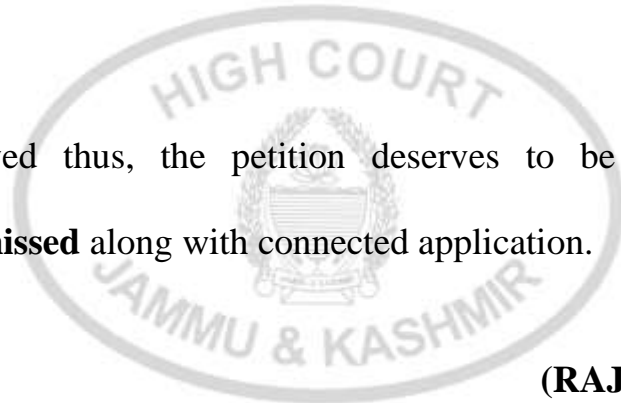
09. So far as ground b) that the petitioner has been deprived of his right to pursue higher education is concerned, the same is not available to the petitioner because SRO-48 of 2018 pursuant to which the notice impugned is issued has not been challenged by the petitioner. More so, the said ground is also misconceived because of the reason that the petitioner has not been deprived of his right to pursue higher education for all times to come and simply a restriction of some duration has been placed upon the petitioner for seeking admission again and the same is in public interest.

10. The ground d) that the petitioner has been punished twice for same action is also not sustainable. The forfeiture of the caution money is because of Rule of University in the event candidate leaves the course midway after taking

admission whereas the SRO 48 of 2018 is meant for regulating the admissions to MD/MS/PG courses. Therefore both provisions operate in different arenas.

11. The ground e) of the petitioner that earlier the candidates were allowed to seek admission when they were undergoing the courses are concerned, these are the instances when SRO-48 of 2018 was not in vogue. The other contention that in the year 2019 only the candidates for the last two years were barred from seeking admission are concerned, the petitioner cannot derive any benefit. Assuming one wrong was committed by the BOPEE, the same wrong cannot be perpetuated further when the same is contrary to the rules. One wrong/mistaken assumption cannot be made a good precedent for future.

12. Viewed thus, the petition deserves to be dismissed and is, accordingly, **dismissed** along with connected application.



**(RAJNESH OSWAL)**  
**JUDGE**

Jammu  
26.05.2020  
(Muneesh)

Whether the order is speaking	:	<b>YES</b>
Whether the order is reportable	:	<b>YES</b>