

NOTICE

Regarding permission to participate in Round – 3

As per directions of the Hon'ble High Court, Bombay in Writ Petition (Lodging) No 1659 of 2013 dated 11.07.2013, Dr Deepali C Tarate, has been permitted to participate in Round -3 of All India Quota PG 2013. Copy of the order dated 11.7.2013 is shown below:

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.1659 OF 2013

Dr.Deepali C. Tarate ...Petitioner
V/s.
Union of India & Ors. ...Respondents

Mr.Mayur Khandeparkar with Mr.Pralhad Paranjape i/b Mr.Ruturaj
P.Pawar for the Petitioner.

Mr.Y.R. Mishra for Respondent Nos.1 and 2.

Mr.Ganesh Gole for Respondent No.3.

Ms.Geeta Shastri, Additional Government Pleader for Respondent No.
4.

**CORAM : S.J. VAZIFDAR &
M.S. SONAK, JJ.
DATE : 11TH JULY, 2013.**

P.C. :-

1. The petitioner seeks a writ of mandamus directing the respondents to permit her to participate in round three of the on-line counseling for allotment of seats for the post graduate medical course and consequential reliefs.

2. The petitioner had filled in the form pertaining to NEET-PG 2013 in the first round. The form required the candidates to express their willingness for participation in the second round and third round.

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The petitioner indicated her willingness to participate in the second round stating "Yes" but not in respect of the third round stating "No". The petitioner has been allotted a seat for M.D. Anaesthesiology at G.S. Medical College, Mumbai.

3. The petitioner sought to participate in the third round but was prevented from doing so on the ground that in the said form she did not indicate her willingness to participate in the third round. The only question is whether by virtue of having stated in the form that she was not willing to participate in the third round, the petitioner could be debarred from doing so.

4. Mr.Khandeparkar, the learned counsel appearing on behalf of the petitioner relied upon several factors which indicated that a candidate is entitled to participate in the subsequent round even though she may not have indicated her willingness in the form itself. Mr.Khandeparkar firstly relied upon the Frequently Asked Questions (FAQ) issued by respondent Nos.2 and 3, Director General of Health Services, Ministry of Health and Family Welfare, Government of India and the Medical Council of India respectively. Question 17 and the answer thereto read as under :-

"Q.No. 17: What is third round of online allotment process?"

Ans: Third round of online allotment will be conducted for the candidates who have submitted their option for participation in third round and for those who were

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registered and submitted choices before first round but not allotted seats as per procedure given below:

3rd round of Counseling:

Fresh set of seats gets added to the system, if any, which is due to latest approvals of MCI. Further, the conversion of seats is being carried out during the third round of seat allotment and accordingly, the candidates are required to be shown all choices which are against vacant, newly added seats, virtual vacancies which are likely to get vacated during up-gradation and also during the conversion of seats as per the following algorithm:

ST (PH) -> ST
SC (PH) -> SC
UR (PH) -> UR
OBC (PH) -> OBC
ST -> SC
SC -> UR

The choices of candidates, who have submitted option for participation in the third round during the reporting period for the first / second round seat allotment, would be initialized, and are required to submit fresh choices online during the time the window is open for the same.

All eligible candidates who desire to take part in third round of online allotment will have to **submit fresh choice** during choice submission period and lock the choices during period of locking. There will not be any indicative allotment in 3rd round of allotment, locked choices of the candidates would be processed and result will be published. Those candidates, who could not submit fresh choices for the third round counseling, would not be considered.

Who are eligible for 3rd Round of allotment:

All candidates interested in participation in the third round counseling are required to submit fresh choices, without which they would not be considered.

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Group-I: Registered candidates who did not get any seat allotment in the 1st or 2nd round of seat allotment and are required to submit fresh choices as per the vacancies shown.

Group-II: Registered candidates, whose 2nd round of allotted Seat Cancelled during the document verification on reporting for admission, **who have secured seat under reserved quota**, due to change of Category from reserved to Unreserved or PH status from Yes to No, but they would still be eligible in the next round of seat allotment, with changed criteria, provided they submit fresh choices, subject to fulfillment of eligibility conditions.

Group-III: Candidates who have given option for participation in 3rd round at the time of 1st and/or 2nd round reporting at allotted institutions.

Who are not eligible for 3rd Round of allotment?

- • **Not reported** at Allotted Institute after seat allotment in either 1st or 2nd rounds.
- • **Reported & Withdrawn/resigned** from seat at the Allotted Institute.
- • Became **non-eligible** due to change of category during document verification
- • Candidate who has not given option for third round at the time of taking admission.
- • Candidate who does not give fresh choices in 3rd round.
- • Who did not register for online allotment of seat before first round of counseling." (emphasis supplied)

5. Prima-facie therefore, a candidate is entitled to participate in the third round even "during the reporting period for the first /

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second round seat allotment". The reporting period for the second round is stipulated in the "Final Schedule For All India (NEET) PG Counseling - 2013" as under :-

S N	Event	Date	Duration
8.	Reporting at the Allotted Medical / Dental College against Round 2	25 June 2013 – Wednesday, July 3, 2013 (Upto 5:00 PM, as per server time)	9 Days

6. The reporting period is therefore, between 25.06.2013 and 03.07.2013. The reporting period is obviously after the form is filled in by a candidate.

From the above questions and answers, it appears that the candidates are entitled to exercise their option even during the reporting period. The form does not expressly preclude a candidate from doing so in the event of a candidate having stated in the form that he / she is not willing to participate in a particular round. There is a possibility therefore, of a candidate believing that he could exercise this option subsequently during the reporting period. There is no question of estoppel if the provisions permit the same.

7. The flow chart on the website of respondent No.2 also indicates that the option can be exercised when the candidate reports to the allotted institute and completes the admission formalities and gives the willingness for participation in the third round. A similar

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option also appears to have been given for the second round, with which however, are are not concerned.

8. The respondents' reliance upon the provisions in FAQ 17 that a candidate who has not given an option for the third round at the time of taking admission, are not eligible for the third round. *Prima facie* does not appear to be well founded. It is not specified that the admission is in respect of the first round admission. Nor does it prevent expressly a candidate for applying in the third round, as aforesaid. Thirdly, FAQ 14 appears to militate against the same, which reads as under :-

Q.No. 14: Is it necessary to join allotted Medical/Dental College to get chance to participate in next round (2nd/3rd round)?

Ans: Yes, in case a seat is allotted, candidate is required to join allotted institution/college and complete the admission formalities then only that candidate can exercise option to participate in next round(s)."

It suggests that only after a candidate joins the allotted institution or college and completes the admission formalities, can he exercise the option to participate in the next round. This appears to be in conformity with the flow chart also.

9. At this stage, to say the least, there appears to be an ambiguity between the form on the one hand and the FAQ and the flow chart on the other. If interim orders are refused, it would not be possible for the Court to set the clock back in the event of the

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petitioner succeeding even at the admission stage. On the other hand, the interim reliefs we propose granting, would be subject to further orders and the petitioner will not claim any equities or rights on the basis thereof. The balance of convenience is therefore, in favour of the petitioner.

10. In the circumstances, the following ad-interim order is passed :-

i). The petitioner is permitted to participate in the third round on-line counseling for allotment of seat to enable the petitioner. To do so, the concerned respondents and the concerned college shall afford the petitioner all the facilities and ensure the implementation of this order.

All the parties to act on an ordinary copy of this order duly authenticated by the Associate / Private Secretary of this Court.

(M.S. SONAK, J.)

(S.J. VAZIFDAR, J.)

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[Signature]
11.7.2013
Session Officer
High Court, Assam State
Bombay