



**THE J&K BOARD OF PROFESSIONAL ENTRANCE EXAMINATIONS**



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(Jammu) Website: <http://www.jakbopee.org>,

**Subject: Consideration order in terms of Hon'ble High Court final Judgement dated 17.11.2017 in OWP No. 1376/2017, titled Sachin Kundal V/s State & Anr.**

**Office Order No. 243 -BOPEE of 2017**

**Date: 11-12-2017**

Whereas, NEET-UG 2017 Examination, for admission to MBBS/BDS was conducted by CBSE on 07-05-2017 and result whereof was declared on 23-06-2017 and;

Whereas, with a view to updating the date of the candidates, the Board notified the Merit List of eligible candidates vide Notification No. 75-BOPEE of 2017 dated 19.07.2017 and subsequently the J&K BOPEE vide Public Notice No.46-BOPEE of 2017 dated 24.06.2017 also asked the eligible candidates to deposit their documents for verification to ascertain their eligibility for allotment of MBBS/BDS seats in the State and;

Whereas, during scrutiny of documents, it was found that one candidate namely Mr. M. Shahbaz Khan s/o Mr. Abdul Majid Khan R/o Pouni, Reasi, bearing Roll No. 903207630, all India Rank 97942, Score 376, had produced an SC category certificate issued by Tehsildar Pouni and;

Whereas, Board examined the matter and vide Notification No. 60-BOPEE of 2017 dated 18-07-2017 sought clarification from DC Reasi vide letter No. BOPEE/SC/C/43/2017 dated 18.07.2017, as how an SC certificate has been issued to a candidate who is Muslim by name and as such the attention of the DC was invited to Constitution order 1956 and;

Whereas, the Deputy Commissioner Reasi submitted a report vide No. DC/Resi/A/905 dated 20.07.2017 wherein it was clarified by the said Deputy Commissioner that the candidate (Mr. M. Shahbaz Khan) belongs to SC category under Chura caste and;

Whereas the matter had also been taken up with Government for enquiry and verification of said SC certificate vide letter No. BOPEE/SC/C/43/2017 dated 24.07.2017 followed by number of reminders and;

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Whereas, JK BOPEE vide notification no. 83-BOPEE of 2017 dated 03.08.2017 read with another notification no. 84-BOPEE of 2017 under Roll No. 903207582, marks 346, rank 1458 allotted MBBS seat in favour of Mr. M. Shahbaz Khan on the basis of SC category and with held it, BOPEE not being an authority to conduct inquiry in respect of SC category certificate issued to candidate. The concerned college was also informed not to allow the private respondent to join against MBBS stream and;

Whereas in the meantime one candidate namely, Rajwant Singh aggrieved by the grant of admission to Mr. M. Shahbaz Khan who has also qualified NEET-UG examination 2017 under Roll No. 903207582, rank 1458, marks 346 and belongs to S.C category filed a writ petition No.1263/ 2017 before the Hon'ble High Court and prayed to grant the following relief :-

- (a) To quash notification no. 83-BOPEE of 2017 dated 03.08.2017 issued by respondent no. 3 (COE) to the extent it pertains to illegal and arbitrary selection of private respondent to the course of MBBS under SC category.
- (b) To quash SC category certificate bearing no. 214-15/Teh/P/BCG dated 01.02.2016 issued illegally in favour of private respondent no. 5 in violation of constitution of Jammu and Kashmir scheduled cost order 1956 which bars the persons professing any other religion other than Hindu and Sikh from getting SC category certificate.
- (c) To direct the respondents to select the petitioner to MBBS course under SC category and shift him from BDS to MBBS course in view of Merit and SC category.

Whereas, the JK BOPEE issued 2<sup>nd</sup> round of counselling/upgradation of MBBS/BDS seats 2017 vide notification No. 95-BOPEE of 2017 dated 14.08.2017 in which the petitioner (Rajwant Singh) also participated against SC category Seats which has become available for SC category due to non joining of a candidates on the basis of 1<sup>st</sup> round of counselling on the basis of merit in GMC, Srinagar and petitioner (Rajwant Singh) was allotted MBBS seat in GMC Srinagar vide Notification No.95-BOPEE of 2017 dated 14.08.2017and;

Whereas, another candidate namely Sachin Kundal, Roll No. 903203947, NEET Rank 1522, marks 342 who had already been allotted BDS seat vide Notification No. 83 of 2017 dated 03.08.2017 filed a writ petition No. 1376/2017 titled Sachin Kundal V/s State and another before the Hon'ble High Court at Jammu and prayed for the following relief .

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- a) To quash notification no. 83 of 2017 dated 03.08.2017 issued by respondent no. 3 (COE) to the extent it pertains to illegal and arbitrary selection of private respondent to the course of MBBS under SC category.
- b) To quash SC category certificate bearing no. 214-15/Teh/P/BCG dated 01.02.2016 issued illegally in favour of private respondent no. 5 in violation of SC order 1956 which bars the persons professing any other religion other than Hindu and Sikh from getting SC category certificate.
- c) To direct the respondents to select the petitioner to MBBS course under SC category and shift him from BDS to MBBS course in view of Merit and SC category and;

Whereas, the above titled writ petition was listed before the Hon'ble High Court on 17.11.2017 and the writ petition has been disposed off with the following directions ( certified copy received on 22.11.2017)-

**"With their consent, writ petition is taken on board and is disposed of by directing the respondents to consider the grievances of the petitioner and decide the same in accordance with the rules and regulations applicable in the facts and circumstances of the case as expeditiously as possible preferable within a period of three weeks from today"**

Whereas, the case has been examined in light of the above directions of the Hon'ble High Court and has been observed as under:-

1. As per MCI regulations no admission to any Medical College/course can be made under any circumstances after the cut off date which in the present case has been notifying as 31<sup>st</sup> of August 2017.
2. Further, in any circumstances, last date for admission/joining will not be extended after 31<sup>st</sup> of August of the year .
3. The schedule of the MCI for conducting/completing admissions has the stamp of the approval of the Hon'ble Supreme Court in the case titled Ashish Ranjan and Ors in writ petition (Civil) No. 76 of 2015 order dated 18<sup>th</sup> January 2016.
4. The Hon'ble Supreme Court has reiterated this direction in other writ petitions/cases/interlocutory applications in the Ashish Ranjans's case. The Hon'ble supreme Court while disposing of an application for grant of extension in time in filling up of the vacant seats of super speciality, MD/MS and MBBS/BDS categorically denied grant of any extension vide order dated 22 september 2017 and rejected the applications.
5. Shri Shahbaz Khan the respondent (No. 4) in the writ petition before the Hon'ble High Court is already pursuing BDS Course in Government Dental College, Jammu as per the affidavit submitted by him and received by the BOPEE office alongwith a notice served by the Mr. Faheem Showket Bhat, Advocate Hon'ble High Court, Jammu along with the notice dated 21-11-

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2017 served by the Mr. Faheen Showkat Bhat, Advocate Hon'ble High Court Jammu.

6. Mr Shahbaz Khan was allotted a seat in MBBS in Government Medical College Srinagar during 2017 under SC category which admission however was withheld in view of pending inquiry into the schedule caste certificate issued to him/receipt of advice from the Government.
7. The affidavit submitted by Mr Shahbaz Khan surrendering his claim for the seat of MBBS dated 7<sup>th</sup> November 2017 and the Hon'ble High Court has disposed of the matter on 17-11-2017 vide its order dated 17-11-2017 and the Hon'ble High Court also observed that the respondent No. 4 has abandoned his claim for the seat of his MBBS course under SC category.
8. The respondent No. 4 has surrendered a claim of a seat much after 31<sup>st</sup> of August 2017 i.e the cut of date for filling up of the seats/ last date for admissions in the Medical Colleges and therefore the seat has become vacant after the cut off date and cannot be filled up under any circumstances in view of the MCI regulations which have the stamp and approval of the Hon'ble supreme court in the Ashish Ranjans case as referred herein above. Further the seat for all practical purposes shall be treated as vacant after the cut off date and the judgment of the Hon'ble High Court viz 17-11-2017 and cannot be filled under any circumstances.
9. The Hon'ble High Court, Jammu in a case OWP No.886/2017 titled Mehak Gul V/s Chairman, JK BOPEE vide its order dated 7.12.2017 has declined to grant any relief to the petitioner, who was seeking upgradation in the MD/MS course-2017 on the grounds that time limit fixed for grant of admission/up-gradation has expired. The relevant part of the Hon'ble High Court Judgement is reproduced as under:-

The cut off date which applies to the admissions to the Postgraduate courses would equally apply for upgradation/ change of stream/ discipline as in any case with the change in discipline, it would be a new admission in a new course. In view of the clear mandate of law given in the judgments (supra), It would not be possible to issue any direction to the respondents to permit the petitioner to change her stream, as prayed for in the writ petition.

The time schedule fixed for the purpose, as stated above, has since expired and in view of the law laid down by the Supreme Court, this Court does not have any jurisdiction to direct the respondents to act contrary to the aforesaid schedule, even if the petitioner is found entitled to change of stream/ up-gradation on merit.

Preliminary objection raised by the State-respondent, therefore, succeeds and in this view of the matter, this Court has not ventured to adjudicate the writ petition on merits. The reliefs claimed in this petition have, thus, become fait accompli. Therefore, the writ petition fails and same is accordingly, dismissed.

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Whereas, the petitioner is already pursuing BDS course GDC, Jammu from the year 2015 and no upgradation can take place after the cut of date in admission as the same is not permissible under MCI regulations/orders of the Hon'ble Supreme Court of India.

Whereas, having considered the matter in accordance with the rules on the subject read with the orders of the Hon'ble Supreme Court in Ashish Ranjans case, the case of the petitioner Mr. Sachin Kundal who is already pursuing BDS course against the seat allotted to him during admission year 2017 cannot be considered for allotment of a seat in MBBS now as a cut off date for admissions has expired since and the seat shall remain unfilled like such other seats in the Medical Colleges across the country in accordance with the MCI regulations read with orders of the Hon'ble Supreme in the matter.

Now, in compliance of the Judgment of the Hon'ble High Court dated 17.11.2017, the case of the petitioner has been examined and considered in light of the applicable rules and regulations which have the seal and signature of the Hon'ble Supreme Court as for as adhering the schedule for admissions to the Medical Courses in concern, is found void of any merit and is hereby rejected.

By order



Deputy Secretary

No. BOPEE/Lit/49/2017

Dated: 11. 12.2017

Copy to the :-

1. Commissioner/Secretary to Government, ARI & Trainings Department, Civil Secretariat, Jammu for information.
2. Shri Asheesh Singh Kotwal, Dy. Advocate General General, Hon'ble High Court Jammu for information.
3. Pvt. Secy to Chairman for the information of the Chairman.
4. Mr. Sachin Kundal (Petitioner) S/o Bittu Ram R/o Village and Tehsil Majalta Distt. Udhampur for information.
5. JK BOPEE website.
6. Stock file