



THE J&K BOARD OF PROFESSIONAL ENTRANCE EXAMINATIONS(BOPEE)

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Subject: - LPA No. 203/2019 C/W with LPA No. 204/2019 titled BOPEE V/S Vasundra Sharma - implementation of the orders thereof.

Reference: 1. No. BOPEE/Lit/13 dated 10-10-2019 from BOPEE to the Ld. Advocate General.

2. AG/PSS/2019/OPN/536 dated 15-10-2019 from Ld. Advocate General.

2.Reference to Law Department vide U.O No. BOPEE/Lit/13 dated 17-10-2019.

Notification No. 113-BOPEE of 2019 DATED 13-11-2019

Whereas, after the conduct of the NEET examination 2019 by the National Testing Agency and declaration of the result by it , the Board of Professional Entrance Examination (BOPEE) after preparation and notified of the State Merit List and on the basis of Online counselling notified the list of candidates admitted to MBBS /BDS courses in Government/Private Colleges vide Notification No. 59-BOPEE of 2019 dated 5-7-2019 and;

Whereas, as the State Government had not notified the procedure for providing reservation to Persons with Disabilities under J&K Rights of Persons with Disability Act, 2018 and as the Board is not competent to do so, the Persons with Disability were treated as OM candidate and considered accordingly and;

Whereas, one candidate namely Vasundhara Sharma (PWD) bearing Sate Rank 1423 and NEET Score 415 aggrieved with her non inclusion in the above Notification filed a writ petition No. WP(c) 2573/2019 titled Vasundhara Sharma V/S State of J&K & Ors before the Hon'ble High Court at Jammu and the Hon'ble High Court disposed of the matter vide its Judgement dated 25-7-2019, the operative part whereof reads as under:-

“Viewed thus, I deem it proper to dispose of the writ petition with a direction to J&K Board of Professional Entrance Examinations (BOPEE), respondent No. 1 herein, to strictly adhere Section 32 of the Jammu and Kashmir Rights of

Persons with Disabilities Act, 2018 read with Amendment Notification No. MCI-34(41)/2018-Med/170045 dated 4-2-2019 for admission of persons to the MBBS Course who competed NEET UG 2019 entrance test under the category of Persons with Benchmark Disabilities, Ordered accordingly, Connected CM, accordingly, stands disposed of.”

Whereas, aggrieved with the above orders of the Hon'ble Court, the Board filed an LPA No.203/2019 titled BOPEE V/S Vasundhara Sharma before the Hon'ble Division Bench challenging the said judgement on various grounds and;

Whereas, the petitioner also not being satisfied with the Judgement challenged the same through LPA No. 204/2019 titled Vasundhara Sharma V/S BOPEE & Ors seeking specific relief for herself as the Judgement of the Single Bench was general in nature and not specific to petitioner and;

Whereas, both the appeals were clubbed by the Hon'ble Division Bench. However the two Hon'ble Judges differed in their opinions on certain points and delivered separate judgements dated 5-9-2019, the operative part of the two separate judgements are reproduced as under:-

First Judge

“For the reasons mentioned above, the present appeals are disposed off by modifying the order passed by the learned Single Judge only to the extent that respondent No. 1 should be granted admission against the seat reserved for PWD, whereas, the reservation in general as provided for under section 32 of the 2018 Act shall be strictly adhere to for all the admissions wherever applicable, for the year, 2020-21 onwards.”

2nd Judge

“For what has been state above, I am of the opinion that direction passed by the writ Court to make compliance wi the provisions of Act of 2018 with regard to admission in under graduate course for medicine though might have been warranted for examination likely to be taken in future, ought not have been asked to be pressed in to service for 2019 NEET. I am, as such of the opinion that relief ought not to have been granted in above terms and consideration of the writ petition. The judgments relied upon by the learned writ Court were not attracted in view of the distinguishable facts.

In consequence thereof, LPA No. 204/2019 filed by the writ petitioner-respondent No. 1 in LPA No 203/2019 is held liable for dismissal and is accordingly dismissed. Resultantly the writ petition filed by her is also held liable for dismissal and is dismissed. LPA No. 203/2019 filed by the respondent No.1 needs to be accepted and allowed. Consequently, the order passed by the writ Court in view of the what has been stated above is held liable to be set aside and is accordingly set aside”.

Whereas, in view of difference of opinion between the two Judges Hon'ble Chief justice refereed the matter to the 3rd Hon'ble Judge for determination of the points of reference, who delivered the judgement on 4-10-2019 as under:-

“19. In view of the foregoing discussion and the reasons, I respectfully agree with the view taken by Hon'ble Mr. Justice Rajesh Bindal and favour the rant of relief in favour of petitioner as has been done by His Lordship. I, however, regret my inability to subscribe to the contrary view of Hon'ble Mr Justice Rashid Ali Dar, whereby His lordship has proposed to dismiss the writ petition. Sequitur of that is the both the Appeals deserve to be disposed off and the order passed by learned Single Judge modified to the extent that the writ petitioner shall be granted admission by giving her the benefit of reservation provided for the persons with the specified benchmark disabilities for the Session 2019-20. This being an exceptional case, the breach of the Schedule of admission issued by Medical Council of India shall not be an excuse available to BOPEE and the admitting institution to admit the petitioner.

Whereas, in view of the above the matter was referred to Ld. Advocate General vide OM No. BOPEE/Lit/13/2019 dated 10-10-2019 for his considered opinion who accordingly advised vide his No. AG/PSS/2019/OPN/536 dated 15-10-2019 and matter was subsequently referred to the Department of Law, Justice and Parliamentary Affairs vide OM No BOPEE/Lit/13/2019 dated 17-10-2019 for advice in view of the opinion of the Ld. Advocate General and;

Whereas, the Board also notified the counselling schedule for filling up of unfilled seats in MBBS/BDS due to increase in intake capacity of three Government Medical Colleges/two Dental Colleges for implementation of the quota for EWS in J&K vide Notification No. 108-BOPEE of 2019 dated

21-10-2019 as the Hon'ble Supreme Court was earlier pleased to extend the counselling date for filling up of the unfilled seats upto 30th November, 2019 vide its order dated 02-09-2019 on an application filed by the State Government. The increased seats provided by the Ministry of Health and Family Welfare vide letter dated 21-06-2019 could not be filled earlier as 103rd Constitutional amendment was not then extended to the then State of Jammu and Kashmir, who had to make necessary amendments in the Reservation Act and the Rules issued thereunder for implementation of the EWS quota. The Jammu and Kashmir Reservation Act was amended through Re-organization Act of 2019, which has effect from 31st October, 2019. The reservation rules were amended vide SRO 518 of 2019 dated 02-09-2019, which has effect from 1st November, 2019; and

Whereas, in the said Notification dated 21-10-2019, Board has already identified and reserved a seat in GMC, Jammu for implementation of the orders of the Hon'ble Division Bench, Jammu for admission of Miss Vasundra Sharma out of the additional unfilled seats available as no other seat was vacant in the Medical Colleges consequent upon the completion of the counselling process in accordance with the MCI schedule for 2019 ; and


Whereas, the advice of the law department is still awaited and the counselling for unfilled seats has been scheduled for 14th and 16th November, 2019 at Srinagar and Jammu simultaneously; and

Whereas, Board has considered the matter in light of the opinion of the Ld. Advocate General and after due deliberations and considering the matter in totality, decided to Notify the admission of Miss Vasundra Sharma in implementation of the judgement against one seat identified and reserved for the petitioner in Medical College Jammu out of the increased intake of 30 Seats by the Government of India which seats are to be filled up as above consequent upon the extension in time granted by the Hon'ble Supreme Court in completion of the admission process up to 30-11-2019 .



Now therefore, in compliance of the orders of the Hon'ble Division Bench dated 05-9-2019 read with judgement dated 04-10-2019 coupled with the advice of the Learned Advocate General, it is hereby notified that:-

1. The Petitioner Miss Vasundra Sharma (PWD) bearing NEET Rank, State Rank.. Score 421 is hereby allotted a seat for admission to the MBBS in GMC Jammu against one of the unfilled seats sanctioned by the Ministry of Health and Family Welfare vide letter dated 21st June, 2019 as an exceptional case. The unfilled remaining 29 seats in GMC, Jammu have already been reflected in seat matrix for the counselling schedule to be held on 14th and 16th November, 2019.
2. The candidate shall report the college up to 18-11-2019 for completion of admission formalities.
3. The college shall verify all the documents of the candidate as required in this regard before allowing the candidate to take admission.
4. The college shall also inform the Board about the joining of the candidate.


Controller of Examinations
J&K BOPEE
Dated: 18/11/2019

No. BOPEE/Lit/13
Copy to:-

1. Financial Commissioner, Health and Medical Education Department.
2. Secretary to Government, Department of law, Justice and Parliamentary Affairs for information.
3. Principal, Government Medical College, Jammu for information and necessary action.
4. Additional Advocate General, Mr. F.A. Natnoo for favour of information and necessary action.
5. Private Secretary to Advocate General for information of Ld. Advocate General.
6. Vasundra Sharma, Petitioner for information.
7. Office order file