

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 04.05.2011

Judgment delivered on: 08.07.2011

W.P.(C) No.10761/2009 and C.M.No.9786/2009

Dr. Hari Nath Yadav & Anr. Petitioners
Through: Mr. Pradeep Dahiya Adv.

Vs.

Govt. of NCT of Delhi & Ors. Respondents
Through: Mr. S.D. Singh with Mr. Rahul Kumar
Singh, Adv. for respondent No. 2.
Dr. Rakesh Gosain, Adv. for
respondent No. 3.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may
be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported
in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. By this petition filed under Article 226/227 of the Constitution of India, the petitioner seeks directions to direct the respondent No.3 NBE to grant registration to the petitioner for DNB Course (Session January 2009- December 2011).

2. The present petition was preferred by two petitioners and later petitioner No. 2 sought deletion of his name. The present writ petition thus concerns the case of petitioner No. 1 alone.

3. Brief facts of the case relevant for deciding the present petition are that the respondent no.2 Institute of Human Behaviour & Allied Sciences, which is accredited by the respondent no.3 National Board Of Examinations (NBE), through a public notice dated 4.2.09 invited applications for three years DNB Course for the session of January 2009-December 2011 to which the petitioner responded and applied for the DNB(Neurology) and was selected by the respondent no.2, pending registration by the respondent no.3 Board. The short controversy involved in the present petition is that the

respondent no.2 selected the petitioner without him having qualified the CET-DNB(Super Specialty) examination, which as per the respondent no.3 NBE is the eligibility criteria for admission in a DNB course and therefore the application for registration of the petitioner to the said course was rejected by the NBE vide letter dated 3.6.09. Feeling aggrieved with the same, the petitioner has preferred the present petition.

4. Learned counsel appearing for the petitioner submitted that pursuant to the advertisement published by the respondent no.2 inviting applications from the eligible candidates to seek admission in 3 years DNB super specialty course in Neurology for the academic session January, 2009 – December, 2011, the petitioner was given admission by the respondent no.2 Institute after he appeared before the duly constituted selection committee of the respondent Institute. It is the case of the petitioner that in the said advertisement, the respondent no.2 notified that the candidates who have qualified CET-DNB (Super Specialty) examination would be offered admission on priority, but if the said seats are not filled up by

the qualified CET-DNB candidates, then the remaining seats would be filled on the basis of a written, clinical test and interview. Counsel for the petitioner submitted that there were only four candidates who had applied for the said super specialty course and in the interview only two candidates were finally selected. Counsel further submitted that after the said selection, the petitioner had joined the DNB course in Neurology on 16.02.2009. The counsel further stated that on 18.02.2009 the petitioner was allotted residential accommodation in Senior Residents' Hostel and on 11.04.2009 he was offered the post of Senior Resident (Neurology) pending consideration of his case for registration in DNB course from the respondent no.3 Board. The contention of the counsel for the petitioner was that the petitioner accepted the said offer as a stop-gap arrangement as he was not apprehending any kind of impediment in getting registration from the respondent no.3 Board on the assumption that the petitioner was duly selected by the respondent no.2 and he also fulfilled the eligibility criteria to seek admission in the three years DNB course. The counsel further stated that on

12.05.2009 the Joint Director (Administration) of the respondent no.2 had issued an office order vide which he was informed that the petitioner will be disengaged w.e.f. the afternoon of 15.05.2009 on the completion of stipulated period i.e. 16.02.2009 to 15.05.2009 but on the representation made by the petitioner his term of engagement was extended from 17.05.2009 to 13.08.2009 by the Joint Director (Administration) of the respondent no.2 Institute. Counsel for the petitioner submitted that the petitioner had received a letter from the Dy. Director (Medical) of the respondent no.3 Board through which the petitioner came to know that his application for registration as DNB trainee was rejected on the ground that the petitioner had got enrolment in the said course without qualifying the CET examination. Counsel for the petitioner further submitted that the petitioner was not at fault as not only he was fully eligible to secure admission in the said super specialty course but he was duly selected in the interview out of the two candidates and was accordingly offered the said seat by the respondent no.2 institute. Counsel further submitted that the respondent-Board

in 2008 itself had relaxed the said condition of CET as only 5% candidates could qualify for the said super specialty course. Counsel also submitted that even as per the stand taken by the respondent-institute, they came to know about the said condition of CET test only on 4.03.2009 and, therefore, the hospital also cannot be blamed for issuing the said advertisement dated 4.2.2009. Counsel thus submitted that the case of the petitioner be considered by this Court on equitable grounds as he cannot be made to suffer for no fault of his.

5. Opposing the present petition, Dr. Rakesh Gosain, leaned counsel appearing for the respondent no.3 NBE submitted that the petitioner cannot claim ignorance about the said eligibility condition as he himself had appeared in the said super specialty test, but failed in the same. Counsel also submitted that as per the Information Bulletin of the NBE, the last date of submitting the application was mentioned as 14.11.2008 and, therefore, even the respondent-institute cannot claim that the said bulletin was not within their knowledge. Counsel further submitted that the respondent-institute had no

right to give admission to the petitioner based only on the interview once the Board has clearly specified the criteria of qualifying the said test of CET to seek admission in the said DNB super specialty course. Counsel thus stated that this Court in exercise of its writ jurisdiction may not give any directions which will have the effect of violating the said rules laid down by the respondent-Board.

6. Counsel appearing for the respondent no.2 -institute, on the other hand, submitted that the institute came to know about the said bulletin only on 04.03.2009 and prior thereto, the same was not within its knowledge. Counsel further submitted that the petitioner was selected by the Selection Committee comprising of six eminent persons consisting of Professors and Doctors of the institute and in the past also the respondent-institute has been following the same directions to the knowledge of the said Board. Counsel thus supported the case of the petitioner and submitted that the petitioner should be granted relief as prayed for.

7. I have heard learned counsel for the parties at considerable length and given my thoughtful consideration to the arguments advanced by them.

8. Respondent No. 3 is the National Board of Examinations (NBE), which was established in the year 1975 with the prime objective of improving the quality of medical education by establishing high and uniform standards of post graduate examinations in modern medicine on all India basis. As per the said Board, it conducts post graduate and post doctoral examinations in approved specialties leading to the award of Diplomate of National Board(DNB), a qualification having global recognition . The said Board was established by the Ministry of Health and Family Welfare in the year 1975 and later it became an independent and autonomous organization in the year 1982. With the derecognition of MRCP/FRCS degrees, the Government of India felt for the need for a centralized body, which could evolve high and uniform standards of post-graduate and post-doctoral examinations in medical sciences at par with

international standards and also to create additional specialties without burdening the resources of the Central Government. In certain disciplines of modern medicine, post-graduation is available only in the form of DNB qualification offered by the respondent Board through out the country and as per the said Board, DNB is a much sought after qualification, both amongst the graduate doctors and even the employer institutes including overseas institutions and governments due to its high standards. As per the Board, for facilitating the grant of DNB qualification it grants accreditation/recognition to various medical hospitals/institutes situated in various parts of the country. For granting accreditation to any of the institutes/hospital in the field of any particular specialty, strict norms are in place and each and every case for grant of accreditation for any specialized course in any hospital/institute is decided by the governing body of the said Board after it is recommended by the accreditation committee of the Board and it is only on the approval by the governing body that the hospital or institute is able to grant admission against such specialized course subject

to the terms and conditions to be followed by such institute/hospital in terms of the letter of accreditation.

9. Respondent No. 2 i.e. Institute of Human Behaviour and Allied Sciences, is an autonomous body registered under the Societies Registration Act, 1960 and is founded jointly by the Ministry of Health and Family Welfare, Government of India as well as Government of NCT of Delhi. Respondent No. 2 is one of the accredited institutes of the NBE and vide letter dated 22nd December, 2005, respondent No. 3 Board had granted fresh accreditation to respondent No. 2 institute to train two DNB candidates in the field of Neurology for a period of three years w.e.f. January, 2006 to December, 2008 subject to fulfillment of the terms and conditions laid down in the said letter. The accreditation of respondent No. 2 institute was renewed further for a period of three years each.

10. Respondent No. 3 had invited applications from the interested candidates to appear in the centralized entrance test known as CET for seeking admission to DNB (Super Specialty)

programmes in various accredited hospitals and institutions. The last day of application form as per the Information Bulletin of the respondent Board was 14th November, 2008 and date of CET examination was 4th January, 2009. It is not disclosed by the petitioner that he had appeared in the said centralized examination CET-DNB on the said date, and failed to qualify the same. But it is apparent that after having not succeeded in the said examination, the petitioner found an advertisement issued by respondent No. 2 in leading newspapers of 4th February, 2009 inviting applications from the interested candidates seeking admission to three years DNB course (session January, 2009 to December, 2011) in the super specialty field of Neurology. The closing date for making the application was 12.2.2009 and date and time of interview of the examination was kept for 14th February, 2009 at 10.00 a.m. As per the eligibility condition notified in the said advertisement, the candidates who had qualified CET-DNB (Super Specialty) would be offered admission on priority while the remaining vacancies arising after the filling of the seats from the CET-DNB (Super Specialty), the candidates

will be selected on the basis of a written, clinical test and interview. In response to the said advertisement, the petitioner had appeared before the selection committee constituted by respondent No. 2 on 14th February, 2009 and since there were no candidates who had qualified the CET-DNB (Super Specialty) examination having approached respondent No. 2 institute in response to the said advertisement, the selection committee of respondent No. 2 had selected the petitioner and offered him one seat in the DNB in the field of Neurology for the academic session of January, 2009 to December, 2011. A Memorandum dated 16th February, 2009 was issued by respondent No. 2 offering the said seat to the petitioner and he joined the said course immediately on 16th February, 2009 itself and consequent to joining of the course the petitioner was allotted the residential accommodation in Senior Residents' hostel vide office order dated 18th February, 2009 issued by respondent No. 2 in this regard. The petitioner was also offered the post of Senior Resident (Neurology) for a period of 89 days and the said ad hoc appointment was extended for further periods also. During the

continuation of his said ad hoc engagement on the post of Senior Resident doctor, the petitioner on 3.6.2009 received a letter from respondent No. 3 Board through which the petitioner and respondent No. 2 institute were intimated that his application seeking registration as DNB trainee was rejected as it was found that the petitioner was granted admission in the said course without qualifying CET Super Specialty Entrance Exam. The National Board accordingly returned the application along with the demand draft to respondent No.2 institute.

11. With the said rejection of the candidature of the petitioner, the main grievance raised by petitioner is that it was because of no fault of his that he was denied registration by respondent No. 3 Board. Counsel for the petitioner termed such an action on the part of the respondent no.3 as illegal, arbitrary and violative of Article 14 and 16 of the Constitution of India and submitted that the said decision taken by respondent No. 3 is in blatant violation of principles of natural justice as the petitioner was not given any opportunity of hearing before rejecting his candidature. Counsel also contended that the petitioner had duly

fulfilled the laid down requirement of respondent No. 2 as notified in the advertisement dated 4.3.2009 and he was duly selected by the Selection Committee constituted by respondent No. 2. Counsel also argued that even respondent No. 3 Board has not been strictly adhering to its guidelines as in the year 2008 many candidates were granted admission in the said DNB course without having qualified the said CET exam. Counsel thus urged that such a relaxation can be extended in the case of petitioner as well. Counsel for the petitioner also argued that respondent No.2 hospital was not aware of the said guidelines issued by respondent No. 3 Board and, therefore, also the petitioner cannot be victimized to deprive him from completing the said DNB course.

12. The learned counsel appearing for respondent No. 2 took a stand that respondent No. 2 had selected the petitioner based on his performance in the interview and out of the four candidates, the selection committee constituted by respondent No. 2, petitioner was selected on merits for pursuing his DNB course for the academic year 2009-2011. Counsel also took a

stand that for the academic year 2006-2008, 2007-2009, 2008-2010 similar procedure was adopted by respondent No. 2 by selecting the candidates for the said course through the process of interview and all such candidates were granted registration by the respondent No. 3 Board. Counsel for respondent No. 2 also submitted that the public notice dated 17th February, 2009 through which respondent No. 3 had issued the guidelines for selection of DNB candidates was received by respondent No. 2 institute only on 4th March 2009 and by that time respondent No. 2 had completed the process of selecting candidates for the said course. Counsel also submitted that respondent No. 2 had taken up the issue of granting registration to the said two candidates based on their selection vide their letter dated 6th August, 2009, but the same, however, was declined by the respondent Board vide their letter dated 3rd June, 2009. Counsel also submitted that it was neither in the interest of respondent No. 2 institute nor in the interest of other candidates to keep the seats vacant for the said DNB course for the academic year 2009-2011.

13. From the factual matrix set out above, a very perturbing situation has arisen before this Court. On one hand, the respondent Board has laid strong emphasis on qualifying the CET examination for securing admission in the DNB course and also strict adherence of the said norms by all the accredited hospitals/institutions for enrolling the candidates in the said super-specialty course. On the other hand, the respondent No. 2 Institute has taken a position that it was not aware of the said guidelines issued by the respondent Board and when they came to know the same on 4th March, 2009 they had already completed the process of selecting the candidates for the said DNB course . In the midst of this kerfuffle, the petitioner being the aggrieved party has taken a stand that he had committed no fault in responding to the public notice issued by respondent No. 2 through an advertisement in the national dailies, seeking his admission in the DNB super-specialty course of Neurology. The petitioner has also taken a stand that he had neither made any misrepresentation nor suppressed any fact from respondent No. 2 Institute and he was selected by the Selection Committee duly

constituted by respondent No. 2 Institute for admission in the said DNB course.

14. In the aforesaid scenario, the galling question before this Court is as to which out of the said parties before the court is at fault and is flouting the laid down guidelines formulated by the NBE. The finger can only be pointed towards respondent No. 2 Institute. It is inconceivable that respondent No. 2 Institute was not aware of the guidelines laid down by the National Board of Examinations through the Information Bulletin for the year 2009 for granting admission in the super specialty courses. Respondent no.2 is one of the accredited institutes by the respondent no.3 and for an institution to know the procedure laid down for admissions, the Information Bulletin was released as early as 25 October, 2008 and was available at the website of the Board and it is unfathomable that the respondent-institute would be unaware of the said bulletin and guidelines. Photocopy of the said Information Bulletin placed on record by the NBE clearly discloses that the last date of submission of application form to participate in the said test and to seek

admission in the super specialty course was 14th November, 2008 and the date of the examination was 4th January, 2009. The said Information Bulletin also carries the website address and e-mail of the said Board. In the column of information for candidates under clause 2.1 it has been clearly laid that CET -SS is the entrance examination for the admission to the three years Super Specialty DNB programme. The said clause 2.1 of the bulletin and certain other clauses of the bulletin, which are relevant are reproduced as under:-

“2. INFORMATION FOR CANDIDATES

2.1. CET-SS is the entrance examination for admission to the 3 years Super Specialty DNB programme.

.....

2.24 Candidates are advised to verify the status of the hospital/institute as a NBE accredited center for DNB – SS program. NBE shall not be liable for any claim resulting from admission to a course not recognized by NBE or admission to a hospital not possessing valid accreditation for any particular course or speciality.

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4. EXAMINATION

CENTRALISED ENTRANCE TEST – SUPER SPECIALITY
(CET-SS-NBE)

The NBE CET – Super Specialty is an entrance examination for entry to the DNB Super Specialties. The next session of the examination shall be held on Sunday, the 4th January 2009.

It is an essential pre-requisite to qualify the NBE CET-SS and possess a valid score for admission to the DNB Super Specialty program.

Candidates successful in the NBE CET can apply for admission to the three year super specialty program to institute accredited by National Board of Examinations as per the scheme of admission so prescribed by the Board. The applicable scheme is prescribed in this information bulletin. The list of National Board of Examinations accredited Institutes where candidates can pursue DNB courses is mentioned at **Annexure V**.

Candidates can also pursue DNB at Medical Colleges running DM/MCh courses. Copy of the notification issued by Government of India in this regard is placed at **Annexure III**.

- Candidates may note that qualifying a CET – SS examination does not confer any kind of right whatsoever on a candidate to register on a permanent basis with the Medical Council of India/State Medical Council or to pursue a DNB or any other Post Graduate/Post Doctoral Courses.

The list of Super Specialities in which candidates can pursue DNB along with their eligibility criteria mentioned in the Information bulletin.

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4.7 Admission to DNB Super Specialty Courses

The successful candidates will apply directly to the accredited hospitals/institutions and appear in the institutional assessment.

4.8 Institutional Assessment

The scheme adapted by NBE for aptitude assessment as per DNB CET – SS information bulletin will be followed by National Board of Examinations accredited hospitals/institutes. The scheme for assessment is stated herein below:

- (a) The hospitals/institutes will prepare a speciality-wise merit list based on the combined performance of the candidates in the theory and short structured

question papers (out of 100 marks) and institutional assessment out of 10 marks i.e. total marks obtained by the candidates out of 110 marks.

- (b) Candidates will be offered admission as per the order of merit computed as per the combined performance out of 110 marks as stated above.
- (c) The list of candidates along with supporting annexures as per NBE guidelines will be sent to NBE for registration. The guidelines governing the admission to DNB programme and registration of candidates are contained in chapter-8 of this bulletin.”

15. In the said Information Bulletin, under the *Guidelines for Admission to DNB (Super Specialty) Programmes* there is a list of Annexures that are to be submitted with the application forms out of which Annexure I is in the form of declaration to be filed by the Head of Institution and it would be pertinent to reproduce the format of the same as under:

“ **Declaration Form of the Head of Institution**

(This undertaking is to be submitted on Rs. ten non-judicial stamp paper, duly notarized)

I, _____ working as _____ (Head of Institute) of _____ Hospital hereby certify that:

- (i) The information enclosed along with as contained in Annexures 1 to 9 is true to the best of my knowledge and nothing thereon has been concealed.
- (ii) That this institute has not charged any kind of capitation fees/security money/caution money/bank deposit/material

- security/fees other than prescribed by National Board of Examinations in any format or any such article/instrument from the candidate towards joining the DNB programme.
- (iii) I undertake that, if this institute/hospital is found not adhering to any of the guidelines of National Board of Examinations, the accreditation of the institute/hospital will be deemed to stand cancelled forthwith.
 - (iv) That the selection of DNB trainees has been done as per the guidelines prescribed by the National Board of Examinations.
 - (v) That all the candidates have been treated alike on equal grounds and no special privilege or weightage has been given to any candidate on any ground.
 - (vi) That the Certificates and Documents submitted by the trainee(s) have been verified from their original degrees and supporting documents and have found to be authentic.
 - (vii) That this hospital has maintained a waiting list as per merit obtained by the candidates in this Aptitude Test and any further vacancies arising due to any selected candidate not joining the seat or leaving the seat, the same shall be filled amongst the waitlisted candidates in order of merit. That none amongst the promoters/administrators of the hospital have been associated with the Aptitude Assessment Test and none of their relatives or close contacts have appeared in the Aptitude Assessment Test.
 - (viii) The panel of experts for the Aptitude Assessment Test and 50% of experts who are not associated with this hospital in any capacity and have never been associated with this hospital.
 - (ix) I undertake that this institution is abiding by the guidelines of the Board for payment of stipend to DNB trainee resident doctors; fees guidelines issued by the Board and will ensure strict compliance of the same for all DNB trainee resident doctors.

Verified and Certified for above.

(DR _____)

MS/Director
____ Hospital”

The aforesaid format prescribed down by the National Board of Examinations in the Information Bulletin would clearly show that the respondent No. 2 being one of the accredited institutes for the two DNB seats in the super-specialty field of Neurology was well aware of the consequences of not adhering to the said guidelines laid down by the NBE. Even the petitioner, who had appeared in the said exam but without success cannot claim ignorance of the admission criteria as laid down by the respondent Board as he might have not only applied to the respondent institute but also to other hospitals/institutes accredited by the NBE where the eligibility criteria would have been the Entrance Examination.

16. The DNB qualification, as stated by the NBE, is a qualification duly recognized in Schedule I of the Indian Medical Council Act, 1956. It is also apparent that the said DNB course is highly specialized course and the eligibility criteria to appear in the entrance examination for DNB course is not less than MD/MS pass candidates. Keeping in view the importance of the said super-specialty programme, the criteria set out for

selection of the candidates by the National Board of Examinations has been through the centralized examination i.e. CET-DNB. As per the respondent Board, the DNB is a much sought after qualification and, therefore, the same is highly competitive and the DNB candidates not only get training from the eminent doctors and professors but they themselves greatly contribute and support in the working of the hospital and in the larger interest of the ailing patients. The respondent Board in its detailed counter affidavit has explained the setting up of the NBE and how the standards set out by the Board in monitoring and granting the DNB degree are at par with the international standards. A comparison chart of the DNB with MD/MS courses was also set out, emphasizing that the centralized examination is conducted on a nationwide basis and is without any element of bias. The submissions of the Board were focused on highlighting the prestige attached with the DNB qualification and the fact that the CET exam is an indispensable prerequisite for admission in the said course.

17. In the present day and age of cut throat competition, admissions in almost all of the specialized courses is through centralized entrance examinations for giving preference to merit and to have a uniform standard and method of granting admissions. Today, whether it is the senior secondary examinations or the eligibility of MBBS or Engineering degree for pursuing a higher degree, it has become immaterial as to how one fairs in these examinations as the entire thrust is on how well you perform in the entrance examination, which is the gateway for admission in any course based on the merit and position one secures in these entrance tests. Certainly, Entrance Examinations are a prism for evaluating students on an undifferentiated level and any action to dilute the procedure and standards laid down would be to set the aim and objective of these tests to naught. Thus, any laxity or concession in favour of any student or any misplaced sympathy would not only give leverage to many unscrupulous colleges and institutes but would also result in compromising the merit, which will ultimately lead

to a pandemonium and deterioration of standards of education of this country.

18. The Supreme Court in the case of ***Mahatma Gandhi University and Anr. Vs Gis Jose and Ors. 2008(17) SCC 611*** clearly took a view that misplaced sympathy should not be shown by the Courts in total breach of the rules. In this case also, a student securing less than cut off marks was given admission in MSc Computer Science by the college in violation of the admission rules and was also allowed to complete the course after appearing in exams despite the fact that the Academic Council of the University refused the student to allow or continue her study in the said course. Taking a strict view the Hon'ble Supreme Court in the following pars held as under:-

"10. The misplaced sympathies should not have been shown in total breach of the rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in CBSE v. Sheena Peethambaran². In para 6 of the judgment, this Court observed as follows: (SCC p. 724)

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations.

Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions."

11. *In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal."*

In ***A.P. Christian Medical Educational Society versus Govt. of A.P. (1986) 2 SCC 667*** the Apex Court took a view that the Court cannot issue a direction to the University to protect the interests of students who are admitted in a medical college in clear transgression of the University Act and the Regulations framed thereunder. The relevant para of the same is reproduced as under:-

"Shri K.K. Venugopal, learned counsel for the students who have been admitted into the MBBS course of this institution, pleaded that the interests of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstance that permission and affiliation had not been granted to the institution. He invited our attention to the circumstance that students of the medical college established by the Daru-Salam Educational Trust were permitted to appear at the examination notwithstanding the fact that affiliation had not by then been granted by the University. Shri Venugopal suggested that we might issue appropriate directions to the University to protect the interest of the students. We do not think that we can possibly accede to the request made by Shri Venugopal on behalf of the students. Any direction of the nature sought by Shri Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the

statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.

The Apex Court in the case of ***Ombir Singh vs State of U.P. (1993) Supp. (2) SCC 64*** reiterated the same view and it was held as under:-

"Thus, we are clearly of the view that once having held that the rule prescribed by the State Government laying down minimum qualifying marks in the entrance examination is valid and the State Government having followed the aforesaid rule in granting admission in post-graduate courses, it cannot be held that such action is illegal. There is no infringement of any legal right much less of any fundamental right of the petitioners."

Therefore, from the legal pronouncements stated herein above, it is clear that the courts cannot give any directions in mutating the eligibility criteria set by the concerned rules and regulations.

19. In the case of ***All India Council for Technical Education vs Surinder Kumar Dhawan and Ors. (2009)11 SCC 726*** the Court took a view that the Courts should keep their hands off if it is a question of education policy or an issue

involving academic matters. Relevant para of the same is reproduced as under:-

The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in. In J.P. Kulshrestha (Dr.) v. Allahabad University¹ this Court observed: (SCC pp. 24 & 426, paras 11 & 17)

"11. ... Judges must not rush in where even educationists fear to tread.

...

17. ... While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies."

18. In Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth this Court reiterated: (SCC pp. 6-57, para 29)

"29. ... the Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them."

.....

31. These being educational issues, they cannot be interfered with, merely because the court thought otherwise. If AICTE was of the view that only those diploma-holders with 10+2 (with PCM subjects) should be permitted to upgrade their qualification by an ad hoc bridge course or that such bridge course should not be a regular or permanent feature, there is no reason to interfere with such a decision. The courts cannot by their orders create courses, nor permit continuance of courses which were not created in accordance with law, or lower the minimum qualifications prescribed for admissions. The High Court's decision to permit candidates who have completed 10+1 plus four-years' post diploma course to take the bridge course cannot be sustained.

32. This is a classic case where an educational course has been created and continued merely by the fiat of the court, without any prior statutory or academic evaluation or assessment or acceptance. Granting approval for a new course or programme requires examination of various academic/technical facets which can only be done by an expert body like AICTE. This function cannot obviously be taken over or discharged by courts. In this case, for example, by a mandamus of the court, a bridge course was permitted for four-year advance diploma-holders who had passed the entry-

level examination of 10+2 with PCM subjects. Thereafter, by another mandamus in another case, what was a one-time measure was extended for several years and was also extended to post diploma-holders. Again by another mandamus, it was extended to those who had passed only 10+1 examination instead of the required minimum of 10+2 examination. Each direction was obviously intended to give relief to students who wanted to better their career prospects, purely as an ad hoc measure. But together they lead to an unintended dilution of educational standards, adversely affecting the standards and quality of engineering degree courses. Courts should guard against such forays in the field of education."

Thus education, being a domain of the experts, the courts cannot supplant their own views and give directions in utter disregard of the rules and regulations and the courts have time and again issued strictures not to interfere in matters of education, and this court is not inclined to take any view contrary to the one set out above.

20. In a recent case decided by Hon'ble Mr. Justice Rajiv Sahai Endlaw in the case of ***Association of National Board Accredited Institutions & Ors. vs. Union of India & Anr.*** WPC No. 714/2011 decided on 23.3.2011 dealing with the challenge made by the accredited institutes of the National Board of Examinations making certain changes in the selection

procedure for admission of the super specialty candidates to the DNB programme the Court held as under:-

"31. I also do not find any force in the proposal that the Institutes/Hospitals be permitted to hold their own State-wise counselling. The procedure suggested by the senior counsel for the petitioners has several pitfalls and there is every possibility of a more meritorious student being denied admission to an Institute/Hospital of his choice, if such procedure is followed. The procedure suggested would also be detrimental to the interest of the students as they would be required to make several applications and appear for counselling in several States. Infact the possibility of the available seats remaining vacant would be much more in such a system. Moreover, I fail to see any reason for the unaided professional Institutes/Hospitals to oppose the centralized counselling when they also claim to be admitting the most meritorious student. They have not been able to controvert that through the process of centralized counselling, they will get the most meritorious student. If that be so, the only reason for opposing the centralized counselling has to be necessarily presumed to be, an intent to admit less meritorious student for extraneous considerations. This cannot be permitted.

*33. In this regard I may notice that even in **T.M.A. Pai** in para 64 it was held that the Institutions are for the students and not vice versa. The merit based admission/selection to Professional Colleges/Institutions having been held to be in national interest, it cannot but be held that the right of the most meritorious students cannot be disregarded.*

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*41. Before parting with the matter, I may also record that the Supreme Court vide order dated 7th March, 2011 in WP(C) No. 380/2009 titled **Simran Jain vs. Union of India** has approved the Regulations on Graduate Medical Education (Amendment), 2010 (Part II) and the Postgraduate Medical Education (Amendment) Regulations, 2010 (Part II) providing for a single eligibility-cum-entrance examination for MBBS course known as 'National Eligibility-cum-Entrance Test for admission to MBBS Course' and a single eligibility-cum-entrance Examination for postgraduate courses known as 'National Eligibility-cum-Entrance Test for admission to Postgraduate Medical Courses', to be held under the overall superintendence, direction and control of the Medical Council of India. The changed procedure of NBE impugned in this petition is found to be in consonance with the changes approved by the Apex Court. 42. The writ petition is therefore without any merit and is dismissed with costs of Rs.1,00,000/- on the petitioner payable to NBE within four weeks of today."*

Thus, it is manifest from above that the criteria as set out by the NBE is after careful consideration and is in consonance with transparency and fairness.

21. Reverting back to the facts of the case at hand, the petitioner in the present case after being selected by the Selection Committee of respondent No. 2 Institute had joined DNB Neurology on 16th February, 2009 and as per his own case he received a letter from the National Board of Examinations on 3rd June, 2009 rejecting his application for registration as DNB trainee. Challenging the said decision of the NBE he filed the present writ petition on 4th August, 2009 and vide order dated 11th August, 2009 this Court directed the respondent not to disengage the services of the petitioner as Senior Resident till the next date of hearing and with the said interim protection the petitioner continued with the said DNB programme. It would be thus quite evident that the petitioner and even respondent No. 2 Institute had received the said communication from the National Board of Examinations through their letter dated 3rd June, 2009

in a reasonable time frame of getting admission. Despite the fact that the petitioner and the institute were well aware that the admission of the petitioner in the DNB programme was in complete violation of the policy guidelines laid by the NBE notified by them through their Information Bulletin, the petitioner decided to approach this court for relief. The petitioner no doubt possesses the requisite qualification for being eligible to undertake the said DNB programme, but the admission could be granted only after he had passed the said centralized exam i.e. CET-DNB. As per the NBE, in fact the petitioner had appeared in the said exam but failed and, therefore, to his very knowledge he was not entitled to seek admission in any of the institutions/hospitals accredited by the National Board of Examinations. The contention of the counsel for the petitioner that the rules of natural justice have been violated as the petitioner was not given an opportunity of being heard by the Board before rejecting his application, does not cut any ice. The rules of natural justice, though not codified are the guiding spirit of the Rule of Law, but they cannot be stretched

too far to be read into every possible situation so as to avoid the obvious consequences. The Board being a body scrutinizing the application forms, where everything which is required is supplied in the form of annexures and documents cannot be blamed for not granting a hearing to the petitioner as there is nothing that on explanation by the petitioner personally would have changed the decision of the Board. Similarly respondent No. 2 Institute had no right to grant admission to any of the candidates in violation of the policy guidelines laid by the National Board of Examinations by which the Institute got its accreditation for administering the said DNB specialized course in the field of Neurology. The petitioner also cannot be heard to say that the Board itself had relaxed the said guidelines in the previous academic sessions, as nothing was produced to prove the same. Even otherwise, the respondent board has admitted that due to desperate circumstances, the criteria was relaxed in the year 2008, but only as a one time measure and it was not to be carried on to the next academic sessions. Respondent No. 2 thus had no right to issue the said advertisement or to select any

candidate by constituting their own selection committee, the process which has already been set aside by the recent judgment of this court in *Association of National Board Accredited Institutions & Ors. vs. Union of India & Anr. (supra)* . The action of respondent No. 2 is also in violation of the declaration form, which has been reproduced above. Respondent No. 2, which is an autonomous body being funded by the Ministry of Health and Family Welfare and Govt. of NCT of Delhi has clearly acted not only in breach of the policy guidelines of the NBE but also caused unnecessary harassment and agony to the petitioner making him believe that his selection in the said DNB programme was legal. To add insult to injury, the petitioner approached the court for relief, and due to the passage of time and because of interim orders, is now in the last leg of his course.

22. In the light of the above discussion, this Court does not find any merit in the present petition as no undue sympathy can be shown by this Court on account of the fact that the petitioner had undergone the said DNB programme for a period

of about 4 months on the date of the receipt of the rejection letter and then continued the said course under the protection of this Court through interim orders. This court is thus troubled not to grant relief to the petitioner as prayed for and no special advantage can be claimed by the petitioner as he continued with the said course at his own peril.

23. However, considering the fact that respondent No. 2 Institute has acted in clear breach of the policy guidelines laid down by the NBE according to which the eligibility criteria for granting admission in the said DNB programme is qualifying the said entrance test CET-DNB and also the fact that such illegal act has caused anguish, pain and torture to the petitioner, therefore, a cost of Rs. 1 lakh is imposed upon respondent No. 2 Institute which shall be paid by it to the petitioner within a period of one month from the date of this order. The said cost of Rs. 1 lakh shall be recovered by the Director/Administrative Head of the respondent No.2 Institute from the officials responsible for publication of the flawed advertisement. A compliance report of the said recovery shall be submitted by the

Director/Administrative Head within a period of two months from the date of this order.

24. The respondent No.3 Board is also directed to take suitable action against respondent No.2 Institute for selecting the candidature of the petitioner by flouting the guidelines as laid down by the Board for the grant of accreditation for the said course to them.

25. With the above directions, the petition stands dismissed.

July 08, 2011

KAILASH GAMBHIR, J