

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 20132 of 2016
Date of decision: 29.09.2016

Yuthika Khatri

....Petitioner(s)

Versus

Pt. B.D. Sharma University, Rohtak and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Rajbir Sehrawat, Advocate,
for the petitioner.

Mr. Ramesh Hooda, Advocate,
for the respondent-University.

Mr. Rohit Arya, AAG, Haryana.

Mr. Manpreet Singh Longia, Advocate,
for MCI.

G.S.SANDHAWALIA, J.

The petitioner seeks admission in the MBBS course for the session 2016-17 against the NRI quota as per her merit category entitlement by treating her eligible to participate in the process of admission/counseling.

It is the case of the petitioner that the CBSE had been given the role of conducting the National Eligibility-cum-Entrance Test NEET-II (2016) to the above said category in addition to the BDS course , which was held on 24.07.2016. The petitioner had been given all India rank of 596890 and her category rank was 255580 since she had a percentile score of 18.302214. Vide notification dated 31.08.2016 (Annexure R-1/1), the respondent-university was given the authority to conduct the admission process for the seats in the medical institutions. The prospectus was

accordingly issued for general category (Annexure P-3) and for the NRI candidates (Annexure P-4). The petitioner had accordingly applied, being a category I NRI, since she was permanent resident of USA. The petitioner was accordingly called for counseling and figured at Sr. No. 6 in her category as per Annexure P-7. On account of the fact that she did not have the minimum marks of the 50th percentile in NEET-2016, she was not granted admission. Accordingly, a representation dated 15.09.2016 (Annexure P-8) was filed that it was not necessary to qualify the NEET-2016 to become eligible. Similar representation was also filed on 19.09.2016 to respondent no. 3. Accordingly, the present writ petition was preferred seeking admission.

In the written statement filed by respondents no. 1 and 2, the plea has been taken that the 50th percentile in the NEET was prescribed and, therefore, petitioner having failed to get the said requirement, she was not eligible. It was also pleaded that the Central Government had the power to relax the minimum marks for admission and there was no need for the University to prescribe the same conditions in the prospectus as such. The notification dated 31.08.2016 prescribed the procedure for admission and also prescribed merit list of the candidates would be prepared who have cleared the NEET-2016. It was submitted that the notification was part and parcel of the prospectus and, therefore, it was to be read in addition to the prospectus. Resultantly, prayer was made that the writ petition be dismissed.

Counsel for the petitioner has accordingly argued that as per the prospectus, NEET was applicable for all India quota seats, State Government quota seats and private management/NRI quota in private

colleges. The State Government had the option to opt for the applicability and as per the prospectus for the general category, it was provided under the eligibility conditions of Chapter IV that the candidate has to obtain the minimum eligibility marks and must have qualified NEET-2016. It was accordingly submitted that the tentative distribution of the 16 NRI seats had been shown in the said prospectus apart from the ESIC Medical College, Faridabad. The prospectus for NRI seats (Annexure P-4) also showed the break up which included the 3 additional seats for the ESIC Medical College. The notification dated 31.08.2016 also found mention in Chapter VII whereby, the fee structure was provided for the NRI seats. Reference was also made to the prospectus issued by the Government Medical College and Hospital, Chandigarh to submit that requirement of being eligible in NEET was not necessary for NRI students and, therefore, there was no requirement of having minimum requirement of 50th percentile.

On the other hand, counsel for the respondent-university placed reliance upon the notification to submit that the eligibility criteria was the one which was fixed under NEET-2016 and which had been prescribed by the Medical Council of India and the Dental Council of India (in short 'MCI' and 'DCI' respectively). Reference was also made to the NEET prospectus (Annexure P-1) and Chapter 6 to show that the eligibility criteria provided that the candidate had to obtain a minimum of 50th percentile in NEET.

The written statement was not filed by MCI but Mr. Longia did not support the cause of the petitioner and submitted that merit could not be given a complete good bye.

After hearing counsel for the parties, this Court is of the opinion that the argument raised by the petitioner is not tenable. The NEET

prospectus was released in pursuance of the orders of the Apex Court dated 28.04.2016, defined the eligible candidate under clause 3(q). The same reads thus:-

*“(q) **“Eligible Candidate”** means a candidate who satisfies the requirement of eligibility as prescribed by Medical Council of India and Dental Council of India.”*

As per the general instructions of Chapter 2, mere appearance in NEET would not confer any right to the candidates for admissions in the MBBS/BDS courses and selection would be subject to fulfilling the admission criteria and the eligibility which was to be prescribed by the Government of India, respective states. The relevant instructions read thus:-

“1 General Instructions

(a) NATIONAL ELIGIBILITY CUM ENTRANCE TEST [UG] 2016 will be conducted as per the directives given by Hon'ble Supreme Court in various decisions on NEET vide orders dated 28.04.2016, 06.05.2016 & 09.05.2016 and the Ordinances promulgated by the Central Government on 24.05.2016.

(b) As per the directives of the Hon'ble Supreme Court of India dated 09.05.2016, in Writ Petition (C) No. 261 of 2016 and other connected matters, following candidates can apply in NEET-II:

- *Left out candidates who could not register in AIPMT-2016/NEET-I.*
- *Candidates who were registered in AIPMT-2016/NEET-I but could not appear in NEET-I.*
- *Candidates who were registered in AIPMT-2016/NEET-I and had appeared but have apprehension that they had not prepared well subject to submission of an undertaking to give up their*

candidature for NEET-I.

(c) Mere appearing in NEET-I & NEET-II does not confer any right to the candidate for admission in MBBS/BDS Courses. The selection and admission to MBBS/BDS seats in any Medical Institution recognized for offering MBBS/BDS Courses is subject to fulfilling the admission criteria, eligibility, rank in merit list, medical fitness and such other criteria as may be prescribed by the Government of India, respective States, Universities and Medical/Dental Institutions.”

Similarly, under Chapter 6 the eligibility criteria noted that the Graduate Medical Education Regulations, 1997 issued under the Indian Medical Council Act, 1956 prescribed the minimum marks of 50th percentile in NEET was the requirement to be eligible for admission. Clause 6(1)(b) further provided that where sufficient number of candidates in respective categories fail to secure minimum marks, the Central Government in consultation with the MCI/DCI, may in its discretion, lower the minimum marks. A list of successful candidates had accordingly to be prepared on all India rank based on the score obtained in the examination prepared by the Board. Clause 3 further provided that the merit list of eligible and successful candidates who had opted for the 15% all India quota seats would be prepared. For seats other than all India quota, with which we are concerned, admitting authorities were to invite applications for counseling and merit list was to be drawn up based on the all India rank by the admitting authorities subject to applicable Rules. The relevant clauses of Chapter 6 read thus:-

“1. Eligibility Criteria

The Central Board of Secondary Education will prepare an All India Merit List of successful candidates

of NEET-2016 on the basis of the eligibility criteria provided by the Medical Council of India and Dental Council of India as given in Graduate Education Regulations-1997 issued under Indian Medical Council Act-1956 and BDS Course Regulations, 2007 under the Dentists Act, 1948. The eligibility criteria are as follows:

***(a)** In order to be eligible for admission to MBBS/BDS Courses for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in National Eligibility Cum Entrance Test to MBBS/BDS Courses held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with Locomotory disability of lower limbs terms of Clause 4(a) iv above, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All India common merit list in National Eligibility Cum Entrance Test for admission to MBBS/BDS courses.*

***(b)** Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility Cum Entrance Test held for any academic year for admission to MBBS/BDS Courses, the Central Government in consultation with Medical Council of India and Dental Council of India may at its discretion lower the minimum marks required for admission to MBBS/BDS Courses for candidates belonging to respective categories and marks so lowered by the Central government shall be applicable for the said academic year only.*

A list of the successful candidates in order of All India

Rank based on the score obtained in the examination will be prepared by the Board.

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3. Merit List for Counselling under 15% All India Quota

*The merit list of the eligible and successful Candidates who have opted for 15% All India quota seats will be prepared by the CBSE on the basis of score obtained in the NEET – 2016. The merit list will be equal to the number of seats available for allotment in MBBS/BDS courses under 15% All India Quota. There shall also be a waiting list equal to 4 times of the merit list. The list of successful candidates (Merit List/Waiting List) shall be forwarded to **the Directorate General of Health Services (Medical Examination Cell), Ministry of Health and Family Welfare, Government of India** for the purpose of allotment of seats by Online Counselling to 15% All India Quota Seats.*

4. Merit List for seats other than 15% All India Quota

(a) *CBSE will provide All India Rank. Admitting Authorities will invite applications for Counselling and merit list shall be drawn based on All India Rank by the Admitting Authorities subject to their applicable rules.*

(b) *The list of successful candidates of NEET who have registered themselves for AFMC on website www.afmcdg1d.gov.in shall be forwarded to **the Directorate General of Armed Forces Medical Service, Ministry of Defence, Government of India** for second stage screening and counselling.”*

It is not disputed as per the result declared of the petitioner by the CBSE (Annexure P-2), she has been declared as not qualified in NEET-

2016, since she has scored a paltry percentile of 18.302214 and, therefore, cannot be in the list of successful candidates which had to be prepared by the Board.

It is a matter of record that the notification dated 31.08.2016 (Annexure R-1/1) was thereafter issued by the State of Haryana providing for the admission procedure which was to be followed in the State which was to be applicable to Government aided institutions listed in Annexure-I. The respondent-university was accordingly authorized to conduct counseling. The process for admission prescribed that the relevant merit of candidates who had cleared the NEET would be drawn up and where sufficient and eligible candidates were not available, admission would be made from All India NEET-2016 merit list. The relevant portion reads thus:-

“6. The Governor of Haryana is further pleased to authorize Pandit Bhagwat Dayal Sharma University of Health Sciences, Rohtak to conduct web based Online Counseling as per Merit of NEET-2016 for admission to all the Government/Government aided Institutes in the State of Haryana.

Process for Admission:-

(i) The admissions under all categories will be made on the basis of relative Haryana State Merit obtained in the NEET-2016 followed by All India Merit of 2016.

(ii) The Relative Merit, among such candidates desiring to seek admissions, shall be drawn from the State Merit of NEET-2016 who have cleared the NEET-2016 with or above such distinction as has been declared as Minimum Eligibility Criteria of proficiency for granting admissions. In case sufficient eligible and

willing candidates are not available as per NEET-2016 (candidates of State Merit), the admissions for such seats will be made from the All India NEET-2016 Merit List.

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(viii) Candidates applying on the basis of NEET-2016 should fulfill the eligibility criteria for being granted admissions as fixed under NEET-2016.

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Admission to NRI Category

All admissions in Government institutes under NRI category seats shall be as per merit of NEET-2016.

Preference of admission shall be as given below:-

Category-I: Actual NRI candidates who originally belong to the State of Haryana.

Category-II: Children of NRI who originally belong to Haryana State.

Category-III: Actual NRI candidates who originally belong to an Indian State or a Union Territory other than Haryana.

Category-IV: Children of NRIs who originally belong to an Indian State or a Union Territory other than Haryana.

i. If sufficient numbers of eligible candidates under first category are available, then they will be admitted first even if students under subsequent category are higher in merit.

ii. The NRI students will have to give a Bank Guarantee/Surety Bond for the balance of fee, if they opt to pay the fee in installments as provided.

iii. Any seat remaining vacant under NRI category after second round of counseling shall go to the open category.

iv. It will be obligatory on the part of the University

to provide registration number to all the candidates once duly admitted.”

From the above reading, it would be apparent that the admissions to NRIs have to be given by order of preference between Category I to IV. As per clause (i), if the sufficient number of eligible candidates are available under category I i.e. actual NRI like the petitioner, then they were to be given first preference. Thus, it would be apparent that eligibility was a criteria which is prescribed and only on account of the non-availability of an eligible candidate from category I, the category II list was to be operated. If the argument of the counsel for the petitioner is thus to be taken into account, then the above clause(i) would be rendered redundant as all NRI candidates of category I by mere appearance in the NEET and having not got the required minimum 50th percentile would all become eligible. The said clauses are also part of the NRI prospectus under Chapter IV.

Counsel for the respondents accordingly is well justified to submit that merit cannot be given a complete good bye merely on account of the fact that the petitioner is a NRI candidate. The Apex Court in ***P.A. Inamdar and others vs. State of Maharashtra and others, 2005 (6) SCC 537*** created 15% additional seats and specifically held that even within this quota, merit is not to be given a complete good bye. The relevant portion of the observations read thus:-

“131. Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a

higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or

regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to Islamic Academy's direction to regulate.”

Resultantly, keeping in view the above, this Court is of the opinion that the argument of the petitioner that NRIs irrespective of not having made the 50th percentile cut would be eligible for admission against the NRI seats cannot be accepted. Accordingly, the present writ petition is dismissed.

29.09.2016
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No