

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8351 of 2017

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1. Mamta Yadav, W/o Rajesh Yadav, R/o Village Ramnagar Mishrauli, P.O.- Naurangia, P.S.- Nebua Naurangia, District- Kushinagar (Uttar Pradesh).
 2. Monika Moni, W/o Abhishek Prabhakar, R/o Chhoti Badal Pura, Thana Road, P.S.- Khagaul, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Health, Government of Bihar.
2. Bihar Combined Entrance Competitive Examination Board through its Chairman cum Member, Board of Revenue, Bihar, Patna.
3. Member, Board of Revenue, Bihar cum Chairman, Bihar Combined Entrance Competitive Examination Board, Patna.
4. Principal Secretary, Department of Health, Government of Bihar, Patna.
5. Additional Secretary, Department of Health, Government of Bihar, Patna.
6. Mata Gujri Memorial Medical College, through its Principal, Kishanganj, P.S.- Kishanganj, District- Kishanganj.
7. Katihar Medical College & Hospital through its Principal, Katihar, P.S.- Katihar, District- Katihar.
8. Ms Jenny, D/o (not known to the Petitioners), currently enrolled in Mata Gujri Memorial Medical College, Kishanganj, P.S.- Kishanganj, District- Kishanganj.
9. Ms Anuradha, D/o (now known to the Petitioners), currently enrolled in Mata Gujri Memorial Medical College, Kishanganj, P.S.- Kishanganj, District- Kishanganj.
10. Ms Krittika, D/o (now known to the Petitioners), currently enrolled in Mata Gujri Memorial Medical College, Kishanganj, P.S.- Kishanganj, District- Kishanganj.
11. Ms Poonam Kumari, D/o (now known to the Petitioners), currently enrolled in Katihar Medical College & Hospital through its Principal, Katihar, P.S.- Katihar, District- Katihar.
12. Medical Council of India, New Delhi.
13. Union of India through Ministry of Health, New Delhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Advocate
For the Respondent/s	:	Mr. NAGENDRA PD.YADAV-SC23
For BCECEB	:	Mr. Prasoon Sinha, Advocate
For the MCI	:	Mr. Kumar Brijnandan & Mr. Tarees Hameed
For Union of India	:	Mr. S.D. Sanjay, Additional Solicitor General
For Respondent No.11	:	Mr. Bindhyachal Singh, Advocate
		Mr. Avinash Kumar
For K.M.C.	:	Mr. Y. V. Giri, Sr. Advocate
		Mr. D. Mishra &
		Mr. Sanjay Kr. Sirvastava, Advocates



CORAM:
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT

Date : 17-10-2017

In the *Mop-up* round of the Post Graduate Medical Admission Counselling, 2017 (PGMAC-2017) conducted by the Bihar Combined Entrance Competitive Examination Board (hereinafter referred to as the BCECEB) (Respondent No.2), Respondent Nos. 8 to 11 have been allowed admission to P.G. Course in Obstetrics and Gynaecology in Mata Gujri Memorial Medical College and Hospital, Kishanganj (Respondent No.6) (hereinafter referred to as MGMMCH, Kishanganj) and Katihar Medical College & Hospital, Katihar (Respondent No.7) (hereinafter referred to as KMCH, Katihar). Respondent No.6 is a Sikh minority Institution, whereas Respondent No.7 is a Muslim minority Institution, which are privately managed. The petitioners had participated in the second round of counselling held on 24.05.2017 and 25.05.2017 by the BCECEB. Up to second PGMAC-2017, the seats against which Respondent Nos.8 to 11 have been allowed admission were shown to be reserved for the respective minority candidates, which remained unfilled.

2. According to petitioner No.1, since PG seats in



Obstetrics and Gynaecology was shown to be reserved, she did not have any opportunity to opt for PG Course in Obstetrics and Gynecology, which was her first choice. The second choice of PG in Dermatology too, she was not getting any, therefore, she did not give any option in the first round of counselling. In the second round of counselling too, the seats of Obstetrics and Gynaecology were shown to be reserved for minorities. Seat in MD. Dermatology being available, she opted and since she was required to take admission by 27.05.2017, she took admission in the said Course in KMCH, Katihar. She opted for Gynaecology in Katihar Medical College & Hospital, Katihar (Respondent No.7). Similarly, petitioner No. 2 had no other option but to opt for PG diploma in Anaesthesia in MGMMCH, Kishanganj (Respondent No.8).

3. Regulation 9 of the Post Graduate Medical Education Regulations, 2000 (hereinafter referred to as the Regulations) prescribes procedure for selection of candidates for Post Graduate Courses. Sub-Regulation (III) of Regulation 9 prescribes that in order to be eligible for admission to any post-graduate course in 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 for post-



graduate courses” (NEET) held for the said academic year. There are certain relaxations provided for reserved category candidates in this aspect. Proviso to sub-Regulation (III) enables the Central Government, in consultation with the Medical Council of India, at its discretion, to lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and that the marks so lowered by the Central Government shall be applicable for the said academic year only.

4. Sub-Regulation (iii) of Regulation 9 reads thus:-

“(III). In order to be eligible for admission to any post-graduate course in 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 for Post-graduate 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 provided in clause 9 (II) above with locomotory disability of lower limbs, 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 post-graduate courses:

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 Post Graduate Courses, the Central Government in consultation with Medical Council of India may at its



discretion lower the minimum marks required to admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.”

5. The petitioners indisputably qualified for admission to post graduate courses in terms of the aforesaid Sub-Regulation (III) of Regulation 9 and the respondent Nos. 8 to 11 to did not qualify, are admitted facts.

6. By invoking Proviso to Sub-Regulation (III) of Regulation 9, after second counselling was over, on 26.05.2017, the Central Government lowered the percentile by 7.5 and thus, the minimum required percentile was brought down to 42.5th. It is not known when the said communication dated 26.05.2017 of the Central Government was dispatched, I take note of the fact that it was Friday on 26.05.2017. 27.06.2017 and 28.06.2017 being, Saturday and Sunday, were holidays for the Central Government Secretariat and State of Bihar Secretariat. Immediately thereafter, through a communication, dated 29.05.2017(Monday), issued by the Health Department, Government of Bihar, the seats of PG Courses in the aforesaid two Medical Colleges reserved for minorities were allowed to be filled up through general candidates. Apparently thus, lowering of percentile statutorily



fixed by the Central Government and decision of the State Government of Bihar to declare the two reserved seats available for general candidates was simultaneous and synchronous

7. Thus, a decision of the Government of India in consultation with the Medical Council of India to drastically lower down minimum requisite percentile in NEET to 42.5th and permission granted by the State Government to BCECEB to fill up the reserved seats by general candidates in P. G. Courses paved the way, for general candidates, who were not even eligible for admission to the P.G. Course by operation of Sub-Regulation (III) of Regulation 9 but became eligible after final round of counselling was over, under proviso to the said Sub-Regulation (III), with the decision of the Central Government, as indicated above, for their admission against seats reserved for minorities.

8. In between, BCECEB through advertisement No. BCECEB (PGMAC-2017/19), dated 28.05.2017 came out with a notice to the effect that list of qualified candidates of NEET(PG)-2017 and NEET (MDS)-2017 as received by Medical Board of Examination (MBE)/ Health Department, Government of Bihar for admission to first year of PG Courses after lowering down the percentile marks of the candidates of



each category had been uploaded on the Board's website on 28.05.2017. The BCECEB, accordingly, invited online applications in order to select candidates against the vacant seats after common counselling for admission to such courses. It indicated that on the basis of respective merit and availability of seats, the counselling programme was to be published on the Board's website on 29.05.2017. As has already been indicated, the State Government had communicated its decision to BCECEB on 29.05.2017 to treat unfilled reserved seats of minority candidates open for general candidates. On 29.05.2017, the State Government asked the BCECEB to conduct *mop-up* counselling on 30.05.2017, for admission in Private Medical Colleges against seats, which remained unfilled after last two rounds of counselling. Clause 5 of the communication of the letter No. 576(1) dated 29.05.2017 issued by the State Government indicated that only such candidates shall be allowed to participate in the counselling who had not been admitted in any of the institutions. Respondent Nos. 8 to 11 have been allowed admission to PG Courses in Gynaecology in the said two Private Medical Colleges on the basis of '*mop-up*' counselling held on 30.05.2017, against seats which were earlier shown to be reserved when the



petitioners were participating in counselling and subsequently treated for open candidates in view of the decision of the State Government, after the Central Government lowered down the percentile.

9. This is the background in which the petitioners seek cancellation of admission of Respondent Nos. 8 to 11 made in PG Courses in Gynecology in two privately managed Colleges (Respondent Nos. 6 and 7). They also seek a declaration that Clause 5 of memo No. 575(1) dated 29.05.2017, which barred the candidates from participating in *mop-up* counselling round, who had already taken admission in any institutions to be illegal and arbitrary as their admission could not act as a disqualification against the petitioners for being considered for admission in the course of Gynaecology.

CASE OF THE BCECEB

10. The facts which are not in dispute in the counter affidavit filed on behalf of the BCECEB can be taken note of, first. In view of the Court's initial observation made on the role of respective functionaries, which had resulted into allowing admissions to such candidates, who were not even eligible for admission initially to much coveted PG Courses in Gynecology, the BCECEB, in its counter affidavit has explained



its limited role of acting as an ‘agency’ as per the guidelines issued by the Health Department, Government of Bihar.

11. It is the case of the BCECE Board that it has been constituted under Bihar Combined Entrance Competitive Examination Act, 1995. In accordance with the memo no. 37(26)/Health, dated 04.02.2000 issued by the Department of Health, Government of Bihar, the BCECE Board was entrusted with the work of conducting post Graduate Medical Admission Test (PGMAT) for selection of the candidates for admission in Post Graduate Medical Courses, viz, MD/MS and PGD Courses available in Medical Colleges of the State of Bihar. Accordingly, the BCECE Board had been conducting PGMAT every year, since the year 2000.

As per the order of the Hon’ble Supreme Court and accordingly directives issued by the Government of India/Medical Council of India, a single National Entrance Eligibility Test viz NEET-PG-2017 has been conducted by the National Board of Examination (NBE), New Delhi in order to select candidates for admission in PG Medical courses in all Medical Colleges across the country. As such, Department of Health, Govt. of Bihar entrusted the BCECEB to conduct counselling for candidates and recommend admission based on



NEET-PG-2017 merit-list. The Department of Health, Govt. of Bihar provided the merit-list of candidates to the BCECEB after obtaining the same from the National Board of Examination (NBE), New Delhi. In view of the above, the proposed prospectus of Post Graduate Medical admission counselling (PGMAC)-2017 was approved by the Department of Health, Govt. of Bihar by letter No. 1/PN-02/2017-421(1) dated 08.04.2017. The list of those candidates who appeared in NEET-PG-2017 conducted by NBE, New Delhi and qualified in NEET-PG-2017 had been uploaded on website of the BCECE Board.

12. Clause 6.1 of the prospectus of PGMAC-2017 required that the candidates must have passed the MBBS examination from any Medical College of Bihar State included in the Schedule of Medical Council of India. This provision had been incorporated in the prospectus of PGMAT-2016 and even prior thereto which were meant for admission in Govt. Medical Colleges.

13. It is further plea of the BCECEB that the Ministry of Health & Family Welfare, Government of India by a letter No. V11011/2015-MEP dated 11.05.2017 issued directives to all Principal Secretaries of States, incorporating



the following directions:-

“You are aware that this Ministry vide letter of even number dated 10th March 2017 requested State/UT Governments to hold combined counselling through such designated authority for admission to all PG Medical/Dental Courses in All Medical/dental Colleges in the States/UTs including private medical/Dental Colleges and Private Deemed Universities from the academic year 2017-18 onwards. This is the first time that a combined counselling for all PG Medical/dental Courses is being conducted by the respective State/Uts.

The All India counselling (Ist & allotment of seats in 2nd round) has already been done by DGHS. Hon’ble Supreme Court has not approved 3rd round of Counselling by DGHS. The vacant seats if any will revert back to States/Uts on 9th May 2017 at 5:00 pm by the DGHS. The second round of the combined counselling is to be conducted by the State/Uts between 11 May to 20th May and last date of joining for the second round is 27th May. However the last date of admission is 31st May, 2017.

In case any seats lying vacant after second round State/Uts counselling, you are requested to conduct a *Mop-up*



round of combined counselling to ensure that all PG seats are filled by 31st May-2017.”

14. The aforesaid directives make it clear that the everything pertaining to admissions in PG medical courses in Govt and Private Medical Colleges was to be completd within 31st May, 2017 and *Mop-up* counselling was also to be concluded within the time frame, as prescribed above, the BCECEB contends.

15. In view of the facts mentioned above, during the first counselling held from 10.04.2017 to 15.04.2017, all the seats available either in Govt. medical Colleges or in Private Medical Colleges were made open for the candidates. It is also the case of the BCECEB that the concerned Private Medical Colleges provided availability of PG Medical seats indicating therein (I) total seats in each courses (ii) General seats for allotment without any reservation criteria and (iii) seats reserved for minorities, which were to be filled up by minority candidates, seats availabilities in aforesaid Private Medical Colleges being as follows:-

Sl. No.	Medical Colleges	Total (obs. & Gynae)	General (Obs.& Gynae)	Minority seats
1.	MGM Medical College, Kishanganj	03	01	02 (sikh)



2.	Katihar Medical College, Katihar	04	02	02 (Muslim)
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16. During the first round of counselling, the only seat for general candidates in PG, Obstetrics and Gynaecology seat available (only one seat) in MGMCH, Kishanganj was opted by Ms. Joshita Dwivedi, NEET-PG-2017, ID-CD-1662295/PGMAC-2017 ID-1000748, AIR-26649/State Gen Rank-532. As such the same seat was allotted to Ms. Joshita Dwivedi on merit-cum-choice basis.

Similarly during the first counselling two Obstetrics and Gynaecology seats available for non-minority candidates were opted by the following candidates on merit-cum-choice, basis:-

Name of the candidates	NEET-PG-2017 ID	AIR (All India Rank)	PGMAC-2017 ID	State Rank
Prachi Singh	CD1653742	16979	1001079	Gen-351
Prachi	CD1701668	20563	1000963	Gen-420

17. Since none of the minority candidates came forward for the Obstetrics and Gynaecology seats available in MGMMCH, Kishanganj (one seat for Sikh Minority), and Katihar Medical College, Katihar (Two seats for Muslim



minority) during the first round of counselling, the seats remained vacant. Therefore the vacancy report as prepared, (duly signed by the authority concerned) reflected two (02) Obs. & Gynae seats (for sikh Minority) in MGMMCH, , Kishanganj and two O Obstetrics and Gynaecology (for Muslim Minority) in Katihar Medical College, Katihar.

18. In view of the decision of Ministry of Health, Government of India contained in letter No. VII011/1/2015-MED dated 26.05.2017, the Department of Health, Govt. of Bihar issued certain directives to the BCECE Board by letter no. 1/PN-06/2014-575(1) dated 29.05.2017, *inter alia* as follows :-

“2. After completion two counslling held earlier for admissions in Private Medical/Dental Colleges, the *mop-up* Counselling for remaining vacancies will be held on 30.05.2017.

5. In *Mop-up* Counselling, those candidates who are admitted in any Institution till now will not participate.”

19. The 31st May, 2017 was the deadline fixed fo0r admission in PG Medical Courses, as mentioned in the letter no. 11011/1/2015-MED dated 26.05.2017, issued by the Ministry of Health, Govt. of India, and as such in the *Mop-up* round of counselling, all the vacant seats were opened for allotment, including two seats of Obstetrics and Gynaecology



Course which remained vacant in MGMMCH, Kishanganj and KMCH, Katihar due to non-availability of candidates belonging Sikh and Muslim minorities.

The National Board of Examination (NBE), New Delhi by notice dated 25.05.2017 reduced the qualifying marks by 7.5th percentile. Consequently the minimum qualifying percentile for General Category was reduced from 50th percentile to 42.50th percentile, for SC/ST/OBC categories from 40th to 32.50th percentile and for persons with disability from 45th to 37.5th percentile. This same was communicated from the Department of Health, Govt. of Bihar by letter No. 1/P.N.-06/2014-574(1) dated 27.05.2017 to the BCECEB.

20. The Department of Health, Govt. of Bihar by letter No. 1/P.N-06/2014-576(1) dated 29.05.2017 issued direction to the BCECEB after consultation with the Department of Law, Govt. of Bihar, that since the availability of minority candidates was very poor, the minority seats as allocated in Private Medical Colleges would be open for General category candidates. In view of the aforesaid directives all the candidates eligible for admission in Private Medical Colleges after lowering down the qualifying percentile a detailed list of eligible candidates was reflected in



Advertisement no. BCECEB(PGMAC)-2017/20 dated 20.02.2017, for the *mop-up* counselling on 30.05.2017, for Private Medical Colleges. The Roll numbers of both of the petitioners do exist, therein.

21. It is mentioned at point 5 of the aforesaid Advertisement that the remaining vacant minority seats will be opened for general candidates as per directives of the Department of Health, Govt. of Bihar by letter No. 1/P.Ne.-06/2014-576(1) dated 29.05.2017, which is available on website.

22. It is, accordingly, the case of BCECEB that during the counselling on 30.05.2017, two seats each of Obstetrics and Gynaecology available in MGMMCH, Kishanganj and KMCH, Katihar which were not filled up due to non-availability of Sikh and Muslim Minority candidates were open for allotments as per directives of the Department of Health, Govt. of Bihar. As such the vacant minorities seats were allotted during the counselling of the respondent No.8 to Respondent No.11.

23. The MGMCH Kishanganj has filed a counter affidavit with the plea that the College had anticipated this situation on the basis of their past experience gained on the



basis of the very first counselling which had taken place from 10. 04. 2017 to 15. 04. 2017 that there were very meager chances of adequate number of minority candidates turning up and therefore the Principal of MGMCH had sent a letter on 23. 05. 2017 to BCECEB requesting them to open the admissions against the remaining reserved seats for the General candidates though in case of Sikh candidates appearing for counselling, priority should be given for their selection. This was done with the intention and purpose that the seats might not be left vacant, the College being a private unaided medical College and all the expenses are to be met from the fee and other charges collected from the students.

24. The only stand which has been taken on behalf of the KMCH, Katihar is that the College has taken admission on the basis of recommendation made by the BCECEB on the basis of counselling.

25. The private respondents N0.8 to 11 have filed their counter affidavits justifying the process and manner of counselling and have contended that there is no illegality so far their admissions are concerned.

26. A counter affidavit has been filed on behalf of the Medical Council of India wherein reliance has been placed



on a Supreme Court order dated 4.5.2017 passed in WP (C) No. 244/2017-(Education Promotion Society of India and others v. union of India and others) to contend that the Supreme Court while dealing with the case of deemed universities in relation to admission in postgraduate medicine course has observed that application of those students who had already taken admission in any postgraduate medicine course in any medical College would not be considered by the state government for their admission.

27. Another decision of Supreme Court dated 9.6.2017 on separate applications filed on behalf of KMCH, Katihar and MGMCH, Kishanganj wherein a direction was sought to the state of Bihar through BCECEB to extend the last date i.e. 31. 05. 2017 for admission to postgraduate medicine courses in the state of Bihar, has also been brought on record. The Supreme Court, by the order dated 9. 6. 2017, while extending the date for completing the admission process to 15. 6. 2017 by holding an extended counselling by the BCECEB, categorically observed that the eligibility for the said counselling shall be confined to such students only who were invited in the last counselling but could not take admission. The medical Council of India has thus defended the action of



the BCECEB to provide in the notice for mop-up counselling that only such candidates shall be eligible to participate who had not taken admission in any of the postgraduate medicine courses.

28. I have heard Mr. Harsh Singh, learned Counsel appearing on behalf of the petitioners, Mr. Prasoon Sinha, learned Counsel representing the BCECEB, Mr. Nagendra Prasad Yadav, learned Counsel appearing on behalf of the State of Bihar, Mr. Y.V.Giri, learned Senior Counsel for the KMCH, Katihar, Mr.Dharmeshwar Mishra learned counsel for MGMMCH, Kishanganj and Mr. Kumar Brajnandan in the presence of Mr. S.D. Sanjay, learned Additional Solicitor General for the Union of India. Respondents No. 8 to 10 have been represented by Mr. Umesh Kumar Singh and Respondent No. 11 by Mr. Bindhyachal Singh, who too have extended valuable assistance to the Court at the time of hearing of the case.

29. Learned Counsel for the petitioners has submitted that it is evident from the pleadings on record that the petitioners did not have any opportunity at any point of time to exercise their option against the postgraduate Obstetrics and Gynaecology seats in the said two colleges which were told to



be reserved for respective minority candidates. He contends that once the respondents decided to make available the said seats for general candidates, in all fairness, the petitioners ought to have been allowed a chance to exercise their options afresh. He has submitted that the denial of opportunity by the respondents to exercise such option is arbitrary and discriminatory and therefore violative of Article 14 of the Constitution of India. He has contended that the state respondents have virtually compromised with the merit by drastically lowering down the requisite percentile by invoking the proviso to sub-regulation (III) of regulation 9 of the Regulations and thus allowed such students, admission to much coveted post graduate course in Obstetrics and Gynaecology, who were as a matter of fact not eligible under the Regulations because of their poor performance, before the MCI, at the eleventh hour decided to lower down the percentile. He has submitted further that the consequence of arbitrary action of the state respondents is that the persons with much inferior and lower merit have been given admission ignoring rightful claim of the petitioners, they being superior in merit. With these submissions, he argues that admissions of the respondent numbers 8 to 11 in postgraduate course in Obstetrics and Gynaecology should be cancelled



under the orders of this Court with the direction to the concerned respondents to admit these petitioners in postgraduate course in Obstetrics and Gynaecology. He contends that clause 5 of the notice, which barred the candidates from participating in mop up counselling round, who had already taken admission in any institution should be declared illegal and against the spirit of equality clause of the Constitution of India. Admission of a meritorious candidate in a less popular course or inferior course cannot be treated to be his disqualification for opting for admission to a better course particularly when, despite his/her willingness, he/she could not be considered for the said course because of the latches on the part of the authorities.

30. He submits that since the petitioners have been able to establish a case of infringement of their fundamental rights, the injury caused to them must be remedied by passing appropriate orders in exercise of the jurisdiction under Article 226 of the Constitution of India. In response to the submissions advanced on behalf of the respondents that in view of the last date of admission to the course in question has been fixed under the regulations which has the seal and approval of the Supreme Court, no admission is permissible beyond the cutoff date, the



learned Counsel for the petitioner has made an alternative submission that this Court may pass appropriate orders even by moulding the relief in a manner that promotes justice and prevents injustice. The writ jurisdiction of the High Court under Article 226 of the Constitution of India being equitable in nature, it is the duty of the court to ensure an advancement of justice and uproot injustice, he argues. He contends that the statutory compulsion and the rule of fairness need to be evenly balanced. He accordingly submits that if this Court is not inclined to order the admission of the petitioners, this Court may award appropriate monetary compensation for the injury suffered by these petitioners because of arbitrary action on the part of the respondents which is obvious and apparent .

31. In support of his submissions, learned Counsel for the petitioners has placed reliance on Supreme Court decisions reported in *Krishan Yadav v. State of Haryana* (1994) 4 SCC 165, *Ramesh Chandra Sankla and ors. Vs. Vikram Cement and others* (2008) 14 SCC 58, *I.T.C. Ltd. And ors. Vs. State of Karnataka and ors* (1985) supp SCC 476, *Hira Tikkoo Vs. Union Territory, Chand Garh and ors* (2004) 6 SCC 765, *State of West Bengal and ors. Vs. Committee for Protection of Democratic Rights, West Bengal and*



others(2010) 3 SCC 571, RBF RIG Corporation, Mumbari Vs. Commissioner of Customs (Imports), Mumbai (2011) 3 SCC 573. He has also relied on the decision of this Court in case of *Rajnikat Ojha and anr. Vs. Union of India through Secretary, Ministry of Railways and ors* reported in 2014 (4) *PLJR 511.*

32. As has already been noticed, it is the stand of the BCECEB that the BCECEB has acted in a strict compliance of the directives issued by the Medical Council of India and the State of Bihar. Justifying the policy of not allowing such candidates who had already taken admission in the course for the *mop up* round of counselling, learned Counsel for the BCECEB has submitted that it is a huge exercise where the large number of candidates participate at various stages of counselling meant for admission in a number of courses and many institutions. If the candidates who have already taken admission are allowed to participate again, in the next round of counselling, it will have chain reactions leading to seats already occupied by them becoming vacant. He submits that the process of counselling is carried out in a manner that maximum of the seats are filled up within the statutory time fixed under the Regulations and approved by the Supreme court . It is for this



reason that only such students who could not take admission in any of the courses, had been allowed to participate in the mop up round of counselling. He has submitted that this is the reason why the Supreme Court, while extending the cutoff date for admission to 15. 6. 2017(supra) had made it clear in the last notice for counselling, that the eligibility would be confined to those students only who were invited in the last counselling but could not take admission. Referring to the said order dated 15. 6. 2017 (supra) of the Supreme Court, he submits that the policy of not allowing such students who had already taken admission in the *mop up* round of counselling cannot be said to be arbitrary and therefore, the challenge to clause 5 of the notice dated 29. 5. 2017 cannot be sustained.

33. Submissions have been made on behalf of the State of Bihar, Medical Council of India and the Union of India on the same line as made on behalf of the BCECEB. The learned Counsel appearing on behalf of the respondents number 8 to 11, too have taken aid of the Supreme Court order dated 15. 6. 2017 to submit that there is a rationale behind allowing only such candidates to participate in the final *mop up* round of counselling who had not taken admission in any of the courses in question. It is common submission made on behalf of the



respondents that there was an apparent dearth of eligible candidates belonging to respective minorities who could have been admitted on the basis of the percentile prescribed under the regulations. It was in that background that a decision to lower down the percentile was taken by the Medical Council of India in consultation with the government of India. Since the *mop up* round of counselling was conducted after the decision to lower down the percentile and since the respondents number 8 to 11 had become eligible for admission, they were rightly allowed to participate in counselling and accordingly allowed admission. It is thus their plea that there is no illegality in the admissions and this writ application being devoid of any merit deserves to be dismissed.

DISCUSSIONS:-

34. On careful examination of the pleadings and materials brought on record by and on behalf of the parties and submissions made at the bar, in my view there are certain basic and fundamental aspects of the matter which need to be kept in mind for addressing the issues involved in this case. The first and the foremost among them being the basic premise on which the case of these petitioners is founded. The said premise is that the petitioner were wrongly denied the opportunity to



participate in mop up round of counselling. The decision that only such candidates would be allowed to participate in the counselling who had not been admitted in any of the institutions is based on paragraph 5 of the communication of the state government dated 29.5.2017 (supra). The paragraph 5 of the said communication has been put to challenge in the present proceeding. The claim of the petitioners of their right to admission in a different course, though they had already taken admission on the basis of counselling already done prior to *mop up* around of counselling can be looked into only if clause 5 of the communication the dated 29.5.2017 (supra) is held to be illegal being violative of Article 14 of the Constitution of India or any other constitutional or statutory provision, and therefore not sustainable.

35. This contention of the petitioner that clause 5 of the communication dated 29.5.2017 (supra) is illegal and discriminatory cannot be sustained in the light of the nature of order passed by the Supreme Court dated 9.6.2017 (supra) wherein direction has been issued that the students who had not taken admission would only be eligible to participate in the extended counselling as ordered by the Supreme Court. As the Supreme Court has found it to be reasonable that in the



extended round of counselling only such students should be eligible for admission to the post graduate course, the decision of the State Government as contained in the communication dated 29. 5. 2017 (supra) cannot be held to be unreasonable by this Court.

36. This leads to the irresistible conclusion that there is no illegality in the action of the respondents State of Bihar and the BCECEB in allowing only such students to participate in the mop up round of counselling who had not taken admission in any course of post graduation. The petitioners therefore cannot successfully plead that they were wrongly denied to participate in the *mop up* round of counselling.

37. Once I record this conclusion, I find it difficult to sustain challenge made on behalf of the petitioners against admission of the respondents number 8 to 11. It is true that respondents number 8 to 11 were not fulfilling the eligibility criteria of having scored 50th percentile but in view of subsequent decision of the medical Council of India to lower down the requisite percentile to 42.5th, their eligibility cannot be questioned.

38. Situated thus, it can neither be said that these



petitioners had been illegally denied to participate in the *mop up* round of counselling, they having already taken admission in one of the postgraduate courses, nor can admissions of the private respondents be said to be illegal, requiring interference by this Court. The question of grant of the relief in terms of monetary compensation, as raised on behalf of the petitioners would have arisen only after returning a finding that any of their legal or fundamental rights stood infringed because of action of the respondents, held to be illegal, which is not the case here. I therefore need not advert to submissions made on behalf of the petitioners with reference to various Supreme Court decisions as noted above.

39. Having held as above, I would have normally just dismissed the writ application as having no merit inasmuch as the petitioners could not establish infringement of any of their legal or constitutional right nor could they substantiate their plea of illegality in the admissions of respondents No.8 to 11. However, having gone through the sequence of events, which I have found coinciding in such a manner, as have been taken note of in the foregoing paragraphs dealing with the facts, that it generates a reasonable apprehension in my mind on the *bona fide* of the decision of the Central Government Medical



Council of India to drastically lower down the percentile to 42.5 to fill up the remaining seats in the *mop up* round of counselling. Was this decision taken as adequate number of candidates with the requisite percentile as prescribed under the Regulations were not available? What material was there before the medical Council of India which compelled them to lower down the percentile so drastically? Why the decision to de-reserve the minority seats in the aforesaid two medical colleges and make it available for general candidates was taken only after the medical Council of India decided to lower down the percentile, just before the *mop up* round of counselling was to take place? Was it done in a very planned manner to ensure admission to the favoured few, since it would not have been humanly possible for candidates not knowing about the sudden decision of the Central Government and Medical Council of India to lower down the percentile, to present themselves for counselling at appropriate places, best suited in terms of their merit and choice, on short notice? The court is completely clueless about these questions which are of great significance particularly because of two developments coinciding together, one lowering down of the percentile and the other, de-reserving the minority seats for general candidates. I am of the considered



view that an in-depth enquiry by an impartial and independent agency at appropriate level should be conducted to address the questions posed above.

40. Considering the essence of all the facts combined together, which have been taken note of as above in my view, a reference to the Central Vigilance Commission constituted under the Central Vigilance Commission Act, 2003 of the questions posed above would be the best suited option. I accordingly do so.

41. The Central Vigilance Commission shall, for the purpose of present order exercise its power and discharge its functions as contemplated under section 8 (1)(h) of the Central Vigilance Commission Act, 2003, which reads thus:-

“(h) exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government :

Provided that nothing contained in this clause shall be deemed to authorise the Commission to exercise superintendence over the Vigilance administration in a manner not consistent with the directions relating to vigilance matters issued by the Government and to confer power upon the Commission to issue directions relating to any policy matters;”



42.It is made clear that no observation made hereinabove as regards the questions which are being referred to, to the Central Vigilance Commission should be treated as the Court’s opinion. The court leaves it to the Central Vigilance Commission, New Delhi to enquire in terms of the present order and proceed thereafter.

43. Before I part with the present order, I must record my appreciation for the able assistance blended with the fairness, extended by the learned counsel representing the parties at the bar.

44. Let a copy of this order be sent through e-mail to the Secretary, Central Vigilance Commission, New Delhi, forthwith.

45. This disposes of the present writ application.

46. There shall be no orders as to costs.

arun/-	(Chakradhari Sharan Singh, J)
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AFR/NAFR	AFR
CAV DATE	AFR
Uploading Date	18.10.2017
Transmission Date	18.10.2017

