

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5087 of 2017

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1. Dr. Deepak Kumar Son of Shivjee Choudhari, Resident of Village-Agwanpur, P.O.-Brah P.S.-Barh District-Patna, Presently residing at Vastu Vihar, Block-B.Unit No. Fr.-17, Phase 1st P.S.-_Karja, Pakri Jalal, Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department, of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
3. The Secretary, Department of Health Medical Education and Family Welfare Government of Bihar, Patna.
4. The Additional Secretary, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
5. The Director, Department of Health, Medical Education and Family Welfare, Government of Bihar, Patna.
6. The Chairman, Bihar Combined Entrance Competitive Examination Board, Government of Bihar, I.A.S Association Building, Near Patna Airport, Patna-14.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagjit Roshan, Advocate
For BCECE Board : Mr. Vikash Kumar, Advocate
For the Respondent/s : Mr. Birju Prasad –GP-13

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

7 02-05-2017 The petitioner had appeared in National Eligible cum Entrance Test (NEET) held by National Board of Examinations in 2017 for admission to P.G. Medical Courses. He belongs to Scheduled Castes category. It is his case that he has served for a period of three years in remote area in the State of Bihar and, therefore he is entitled for weightage in terms of the regulations framed by the Medical Council of India for the purpose of



admission to PG Medical courses. He has specifically relied on the proviso to sub clause (vii) of Clause 9 of the Regulations as amended by the notification dated 15.02.2012.

2. It is noteworthy that admission to Post Graduate Medical courses are governed by Post Graduate Medical Education Regulation, 2000 (hereinafter referred to as the Regulations) made in exercise of powers conferred by Section 33 of the Indian Medical Council Act, 1956. Sub clause (III) of Clause 9 of the said Regulations lays down the minimum marks which a candidate must obtain to be eligible for admission to any Post Graduate course. According to the said provision, a candidate must obtain minimum marks at 50 percentile in the NEET of Post Graduate Courses'. For candidates belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes, the said minimum marks has been fixed at 40 percentile. Needless to say that percentile is to be determined on the basis of highest marks secured in All India Common merit list in the NEET for Post Graduate Courses'. For ready reference Sub Clause (III) of Clause 9 of the Regulations as amended with the issuance of notification by Medical Council of India dated 15.02.2012 is being reproduced below:-

“In order to be eligible for



admission to any postgraduate 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 postgraduate 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 as 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 Postgraduate 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 for 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.”

3. This is to be noted that there is one common entrance test (NEET) held for admission to Post Graduate (PG) Medical Courses throughout the country. This is also to be noted that 50 per cent of total PG seats are to be filled up on the basis of All India Merit List and for filling of rest of 50 per cent of seats, preference/ weightage is to be given to the residents/students who have done their MBBS course from a particular State, which, in common parlance is described as ‘State seats’.

4. The Government of Bihar has issued prospectus for Post Graduate Medical Admission Counselling, 2017 for filling up of the said 50 per cent State quota seats. Following Sub clause (III) of Clause 9 of the Regulations as noted above, the State Government of Bihar has, in the said prospectus prescribed that for the purpose of admission to PG Medical Courses a candidate of general category must secure marks at, at least 50 percentile and those belonging to Scheduled Castes, Scheduled



Tribes , OBC and Backward Classes, 40 percentile in the competitive test of NEET (PG-2017).

5. This is not in dispute that the petitioner who claims to be belonging to Scheduled Castes category has not obtained marks at 40 percentile in the NEET and, therefore, does not fulfill the eligibility criteria fixed under the Regulations and prescribed by the State Government of Bihar in its prospectus issued for Post Graduate Medical Admission Counselling, 2017.

6. It is the case of the petitioner that qualifying criteria and cut-off marks as fixed by the National Board of Examinations in its notice dated 13.01.2017 is only for the purpose of filling up of All India seats. According to him, said percentile is not for filling up State seats.

7. He has placed heavy reliance on Supreme Court decision in the case of *State of U.P. and others v. Dinesh Singh Chouhan* reported in **2016(9) SCC 749** and has submitted that the Supreme Court has laid considerable emphasis on giving due weightage for those who had served in remote areas.

8. I do not find much force in submission advanced on behalf of the petitioner in view of clear stipulation in the prospectus issued by the Bihar Combined Entrance Competitive Examination Board (BCECEB) issued for the purpose of filling up



of 50 per cent of State quota seats of MD MS PGD and PG Dental Courses based on list of NEET (PG-2017) and NEET (MDS-2017) Clause 10.2 (vii) and which reads thus:-

“The candidates belonging to General category or unreserved category have to secure at lest 50th percentile marks and candidates belong to SC , ST , EBC & BC reserve categorists at least 40th percentile marks in the competitive test of NEET (PG) 2017/NEET (MDS)-2017, in order to fulfil the minimum performance criterion as fixed by the Medical Council of India to be eligible for admission in any Post Graduate course. No weightage will be given for Remote or any other services. Only the rank obtained in NEET (PG)-2017/NEET (MDS)-2017 will be taken into consideration.”

9. It is evident from the prospectus that the Government of Bihar has followed the minimum standard as prescribed under the Regulations. In view of cut-off marks fixed by the BCECEB in conformity with the Regulations, the petitioner does not qualify for being considered for admission to PG course.



The question of giving weightage on the basis of his having served in remote areas would have arisen only in case he fulfilled the minimum eligibility criteria prescribed under the Regulations and the prospectus issued by the State Government in this regard.

10. Learned counsel for the petitioner by way of last resort has drawn my attention to proviso to Clause (III) of Regulation 9 of the Regulations which has already been extracted above. The proviso to the said Regulation enables the Central Government to lower the minimum marks required for admission to Post Graduate Courses for candidates belonging to respective categories, in case sufficient number of candidates that category have failed to secure minimum marks as prescribed in NEET held for any academic year, for admission to Post Graduate Courses.

11. I do not think there can be any reason for overlooking the statutory provision either by the Central Government or by Medical Council of India in case the number of candidates are found to be insufficient in particular category/categories. I, therefore observe that if sufficient number of candidates are not found available for admission to P.G. Courses in the State of Bihar, the State of Bihar may take up the issue with the Central Government and Medical Council of India for application of the proviso to Sub-clause III of Clause 9 of the



Regulations. The observation, should however, will not be treated as direction or command by this Court for any purpose.

12. The relief sought for in the present application cannot be granted in the facts and circumstances of the case as noted above. However, with the observation as above, this application stands disposed of.

(Chakradhari Sharan Singh, J)

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