

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 916 OF 2017

Pooja Bajaj, D/o Tej Kumar Bajaj, aged about 27 years, R/o Shivam home,
near Bank of Maharashtra, Opp. Netaji Hotel, Katora Talab, Raipur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Medical
Education, Mahanadi, Mantralaya, Naya Raipur, Post Office and Police
Station Naya Raipur, District Raipur (C.G.)

2. Director, Directorate of Medical Education, Indrawati Bhawan, Naya
Raipur, Post Office and Police Station Naya Raipur, District Raipur (C.G.)

... Respondents

and

WRIT PETITION (C) NO. 919 OF 2017

1. Abhishek Halder, S/o Shri A.K. Halder, aged about 26 years, R/o
House No. 34, Sector 2, Road No.4, Professors Colony, District Raipur
(C.G.)

2. Ashiti Jain, D/o Late Shri Malay Ranjan Goyal, aged 27 years, R/o
Arihant Hospital, Ring Road, Mission Chow, Ambikapur, District Surguja
(C.G.)

3. Prateeti Singh Thakur, D/o Shri C.P.S. Thakur, aged 27 years, R/o
Sweet homes, Kotri Road, Behind Maruti Point, Raigarh, District Raigarh
(C.G.)

... Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Health
and Family Welfare Mantralaya, Mahanadi Bhawan, Naya Raipur, District
Raipur 492002 (C.G.)

2. Director Medical Education, Old Nurses Hostel, DKS Bhawan,
District Raipur 492002 (C.G.)

3. National Board of Examinations, Medical Enclave, Ansari Nagar,
Ring Road, New Delhi 110029

4. Medical Council of India, through its Registrar/Secretary, MCI
Building, Pocket 14, Sector 8, Dwarka, Phase I, New Delhi 110077 (India)

... Respondents

Mr. Rajeev Shrivastava, Advocate, for the Petitioner in WPC No. 916 of 2017.

Mr. Kshitij Sharma, Advocate, for the Petitioners, in WPC No. 919 of 2017.

Mr. Prafull Bharat, Additional Advocate General, for the State.

Ms. Anubhuti Marhas, Advocate, for the Medical Council of India.

Mr. Devesh G. Kela, Advocate, for the Intervenor.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Thottathil B. Radhakrishnan, C.J.

16/05/2017

1. These Writ Petitions are filed by the persons who have been included in the State Quota following the NEET PG, 2017 examination conducted by the National Board of Examinations.
2. Heard learned Counsel for the Petitioners and learned Additional Advocate General.
3. The issue relates to the question whether the State Government was justified in confining the admissions to the State Quota for 2017 following NEET PG, 2017 to those persons who had obtained MBBS degree from Medical Colleges in the State of Chhattisgarh.
4. In view of the issues raised, the fundamental questions for decision were deliberated upon though for the purpose of an interlocutory order and while admitting the Writ Petitions the following interlocutory order was made by this Court on 12.4.2017:

“The writ petitions are admitted.

The Petitioners have their domicile in the State of Chhattisgarh. They obtained MBBS degrees from Medical Colleges outside the State of Chhattisgarh. They competed in NEET-PG, 2017 examinations conducted by the National Board of Examinations which is the authority authorised to conduct such tests and were placed in the list prepared by the Directorate of Medical Education, Chhattisgarh, for allotment under the State Quota. But, they are now denied admission on the ground that the Chhattisgarh Medical Post Graduation Entrance Rules, 2017 (for short, 'the 2017 Rules') have been made confining admission to those persons who had obtained MBBS degree from Medical Colleges in the State of Chhattisgarh. This is under challenge.

The following chronological lists of dates are relevant for the purpose of this interlocutory order:

(i) The last date fixed for application for NEET examination – 31.10.2016.

(ii) NEET examination held on – 5.12.2016.

(iii) Schedule for Counseling for the State quota seats of the State of Chhattisgarh notified on 7.4.2017.

(iv) Counseling for the State quota of Chhattisgarh scheduled from 4.4.2017 (before notification) to 13.4.2017.

The impugned Rules were made and published as per notification dated 3.4.2017. That was after the Directorate of Medical Education had published the provisional merit list of those who had cleared the NEET-PG, 2017 examination from the State of Chhattisgarh, on the basis of the list forwarded by the National Board of Examinations (for short, 'NBE') containing the names and details of the candidates from the Chhattisgarh who are included in the list of successful candidates of NEET-PG, 2017 examination. Counseling for the State list is on the basis of the provisional list published by the Directorate of Medical Education.

The aforesaid factors will show that the impugned 2017 Rules were made and issued after NEET had finalised the list of qualified candidates following the NEET-PG, 2017 examination for admission to Post Graduate courses and after the State of Chhattisgarh had, through the Directorate of Medical Education, published the list of successful candidates from the State of Chhattisgarh.

Adverting to the Prospectus for NEET-PG, 2017, it can be seen that through a composite process of entrance examination, 50% of All India quota is identified. The State Quota seats are identified and different others classifications, in terms of the Prospectus are also made.

Of abundant relevance for the purpose of this case, is the fact that the All India Quota 50% may include students domiciled in Chhattisgarh but who have completed MBBS Course from other States or Universities and would yet be covered as enlisted in the All India Quota allotment to the Medical Colleges in the State of Chhattisgarh. There is no insistence that they have to have studied for MBBS

Course in a Medical College in the State of Chhattisgarh. However, when it comes to the State Quota seats, that is to say, seats in Government Medical Colleges owned and controlled by the State Government, the impugned Rules insist that, even if the applicant is domiciled in Chhattisgarh, that person should have obtained MBBS course after undergoing a Course of study in a Medical College in the State of Chhattisgarh.

Keeping aside the issues referable to Articles 14, 15, 16, 19 (1)(e) and 21 of the Constitution of India, fundamentally, the case in hand is one where the State Government has brought the impugned Rules in such a way that it conspicuously changes the rules of the game adverse to the interest of those from the State of Chhattisgarh, who had participated in the NEET-PG, 2017 examinations, which is the first; and an integral; phase of the selection to the PG course seats under the State Quota. This is the net result of excluding students domiciled in Chhattisgarh and who have obtained MBBS degrees from Universities in the other States and confining the State Quota seats to be available only to those domiciled in the State of Chhattisgarh and have obtained MBBS degree from the Medical Colleges in the State of Chhattisgarh.

Having regard to the aforesaid facts, the Petitioners have demonstrated a very strong *prima facie* case for an interlocutory order in their favour staying the operation of Rule 4(a) [4(क)] of the Chhattisgarh Medical Post Graduation Entrance Rules, 2017, pending final disposal of these writ petitions, to the extent, it inhibits admission of the students who have obtained MBBS degree from a University outside the State of Chhattisgarh, to the Post Graduate Courses in the Medical Colleges in the State of Chhattisgarh under State quota.

Hence, operation and enforcement of Rule 4(a) [4(क)] of the Chhattisgarh Medical Post Graduation Entrance Rules, 2017, is stayed pending final disposal of these writ petitions, to the extent, it inhibits admission of the students who have obtained MBBS degree from a University outside the State of Chhattisgarh, to the Post Graduate Courses in the Medical Colleges in the State of Chhattisgarh under State quota.

The Directorate of Medical Education and other Respondents concerned are directed to ensure that counseling of the candidates concerned are carried out without reference to the said Rule to the extent it is stayed hereby.”

5. At the final hearing of these Writ Petitions which has become necessary at this point of time since the State Government has filed return and has sought that the afore-quoted interlocutory order be vacated, learned Additional Advocate General points out that in terms of the public notice given by the National Board of Examinations, for short, "NBE", the candidate is required to verify from their respective State Governments, regarding inter-alia, the applicable rule position, domicile criteria etc. He also points out that even as per that notification, merely appearing and qualifying in NEET PG, 2017 does not make a candidate qualified and/or eligible for State Quota seats. He makes reference to Clause 3.c of public notice dated 27.9.2016 issued by the NBE for NEET PG. The learned Additional Advocate General thereupon drew our attention to Rule 4 of the impugned Annexure P-1 rules which was published on 3.4.2017. Rule 4 of those rules provide, inter-alia, the provision that acquisition of the qualifying degree MBBS has to be from an University in the State of Chhattisgarh for the purpose of obtaining admission to Post Graduate courses in the Medical institutions in the State of Chhattisgarh.

6. Learned Counsel for the Petitioners contesting the aforesaid position argued that the provision of Annexure P-1 rules cannot affect the admission to 2017 MBBS course following NEET PG, 2017.

7. Reverting to the facts and factors noted in the interlocutory order quoted above, it may be reiterated that after the last date fixed for application for NEET examination, i.e., 31.10.2016, the NEET examination was held on 5.12.2016 and the Directorate of Medical Education (DME) had published a list for counseling and allotment under the State Quota following the placement of that list by NBE to the DME, Chhattisgarh. The schedule for counseling for the State Quota of Chhattisgarh was notified on 7.4.2017 but to be commenced from 11.4.2017, i.e., before the date of notification of the scheduling of the counseling for the State Quota. Such counseling was to go on till 13.4.2017. Bearing these dates in mind reverting to the impugned Annexure P-1 it can be seen that those rules were issued on 3.4.2017, i.e., the day immediately preceding the first date for counseling to the State Quota. As per rule 15 of those rules, the 2016 rules were repealed. This means that until 3.4.2017 the 2016 rules governed the field. Now revert to Annexure R-2, public notice issued by the NBE, i.e., dated 27.9.2016. That is issued with reference to NEET PG, 2017 scheduled to be held from 5 – 13th December, 2016. Clarifications were sought for by the different candidates. It was therefore that the said public notice was issued. Clause 3.a which deals with the state-wise result enjoins, among other things, that the final merit, eligibility, state category, state category rank etc., shall be determined by the State itself as per its applicable regulations, criterias, guidelines and reservation policies. Clause 3.c therein provides that candidates should verify from their respective State Governments regarding the applicable rule position, domicile criteria etc., and that merely applying and qualifying in NEET PG, 2017 does not make a candidate qualified and/or eligible for State Quota

seats.

8. In terms of the law relating to admissions to the Medical Post Graduate Courses in India through the different judgments of the Hon'ble Supreme Court and Medical Council of India Post Graduate Medical Education Regulations, 2000, primacy is given to the activity of the NBE in receiving applications and conducting the NEET PG examinations. The States in India submit to the jurisdiction of the NBE in that regard. In such competitive considerations for admission, certainty of the applicable laws and the cut-off dates on the basis of which such laws would apply is of abundant importance. Therefore we are of the view that insofar as the State Quota is nothing but what emerges out of a competition at the hands of the NBE, the laws that govern State Quota are those which would govern admission as on the last date fixed for making application for admission to NEET PG examination. This is the reasonable and rational view that can be taken rather than to pin the eligibility of the students down to the uncertainty of circumstances that may come, including through repeated exercise of rule making authority.

9. On the facts of the case in hand, it cannot be disputed that in terms of 2016 rules there was no requirement for a candidate domiciled in the State of Chhattisgarh to obtain the MBBS degree from an institution in the State of Chhattisgarh for the purpose of being considered for admission to Medical Post Graduate courses in any institution in the State of Chhattisgarh. Such an interdiction has to be tested as one which could be permitted to run only on strict consideration and application. Otherwise it would impinge upon the fundamental rights referable to Part III of the Constitution as would be relevant for admissions in a State. The rules

governing selection could not have been changed either by the Medical Council of India and/or the State Government after the selection process had commenced at the hands of NBE which is the authority bestowed with the power to do so. See for support **K. Manjusree v. State of Andhra Pradesh & Another**, 2008 (3) SCC 512, rendered making reference to judicial precedents including **P.K. Ramchandra Iyer v. Union of India**, 1984 (2) SCC 141, **Umesh Chandra Shukla v. Union of India**, 1985 (3) SCC 721, and **Durgacharan Misra v. State of Orissa**, 1987 (4) SCC 646.

10. The aforesaid reasonings as it contained in the impugned interlocutory order issued on 12.4.2017 is only to be affirmed. We do so.

11. For the aforesaid reasons, including those mentioned in the interlocutory order dated 12.4.2017 which we treat as part of this judgment, these Writ Petitions are allowed reading down rules 1 (2) and 4(क) thereby holding that they do not apply to selection and admission to State Quota for Medical Post Graduation Course in the State of Chhattisgarh from among candidates who have succeeded in the NEET PG, 2017 examination. These Writ Petitions are ordered accordingly. As a consequence, it is directed that such candidates be considered for admissions to the Medical Colleges in the State of Chhattisgarh if the candidature of such persons is otherwise in accordance with law.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge