

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 924 OF 2017

Dr. Anita Verma, W/o Dr. Yogendra Kumar Verma, aged about 23 years,
R/o Hospital Colony, Pallari, District Balodabazar-Bhatapara (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (C.G.)
2. Director, Medical Education, Old Nurses Hospital, DKS Bhawan Parisar, Raipur, District Raipur (C.G.)
3. Director Health Services, Mantralaya, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
4. Medical Council of India, through its Chairman, Pocket 14, Phase-1, Sector 8, Dwarka, New Delhi 110077

... Respondents

and

WRIT PETITION (C) NO. 923 OF 2017

1. Dr. Vikas Kumar Poddar, S/o Pawan Kumar Poddar, aged about 32 years, R/o Manendragarh, District Korba (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Health and Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (C.G.)
2. Director, Medical Education, Old Nurses Hospital, DKS Bhawan Parisar, Raipur, District Raipur (C.G.)
3. Director Health Services, Mantralaya, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur (C.G.)
4. Medical Council of India, through its Chairman, Pocket 14, Phase-1, Sector 8, Dwarka, New Delhi 110077

... Respondents

Mr. Sunil Otواني, Advocate, for the Petitioner in WPC No. 924 of 2017.

Mr. Manoj Paranjpe, Advocate, for the Petitioner, in WPC No. 923 of 2017.

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

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

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 taking away the benefit of bonus marks for the in-service candidates for admissions to the State Quota for 2017 following NEET PG, 2017 on the ground that the Chhattisgarh Medical Post Graduation Entrance Rules, 2017 (for short, 'the 2017 Rules') have been made taking away the bonus marks available to those doctors.
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.

Petitioners who hold MBBS degrees are employed in health services of the State of Chhattisgarh. In terms of the Chhattisgarh Medical Post Graduation Entrance Rules, 2016 which governed them while they applied for NEET-PG 2017 examinations conducted by the National Board of Examinations which is the authority authorised to conduct such tests, they were entitled to bonus marks treating them as in-service candidates. They competed in the NEET-PG 2017 examinations 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 such benefit of bonus marks for admission on the ground that the Chhattisgarh Medical Post Graduation Entrance Rules, 2017 (for short, 'the 2017 Rules') have been made taking away the bonus marks available to those doctors. 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.

Keeping aside the issues referable to Articles 14 and 16 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.

The provision for bonus marks were made in favour of the doctors working in Government sector, to the extent provided by the Chhattisgarh Medical Post Graduation Entrance Rules, 2016 thereby giving them an incentive for discharging the duties and responsibilities in that regard. That was provided through the 2016 Rules then in force. Such a provision for incentive has been held to be one not amounting to reservation and a matter which would sustain a challenge to its constitutionality. This is part of the law laid down by the Apex Court in **State of Uttar Pradesh and Others Vs. Dinesh Singh Chauhan, (2016) 9 SCC 749**. It was when such statutory rules governed the field, that the selection procedure was commenced with the inexcusable requirement of participation in NEET-PG, 2007 examination, which, obviously, is governed by the Prospectus issued for that examination by the National Board of Examinations. The impugned 2017 Rules, not only changes the rule of the selection process which had thus commenced, but is also *prima facie* unsustainable because those Rules could not have been retrospectively made to affect the selection process which had already commenced. In this view of the matter, there is every likelihood of the challenge levied by the Petitioners being upheld.

Having regard to the aforesaid facts, the Petitioners have demonstrated a very strong *prima facie* case for an interlocutory order in their favour ordering and directing that the benefits available for in-service candidates to bonus marks, by way of incentive as was available before issuance of the Chhattisgarh Medical Post Graduation Entrance Rules, 2017, will continue to apply to beneficiaries of such provision for bonus marks which was available in terms of the Chhattisgarh Medical Post Graduation Entrance Rules, 2016, pending final disposal of these writ petitions.

Hence, it is ordered and directed that the benefit of bonus marks (incentive) as was available to in-service candidates under the Chhattisgarh Medical Post Graduation Entrance Rules, 2016, will continue to apply and regulate the admissions of in-service candidates

to the Post Graduate Courses in the Medical Colleges in the State of Chhattisgarh under State quota for the year 2017.

The Directorate of Medical Education and other Respondents concerned are directed to ensure that counseling of the candidates concerned are carried out in terms of this order and directions."

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. 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 holding that the Chhattisgarh Medical Post Graduate Entrance Rules, 2016 would apply for the selection and admission to the State Quota for Medical Post Graduate Course in the State of Chhattisgarh from among candidates who have succeeded in the NEET PG, 2017 examination, and those admissions will not be governed by the Chhattisgarh Medical Post Graduate Entrance Rules, 2017, as regards in-service candidates for grant of bonus marks in terms of 2016 Rules. It is so declared. 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. These Writ Petitions are ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge