

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4041 of 2017 (O&M)

Date of Decision: 24.05.2017

Kuldeep Singh Malik (minor) though his father Ranbir Singh Malik

....Petitioner

Vs.

Union of India and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Gobind Sharma, Advocate,
for the petitioner.

Mr.Puneet Gupta, Advocate, and
Mr.Ajay Gupta, Advocate,
for the UOI/respondent No.1.

Ms.Tanisha Peshawaria, DAG, Haryana.

Mr.M.C. Longia, Advocate,
for respondent No.3.

Mr.Harsh Aggarwal, Advocate,
for respondent No.4.

RAKESH KUMAR JAIN, J. (ORAL)

Reply on behalf of respondent No.4 is filed today in
Court.

The petitioner was born on 23.02.2001 and was to
complete 17 years on 23.2.2018. He completed his 10th class at the
age of 15 years. It is averred that respondent No.4 published the
admission notice and invited online applications for admission to all
the seats of MBBS/BDS courses through National
Eligibility-cum-Entrance Test (NEET-UG-2017) in the

Medical/Dental Colleges run with the approval of respondent No.3/Medical Council of India under the supervision of respondent No.1/Ministry of Health and Family Welfare, Government of India.

The petitioner has challenged condition No.(ii) of the eligibility criteria, which read as under: -

“The candidate must have completed age of 17 years at the time of admission or will complete the age on or before 31st December 2017 i.e. the year of his/her admission to the 1st year M.B.B.S./B.D.S. course.”

Admittedly, the petitioner was not 17 years of age at the time when he had applied for the admission. He has challenged the aforesaid condition on the ground that no minimum age has been prescribed in the Indian Medical Council Act, 1956 [for short ‘the Act’] and the Rules made therein.

On 1.3.2017, the following order was passed by this Court: -

“This application has been filed in the Court today for amendment of the present Civil Writ Petition and placing on record the amended petition. The petitioner wants to challenge the Condition No.2 regarding minimum age for appearance in National Eligibility Entrance Test, 2017 (for short

“NEET”). In view of the matter, the amendment of the petition is allowed and the amended petition is taken on record. Registry to assign number to CM.

According to the petitioner he was admitted to the school in Class-1 at the age of 5 years and passed the Class 10th examination at the age of 15 years without jumping any class. His date of birth is 23.02.2001 as per date of birth proof (Annexure P-1). He will complete the age of 17 years on 23.02.2018.

The petitioner wants to appear in NEET, 2017, examination. Students appearing in 12th class can appear in said test provisionally subject to their fulfilling the conditions later. The petitioner is aggrieved of Condition No.2 in the notice published by respondent No.4 i.e. Central Board of Secondary Education (CBSE) (Annexure P-3), wherein it is laid down that candidate must have completed the age of 17 years at the time of admission or will complete the age on or before 31.12.2017 i.e. the year of his admission to First Year MBBS/BDS Course.

The learned counsel contends that in the Rules of the Medical Council of India, there is no such condition of the minimum age and that the said condition is arbitrary. The petitioner was admitted to Class-1 at the appropriate age and he has not jumped any class and will complete his 12th Class in April-May, 2017. Therefore, debarring him from appearing in NEET, 2017 exam on account of age is discriminatory and unconstitutional. The interim prayer has been made for allowing the petitioner to fill his online examination form for the said NEET Examination, 2017 going to be held on 07.05.2017. Since an important question of law has been raised as to whether any minimum age can be fixed for NEET, 2017 exam, therefore, the matter required to be considered at length.

Notice of motion to respondents No.1, 2, 3 and 4.

Mr. Naveen Sheoran, DAG, Haryana, accepts notice.

In the meanwhile, the petitioner is allowed to fill the online/manual application for the

*NEET, 2017 exam to be held on 07.05.2017,
subject to the outcome of the present
petition.*

List on 10.05.2017.”

The petitioner has accordingly availed the chance but the result has not been declared so far. The respondents have filed their reply in which it is averred that the minimum age of 17 years is prescribed under Regulations 4(1) of the Medical Council of India Regulation on Graduate Medical Education, 1997 [hereinafter referred to as ‘the Regulations’] framed in terms of Section 33 of the Act. The relevant portion of Regulation 4(1) of the Regulations read as under: -

“Chapter II

*Admission, Selection, Migration &
Training: -*

4. Admission to the Medical Course –

*Eligibility Criteria: No candidate
shall be allowed to be admitted to
the Medical Curriculum proper of
first Bachelor of Medicine and
Bachelor of Surgery (MBBS) course
until:*

- (1) He/she shall complete the age of 17
years on or before 31th December of
the year of admission to the MBBS
Course.”*

Learned counsel for respondent No.1 has further referred to a decision of Division Bench of the Allahabad High Court in the case of “**Ankit Chaturvedi Vs. Union of India and others**” 2016 AIR (Allahabad) 126, to contend that a similar controversy has already been decided and the vires of the said Regulation has been upheld.

Learned counsel for the petitioner has prayed that he may be allowed to withdraw the present petition at this stage and has also prayed that the petitioner be allowed to avail three chances to appear in the NEET examination and the chance availed by the petitioner, under the order of the Court, may not be counted.

On the other hand, learned counsel for the respondents has submitted that the petitioner cannot be given three chances as one chance has already been availed by misleading the Court as it has been alleged in the petition that there is no such provision prescribing minimum age much less of 17 years either in the Act or Rules therein. It is further submitted that in the Regulations minimum age of 17 years has been specifically provided for seeking admission to the seats of MBBS/BDS courses which itself is sufficient to deny the relief to the petitioner as has been prayed. It is also submitted that one chance has been availed by the petitioner under the order of the Court, thus, he cannot be allowed three more chances.

I have heard learned counsel for the parties and examined the record with their able assistance.

The issue involved in this case is for quashing of condition No.(ii) of the eligibility criteria of admission notice for NEET-UG-2017 being in violation of the Act and the Rules therein.

The entire case of the petitioner is on the premise that there is no provision of providing minimum age of 17 years for seeking admission in the NEET-UG-2017. The contention of the petitioner is totally fallacious because of the presence of Regulation 4(1) of the Regulations in which it is specifically provided that the candidate, who wanted to seek admission in the MBBS course, should be 17 years of age on the entry date of the admission. Moreover, the vires of the Regulations of 4(1) of the Regulations has already been tested in the earlier litigation in the case of **Ankit Chaturvedi (Supra)** in which the Court has relied upon another decision of the Full Bench of Rajasthan High Court rendered in the case of **“Gautam Kapoor Vs. State of Rajasthan” AIR 1987 Raj 174**, wherein it has been held that the minimum age of a candidate at the time of passing of the qualifying examination, specified by MCI, is neither unseasonable nor arbitration. The same view has been adopted and upheld by the Allahabad High court.

In these facts and circumstances, there is no merit in the present petition and the same is hereby dismissed. It is also ordered that since one chance, under the order of this Court, by misrepresenting the facts has already been availed by the petitioner, he would now can avail two chances more. Insofar as the result of

first attempt of the petitioner is concerned, it need not to be declared because he was under age.

24.05.2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable Yes/No