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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8383 OF 2018

Areej Khan d/o Abdul Rahman Khan,
age: 17 years, Occ: student,
Through Guardian,
Abdul Rahman Khan s/o Yousuf
Khan, age : 52 years,
Occ: Business, resident of
Plot No. 36, N-11, Sector-L,
CIDCO, Aurangabad.

..PETITIONER

VERSUS

1. The State of Maharashtra
2. Commissioner of Common
Entrance Test (CET)
8th floor, new Excelsior
Building, A.K. Narayan Marg,
Fort, MUMBAI-400 001
3. The Director of Medical
Education and Research,
Mumbai.
4. The Chancellor,
Health University,
Nasik.

..RESPONDENTS

Ms A.N. Ansari, Advocate for petitioner;
Mr S.S. Dande, A.G.P. for respondent Nos.1 & 3;
Mr M.D. Narwadkar, Advocate for respondent No.2;
Mr Anandsingh Bayas, Advocate for respondent No.4

WITH

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WRIT PETITION NO. 7536 OF 2018

Sudat Jagadish Ghete,
Age: 18 years, Occ: Student,
R/o. Shantidoot Nagar, Raver,
Tal. Raver, Dist. Jalgaon.

..PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Ministry of Education,
Mantralaya, Mumbai 400 032
2. Commissionerate,
Common Entrance Test Cell,
Mumbai, 8th floor, New Excelsior
Building, A.K. Naik Marg,
Fort, Mumbai-400 001
3. Director of Medical
Education and Research
Government Dental College
and Hospital Building,
Saint George Hospital
Compound, Near V.T.
Mumbai-400 001.

..RESPONDENTS

Mr Atmaram J. Patil, Advocate for petitioner;
Mr G.O. Wattamwar, A.G.P. for respondent Nos.1 & 3;
Mr M.D. Narwadkar, Advocate for respondent No.2;

WITH**WRIT PETITION NO. 7856 OF 2018**

Zoha Batool Abdul Moiz
Siddiqui, Age: 17 yrs, Minor
U/g of mother
Vajiha Tabassum Siddiqui
Age: 42 yrs, Occ: Household,
R/o. Green Valley, Rozabaugh,

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Aurangabad, Dist. Aurangabad. ..PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary,
Medical Education Department
Maharashtra State
Mumbai – 400 032 ..RESPONDENTS

Mr Niteen V. Gaware, Advocate for petitioner;
Mr A.S. Shinde, A.G.P. for respondent No.1;
Mr M.D. Narwadkar, Advocate for respondent No.2;

WITH

WRIT PETITION NO. 8159 OF 2018

Rupali D/o Balaji Ghodke,
Age: 20 years, Occ: Education,
R/o. Kolgaon, Post. Borgaon Darji,
Tq. Renapur, Dist. Latur,
At present R/o. Swami Samarth Nagar,
Ambejogai Road, behind Kandsare,
Latur, Tq. & Dist. Latur. ..PETITIONER

VERSUS

1. The Union of India,
Through Secretary Ministry of
Health and Family Welfare
Government of India, Nirman
Bhawan, New Delhi.
2. The Medical Council of India,
Through it's Secretar
Pocket No.14, Sector-8,
Dwarka, New Delhi.
3. The State of Maharashtra,
Through Secretary,
Health Department, Mantralaya,

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Mumbai.

4. Maharashtra Health University
Nashik Through it's Registrar,
Mharrul, Dindori Road,
Nasik.
5. The Commissioner and Competent
Authority CET, CELL,
Maharashtra State Mumbai,
8th Floor New Excelsior Building,
A.K. Nayak, Marg, Fort,
Mumbai. ..RESPONDENTS

Mr D.N. Gilche, Advocate for petitioner;
Mr S.B. Deshpande, Assistant Solicitor General of
India for respondent No.1;
Mr A.S. Shinde, A.G.P. for respondent No.3;
Mr S.K. Kadam, Advocate for respondent No.2;
Mr K.C. Sant, Advocate for respondent No.4;
Mr M.D. Narwadkar, Advocate for respondent No.5;

**CORAM : PRASANNA B. VARALE &
S. M. GAVHANE, JJ.**

DATE : 26th JULY, 2018

ORAL ORDER :

In Writ Petition No.8159 of 2018, learned
Counsel appearing for the petitioner orally prays
for amendment in the petition by correcting status
of respondent No.4. Oral prayer is allowed.
Amendment be carried out forthwith.

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2. This is a bunch of four petitions involving a common and identical issue for consideration. It may not be necessary for us to give details of the petitions. Suffice it to say that, the petitioners are students, who were desirous of seeking admission to the professional courses like medical, engineering and alike professional courses for the academic year 2018-2019. The competent authority issued a brochure whereby the procedure for seeking admission and regulation of the admission is made known to the students community in general seeking admission to such courses. These petitioners passed their secondary and higher secondary school examinations conducted by the competent board and after obtaining requisite marks at that level, the petitioners submitted their applications by way of on line process. It is common knowledge that this centralized admission process is known as National Eligibility cum Entrance Test. The petitioners, as per procedure, while submitting the application

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form exercised choice for seeking admission to the course in the respective colleges, such as private colleges, Government colleges against quota allocated to the institutes for the meritorious and successful students.

3. The submission before this Court by the petitioners is, while submitting the application form and exercising choice against seats available in the institutions, the petitioners made it clear that they are putting their claim for the private colleges or State Government colleges against the available quota of such institutions/colleges. The controversy is about exercising option to quota made available in the institutions to Non Resident Indian (for the sake of brevity 'NRI quota').

4. In all these petitions, the petitioners submitted that while exercising their choice at the stage of filling up the application forms, though these petitioners clicked their option against private colleges or for State quotas,

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inadvertently, against some institutions, the petitioners clicked option 'N'. In some petitions, a ground is raised that the petitioner was under a bonafide belief that option 'N' stands for non Government college. In some petitions, it is simple stand that a mistake occurred as these petitioners are young students and while filling up the application form by sheer mistake even though the petitioners wanted to put their claim for seat quota, wrong choice was exercised by the petitioners resulting in claiming an erroneous option namely 'N'.

5. Though certain ground is also raised to submit that there was some technical fault in the operation system at the level of filling up the application form, we are not at all considering this submission, as we are not inclined to go into these aspects, whether operation system was working or not working and it was working as submitted by the petitioners etc. The document placed on record insofar as the petitioner Areej Khan in Writ

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Petition No. 8383 of 2018 is concerned, we are taking this petition as lead petition. The perusal of the document shows that the petitioner was clear in making it known that she had opted for the seats available in the private college or in the State quota and she was not interested in NRI quota.

6. Similar is the case of other petitioners.

7. Learned Counsel appearing for the petitioners submitted that in view of the regulatory procedure reflected in the brochure, the options once exercised by the petitioners are not changeable and the petitioners would have to stick up to the option meaning thereby even if a bonafide mistake is committed by the students, they would be deprived of in participation in the admission process and resultantly, this would seriously jeopardized academic career of the petitioners.

8. Ms. Ansari, learned Counsel appearing for the petitioner invited our attention to the latest

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judgment of this Court delivered at Principal Seat in the matter of ***Shashi Saraswat vs The State of Maharashtra and another*** in ***Writ Petition Stamp No. 19728 of 2018*** and copy of the same is placed on record at Exhibit-I. The submission in the above referred judgment was, the petitioner was similarly circumstanced with these petitioners. Petitioner Shashi Saraswat also exercised an erroneous option and considering the submission that option being exercised erroneously and there was no malafide intention and mistake committed by the petitioner was bonafide mistake, Division Bench of this Court at Principal Seat, allowed the petition in terms of directions namely direction No.1 to respondent No.2 i.e. Commissioner Common Entrance Test Cell, to permit the petitioner to offer her choice of preference in MBBS course against the seats MBBS course in the second round of counselling. Direction No.2 was to respondent No.2 to consider the candidature of the petitioner, on the basis of the State merit list of NEET UG-2018 and operate the preference/option given by the petitioner as

against her merit. Position in the second round of counselling to the Health Science courses.

9. It may not be out of place to state here that the similar grievance was made before us in some other petitions and there was insistence for interim order. It was brought to our notice that the competent authorities issued to the students thereby informing the students to exercise an option namely 'delete' and to submit the application form. This opportunity was given to the students to do needful within stipulated period. Considering this fact, we were not inclined to grant interim orders in those matters. On finding that there are as many as four students before us and common grievance is raised in exercising an erroneous option by mistake and considering bonafide mistake of the students, who are at the threshold of starting their career and considering the aspect that the mistake committed by the students should not result in causing serious prejudice to the academic career of the

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petitioners, we have requested the respondent authorities to take instructions as expeditiously as possible.

10. Though we have observing that the grievance raised by the petitioners in the petitions requires our immediate attention, as academic career of these students is at stake, at the same time, we also make it clear that the students who are desirous of seeking admission to the professional courses and are well conversant to the modern regulatory system of filling up applications by adopting modern means of communication cannot say and submit that they were under an erroneous impression and could not peruse instructions in the brochure minutely. It may not be out of place to state that the Division Bench at Principal Seat while dealing with the identical issue referred to submissions of learned Senior Advocate appearing for the petitioner and at paragraph-6 of the judgment and order, learned Senior Advocate appearing for the petitioner in all

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his fairness submitted that the petitioner ought to have been careful while clicking/selecting the said college and he further conceded to the fact that brochure published by the competent authority distinguished the colleges based on the Government colleges offering MBBS seats from all the three regions i.e. Rest of Maharashtra (ROM), Vidarbha and Marathwada and also distinctly mentioned the colleges offering courses in Dentistry, Ayurveda BMS, Homeopath BHMS and also the colleges offering courses of B.Sc. Nursing including private and Government.

11. Learned Counsel appearing for the respective petitioners, on instructions, submitted before us that as the petitioners have disclosed that they are not staking their claim for NRI quota and the petitioners would stake their claim only for those seats available in the private institutions and it was further submitted that the petitioners' claim be considered by the authorities in the seats available with the private

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institutions without disturbing the claim of other meritorious students and without disturbing admission process, we find that the submission of learned Counsel appearing for the petitioners is fair and of worth consideration. We are of the opinion that the petitions can be disposed of at admission stage itself by issuing appropriate directions.

12. The respondent authorities have filed affidavit in reply and opposed the petitions.

13. While dealing with the grievance of the petitioners, we are of the opinion that as these petitioners have not submitted their claim for NRI quota and they were putting claim for admission to the seats available in the private colleges and considering availability of large number of seats in the private colleges against the petitioners, who are four in number before us, whether the issue can be resolved without disturbing admission process or without disturbing other meritorious

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students who have already submitted their application form by exercising their options.

14. Considering the grievance above referred, as well as considering the order passed by the Division Bench of Principal Seat in ***Shashi Saraswat*** (supra), we are of the opinion that the interest of the petitioners-students can be protected by issuing directions and these directions would not disturb the claim of already admitted students. We are further making it clear that the order passed by us shall not be considered as a precedence. Similar caution was also given in the order passed by the Division Bench at Principal Seat.

15. In the result, we allow the petitions with following directions.

Respondent No.2 to consider the applications of the petitioners students against their choice for private colleges in State quota without disturbing already admitted students on

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available vacant seats.

2. We make it clear that if the petitioners have put the claim for same institutes, their claim is to be considered on the *inter se* merit basis.

3. The petitions are allowed and disposed of accordingly.

(S. M. GAVHANE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

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