

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

WRIT PETITION NO. 13444 OF 2017

Prachi d/o Sunil Kurkute,
Age 18 years, Occu. Student,
R/o Shantai House No.192,
Shivaji Nagar (Mhada), Bhokardan
road, Jalna, District Jalna

.. Petitioner

Versus

1. The State of Maharashtra,
through the Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai
2. The Director,
Medical Education and Research,
Mumbai
3. The Competent Authority,
Commissioner, State CET CELL
Maharashtra State, Mumbai
4. The Director,
Ayush Sanchanalay,
Maharashtra State,
Mumbai
5. The Dean,
BSPM's Dhanwantari Ayurved
Mahavidyalaya, Udgir, Tq. Udgir,
District Latur
6. Principal,
Seth Govindji Raoji Ayurved
Mahavidyalaya, Solapur,
District Solapur
7. The Registrar,
Maharashtra University of
Health Science, Nashik

.. Respondents

Mr Mukund R. Kulkarni, Advocate for petitioner
Mr K.N. Lokhande, A.G.P. for respondents no.1 to 4
Mr M.V. Deshpande, Advocate for respondent no.3
Mr S.N. Patne, Advocate for respondent no.6
Respondent no.7 served

**CORAM : S.V. GANGAPURWALA &
A.M. DHAVALA, JJ**

**DATE OF RESERVING
THE JUDGMENT : 13th February 2018**

**DATE OF PRONOUNCING
THE JUDGMENT : 28th February 2018**

JUDGMENT (Per A.M. Dhavale, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, matter is heard finally at the admission stage.
2. The petitioner seeks writ of mandamus or direction to respondent no.6 to give admission to her in Ist year B.A.M.S. College as per merit list.
3. The petitioner appeared for XIIth year examination of C.B.S.E. and secured percentile score 47.46. In the CAP round, she was selected and given provisional admission on 26th October 2017 to B.A.M.S. Course on her merits in BSPM's Dhanwantari Ayurvedic Mahavidyalaya, Udgir. She took provisional admission on the same day in the said college, but she had not submitted retention form. The admission date was extended to 8th November 2017 for Government, Government aided and non-aided Colleges for vacant posts. Respondent no.6 College at Solapur is run by minority community of Jain and ten seats were available in the said college for Jain minority community. On 3th November 2017, the petitioner being Jain, applied for admission in respondent no.6 College at Solapur. On 6th November 2017, respondent no.6 published merit list in which the petitioner stood at Serial No.9 and was thus eligible for admission in the said college. The petitioner's father is a worker and she was unable to bear

the expenses of private college at Udgir. On 7th November 2017, the petitioner got her admission cancelled in the Udgir college and on 8th November 2017, she approached Solapur college, but she was told that she was not entitled for admission on the ground that she had already taken admission in college at Udgir. She disclosed that though she had taken provisional admission, she had not filled in retention form and has not joined the college. Still she was not given admission in Solapur college (respondent no.6). Hence, this writ petition dated 15.11.2017.

4. Ajit Damle, Head of Department for respondents no.1 to 4 and Anil Mane, Principal for respondent no.6 College filed affidavits-in-reply and claimed that the petitioner was selected in CAP round for B.A.M.S. Course. She had taken admission on merits in Respondent no.4 college at Udgir from O.B.C. category on 26th October 2017 and she had joined the said college. On her application dated 4th November 2017, her name was shown in the merit list at Sr.No.9 in respondent no.6 - College, but she had suppressed the facts of earlier admission. As per notification dated 3th November 2017, issued by respondent no.3, the petitioner was not eligible for admission in respondent no.6 College. Her application was rightly rejected.

5. Mr Mukund Kulkarni, learned Advocate for the petitioner has argued that the petitioner was entitled for betterment in spite of her previous admission on merits in college at Udgir. He pointed out that as per NIIT UG - 2017 notice, the petitioner was entitled to apply for admission in College of minority institution (Jain) as she had cancelled her previous admission. He pointed out that her admission in Udgir

college was provisional. He submitted that as long as the retention form was not filled up, the petitioner was entitled to apply for admission in any other college in spite of her previous admission. He argued that on merits, the petitioner was entitled for admission in respondent no.6 College and so she was selected.

6. Per contra, learned Advocate Mr Murar Deshpande for respondent no.3, learned Advocate Mr Patne, for respondent no.6 argued that the option of selecting college was admissible to the petitioner only in cap round and not in the admission at institutional level. He invited our attention to the notice of State CET, NEET UG - 2017 dated 3.11.2017. Clause (3) thereof, which shows that when any student has got admission to any medical course and had joined the said college, he/she will be ineligible to apply for admission at institute level. When the petitioner applied for admission in respondent no.6 College, the CAP rounds were over. He also argued that there cannot be directions for admission of a student in medical course after the cut off date, as laid down by Apex Court in **Ashish Ranjan's** case and on Medical Council of India Vs. Madhu Singh Civil Appeal No.5166/2001 decided by the Apex Court dated 11.9.2002 and **Mridul Dhar Vs. Union of India, Supreme Court judgment dated 12.1.2005 2005 (2) SCC 65.**

7. Learned Advocate Mr Murar Deshpande for respondent no.3 relied on judgment of Apex Court in **Dr. Dinesh Kumar & Ors vs Motilal Nehru Medical College, Allahabad & Ors., 1987 SCC (4) 122**, wherein it is observed that "In all medical colleges/institutions to which the scheme applies, teaching for MBBS/BDS course should start on the first working day of September (later modified to 1st October) and even those institutions which are outside the scheme might as

well commence their academic sessions from September so that throughout the country there would be uniformity in that regard.”

8. Mr Mukund Kulkarni argued that in exceptional case, the admission can be given after the cut off date.

9. The only point for our consideration is “Whether the respondents no.3 and 6 can be directed to admit the petitioner in respondent no.6 – College at this stage?”

10. It is well known that there is tough competition for admissions In Medical Colleges. Therefore, centralised counseling process (CAP) was introduced and in view of complications and challenges to the admissions or rejections of admissions, the Apex Court has from time to time fixed time schedule and issued guidelines. The purpose of CAP round is to secure medical seats for meritorious students, with due regards to the reservations of various types.

11. The Circulars on record disclose that a candidate who has secured good marks in CET has to apply for CAP round wherein there is facility for giving preferential choices. There are number of rounds. The person may not get a good college in 1st round, but he or she can be considered in next round for preferential choice. The notice dated 17th October 2017 specifically shows that the scheme of betterment is available. The brochure NEET UG – 2017 Clauses 10.2.3 clarifies that even if selected in the first round his/her candidature for preferential college can be considered and such shift is compulsory and mandatory. The only exception is for student who has filled in Status Retention Form.

12. As per the rules, a student getting admission in the first round in a college, which is lower down in the preferential choices of the candidate has to take admission in such college. It is provisional admission and so far he/she has not filed Retention Form, his/her case will be considered for upper preferential choices. In such process the competent authority has a knowledge that particular student has been selected for particular college and when his/her case is considered for preferential choices, the post to which he/she was earlier selected can be given to other candidate and he/she has no option, but to opt for the preferential choice given by him/her. This CAP round process is at university level.

13. It is crystal clear that the whole process has been implemented supervised monitored with one of the main objects that no seat from any college shall remain vacant on account of cancellation of admission or not taking admission at University level. Since this process is having facility of providing preferential list of colleges and of betterment, it is distinct from the subsequent process of admission at institutional level.

14. Rule 16 of the Maharashtra Unaided Private Provisional Professional Educational Institutions (Regulation of Admissions to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 provides for admission of institutional level round (+) seats remaining vacant after CAP round. Rule 17 provides for cancellation of the admission and issuance of letter of cancellation by college with intimation to the competent authority.

15. The Circular dated 3rd November 2017 (Exh.'F') shows that at institutional level, there is no provision for giving preferences of colleges. It is treated as open category without reservations except for preferential admissions to minority institutions for students belonging to such minority community. The essential and distinct condition in the admission at university level is that a candidate who has taken admission in any medical branch and has joined and continues in the college on the 1st day of the round would be ineligible for consideration at institutional level. It is obvious that when the institutional level admission process is implemented, the competent authority monitoring the admission process collects figures of vacancies, both, of the seats reserved for the institution level as well as the vacancies left in various colleges after the end of CAP rounds. Therefore, in the process of institutional level from 3rd November 2017 to 8th November 2017, the candidates who have not withdrawn their admissions from any medical course, were ineligible, irrespective of the fact whether they have filled up Retention Form or not. The filling of Retention Form is relevant for elimination of their names in the CAP rounds so that they should not be considered for betterment. The students, who have taken admission in any medical course in the CAP round, if are permitted to appear and get selected in admissions at institutional level, it will create a permanent vacancy in the first college, where he/she was given admission.

16. The facility of giving preferential choice and betterment is not available at institutional level. It is for the candidate to decide whether he/she has chances to get admission at university level and if he/she feels that he/she has chance, he or she can withdraw his/her

admission from the earlier college and then apply for institute level admission.

17. The interpretation of the respondents that when a student has taken admission in any college, he is not entitled for consideration for the admission at University level is not correct. The words "आज रोजी रुजू असतील" (who continues to be admitted as on today) indicates that the students who have taken provisional admission can also withdraw their admission and if they are not in the college on the first day of first round of institution level, they can be considered for the said round.

18. In the CAP round process, even when a student is admitted in one college he need not withdraw his/her admission for consideration of betterment choices. In that case he/she has to produce receipt of original certificate tendered by him/her in the first college while securing admission in the second college of betterment choice. There is no such facility for admission at institute level. At institute level, one has to produce the original documents at the time of admission. He can get the original documents from the first college of admission, only on cancellation of admission. While interpreting the provisions of various Circulars and giving due regard to the career prospects of students, we cannot permit any medical seat to remain vacant at the cost of betterment right of a student.

19. In **Mridula Dhar Vs. Union of India, 2005 (2) SCC 65**, (supra), Apex Court judgment dated 12.1.2005, the object of reducing the lapsing of seats to bear minimum has been highlighted along with strict

adherence to the time schedule and cut off date. The State Governments were directed to take all necessary steps to prevent deviation from the prescribed schedule. The Apex Court observed that “on account of time frame and all India consequences on admission, some meritorious students may not get college of their choices as per merit list. Still, All India Quota should not revert to State Quota. It is observed that object of the admission and last date of joining college in State Quota before the start of second round of counseling or allotment of seat from waiting list in All India Quota clearly is that the correct factual position as to the availability of the seats ought to be known to the DGHS before start of second round of counseling. If it is not done, number of seats would be lost to the merit ranking candidates from AIEE.

20. In the present case, the petitioner Prachi had taken admission in Respondent no.4 college at Udgir to a seat allotted to her on merits in CAP round. On 3rd November 2017, she was very much student of the said college, though she had not filed Retention Form. Her case could not have been considered for admission process held for the period from 3rd November 2017 to 8th November 2017 at institute level.

21. It is pertinent to note that thereafter again the time limit was extended and further process was held on 14th November 2017. Since the petitioner had taken back her documents and cancelled her admission from Udgir college on 7th November 2017, though she was not eligible for consideration for admission process held at institute level from 3rd November 2017 to 8th November 2017, she could have again applied along with original documents for the institute level

admission process held from 14th November 2017 to 22nd November 2017, but she has not done so, but she filed the present writ petition on 15th November 2017.

22. The list of vacancies published for institute level admission on 14th November 2017 shows that as she had withdrawn her admission from Dhanwantari Mahavidyalaya, Udgir, the said seat is shown as vacant in the list of 14th November 2017, which was not shown as vacant in the list of vacancies published on 3rd November 2017.

23. We find that the respondents have properly interpreted the provisions and have rightly held that the petitioner was ineligible for consideration for filling up vacancies in institute level for the period from 3rd November 2017 to 8th November 2017, as she was admitted in Udgir college on 3rd November 2017.

24. The petitioner should have withdrawn her admission before 3rd November 2017 and then she should have applied for institute level admission process on 3rd November 2017. As she had not done so, there was certainty that if she would have been selected, one seat from Udgir college would have remained vacant for entire course of five years. The rules provide for penalty of Rs.10 lakh for any act causing such vacancy. This is not permissible and, therefore, she was rightly not considered for institutional level admission in the first round dated 3rd November 2017.

25. In **Ashish Ranjan's case, Writ Petition No.76/2005** decided by the Apex Court on 18.1.2016, the schedule disclosing the last dates was submitted and the Apex Court gave stamp of approval to the same. It provided that in any circumstances, the last date for

admission will not be extended after 31st August, however, the extension of time was given for declaration of result to Tamil Nadu State on account of natural calamity.

26. In Medical Council of India Vs. Madhu Singh Civil Appeal No.5166 of 2001 decided by Apex Court on 11.9.2002, after referring to the judgment of **State of U.P. & Ors. Vs. Dr. Anupam Gupta & Ors., 1993 Suppl. (1) SCC 594** and **Dr. Subodh Nautiyal Vs. State of U.P. & Ors., 1993 Suppl. (1) SCC 593**, necessity of completion of the admission within scheduled time was expressed in following words:

“ Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and be completed within the schedule so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the mid-stream would disturb the courses and also work as handicap to the candidate themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidate into those vacant seats cannot be sustained.”

By referring to **State of Punjab & Ors. Vs. Renuka Singh & Ors., 1994 (1) SCC 175**, the practice of granting admissions after the commencement of the course on compassionate ground was deprecated and it was observed that “the High Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.”

27. The necessity for a medical student to undergo the full course was highlighted stating that the country does not want half baked medical professionals. In conclusion, it was laid down that there is no scope for admitting student mid-term as that would be against very spirit of statutes governing the medical education. Even if seats are unfilled that cannot be a ground for making mid session admissions. The High Court order directing mid sessions admission was set aside.

28. In the light of above, when the cut off date was time and again extended upto 22.11.2017 and still there is delay of three months, at this stage at the fag end of academic year the petitioner's case cannot be considered on this ground as well.

29. For the aforesaid reasons, we hold that the petition deserves to be dismissed and is accordingly dismissed. Rule is discharged. The interim order granted earlier stands vacated. No order as to costs.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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