

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10754 of 2018**

ALISHA MURTAZA KHOKHAWALA .. PETITIONER

Versus

**THE STATE OF MAHARASHTRA
THROUGH DEPT OF MEDICAL
EDUCATION AND DRUGS & ORS .. RESPONDENTS**

...

Ms.Pooja V. Thorat for the petitioner.

Ms.Shruti Vyas 'B' Panel Counsel for State – respondent nos.1 to 3.

**CORAM: SHRI RANJIT MORE &
SMT. BHARATI H.DANGRE, JJ.**

DATED : 25th SEPTEMBER 2018

JUDGMENT:- (Per Smt.Bharati H. Dangre, J)

1 Rule. Rule returnable forthwith. Heard by consent of the parties.

The petitioner, a student desirous of pursuing her post-graduate degree in Physiotherapy has invoked the jurisdiction of this Court seeking direction to the respondent

authorities to conduct second Mop Up round for Private Unaided Physiotherapy Colleges for Masters in Physiotherapy courses before proceeding to conduct the Institutional level rounds and by way of an interim relief, a direction is sought from this Court to stall the institutional level round.

2 The petitioner has completed her graduation in Physiotherapy i.e. “B.P. Th” from the M.G.M. College of Physiotherapy, Navi Mumbai in the year 2017. Being desirous of pursuing her post-graduate physiotherapy course referred to as “M.P.Th course, she participated in the Common Entrance Test conducted by the Government of Maharashtra on 22nd July 2017 for securing a seat in a Post-graduate course. The petitioner has impleaded the State of Maharashtra, Department of Medical Education and Drugs as respondent no.1, Director of Medical Education and Research, Mumbai is impleaded as respondent no.2 and the Commissioner, State Common Entrance Test Cell is impleaded as respondent no.3 to the petition.

3 It is the case of the petitioner that the respondent no.3 published an information brochure for the purpose of regulating the admission to the M.P.Th, M.O.Th, Audiology, Speech and Language Pathology [M.A.S.L.P.] & Prosthetics & Orthotics [M.Sc (P & O)] Courses for the year 2018-19. The admission process to the course which the petitioner was desirous of pursuing was governed by the said information brochure published by the respondent no.3. The petitioner participated in the said process and secured the State Merit list Rank No.205 under the Open General Category after appearing in the Common Entrance Test.

 It is the specific case of the petitioner that the brochure published by the respondent no.3 governed the admission process to the said course and contained instructions for the candidates and these instructions specifically set out with the entire mechanism to be adopted by the respondent authorities while filling up the seats to the post-graduate courses in physiotherapy/occupational therapy/ Audio and Speech language for the Academic Year 2018-19. This brochure regulated the admission process for private unaided

minority, Government and Corporation, Physiotherapy/ Occupational therapy colleges in State of Maharashtra. The petitioner has placed reliance on the several clauses contained in the said brochure and specifically makes a reference to the procedure contained therein in regards to the “seat allotment process” as well as “Status Retention Mechanism” contained in the said rules. The petitioner also placed reliance on the procedure to be followed for conduct of rounds including the Mop-Up rounds and the rounds at institutional level for filling up the seats.

4 The petitioner participated in the process for admission to the M.P.Th course and on securing a merit list Rank, participated in the Counselling process which is commonly known as “CAP” round. As per the process set out in the said brochure, she submitted a preference form on 14th August 2018. The petitioner's subject of preference is cardio-respiratory physiotherapy. She underwent a Common Counselling in order to enable her to secure a seat in the Government aided colleges and also the private unaided

colleges. The petitioner was allotted VSPN College of Physiotherapy, Nagpur in the subject of Cardio Respiratory Physiotherapy on the publication of First Selection list. On 29th August 2018, the petitioner opted for betterment and she was upgraded to a seat in Modern College of Physiotherapy Pune in the same subject of her choice. She also underwent the first Mop Up round-1 which was declared on 12th September 2018 and she was retained in the same college and as there was no scope of any upgradation.

5 The grievance of the petitioner is about the further process adopted by the respondent authorities. According to the petitioner, the respondent no.3 the Competent Authority issued a notice declaring one more Mop Up round but restricting the same only to Government Aided Colleges. As per the petition, the notice dated 12th September 2018 conveyed that there will be no further Mop Up rounds for Private Unaided colleges and all the seats remaining vacant on culmination of the Mop-Up round-1 will be surrendered back to the respective Private Unaided Colleges who would be

permitted to fill up those seats by conducting an institutional round. It is also a specific case of the petitioner that the Mop-Up round-2 for Government Aided Colleges which was conducted on 18th September 2018 was intended to fill up only one vacancy which had occurred in AIIPMR College, Haji Ali and necessarily for one student, whereas on conclusion of the Mop UP round-1 for Private Unaided Colleges, the seats were surrendered in form of vacant seats to the respective institutions. The petitioner admits that she submitted her Status Retention Form on 17th August 2018 and then on 18th August 2018, the respondent no.3 published a list of eligible candidates for institutional round in Private Unaided Colleges. The grievance of the petitioner is that the said list included 25 students who were already allotted a seat in first, second and Mop Up round and have joined the colleges, but still they are made eligible to participate in the institutional level round in furtherance of Rule (E) 5 of notice dated 12th September 2018.

6 We have heard Ms.Pooja Thorat appearing for the petitioner and she does not dispute the fact that the petitioner

is already admitted against her M.P.Th seat at PES Modern College of Physiotherapy, Pune. Ms.Thorat would submit that she has basically two grievances i.e. (a) the respondent authorities have indulged into discrimination by not conducting second Mop Up round for Private Unaided Physiotherapy Colleges, whereas in case of Government/ Corporation Colleges, a second Mop Up round was held and (b) the notification dated 12th September 2018 is clammed as arbitrary and unreasonable, inasmuch it does not give an equal playing field for all the candidates, betterment of choices in accordance with the merit.

The precise submission of Ms.Thorat is that when there are vacancies in the Private Unaided Colleges, the respondent authorities who have applied the same set of Rules to the Government and Corporation Colleges as well as the Private Unaided Colleges ought not to have applied different parameters specifically when the seats are lying vacant. She would submit that in private colleges, the seats are being reverted back to the institution at the conclusion of first Mop Up round and discretion is given to the institutions to fill in the

seats at their level and this according to her, results in arbitrariness. Her apprehension is that the private unaided colleges which have 29 vacant seats in various subjects are likely to be filled in by the same less meritorious candidates than that of the petitioner. She would submit that two seats in Sancheti college and two seats in Jindal college, which are lying vacant and surrendered to the respective institution would have accommodated the petitioner if the second Mop Up round for these private unaided colleges was conducted.

Ms.Thorat therefore, prays that the petitioner is deprived of her lawful claim by the arbitrary process adopted by the respondent authorities and this would hamper her career prospects since she is interested in pursuing her education in cardio respiratory physiotherapy and in her college of her choice in terms of her score in the CET. She therefore, urges that the petition be allowed in terms of prayer clause (a).

7 The respondent authorities are represented by Ms.Shruti Vyas, and on a specific query as to why the Mop Up rounds in the Private Unaided Institution have been restricted

only to one round, whereas two Mop Up rounds are permitted to be conducted for Government colleges, she would invite our attention to Rule 15 contained in the Information Brochure published by the respondent no.3 and she would advance her submission that in light of the said rules, the private unaided/private minority colleges are competent to fill in the vacant seats at their own level, whereas this provision is not available in case of Government/Corporation Institutions and since one seat was lying vacant after the conclusion of Mop Up round-1, the authorities permitted conduct of Mop Up round 2 for the Government/Corporation colleges.

Ms.Vyas would also raise an objection about the entitlement of the petitioner to claim the relief through the petition and she would submit that the petitioner has already filled in the Status Retention Form and has secured her seat at the end of the conclusion of the Mop Up round-1 and therefore, there is no question of she progressing any further or availing chances of betterment even if any other round is conducted. Ms.Vyas would invite our attention to Rule 13 which deals with Status Retention Form and she would submit that submission of

Status Retention Form is an irrevocable and irreversible act of the candidate. She would also submit that candidates who have filled in Status Retention Form are not eligible for Mop UP round in terms of Rule 14 and it is her specific submission that the petitioner's candidature cannot be considered for the institutional round or for M.P.Th courses since her admission is already sealed before 18th September 2018 and in terms of a notice issued on 12th September 2018, she cannot participate in the institutional round. Learned counsel for the respondent would thus submit that the petitioner is not entitled to invoke the jurisdiction of this Court since she is already ousted from the further procedure in view of filling up of Status Retention Form.

8 With the assistance of the learned counsel for the parties, we have carefully perused the petition along with its annexures. We have also gone through the Information Brochure for preference system and Seats Matrix for the M.P.Th/M.O.Th/MASLP/M.Sc. (P & O) Admissions for the year 2018.

The Government of Maharashtra has established the “Admission regulatory authority and the State Common Entrance Test Cell” in terms of the Maharashtra Unaided Private Professional Educational Institutes (Regulation of Admission and Fees) Act of 2015. The State Government has gazetted the said Rules on 18th April 2017. The Commissioner of State Common Entrance Test Cell has been designated as competent authority for conduct of the PGP-CET/2018 and for selection of candidates for admission to various Post-graduate courses for the year 2018-19. The PGP-CET-2018 is applicable for admission to Private Unaided Physiotherapy, Occupational Therapy and other colleges/institutions offering such courses. The Government of Maharashtra issued a resolution on 16th December 2015 thereby declaring its decision to conduct a State Common Entrance Test for all the Health Sciences courses including the Masters of Physiotherapy courses for all the government as well as private unaided and minority institutions offering such courses. By the said Government Resolution, a Single Window System in terms of Section 4 of the Maharashtra

Unaided Private Professional Educational Institutes (Regulation of Admission and Fees) Act of 2015 was made applicable for the Health Science Courses whether they were conducted in the Government colleges or private unaided and minority colleges.

9 The respondent no.3 competent authority published the brochure setting out the procedure of on-line application for various courses and the Government of Maharashtra accorded its approval to this information brochure on 20th June 2018 for conducting the process for admission to the Health Science courses for the year 2018-19. The information brochure prescribed for the eligibility criteria for admission to the PGP-CET-2018 and other post-graduate courses. It also prescribed the manner of conduct of the CET and also set out the details for counselling the preference form filling procedure apart from the manner of distribution of the seats available with the colleges belonging to the State Government, Corporation, Private Unaided, Minority Colleges/ Institutions offering the Post-graduate courses.

Perusal of the rules would reveal that it has prescribed in detail the manner of allotment of seat and a candidate is entitled for allotment of a seat based on the preference given by him and on the basis of his merit. It would be appropriate to refer to Rule 12 which finds place in the Information Brochure and which deals with seat allotment procedure :

12 SEAT ALLOTMENT PROCESS :

12.1 Based on preferences given, the seats will be allotted on merit and the allotment will be displayed on website of State CET Cell i.e. 'www.mahacet.org' All the candidates to whom a seat has been allotted in the 1st round on the basis of Merit-cum-Preference will have to compulsorily join the college and course so allotted, within prescribed period by completing the requisite formalities i.e. submission of original documents as per the list given in Clause No.8 of this brochure and payment of requisite fees.

12.2 If a candidate gets selected for a particular MPTh/MOTh/MASLP/Msc(P&O) post-graduate course, then the candidate is required to join that course as per the procedure. In case he/she does not join the course, he/she will not be eligible for subsequent admission process of PGP/PGO/PGASLP/Msc (P & O) CET 2018.

12.3 It is made clear that even if a candidate to whom a seat has been allotted in the first round wants a betterment of his/her choice, such a candidate must initially accept the allotment and join the college by completing the necessary formalities as set out by these Rules, failing which such a candidate will be thrown out of the entire admission process of the current academic year 2018-19.

If any candidate to whom a seat has been allotted in the first round does not join the college and course seat so allotted, it will be presumed that such a candidate is not interested in the admission process and for all further round(s) of admission, such candidate shall not be considered for allotment of any seat whatsoever.

The seat so allotted to such a candidate who does not join, will be presumed to be a vacant seat as on and from the next date after the date set out as the last date for joining the college in terms of such allotment. Such a vacant seat will be allotted in the next round of admission process within prescribed period.

12.4 All the candidates who have filled the preference form and to whom a seat could not be allotted in the round will be held eligible for allotment of a seat in the subsequent round(s).

12.5 For filing of vacant seats after first round, same preferences will be considered for subsequent computerized rounds and no separate preference form will be required to be filled by the candidate (except for final round by personal appearance). For aforesaid computerized round those candidates who have not joined/resigned after allotment of seat(s) will not be considered eligible.

10 Rule 13 deals with Status Retention and it stipulates that all the candidates who have joined in the rounds on allotted seat, will be given a stipulated period to fill the Status Retention Form. In case if a candidate to whom a seat has been allotted and who has joined the college is satisfied with the allotment, it is imperative for a candidate to submit a Status Retention form in the format prescribed before the prescribed date with the Dean of the College where such seat has been allotted. Submission of the Status Retention form is irrevocable and irreversible act of the candidate. The said rule also stipulates that all such candidates to whom seat has been allotted in the earlier round and who have accordingly joined the college, if do not submit “Status Retention Form” and if he

gets a betterment in the subsequent round as per the higher choice, then it is mandatory to join the allotted college. However, if a candidate does not get a betterment on his higher choice and subsequent rounds, then he shall remain on his previous seat allotted.

One important and salient feature of the whole process is that the competent authority may conduct subsequent round(s) but the preference filled in by the candidate continues to govern the entire journey of the candidate and it is not permissible to fill in separate preference at any subsequent rounds of selection.

11 After conduct of the two rounds of seat allotment, the procedure contemplates conduct of a Mop Up round(s) if the seat remain vacant due to non-allotment, non-reporting or on account of the resignation after joining or any other reason and the details of the Mop Up round are to be declared by a separate notice at a stage when occasion arises. The rule, however, makes it clear that certain candidates will not be held

eligible for Mop Up rounds and enumerates the following categories :

- (a) candidate to whom a seat has been allotted to computerized cap rounds and not joined
- (b) candidate who has filled Status Retention Form
- (c) those candidates who have joined and resigned after allotment of seats.

12 In pursuance of the provision of conduct of Mop-Up round, the respondent no.3 published a notice on 12th September 2018 prescribed a procedure to be followed for the conduct of Mop Up round for the PGP/PGO/PGASLP/M.Sc. (P & O)-CET 2018. The said notice prescribed the eligibility in the following manner

(A) Eligibility for MOP-UP Round -

- 1 All candidates admitted in 1st round, 2nd round and secured the admission.
- 2 All the candidates who are wait listed and to whom choice was not available during 1st round, 2nd round.

(B) Candidates NOT ELIGIBLE for the MOP UP round.

- 1 Those who have submitted Status Retention Form in 1st or 2nd round.

- 2 Those who were selected in 1st round but failed to take the admission.
- 3 Those who were selected in 1st round but cancelled the admission.
- 4 Those who were selected in 1st round but resigned the seat.
- 5 Those who were selected in 2nd round but failed to take the admission.
- 6 Those who were selected in 2nd round but cancelled the admission.
- 7 Those who were selected in 2nd round but resigned the seat.

The said notice also prescribed the procedure of Mop Up round and it contemplates that if the seats in Government/ Corporation colleges remain vacant after the Mop Up round, Common Entrance Test Cell may conduct another selection round on 26th September 2018 if required. The last date for filling up of the M.P.Th seats for Private Unaided/Minority colleges at the institutional level is stipulated as “30th September 2018”. The instructions contained in the said notice for conduct of Mop Up round needs a reproduction :

(D) Instructions for the MOP-UP Round

- 1 *If a candidate is upgraded during any rounds for Government / Corporation Colleges from Private to Government (MPTH) then there will be no penalty clause applicable to him / her.*

- 2 *If a candidate has a selected status for MPTH course on 18.09.2018 in Government/Corporation colleges, then his/her name will be deleted for the merit list. He/She will not be considered for admission process to be carried out for private unaided/Minority colleges at institute level rounds.*
- 3 *The candidate having selected for MPTH in Government/ Corporation colleges in round to be declared on or after 19.09.2018 and 26.09.2018 must join the seat. If the candidate fails to join then he/she will be charged penalty of Rs.1,00,000/- and will not be eligible for the admission process for next two years in all Health Science Course.*
- 4 *The admission process for Private Colleges will be completed on 18.09.2018 after 10.00 p.m.*

13 The said notice also stipulates the procedure for institutional round for the Post-graduate Physiotherapy course and this round is available only for the Private Unaided/Minority colleges and if seats remaining vacant after Mop Up round-1. It also contained a stipulation to the following effect :

(E) Procedure for Institutional Round for MPTH courses

All the candidates having admitted status on or before 18.09.2018 are NOT ELIGIBLE for institutional round.

All those candidates selected and joined during 1st round, 2nd round and MOP-UP(s) round in Government/Corporation/ Government Aided/Private Unaided/Minority Colleges are NOT ELIGIBLE to *participate institutional level round*.

This Rule therefore, stipulates that the candidates who have admitted on or before 18th September 2018 either in the first round, second round or the Mop Up rounds in Government/Corporation/Government Aided/Private Unaided/Minority colleges, then such candidate is not eligible to participate at the institutional level round. As per the said notice, 18th September 2018 was fixed as the date for display of list of vacant seats college wise and from 19th September 2018 to 30th September 2018, the schedule is appended for the institutions to fill in the vacant seats at their own level. 30th September 2017 is the prescribed cut-off date for the M.P.Th courses.

14 In the backdrop of the scheme as ingrained in the information brochure governing the admission process for the M.P.Th and on perusal of the grievance raised by the petitioner, we do not find that the respondent authorities have,

in any manner deviated from the prescribed set of rules. The petitioner participated in the Cap round and was allotted a set in first round of counselling in the V.S.P.M college of Physiotherapy, Nagpur in the subject of her choice i.e. Cardio Respiratory Physiotherapy. In the second round, the petitioner got herself upgraded to the Modern college of Physiotherapy, Pune again in cardio respiratory, Physiotherapy. According to the petitioner, a first Mop Up round was conducted, but she was not upgraded as there was no choice available. The precise submission of the petitioner is that since the notice dated 12th September 2018 published by respondent no.3 declare that there will be no further Mop Up round for Private Unaided and the seats remaining vacant would be surrendered to the respective Private Unaided Colleges, she filled in the Status Retention Form on 17th August 2018. The grievance of the petitioner is in respect of non-conduct of two Mop Up rounds for the Private Unaided Colleges, whereas a second Mop Up round was conducted in respect of one seat to be filled in, in the Government Colleges. As far as the private colleges are concerned, they are strictly

governed by the Maharashtra Unaided Private Professional Educational Institutes (Regulation of Admission and Fees) Act of 2015 and the Rules framed thereunder in the year 2016 known as Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Post-graduate Courses in Physiotherapy (M.P.Th), Occupational Therapy, (M.O.Th), Audiology, Speech and Language Pathology (M.A.S.L.P) and Prosthetics and Orthotics M.Sc (P & O) courses Rules 2016. These Rules govern the admission procedure to the course in Physiotherapy in all the Unaided Private Professional Educational Institutions. In terms of the said Rules, all Cap rounds are to be conducted by computerized allotment and it contemplates the subsequent vacancies to be filled in at the institutional level and in terms of Rule 13, the Director or Principal of the Institution is authorized to carry out the admission for the seats lying vacant after the CAP round, strictly as per the *inter se* merit of the candidate who had applied for the institution.

Perusal of the Rules would reveal that the seat allocation in such institution has a restricted quota for the

institutional seats and the private institutions are entitled to fill in the said seats at their level. However, such a provision is not available to the Government and Government Aided colleges or the colleges run by the Corporation and therefore, the institutional level round is held only in the Private Unaided/Minority Institutions through conduct of institutional level round and from the desirous candidates who are declared eligible in the CET and strictly on the basis of their *inter se* merit in the said CET. The respondent nos.2 and 3 have rightly carried out a first Mop Up round in the private colleges for filling up the vacant seats after conduct of two rounds of seat allotment both in the Government and Corporation and unaided private/Minority colleges. However, after conduct of the Mop UP round-1 in Private and Unaided colleges, the seats came to be surrendered to the institutions to be filled in by the institutional level round. The petitioner has not questioned the validity of Rule 15 which is based on the Maharashtra Unaided Private Professional Educational Institutes (Regulation of Admission and Fees) Act of 2015 and the Rules framed thereunder in the year 2016 known as Maharashtra

Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Post-graduate Courses in Physiotherapy (M.P.Th), Occupational Therapy, (M.O.Th), Audiology, Speech and Language Pathology (M.A.S.L.P) and Prosthetics and Orthotics M.Sc (P & O) courses Rules 2016. In absence of any challenge to Rule 15 contained in the Information Brochure or the validity of a provision contained in the Enactment of 2015 and the rules permitting the institutional level round for the Private Unaided/Minority Colleges, we refrain ourselves from dealing with the justiciability of the said rule.

However, at present, it is suffice to say that the respondent authorities have acted in terms of the existing rule and therefore, we do not find any flaw in not conducting a second Mop Up round for the Private Unaided/Minority Colleges and in restricting the second Mop Up round in respect of Government/Corporation colleges. We are of the opinion that since we are not called upon to ascertain the validity of the said Rules which is being dubbed as discriminatory in

absence of any challenge to the said Rule, we do not express any opinion on the same.

15 As far as the grievance of the petitioner in respect of non-consideration of the petitioner in the institutional level round is concerned, we are of the firm opinion that the notice dated 12th September issued by respondent no.3 made is clear in unequivocal terms that all the candidates having admitted status on or before 18th September 2018 are not eligible for institutional round. The petitioner who has secured her admission on conclusion of the second round in the Modern College of Physiotherapy, Pune and who is seeking betterment, is not entitled to make a grievance. As far as the grievance of the petitioner that she was interested in pursuing her post-graduate in Cardio Respiratory Physiotherapy is concerned, we have noted that she has already secured an admission in the very same branch in the Modern College of Physiotherapy and her grievance as such, do not survive. She expects an upgradation either to the Jindal Physiotherapy College or Sancheti Physiotherapy College which was her preference

nos.9 and 7 respectively, she is debarred from participating in the institutional level round in view of her admitted status on 18th September 2018.

16 We do not find any flaw in the said curtailment or the cut-off date since the admission process must meet a level of certainty at some point of time and if the options are allowed to be re-opened then the process would become unending. Since the Hon'ble Apex Court as well as this Court, time and again, has emphasized on the cut-off date for admission to the professional courses, and on beginning of the academic session and since cut-off date for M.P.Th course is being scheduled as 30th September 2018, we see no infirmity in the notice dated 12th September 20178 which was intended to put a seal on the admissions effected during the first, second and the subsequent Mop Up rounds in favour of the candidates who have finalized their admissions by depositing the fees in the respective colleges. In any contingency, we do not see any prejudice being caused to the petitioner. As far as the grievance of the petitioner that other candidates who have

sought their seats in first/second round are again permitted to participate in the institutional level rounds and the petitioner has cited examples to the said effect, we are of the firm opinion that the said course is not available to the competent authority i.e. respondent no.3. When we confronted the learned AGP Ms.Vyas with the aforesaid situation in light of the submissions advanced by Ms.Thorat, on instructions, Ms.Vyas would concede to the position that the notice dated 12th September 2018 made it very clear that those candidates who are granted an “admitted status” on or before 18th September 2018, are not eligible for institutional round and she would further concede to the fact that the said notice prescribe that all those candidates selected and joined during first and second rounds and MOP-UP(s) and are not eligible to participate in the institutional level round. Ms.Vyas would therefore submit that the competent authority would abide by the said clause contained in the notice dated 12th September 2018. Ms.Vyas, learned counsel appearing on behalf of the respondents, on instructions of the officer concerned – Dr.A.S. Vyas, Officer on Special Duty, DMER, Mumbai, who is present

before the Court, makes a statement that the students who have been allotted seats and have taken admission on/or before 18th September, 2018, will not be allowed to participate in the round for institutional level admission. The statement is accepted.

Once such statement is made by the learned counsel, we do not see any merit in the grievance raised by the petitioner in the petition and therefore, in our considered view, the petition deserves a dismissal and it is accordingly dismissed.

The interim relief, granted by an order dated 24th September 2018, stands vacated.

(SMT. BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)

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