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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 24.04.2018

+ W.P.(C) No.4131/2018 & C.M. Nos.16251-16252/2018

DR.LOKESH KUMAR MEENA Petitioner
Through Mr.R.K. Saini, Adv. with
Mr.Shekhar Kumar, Adv.
versus

UNION OF INDIA & ORS. Respondents
Through Mr.Ripu Daman Bhardwaj,
Adv. for R-1/UOI.
Mr.T. Singhdev, Adv. for R-
2/MCI.
Ms.Anita Sahani, Adv. for R-
3/GGSIP University.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition, the petitioner, who is a Scheduled Tribe (ST) candidate for NEET Post Graduate 2018, has impugned the order dated 6th April, 2018, passed by respondent no.1/Union of India, whereby the respondent no.1 after consulting with respondent no.2/Medical Council of India, decided that the lowering, if any, of the cut-off percentile in NEET PG 2018 required for ST candidates in accordance with the discretion vested in the Union of India as per the proviso to Sub-Clause III of Clause 9 of Post Graduate Medical Education

Regulations, 2000 (hereinafter referred to as “Regulations”), would be done only once the nationwide vacancy position in various categories, is finalised. The respondent no.1 has also taken a categorical stand that the lowering of the cut-off percentile, from the percentile of 40 prescribed for ST candidates, cannot be resorted to for vacancy position in respect of a particular University.

2. At the outset, Mr.Saini, learned counsel for the petitioner, submits that the impugned order is liable to be set aside, as a perusal of the same clearly shows that the respondent no.1 has not applied its independent mind to the contentions raised by the Petitioner in his representation, and has merely reiterated the advice of respondent no.2 which is not binding on respondent no.1. He submits that respondent no.1 has failed to appreciate that the advice of respondent no.2 is merely recommendatory and while exercising its discretion under the Regulations, the respondent no.1 ought to have considered all relevant factors, which has not been done in the present case.

3. Mr. Saini submits that the impugned order has been passed without appreciating that the very aim and purpose of the aforesaid proviso is to ensure that the eligible SC/ST candidates are able to get admission in the Post Graduate Medical Courses in the seats reserved for them and those reserved seats do not go waste or are not transferred to general category candidates. He further submits that even otherwise, the reason given in the impugned order that the said discretion

would be exercised only after the nationwide vacancy is known, is based on an erroneous presumption. He submits that in fact once the NEET PG Examination result was declared, the respondents became fully aware not only of the number of candidates who had qualified but they also had the break-up of the requisite seats in different colleges and Universities as also the number of SC/ST/OBC & General Candidates. He, therefore, submits that in case the respondents wanted, they could have easily worked out the nationwide vacancy at this stage itself.

4. Mr. Saini further submits that the decision of the respondents to exercise their discretion after the nationwide vacancy is known, is contrary to their own decision in the earlier years. He draws my attention to the order dated 3rd June, 2013, whereby the respondents had in the year 2013, reduced the percentile in respect of SC/ST & OBC candidates even before the first counselling itself. He, therefore, contends that there is no reason as to why respondents should not have exercised the said discretion at this stage itself.

5. Lastly, Mr.Saini submits that in case the respondents decide to exercise the said discretion in favour of ST candidates after the second counselling is over, it would be of no benefit to ST candidates as all the roster point seats reserved for them, shall stand transferred to other categories including the General Category.

6. I have heard Mr.R.K. Saini, Advocate for the petitioner; Mr.Ripu Daman Bhardwaj, Advocate for respondent no.1; Mr.T. Singhdev, Advocate for respondent no.2 and Ms.Anita Sahani, Advocate for respondent no.3.

7. Mr.Bhardwaj while defending the impugned decision, submits that the basic premise on which the present petition is based, is faulty because the cause projected in the petition is the availability of certain unfilled reserved ST seats in respondent no.3/University whereas the respondent no.1 has to take an objective decision after examining the nationwide position. He submits that once the respondents examine the nationwide vacancy position, it is quite possible that a number of ST candidates may obtain admission in various PG Medical Courses other Universities/Colleges in the country and, therefore, there may not be any need to lower the percentile, any further as the percentile fixed for ST candidates is already 10% lower than the one fixed for the General Category candidates. He further submits that merely because the respondents had in the year 2013, decided to lower the percentile even before counselling, it cannot be held that the said discretion must be exercised in a particular manner every year.

8. Mr.T. Singhdev, learned counsel for respondent no.2, also reiterates the submissions made by Mr.Bhardwaj, and states that the discretion vested in respondent no.1, cannot be exercised merely because the petitioner or any other candidate

wants admission in one particular University. He submits that the aim of the proviso is to ensure adequate representation of ST/SC candidates in PG Medical Courses but that does not imply that the respondent no.1 should exercise the said discretion merely to enable the petitioner to take admission in one particular University or course.

9. Ms.Sahani, learned counsel appearing for respondent no.3, submits that since it is for the respondent no.1 to consider the overall vacancy position in the country and then pass appropriate directions, respondent no.3 does not have any direct role to play in the present petition and it is only the respondent no.1 who has to take a final decision.

10. I have heard learned counsel for the parties at length. Before I deal with the rival contention of the parties, I deem it appropriate to refer to Clause (1) to (4) of the Regulation 9 of the Post Graduate Medical Education Regulation, 2000, which reads as under:-

“9. Procedure for selection of candidate for Postgraduate courses shall be as follows:

(1) There shall be a uniform entrance examination to all medical educational institutions at the Postgraduate level namely ‘National Eligibility-cum-Entrance Test’ for admission to postgraduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

(2) The “designated authority” to conduct the ‘National Eligibility-cum-Entrance Test’ shall be

the National Board of Examination or any other body/organization so designated by the Ministry of Health and Family Welfare, Government of India.

(3) In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the 'National Eligibility-Cum-Entrance Test for Postgraduate courses' held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-cum-Entrance Test for Postgraduate courses.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Postgraduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only."

11. A perusal of Clause 3 of the aforesaid proviso, clearly shows that the intent of the Rule is to ensure adequate

representation of SC/ST candidates in the Postgraduate Medical Institutes. What thus emerges is that the vacancy position and the number of the SC/ST candidates who meet the percentile prescribed as per the Regulations, may vary from year to year and it is for this reason that there is no mandate in the Regulation that the percentile must be lowered every year. In fact, it is only to cater to such varying situations which may arise from time to time that a discretion has been vested in the Central Government to lower the required percentile for admission for ST/SC/OBC candidates, if the need so arises. It may also be noted that this discretion is to be exercised after consulting the Medical Council of India which is an expert body constituted for maintaining the standards of medical education in the country.

12. Having considered the impugned order, I find no merit in the contention raised by learned counsel for the petitioner that the impugned order shows non-application of mind. In my view, only because respondent no.1 has after consulting respondent no.2, decided to accept the advice given by respondent no.2, it cannot be said that respondent no.1 has not applied its independent mind. The respondent no.1 while accepting the advice of respondent no.2, was not expected to give further detailed reasons.

13. In the aforesaid light, when I examine the impugned order, I find that the same merely states that the Union of India did not deem it appropriate, to lower the percentile at this stage

thus clearly showing that a decision in this regard may be taken at a later stage, if the need so arises. There is also merit in the contention of learned counsel for respondent no.1 & respondent no.2 that since the nationwide vacancy position of seats reserved for ST/SC candidates is yet to be finalized, it is quite possible that adequate number of ST/SC candidates may get admission on their own merit and the said situation will become clear only after some more time when the counselling in other Institutes also progresses. In my view, the aim of the proviso to Clause (III) of Regulation 9 is not to grant any particular seat to ST/SC candidates by further lowering the already lower percentile prescribed for them but only to ensure that there is adequate representation of ST/SC candidates in PG Medical Courses, which objective could well be fulfilled even by lowering of percentile at a later stage.

14. I find that the entire attempt of the petitioner appears to be to seek admission only in respondent no.3/University, which is not the purpose of the proviso. In these facts, I see no reason to accept the contention of learned counsel for the petitioner that the present petition has been filed only to ensure that the requisite number of ST candidates are able to get admission in Post Graduate Medical Courses.

15. In view of the specific stand taken by respondent no.1 that the decision to lower the percentile, if any, for ST candidates would be taken after the nationwide vacancy position is known, and the percentile would be lowered for ST

candidates, if the need be at a later stage. I am unable to accept the bald statement of Mr.Saini, that in case such a decision is taken after second round of counseling in respondent no.3, the ST candidates would not be able to get any PG Medical seats.

16. I am also unable to accept the submission of learned counsel for the petitioner that merely because respondent no.1 had in one particular year i.e. 2013, lowered the percentile for ST candidates before the start of the counseling, the respondent no.1 should do the same in this academic year. In my opinion, once a discretion has been vested in the Union of India by the Regulation itself, the Union of India is free to exercise the same by considering all relevant factors as may prevail from time to time and no infirmity or irregularity can be found in the decision of respondent no.1, to defer the lowering of percentile for ST candidates, if needed, to a later stage

17. The writ petition and pending applications are dismissed with no orders as to costs.

18. Copy of this order be given **DASTI** under signatures of Court Master.

(REKHA PALLI)
JUDGE

APRIL 24, 2018/aa