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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 1567 of 2019**

Aashutosh Agrawal Shri Vishnu Prasad Agrawal, Aged About 24 Years R/o
Nepal Gate, Charcha Colliery, Tahsil And District- Koriya, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Health And Family Welfare, Department, Mantralaya, Mahanadi Bhawan Naya Raipur, District Raipur, Chhattisgarh.
2. Directorate Of Medical Education, Raipur, Through Its Director, Old Nurses Hostel, Dks Bhawan Parisar, Raipur, District Raipur, Chhattisgarh.
3. Pt. Jawahar Lal Nehru Memorial Medical College, Raipur, Through Dean, Jail Road, Raipur, Chhattisgarh.
4. Ram Chandra Patel, Shri Kamala Prasad Patel, Through Its Dean, Jawaharlal Nehru Memorial College, Raipur, Chhattisgarh.
5. Vanaja Thakur, Shri Viranandra Thakur, Through Its Dean, Jawaharlal Nehru Memorial College, Raipur, Chhattisgarh.

---- Respondents

For Petitioner	: Shri Mateen Siddique, Advocate.
For Respondent/State	: Smt. Fouzia Mirza, Additional Advocate General.
For Respondent No. 5	: Shri Y.S.Thakur, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Manindra Mohan Shrivastava, Judge****Order on Board****Per P.R. Ramachandra Menon, Chief Justice****13/05/2019**

1. The admission and allotment finalised by the Respondent-State in respect of MD General Medicine (unreserved category) giving a birth to the 5th Respondent who is placed at Serial No. 58, however, without considering the candidature of the Petitioner placed at serial No. 57, is under challenge

in this writ petition.

2. After coming out successful in the NEET (PG)-2019, the Petitioner satisfied the requirements in connection with the Post Graduate course as mentioned above. He was desirous of joining only for the course, MD General Medicine, but in the first round of counselling held on 29.03.2019, since only one post in the unreserved segment was available in the State Quota and further since better merited candidates were standing in front of the queue, the Petitioner did not get admission. In fact, one Pranjali Mittal was selected and the slot was given to her. It is stated that before the last date stipulated for admission, she resigned and vacated this slot by virtue of which one seat was available to be allotted to the candidate next in the queue.
3. The second round of counselling was scheduled between 12.04.2019 to 28.04.2019 but according to the Petitioner, no seat in respect of MD General Medicine under the unreserved segment was shown and the entry was shown as '0'. By virtue of the said fact, it is stated that there was no need, necessity or occasion for the Petitioner to have registered for the second round of counselling and hence, he did not apply. It is also pointed out that by virtue of the notifications or proceedings issued by the competent authority, the vacant seats, if any in the Central Quota would be added on to the State Quota after the second round of counselling and hence he was eagerly waiting for getting such a chance.
4. According to the Petitioner, on 27.04.2019, the second round of counselling was done where 'two' seats were shown under the above segment which in fact came as a bolt from the blue. The person by name Ram Chandra Patel at serial No. 34 and the 5th Respondent placed at serial No. 58 of the selection proceedings were identified as the persons eligible, who in turn were given admissions accordingly.

5. The learned counsel for the Petitioner submits with reference to Annexure P/5 dated 25.03.2019 that, altogether, 53 (49+4) seats were available for being filled up in different categories as mentioned therein. It is also discernible from the proceedings dated 25.03.2019 and the entry at serial No. 15 that only one seat of MD General Medicine in the unreserved category was shown and subsequently, the said slot was given to Pranjali Mittal who initially joined and subsequently vacated the slot as mentioned above. It is brought to the notice of this Court that as per Annexure P/7 proceedings in relation to the second round of counselling which is dated 15.04.2019, no vacancy of MD General Medicine in the unreserved segment has been shown. The second round of counselling and allotment was on 27.04.2019 whereby admission was given to Ram Chandra Patel and the 5th Respondent but because of some reasons connected with domicile, the person by name Mr. Patel did not secure the admission. The mop-up exercise was completed on 10.05.2019 and the net result as on date is that the Petitioner who is a better merited candidate stands excluded whereas the 5th Respondent who was only next in the queue has been accommodated and given a placement which is stated as not liable to be sustained under any circumstances, and hence the challenge.
6. The learned Additional Advocate General submits that the writ petition itself is not maintainable insofar as the Petitioner, after the first round of counselling, did not take any steps to get himself registered for the second round of counselling to be considered against the vacant slots, if any, which might arise in the course of the process. It is also pointed out that, after the second round of counselling of the All India Quota seats, which was done on 23.04.2019, one seat which became vacant later, was added on to the State Quota. In the meanwhile, the person by name Pranjali Mittal having resigned on 22.04.2019 had given rise to another slot in the State Quota and thus 'two' seats were available in the MD General Medicine in the

unreserved segment. Allotment/admission was given considering the names of the persons who had already got registered in this regard. It is stated that there was no necessity to have the said seats notified again, as Note No. 1 (page 55) clearly says that these seats, after the second round of counselling in the All India Quota, will be added on to the State Quota. It was very much open for the Petitioner to have applied for and registered in connection with the second round of counselling.

7. It is also stated that the said 'Note No. 2' cannot be read in isolation, which has to be taken in conjunction with 'Note No. 1' which would clearly reveal that the stipulation under Note No. 2 is with reference to the second round of counselling in the All India Quota and not the second round of counselling in the State Quota. The idea and understanding of the Petitioner is thoroughly wrong and misconceived, submits the learned Additional Advocate General.
8. It is pointed out that admission given to Ram Chandra Patel was by virtue of his better merits than the Petitioner and as such the said slot could not have been aspired by the Petitioner under any circumstance. Similar is the position with regard to the admission given to the 5th Respondent herein, it being identified and earmarked seat for a female candidate in the unreserved category. The mop-up round was over on 10.05.2019 and this being the position, no claim of the Petitioner can be entertained under any valid ground, submits the Additional Advocate General.
9. Shri Yashwant Singh Thakur, learned counsel appearing for the 5th Respondent submits that the Petitioner has projected the picture in such a manner as if the 5th Respondent has secured the admission merely as a matter of luck which is not correct. It is stated that she had participated in the process of selection and she was successful in getting admission in the All India Quota at Ahmedabad for the course opted by her in the first round

itself. She was desirous of having placement in better institutions and accordingly she moved forward and with an intent to get admission for the most desired course, she had registered herself for the second round of counselling in the State Quota as well. The learned counsel submits that the identification and allotment of seat to the 5th Respondent is in respect of the earmarked slot of female candidate could not have been claimed by the Petitioner. The learned counsel supports the submission made by the learned Additional Advocate General with regard to the scope of Note No. 2 (page 55 of writ petition). The Petitioner was sleeping over the rights and liberties and one fine morning, he has turned up contending that admission had to be given to him, notwithstanding the fact that he had not registered for the second round of counselling. It was quite obligatory to have prior registration for the second round of counselling, satisfying the prescribed fees for registration without which he cannot be heard to say that he has been overlooked in giving admission to the 5th Respondent or anybody else. The learned counsel also points out that, it was only by virtue of different options given by the 5th Respondent that she could advance further and that the Petitioner having failed to give any such option, admittedly having failed to register his candidature in respect of second round of counselling, is not justified in approaching this Court seeking for invoking the discretionary jurisdiction of this Court, particularly when there is no fault or lapse on the part of the State or any of the Respondents concerned in finalising the process of selection and allotment.

10. The learned counsel for the 5th Respondent submits that the writ petition is bad for another reason as well. By virtue of the credentials of the 5th Respondent as mentioned above, if at all the Petitioner is entitled to get any relief from this Court in this writ petition, the net result will be that the 5th Respondent will have to vacate the seat and will be pushed down. As a natural consequence, the admission given to the less meritorious candidate

on comparison with the 5th Respondent will have to vacate his/her slot as well, to accommodate the 5th Respondent. The said persons who have already secured their admissions have not been chosen to be impleaded by the Petitioner in the writ petition. As such, the writ petition is bad for non-joinder of necessary parties and is liable to be dismissed on this count as well. The position is sought to be illustrated by the Petitioner with reference to the level of the candidates at B-10 and B-11 of Annexure 8 (page 57) in connection with the allotment held on second round of allotment finalised on 27.04.2019.

11. The learned counsel for the Petitioner submits that the process of counselling was unfair insofar as the Petitioner was never let known as to the existence or availability of the vacancies. The said submission does not hold any water at all, insofar as no separate notification was contemplated or necessary in connection with the process and the position had already been made clear by the State/authorities in the notification already issued; particularly by way of the contents of Notes No. 1 and 2 read together. It is also relevant to note that the last date for registration of the second round of counselling was from 15.04.2019 to 20.04.2019 and since the slot became vacant only on 22.04.2019 (having vacated the slot by resignation of Pranjali Mittal) the Petitioner is not at all correct in saying that the said vacancy ought to have been published or notified so as to have the Petitioner enabled to apply for the second round of registration before the last date i.e. on 20.04.2019.
12. We find considerable force in the submissions made by the learned Additional Advocate General and also by the learned counsel for the 5th Respondent. We are of the view that no tenable ground has been brought to the notice of this Court so as to have interference.

13. It is noted that when the matter came up for consideration before this Court on 30.04.2019 an interim order of stay of further proceedings pursuant to the admissions given to the 5th Respondent was passed, which came to be extended further as per the order dated 07.05.2019.
14. We have already held that the writ petition is devoid of any merit. The principle of "*Actus Curiae Neminem Gravabit*" i.e. an act of the Court shall prejudice no one, is attracted. As such, the rights and interest of the 5th Respondent are required to be protected. Since the last date for joining the course was on 10.05.2019, we make it clear that the 5th Respondent is entitled to join for the course and it shall be for the Respondent-State/ Department to give admission to the 5th Respondent for MD General Medicine in the unreserved segment based on the admission given to her forthwith.
15. The writ petition fails. It is dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Manindra Mohan Shrivastava)
JUDGE