

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2285 of 2019**

Vaibhav Agrawal S/o Durgesh Kumar Agrawal Aged About 17 Years
R/o Shankar Nagar, Mahasamund Chhattisgarh. Minor Through
Uncle M.K. Agrawal, S/o B. N. Agrawal, Aged About 47 Years, R/o
Kanchan Vihar, Koni, Bilaspur Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through Secretary, Medical Education Department, Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur Chhattisgarh.
2. Director, Medical Education, Old Nurses Hostel, D.K.S. Bhawan Premises, Raipur Chhattisgarh.
3. Collector, Mahasamund, District - Mahasamund Chhattisgarh.
4. Tahsildar, Mahasamund, District - Mahasamund Chhattisgarh.
5. Union Of India Through Secretary, Ministry of Personal, Public Grievances and Pension, Department, of Personal and Training, North Block, New Delhi.

-----Respondents

For Petitioner	: Shri Rajeev Shrivastava, Advocate.
For State	: Shri Gagan Tiwari, Dy. Government Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Parth Prateem Sahu
Judgment on Board

Per PR Ramachandra Menon, CJ**11.09.2019**

1. The petitioner has moved this Court with the following prayers :-

“10.1 That this Hon'ble Court may kindly be pleased to call for the entire records of the respondent no.4 with regard to issuances of the order dated 02.07.2019.

10.2 That, this Hon'ble Court may kindly be pleased to quash the order dated 02.07.2019 passed by the respondent no.4 by which the respondent no.4 has rejected the application for issuance of EWSs certificate for the purposes of medical admission of the petitioner.

10.3 That, in alternate if the petitioner is not entitled for EWSs certificate, the petitioner will be treated as Unreserved Candidate for taking admission in Pt. Jawahar Lal Nehru Memorial Medical College, Raipur.

10.4 Any other relief(s)/order(s)/direction(s) in favour of petitioner, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, in the interest of justice.

10.5 Cost of the petition.”

2. When the matter came-up for consideration before this Court on 10.07.2019, we heard both the sides and based on the materials brought on record, the following order was passed :-

“ Heard the learned counsel for the Petitioner as well as the learned counsel representing the State.

Main grievance is with regard to the denial of EWS Certificate to the Petitioner, for being considered as a candidate eligible within the 10% quota earmarked for such segment with reference to the income from all sources for the previous financial year as envisaged under Clause – 4.1 of Annexure-P/5 Office Memorandum dated 31.01.2019. The rejection of the candidature in this regard is with reference to the acquisition of the property by the mother of the Petitioner in the current financial i.e. on 12.04.2019.

According to the learned counsel for the Petitioner the second limb of Clause 4.1 of the Office

Memorandum has to be treated as a proviso to the first one and cannot be read in isolation. We *prima facie* find it difficult to accept the said proposition. However, there is an alternate prayer for the Petitioner to the effect that the Petitioner having applied in the unreserved segment as well, he is eligible to get admission based on his marks by virtue of the mandate under Clause 7 of Annexure-P/5 Office Memorandum dated 31.01.2019.

In the above circumstance, we direct the Respondents to consider the candidature of the Petitioner and to allot the seat based on the rank of the Petitioner in respect of the unreserved category on a provisional basis and subject to the outcome of the writ petition.

Certified copy today.”

3. Subsequently, the matter was listed for further consideration on 07.08.2019 as well. Despite the order passed earlier, it was stated that 'admission' was not given to the petitioner, pursuant to which, instruction was called for and based on the instruction obtained in the afternoon, the position was recorded and the following order was passed :-

“ I.A. No.02 of 2019 has been filed by the Petitioner for directing the Respondents to give admission to the Petitioner in M.B.B.S. Course.

The learned counsel for the Petitioner submits that notwithstanding the order passed by this Court on 10.07.2019, it has been paid only scant regards by the Respondents saying that the order is only to provide 'seat' to the Petitioner and not to grant 'admission' and accordingly, admission has not been granted to the Petitioner to the course in question and the Respondents are proceeding with further steps to fill up the vacancy by

granting admission to some others, who are standing next in the queue with reference to the merit of the Petitioner.

When the matter came up for consideration before this Court in the morning, in the light of the submission made by the learned counsel for the Petitioner that the Petitioner was specifically instructed by the Dean that, this was the instruction given to him by the Director and hence is constrained to move this Court through this petition, we called for further instructions.

In the afternoon, when the matter is taken up, Mr. Gagan Tiwari, learned counsel representing the Respondents-State and their authorities, submits on the basis of instruction received over telephone from the Director that the Director has given specific instruction to give 'admission' to the Petitioner based on the order passed by this Court on 10.07.2019. The learned counsel submits that, it is open for the Petitioner to remit the fees and join for the course accordingly.

The said submission is recorded.

List the matter for further consideration after four weeks.

Certified copy today.”

4. Today, when the matter is taken up, the learned counsel for the petitioner submits that based on the interim orders passed by this Court, admission has been given to the petitioner and he is pursuing the studies accordingly.
5. Learned counsel representing the State submits that the last date of admission is over and there is no other claimant to contest for the seat in question.

6. In the said circumstances, we make the interim orders absolute. With regard to the prayer No.10.2, it is not necessary for this Court to go into the said aspect in this case and the parties are set at liberty to pursue other appropriate remedy in accordance with law.
7. Accordingly, the writ petition stands disposed off.

Sd/-

(PR Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge