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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No. 2682 of 2019**

- Subham Sen, S/o Shri Ramswarup Sen, aged about 20 years, R/o Village & Post Saddhu, District Raipur (C.G.), Pin – 492017.

---- Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Department of Medical Education, Mantralaya, Mahanadi Bhawan, Nava Raipur, Atal Nagar, District Raipur (C.G.)
2. Director, Office of Directorate, Medical Education Chhattisgarh, Near Old Nurses Hostel, DKS Bhawan Campus, Raipur (C.G.)
3. Counseling Committee, through its Chairman, Counseling Committee, Directorate, Medical Education, Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Vinod Deshmukh, Advocate.
For Respondents	:	Shri Gagan Tiwari, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Justice Parth Prateem Sahu, Judge****Order on Board****Per P. R. Ramachandra Menon, Chief Justice****09.08.2019**

1. The grievance of the Petitioner is with regard to the inadequate allotment in respect of the unreserved segment in the 'Sainik Category' in accordance with percentage earmarked for the above category for providing admission to the MBBS course based on the NEET result.
2. The sequence of events is as follows: the Petitioner admittedly became successful in the All India Examination conducted by the NEET and secured rank of 1575 in the State quota and in the 'Sainik Category' at Sl. No. 5. There is no dispute for the fact that, out of the total seats, 3% has to be earmarked in

Sainik Category in each segment including the unreserved segment. The case of the Petitioner is that, in the initial round of counselling, based on the total number of seats available, the Petitioner unfortunately did not find a place as only 'four seats' were available and allotted under the unreserved Sainik segment, which were filled up by the Respondents by accommodating candidates who were standing in front of the Petitioner based on their better merit. The heartburn started in the 2nd round of counseling, when additional seats were allotted, whereby another extent of 'four seats' were to be given in the said segment by applying the quota of 3% for Unreserved Sainik Segment. The Petitioner, having been placed in Sl. No. 5, was the next person to be allotted against the next seat in the Unreserved Sainik Segment. The rule has been given 'go bye' and the seats have been filled up by the Respondents from other segments, thus, virtually defeating the rights and interest of the Petitioner. This made the Petitioner to approach this Court by filing the writ petition with the following prayers:

“1. This Hon'ble Court be pleased to direct the Respondent Authority/State Government to produce entire records in respect of allotment of seats/admission in the Government Medical Colleges.

2. This Hon'ble Court be pleased to issue the appropriate writ/writs, order/orders and direct the respondent government to grant seat and admission to the petitioner in Government Medical College for MBBS course according to his merit/rank in Sainik Category, which is reserved for UR Sainik.

3. This Hon'ble Court be pleased to direct the respondent authority to allot the seat for MBBS Course to the candidates belonging to the Sainik Category according to their merits/rank in

Government Medical College.

4. This Hon'ble Court be pleased to hold that the action on the part of the authority of the State Government is completely illegal and violated the policy as well as Rules while allotting the seats/admission in the Government Medical College.

5. Any other relief as deemed fit by this Hon'ble Court."

3. The learned counsel for the Petitioner reiterated the submission with reference to the pleadings raised in the writ petition and asserted that the Respondents went wrong in not applying the rules of reservation in respect of the Sainik Category in the 2nd round of counselling. The prescribed ratio is to be made available on each occasion, as and when the seats are increased and it is not correct to say (as contended by the Respondents) that it can be applied only once i.e. in respect of the 1st round of counseling. The learned counsel sought to demonstrate the position with reference to the materials on record including the increase in number of the seats.
4. Shri Gagan Tiwari, the learned counsel representing the State / Respondents submits with reference to the contents of the reply filed, that the idea and understanding of the Petitioner is not correct. The rules of reservation have been correctly applied by the Respondents and in respect, of Sainik Category, 3% of the 'unreserved seats' was worked out with reference to the actual number of seats available in the 1st round of counselling. Admittedly, all the 'four seats' filled up in the Unreserved Sainik Segment (in the 1st round of counselling) whereby the candidates who were having better merits than the Petitioner came to be selected. The only question is whether the Petitioner who was standing next in the queue was to be considered, with reference to the additional seats made available.

5. With reference to the seat matrix produced by the Petitioner himself, in respect of the 1st round of counselling as part of Annexure P/3, and the position reflected in respect of the 2nd round of counselling forming part of Annexure P/5, the learned counsel for the State submits that, in respect of Raipur Medical College, the total available seats were 130; out of which only 56 seats were available in the Unreserved Segment. Considering 3% of the said figure, it worked out to be 1.68 and hence 3% Sainik Category could have been allotted only '1 seat', which was allotted accordingly. Similarly, in respect of the Bilaspur Medical College where 130 seats were available, where 56 seats were in Unreserved Segment; in turn leading to allocation for '1 seat' in the Sainik Category, towards 3% of the total Unreserved Segment. Jagdalpur College was having total of 92 seats, out of which 40 were in the Unreserved Segment and on working out 3% of the said Unreserved Segment under the Sainik Category, the figure was only 1.2 and hence one '1 seat' was allotted. In Rajnandgaon, the total number of seats were 92, with Unreserved Segment as 40 seats, resulting in the same figure as '1 seat', which was allotted towards Unreserved in the Sainik Category.
6. Coming to the 2nd round of counselling, some seats came to be added on, which was by virtue of the reversion of seats provided under Central Quota, where no candidate was available. In respect of the Raipur Medical College, 11 seats came as additional seats; in turn making the total number of seats got changed from 130 to 141. Out of 141 seats, 61 seats were to be in the Unreserved Segment and on working out 3% allocable to the Sainik Category, the figure was 1.83. Hence only '1 seat' could have been allotted, which had already been allotted in the 1st round of counselling itself and no change was resulted.
7. Similarly, in respect of Bilaspur, the reverted seats were only 12. Adding the same to original figure of 130, it became 142; of which only 61 seats could have been identified under the Unreserved Segment. This being the position, the

figure worked out towards 3% Sainik Quota came to be 1.83 and hence only '1 seat' could have be allotted, which had already been allotted in the first round itself. Coming to Jagdalpur, the additional seats obtained by reversion of the Central seats were only 6. Adding the same to the original figure of 92, it became 98 and the Unreserved Segment became 43. 3% of the said figure worked out to be 1.29 and hence, '1 seat' alone could be allotted in the 3% Sainik Category, which had already been done in the 1st round.

8. Same is the position with regard to the Rajnandgaon, where the additional seats provided were only 3. Adding the same to the original figure of 92, it became 95, leaving the total number of seats in the unreserved segment as 41. 3% of the same came to be 1.23 and hence, only 'one seat' could be allotted towards the 3% Sainik Quota, which was already done and it did not warrant any change. Thus, the ratio of allotment already done towards the Unreserved Sainik Segment stands completely satisfied and there is no variation in this regard.
9. The learned counsel for the STAtE submits that the position has been explained in crystal clear terms in paragraph 16 to 19 of the return filed in this regard. We find it appropriate to have it extracted for better clarity in all respects, as given below:

“16. It is further respectfully submitted that after the first round of counseling seats are reverted back to the State quota from All India Quota from different Medical Colleges. The answering respondents has again calculated the total number of available seats for second round of counseling. At this stage it is worthy to mention that petitioner is harping on Annexure P/6 with the contention that since the total number of seats has been increased the reservation roster is to be applied again so that the petitioner is allotted a seat in Government Medical College, against this contention of the petitioner it is respectfully submitted by

the answering respondent that it is settled law that reservation roster is to be applied only once and the contention of the petitioner is to be rejected at the threshold because it is not supported by any legal grounds.

17. It is respectfully submitted that the seat distribution shown as Annexure P/6 reflects the reservation applied in various categories & class on total number of seats, including seats reverted from All India Quota. It does not show the vacancy after first round of counseling.

18. It is respectfully submitted that, as per the Rules of 2018 which permits that over all reservation should not exceed 3% under the Sainik class, and answering respondent following the Rules has already allotted the seats to the respective candidates based on their merits there is no way to allot further seats by way of reservation. Further more it is respectfully submitted that at present only 1 seat of Sainik class which falls under ST category is left vacant and that is to be filled by the answering respondents at the stage of mop-up round as per Rule 8 of the Rules, 2018.

19. It is further respectfully submitted the name of petitioner is showing at Sr. No. 882 against (OBC) of the merit list after first round of counseling and his unreserved rank is 1575 and Class is shown as Sainik and rank as S-5, with this rank the petitioner is even otherwise not eligible for allotment of seats from second round of counseling. So contention of the petitioner, is liable to be dismissed on this ground alone because the merit of the petitioner does not make him eligible.”

10. It is also brought to the notice of this Court that, earlier, though the principles of reservation, particularly in the Sainik Category and such other allocable segments were being worked out institution-wise, the relevant rule at that point of time did not provide for working out the ratio institution-wise. In the said circumstance, when it was challenged before this Court in **Apeksha Kaushik**

vs. State of Chhattisgarh & Another in WPC No. 2267 of 2019, the same was interdicted, holding that rules did not provide for applying the ratio institution-wise. This made the State to change the Rules and new Rules i.e. Chhattisgarh Medical, Dental & Physiotherapy Under Graduate Admission Rules, 2018 have been promulgated and notified, making it institution-wise. There is no dispute to the fact that the ratio has to be applied institution-wise in the said context and this has been correctly done by the Respondents, submits the learned counsel representing the State.

11. From the above, it is discernible that the course pursued by the Respondents is perfectly within the four walls of law and is not assailable under any circumstances.
12. Writ petition fails. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge