

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Order reserved on 01.10.2019****Order delivered on 21.10.2019****Writ Petition (C) No. 3485 of 2019**

1. Ghugal Yukta Anil D/o Anil Ghugal Aged About 20 Years R/o Ekdant Apartment, Madhusan Colony, Near Mount Carmel Convent, Chandrapur, Dist. - Chandrapur, Maharashtra.
2. Raman Mohan Girhe S/o Mohan Marotrao Gihre Aged About 22 Years R/o Ward No. 6 Bhajanpura Near Hanuman Mandir, Nerpinglai, Amravati, Dist. - Amravati Maharashtra.
3. Ritesh Motwani S/o Premchand Motwani Aged About 20 Years R/o Ratlam, District - Ratlam, Madhya Pradesh.
4. Tanvi Nakhate D/o Tushar Nakhate Aged About 20 Years R/o 32, Tirupati Sagar Apartment, Auryvedic Layout, Sakkardara, Nagpur, District- Nagpur, Maharashtra.
5. Borole Sanket Nilkanthrao S/o Nilkanthrao Aged About 20 Years R/o Anand Nagar at Post Yeoda Tq., Daryapur, Yeoda Amravati, Maharashtra.
6. Rakesh Vindo Dhabekar S/o Vinod Aged About 22 Years R/o Plot No. 59, Flat No. 13 Shri Ganesh Sahamiwash, Nandan Van Near Toari Hospital, Nagpur, Dist. - Nagpur Maharashtra.
7. Bhamnani Ishika Jagdish D/o Jagdish Aged About 21 Years R/o Sidhi Colony, Hemu Kahani Chowk, District - Gondia, Maharashtra.
8. Garima Temre D/o Mansaram Temre Aged About 21 Years R/o 25, Subhas Chowk, Ward No. 03 Motipur, Rajnandgoan, Dist- Rajnandgoan, Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh Through - Secretary, Department of Health and Family Welfare And Medical Education, Mahanadi Bhawan, Naya Raipur, Dist. - Raipur Chhattisgarh.
2. Directorate of Medical Education, old Nurses Hostel, D.K.S. Bhawan, Raipur, Chhattisgarh.
3. Union of India Through - Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
4. Chhattisgarh Dental College and Research Institute Through - Chairman, Sundra, N.H. - 6, Rajnandgoan Chhattisgarh.
5. Dental Council of India Through - Joint Secretary, Ahven - E-Galib Marg, Kottla Road, New Delhi.

---- Respondents

Writ Petition (C) No. 3574 of 2019

1. Lokesh Manikanta Pothineedi S/o Shri Gopal Krishna Pothineedi, Aged About 18 Years, Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
2. June Pramanik D/o Shri Ram Chandra Pramanik Aged About 18 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
3. Nagesh Kumar S/o Shri Baboo Lal Aged About 22 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
4. Yarram Varshitha D/o Shri Yarram Venkata Rao Aged About 18 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
5. Sonali Yadav D/o Shri Krishna Yadav Aged About 20 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
6. Suneel Mehta S/o Shri Man Singh Mehta Aged About 20 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
7. Gangboir Leesha Sahu S/o Shri Ajay Kumar Aged About 20 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
8. Kamlesh Bhardwaj S/o Shri Santram Bhardwaj Aged About 19 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
9. Adharika Agrawal D/o Shri Vasant Agrawal Aged About 23 Years Student of Maitri College of Dentistry And Research Centre Durg, Chhattisgarh.
10. Burugu Pranavi D/o Shri Burugu Prasad Aged About 18 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
11. Darshna Soni D/o Shri Ishuvler Soni Aged About 20 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
12. Alijingi Akhila D/o Shri Alijingi Ramu Aged About 19 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
13. Niharika Pal D/o Shri Loknath Pal Aged About 19 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.
14. Janani L D/o Shri Loganathan Aged About 18 Years Student of Maitri College of Dentistry and Research Centre Durg, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh Through Secretary, Department of Health And Family Welfare And Medical Education, Mahanadi Bhawan, Naya Raipur, District Raipur,

Chhattisgarh.

2. Directorate of Medical Education Old Nurses Hostel, D.K.S. Bhawan, Raipur, Chhattisgarh.
3. Union of India Through Secretary, Ministry of Health And Family Welfare, Nirman Bhawan, New Delhi.
4. Maitri College of Dentistry And Research Centre Through Chairman, G.E. Road Anjora, Durg, Chhattisgarh.
5. Dental Council of India Through Joint Secretary, Ahven-E-Galib Marg, Kottla Road, New Delhi.

---- Respondents

Writ Petition (C) No. 3474 of 2019

1. Ishika Jain D/o Rajkumar Jain Aged About 19 Years R/o Main Road, Patnagarh, District - Bolangir, Odisha
2. Sneha Gosh D/o Chanchal Kumar Gosh Aged About 19 Years R/o Najarganj, Post Office - Midnapur, District - Paschim Medinipur, West Bengal.

---- Petitioners

Versus

1. State of Chhattisgarh Through Secretary, Department of Health and Family Welfare and Medical Education, Mahanadi Bhawan, Naya Raipur, District - Raipur, Chhattisgarh.
2. Directorate of Medical Education, Old Nurses Hostel, D. K. S. Bhawan, Raipur, Chhattisgarh.
3. Union of India Through - Secretary, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
4. Rungta College And Dental Science and Research Through - Dean, Kohka, Road, Kurud, Bhilai, Chhattisgarh.
5. Dental Council of India, Through - Joint Secretary, Ahven - E - Galib Marg, Kottla Road, New Delhi.

---- Respondents

Writ Petition (C) No.3485 of 2019

For Petitioners	: Shri Saurabh Dangi, Advocate
For Respondent/State	: Shri Gagan Tiwari, Dy. G.A.
For Respondent/UOI	: Shri B.Gopa Kumar, ASG.
For Respondent/DCI	: Shri N.K. Vyas, Advocate

Writ Petition (C) No.3574 of 2019

For Petitioners	: Dr. N.K. Shukla, Senior Advocate with Shri Shailendra Shukla, Advocate
For Respondent/State	: Shri Gagan Tiwari, Dy. G.A.
For Respondent/UOI	: Shri B.Gopa Kumar, ASG.
Respondent/DCI	: Shri N.K. Vyas, Advocate

Writ Petition (C) No.3474 of 2019

For Petitioners	: Shri Saurabh Dangi, Advocate
For Respondent/State	: Shri Gagan Tiwari, Dy. G.A.
For Respondent/UOI	: Shri B. Gopa Kumar, ASG.
For Respondent/DCI	: Shri N.K. Vyas, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order

Per Parth Prateem Sahu, Judge

1. Since a common question is involved in all the three writ petitions, therefore, they are being heard together and decided by this common order.

2. The grievance of all the Petitioners are that Respondent No.2 had open the online registration of eligible candidates, who appeared in NEET (UG)-2019 examination for third mop-up round on 13.09.2019 to 14.09.2019, but they have not been permitted to get themselves registered. Further, their case is that they have been granted admission in Respondent No.4- Private Dental Medical College in each of the petition, which was cancelled by virtue of letter dated 17.09.2019 issued by Respondent No.2 addressing Principals of all Private Dental Medical Colleges of Chhattisgarh directing to cancel the admission of Petitioners along with similarly placed candidates.

3. The case of the Petitioners are that they have appeared in NEET (UG)-2019 examination and were also become

successful as all of them have scored 50 or more percentile in the said examination. The Petitioners could not get themselves registered and appeared for counselling in second mop-up round, which was held on 06.09.2019 and 07.09.2019. Respondent No.2 issued a letter/notice on 12.09.2019 for registering the candidates for third mop-up round who become eligible after reduction in cut-off marks on 13.09.2019 from 21.00 hours up to 14.09.2019 till 17.00 hours, but the Petitioners have not been permitted to get themselves registered in pursuant to notice dated 12.09.2019, which was uploaded on the website also.

4. Looking to the vacant seats available in the Private Dental Medical Colleges, they have appeared before three different Private Dental Medical Colleges and they were granted admission before expiry of the prescribed last date for admission i.e. 15.09.2019. Subsequently, Respondent No.2 issued a letter on 17.09.2019 directing Principals of all Private Dental Medical Colleges to cancel all the admissions, which have been given without permission of Respondent No.2. The issuance of letter directing cancellation of their admissions made the Petitioners to approach this Court by filing the writ petitions.

5. Dr. N.K. Shukla, learned senior counsel appearing for the Petitioners in Writ Petition (C) No.3574 of 2019 submitted that the Petitioners were having 50 or more percentile, which is in

accordance with cut-off marks prescribed for admission in NEET (UG)-2019 examination and they were eligible to get the admission. He further submitted that getting registration for counseling is only procedural course so that the candidates belonging to other States could not have been admitted over the rights of admission of students, who belongs to the State of Chhattisgarh. He further submitted that Petitioners have not registered themselves earlier and it is Respondent No.2 who open online portal for fresh registration, but Petitioners were not permitted to get themselves registered, which is arbitrary in the eyes of law. He lastly submitted that looking to the seat matrix available, Petitioners appeared before the Private Dental Medical Colleges i.e. Respondent No.4; they were granted admission on vacant seats and no illegality has been committed by Respondent No.4 in granting admission to the Petitioners.

6. Shri Saurabh Dangi, learned counsel appearing for the Petitioners in Writ Petition (C) Nos.3485 of 2019 and 3474 of 2019 submitted that Petitioners were not permitted to get themselves registered afresh in third mop-up round, for which, online portal has been opened on 13.09.2019 from 21.00 hours up to 14.09.2019 till 17.00 hours, therefore, the action on the part of Respondent No.2 is discriminatory in nature. He further submitted that Petitioners secured 50 or more percentile and as per notification issued by Dental Council of India dated 06.09.2019 for reduction in qualifying percentile of all the categories i.e. for General - 40 percentile, for SC/ST/OBC - 30

percentile and for General candidates with Bench Mark Disabilities specified under the Right of Persons with Disabilities Act, 2016 - 35 percentile, they have a right to admission being more meritorious and there is no illegality as such. It is also contended by him that merit of a candidate cannot be ignored. He further submitted that the action on the part of Respondent No.2 in issuing a letter directing Principals of all Private Dental Medical Colleges to cancel the admission of Petitioners is illegal; they have been granted admission in the stray vacancy and so many seats are lying vacant in the Private Dental Medical Colleges, which may also cause financial loss to Private Dental Medical Colleges. He lastly submitted that this Court by order dated 13.09.2019 directed Respondent No.2 for permitting online registration with respect to all candidates but Respondent No.2 in violation of order of this Court, not permitted the registration of the Petitioners instead issued direction for cancellation of the admissions already granted by the respondent No.4-Private Dental Medical Colleges.

7. Shri Gagan Tiwari, learned Deputy Government Advocate appearing on behalf of the State submitted that proceedings of all rounds of counselling including mop-up rounds were over on 07.09.2019, but looking to the notification issued by Dental Council of India dated 06.09.2019, by which, Dental Council of India has reduced the qualifying percentile for admission in BDS course and the benefit of said notification could not be availed by the candidates of State of Chhattisgarh, therefore,

Respondent No.2 had wrote a request letter to the Ministry of Health and Family Welfare (Dental Education Section) for granting permission to conduct counselling beyond second mop-up round and Respondent No.3 vide its letter dated 12.09.2019 accepted the request of Respondent No.2 and accorded permission for fresh registration to candidates, who become eligible for counselling due to reduction in qualifying percentile and allowed them to participate in stray vacancy round. He further submitted that permission for fresh registration beyond second mop-up round has been granted by Respondent No.3 for candidates who were not eligible prior to issuance of notification dated 06.09.2019 and has become eligible subsequently thereafter; the permission of Respondent No.3 is not for all the candidates, but it is restricted to the candidates who became eligible after lowering down the qualifying marks. He further submitted that on the basis of said permission granted by Respondent No.3, Respondent No.2 had conducted proceeding and permitted registration for third mop-up round to the candidates, who became eligible after lowering down the qualifying marks and Respondent No.2 has not committed any illegality as Respondent No.2 cannot go beyond the direction/permission of Respondent No.3 in the matter of medical admission. He further submitted that Petitioners are misinterpreting the order passed by this Court and admissions are to be granted strictly in accordance with the procedure prescribed under the Chhattisgarh Chikitsa, Dant Chikitsa,

Bhulik Chikitsa (Physiotherapy) Snathak Pravesh Niyam, 2018 (hereinafter referred to as 'Admission Rules, 2018'). He further submitted that Petitioners were granted admission by Respondent No.4-Private Dental Medical Colleges of their own, without following the procedure prescribed under the rules. Admissions in the Medical Colleges/Dental Medical Colleges are governed in accordance with the Admission Rules, 2018, therefore, Respondent No.2 has rightly issued a letter dated 17.09.2019 (Annexure P/1) directing Principals of all Private Dental Medical Colleges to cancel the admissions granted in violation of Admission Rules, 2018. He placed reliance on the judgment dated **21.06.2019** passed by the Hon'ble Supreme Court in **Writ Petition (Civil) No.747 of 2019** parties being **Education Promotion Society for India and Another v. Union of India and Others** to support his contention.

8. We have heard learned counsel appearing for the parties.

9. The short question which arises for consideration before this Court is whether Respondent No.2 was justified in not permitting the Petitioners to get themselves registered for third mop-up round, which is an extended mop-up round, pursuant to permission granted by Respondent No.3 vide its letter dated 12.09.2019 and action of Respondent No.2 in issuing letter to Principals of all Private Dental Medical Colleges directing cancelling admissions of candidates including the Petitioners as it has been done without permission of Respondent No.2 to be

correct or not ?

10. It is not in dispute from the submissions made by learned counsel appearing for the respective Petitioners themselves that Petitioners have secured 50 or more percentile and thereby they were eligible for registering and counselling for the second mop-up round, but they themselves have not chosen to appear in second mop-up round. Respondent No.3 only on 06.09.2019 issued a notification for lowering down the qualifying marks for admission in BDS course. On the basis of request letter of Respondent No.2, Respondent No.3 had permitted for third mop-up round, which is beyond the schedule only to achieve specific purpose, for which, notification dated 06.09.2019 has been issued. Permission letter issued by Respondent No.3 in very specific term mentions that “may allow fresh registration to the candidates who become eligible for counselling due to reduction in percentile”.

11. A bare perusal of contents of letter shows that additional mop-up round is restricted only for those candidates who become eligible for counselling due to reduction in qualifying marks and not for all the candidates who were eligible prior to issuance of notification dated 06.09.2019. Therefore, the action on the part of Respondent No.2 cannot be called to be illegal or arbitrary as Respondent No.2 is bound by directives of Respondent No.3. In view of the aforementioned facts, we are of the considered opinion that Respondent No.2 has not acted

in arbitrary manner and has not committed any illegality in not opening the portal for registration of candidates who were eligible for registration and admission prior to issuance of notification dated 06.09.2019.

12. Insofar as the argument raised by learned counsel for the Petitioners that Respondent No.2 has committed an illegality in not acting in accordance with orders passed by this Court are misplaced. We have passed the order dated 13.09.2019 in view of letter issued by Respondent No.3 on 12.09.2019 and have only directed online registration portal be opened for the candidates belonging to all categories i.e. General and SC/ST/OBC and persons with locomotory disability and not for all candidates, which is to be read along with Paragraphs 5 and 6 of the order. Paragraphs 5 and 6 of order dated 13.09.2019 passed in Writ Petition (C) No. 3201 of 2019 is reproduced herein below :-

“5. As we have already held in Writ Petition (C) No.3182 of 2019 that the action of respondent No.2 for converting the seats on 06/09/2019 prior to the cut-off date for admission to reserved category from unreserved category to be illegal and therefore, now the petitioner is also entitled for getting himself to be registered afresh in the registration portal opening from today at 9.00 P.M. because of letter dated 12/09/2019 issued by Government of India, Ministry of Health and Family Welfare (Dental Education

Section) granted permission vide letter dated 12/09/2019 for allowing fresh registration of the candidates who became eligible for counselling due to reduction in percentile and respondent No.2 has fixed the date for registration on 13/09/2019 and 14/09/2019.

6. In view of the facts and figures of the case and direction of this Hon'ble Court in Writ Petition (C) No.3182 of 2019 that the Online registration portal be opened for the candidates belonging to all categories i.e. General and SC/ST/OBC and persons with locomotory disability, we direct respondent No.2 to permit the petitioner for his fresh registration in Online registration portal by making necessary arrangement and to allot available College as available vacant on date."

13. From the above, it is clear that we have not made any observation or direction beyond the contents of letter dated 12.09.2019 issued by Respondent No.3.

14. The other submission made by learned counsel appearing for the Petitioners is that Petitioners have already got admission in Respondent No.4-Private Dental Medical College and their admission have been cancelled by virtue of letter issued by Respondent No.2.

15. The said submission of learned counsel for the Petitioners themselves shows that without getting themselves registered for extended third mop-up round, they have taken admission in

Respondent No.4-Private Dental Medical College and Respondent No.4 has given admission, but the fact remains that admission of Petitioners is in violation of Admission Rules, 2018. The course and procedure has specifically been provided in Admission Rules, 2018 right from the eligibility of candidates, who appeared in NEET (UG)-2019 examination including procedure of examination, declaration of results, reservation of seats, registration for counselling and thereafter admission in the allotted Medical Colleges by the competent authority. The complete schedule and procedure for admission has been provided under the Admission Rules, 2018 and anything done contrary to Admission Rules, 2018 will make the complete act illegal, which do not have any force of law. The Petitioners who are well aware about the procedure of admission in Dental Colleges but took admission in violation of the Admission Rules, 2018, do not have any right to seek protection of their illegal act from this Court. Any illegality committed by any person fully knowing that it is contrary to any rules are not entitled for any relief in a petition under Article 226 of the Constitution of India. In the aforementioned facts, in the considered opinion of this Court, Respondent No.2 has not committed any illegality in directing Respondent No.4-Private Dental Medical College to cancel all the illegal admissions granted in violation of Admission Rules, 2018.

16. The last submission made by learned counsel appearing for the Petitioners is that so many seats in Private Dental

Medical Colleges are vacant and thereby the College may suffer financial loss as well the Petitioners also will suffer loss of one academic year is concerned, we are not impressed with the argument so raised. Once the rules have been framed fixing the schedule by the authorities for admissions in BDS course, then the said rules and schedule are required to be followed strictly.

17. The Hon'ble Supreme Court in the matter of **Education Promotion Society for India** (supra) while dealing with the case for admission in the Post Graduation Medical Course, held as under :-

“6.Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a Pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.

7. We may note that in the schedule prescribed, there are three rounds of counselling, the first round, the second round and the mop-up round. The mop-up round was to be completed by 31.5.2019 and if some seats remain vacant even after the mop-up round it cannot be helped. Extension cannot be granted just because some seats are lying vacant without there being any other justification.”

18. Hon'ble Supreme Court in its recent decision has turned down the similar arguments raised in a case of admission in Post Graduation Medical Course and we cannot take a different view of what was taken by Hon'ble Supreme Court.

19. For the foregoing reasons, the Petitioners are not entitled to get any relief as claimed by them. These writ petitions being devoid of substance, are liable to be and are hereby dismissed.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh