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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on 01.10.2019

Judgment pronounced on 10.10.2019

+ **W.P.(C) 7255/2019 & CM APPL. 30114/2019**

DR. SHIDORE SHITAL MHATARDEO Petitioner

Through: Mr. Puneet Yadav with Mr. Sourabh Gupta, Mr. Prashant Dahat, Mr. Taran Arora, and Ms. Priya Singh, Advocates.

versus

NATIONAL BOARD OF EXAMINATION (NBE) Respondent

Through: Mr. Kirtiman Singh with Mr. Prateek Dhanda, Mr. Waize Ali Noor, and Mr. Rohan Anand, Advocates.

+ **W.P.(C) 7581/2019 & CM APPL. 31549/2019**

DR. JAYA BAJPAI Petitioner

Through: Mr. Kaustubh Shukla with Mr. Abhay Singh, Advocates.

versus

NATIONAL BOARD OF EXAMINATION

AND ANR Respondents

Through: Mr. Kirtiman Singh with Mr. Prateek Dhanda, Mr. Waize Ali Noor, and Mr. Rohan Anand, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J.:

1. The chasm between justice and what a wooden approach to law can lead to is brought to fore in these cases. The endeavor is to reduce the chasm and hold out hope to those who have toiled and perspired to reach their cherished goal.

2. These are two petitions in which in effect a direction is sought against the respondent i.e. National Board of Examination (hereafter referred to as “NBE”) to allot seats to the petitioners pursuant to the final round of counselling held *qua* DNB (Post MBBS) Course *vis-à-vis* January 2019 admission session.

3. Pertinently, the schedule for Online Centralized Merit Based Counselling was published *via* notice dated 25.03.2019. This notice, I am told, was uploaded on the web portal of the NBE. The notice dated 25.03.2019 was followed by a public notice dated 4.06.2019.

3.1 The public notice dated 25.03.2019 set forth the schedule for the counselling process. Dates for the first, second, third, and final round were also indicated in the aforementioned public notice.

4. Importantly, apart from other aspects, applicants were put to notice that original documents would be verified *qua* those who were called in the second, third and final round of counselling. Both the petitioners were called for the final round of counselling, *albeit*, on different dates.

5. The petitioner in W.P. (C) No. 7255/2019 was called for the final round of counselling on 19.06.19 while the petitioner in W.P. (C) No. 7581/2019 was called for the final round of counselling on 21.06.2019.

5.1 For the sake of convenience, the petitioner in W.P. (C) No. 7255/2019 would hereafter be referred to as “Dr. Shidore” while the petitioner in W.P.(C) No. 7581/2019 will be referred to as “Dr. Jaya”. However, where the context requires otherwise they would be collectively referred to as “petitioners”.

6. What is not in dispute is that both Dr. Shidore and Dr. Jaya have obtained their MBBS degree which is the basic qualification for applying for the DNB (Post MBBS) Course. It is also not in dispute that both Dr. Shidore and Dr. Jaya sat for the National Eligibility Cum Entrance Test - Post Graduate, 2019 (hereafter referred to as “NEET-PG”) and that while Dr. Shidore was ranked 19759, Dr. Jaya ranked 34632.

7. It is also not in dispute that while Dr. Shidore qualified her MBBS course in 2015 and Dr. Jaya passed her MBBS course in 2003. What is also not disputed that both, Dr. Shidore and Dr. Jaya, have been denied a seat in the DNB (Post MBBS) Course by the NBE only because on the date of the final round of counselling they were unable to produce their original MBBS degree certificates.

8. The NBE defends its decision to deny seats to Dr. Shidore and Dr. Jaya based on the provision incorporated in its Handbook for Admission to DNB Broad Specialty Courses including Direct 6 Years Courses (Post

MBBS) January 2019, Admission Session (hereafter referred to as “Handbook”).

8.1 The relevant part of the provision on which reliance is placed by the NBE is extracted hereafter:

“7.4 Final Round (In-person)

xxx xxx xxx

4. Candidates are required to produce the following documents in original at the time of counselling, failing which the candidate shall not be allowed to participate in the counselling:

*a. MBBS Degree certificate/Provisional Pass Certificate of MBBS**

b. Permanent Registration certificate issued by MCI/State Medical Council for registration of MBBS qualification.

c. Internship Completion Certificate (internship completion date must be on or before 31st March 2019).

d. SC/ST/PWD/OBC certificate issued by [the] competent authority, if applicable.

Caste certificate must be issued by [the] competent authority. The sub-caste should tally with the Central Govt. list.

e. Special category certificate issued by the competent authority, if applicable.

f. Valid Identity proof i.e. PAN Card, Indian Passport, Voter ID card, Driving License or Aadhaar Card (with [the] photograph).

g. Any Bonafide Certificate (optional)

**Provisional certificate of MBBS Qualification is permissible only for those candidates who had passed the MBBS Qualification in the year 2018.*

If the candidate has passed MBBS Qualification before 2018 and the MBBS degree certificate has not been issued to him/her so far by the concerned university/Board, documentary evidence to this effect in the form of a letter from competent authority of respective university/Board is to

be furnished at the time of certificate verification/joining the allotted institute.

All the certificates must be in HINDI or ENGLISH. In case if any of the certificate(s) is/are in [the] regional language, its Hindi/English version translated copy duly authenticated by a Gazetted Officer will be required in original at the time of certificate verification/joining the allotted institute.”

9. I may only note that both Dr. Shidore and Dr. Jaya have in their possession the original MBBS degree certificates. While Dr. Shidore was able to obtain her MBBS degree certificate on 24.06.2019, Dr. Jaya was able to obtain the same only after the cut-off date i.e. 30.06.2019.

10. Therefore, the issue which arises for consideration is as to whether the denial of a seat to both Dr. Shidore and Dr. Jaya by the NBE was tenable in the context of paragraph 7.4.4(a) (read with proviso of the Handbook)?

11. To adjudicate upon this issue, the following facts are required to be noticed *qua* both petitioners.

W.P.(C) 7255/2019 (Dr. Shidore)

12. Dr. Shidore completed her MBBS course from Dr. Vaishampayan Memorial Government Medical College, Solapur, affiliated to Maharashtra University of Health Sciences, Nashik, India, in and about December 2015. The convocation was held on 02.05.2017.

13. Dr. Shidore did her mandatory internship over the period spanning between 01.03.2016 and 28.02.2017.

14. Thereafter, Dr. Shidore joined mandatory rural medical officership in the State of Maharashtra. The period spent on this internship, which is adverted to as “Rural Internship”, spanned between 07.07.2017 and 07.07.2018.

15. Dr. Shidore sat for the NEET-PG, 2019 exam in and about January 2019, the result *qua* which was declared on 31.01.2019. Dr. Shidore was ranked 19759 in the merit list. An application was made by Dr. Shidore, on 08.02.2019, to Maharashtra University of Health Sciences for issuance of her MBBS degree certificate. This was followed by Dr. Shidore to the Dr. Vaishampayan Memorial Government Medical College, Solapur, on 11.03.2019, for issuance of her MBBS degree certificate.

16. Dr. Shidore was not called for the first, second and third rounds of counselling. Dr. Shidore was, however, called for the final round of counselling by the NBE *vide* an undated written communication titled “Counselling Participation Letter” (in short “CPL”)

16.1. As alluded to hereinabove, Dr. Shidore was asked to report for counselling on 19.6.2019 at 1:30 P.M. *via* the CPL.

16.2 Besides this, Dr. Shidore was asked to bring with her one-year course fee in the form of a demand draft drawn in favour of the NBE, payable at New Delhi for Rs 1,25,000/-, and also, the CPL.

16.3 More importantly, paragraph 7 of the CPL put Dr. Shidore to notice that she was required to produce all documents/certificates as referred to in subparagraph (a) to (g) in original.

16.4 Pertinently, paragraph 7 of the CPL is identical to paragraph 7 of the Handbook, the relevant part of which I have extracted hereinabove. The only difference between the two provisions lay in the proviso which is appended to paragraph 7 of the CPL.

16.5 The proviso to paragraph 7 of the CPL was erroneous inasmuch as while it (when read with the main provision) sought to give a leeway to the candidates who had passed their MBBS course before 2018 and were not issued their degree certificate to furnish a letter (from the competent authority of the respective University/Board at the time of certificate verification/joining the allotted institute) to that effect it used the expression “Post Graduate Diploma Qualification”.

16.6 At this juncture, I may also point out that while in paragraph 9 of the Handbook under the heading “second round”, a candidate allotted with a seat was supposed to pay Rs. 80,000 towards a one-year course fee, in the CPL, issued to Dr. Shidore *via* the NBE online counselling portal, as noticed above, she was asked to carry a demand draft towards a one-year course fee for an amount of Rs. 1,25,000/-.

17. Carrying on with the narrative, Dr. Shidore at the time of counselling i.e. on 19.06.2019 avers that she produced the following documents.

- a) Passing certificate of MBBS;
- b) Registration certificate issued by State Medical Council;
- c) Internship completion certificate;
- d) Caste certificate;

e) ID proof, and;

f) Demand Draft of Rs. 1,25,000/- in favour of National Board of Examination, New Delhi.

17.1. Importantly, copies of these documents have been appended as annexures to the writ petition.

18. It appears that Dr. Shidore obtained the original MBBS degree certificate on 24.06.2019.

19. Strengthened by this development, Dr. Shidore made a representation to NBE on 25.06.2019.

19.1 In the representation, Dr. Shidore emphasised the fact that she had produced all documents to establish her eligibility *qua* the DNB (Post MBBS) Course on the date of counselling.

19.2 It was emphasised by Dr. Shidore that as per point no. 9 at page no. 19 read with proviso of the Handbook, she could have presented the original MBBS degree certificate even at the time of joining the allotted institute. It was asserted that she had sought time to produce the same even *via* fax but that request was rejected.

19.3 In this context, it was averred that though a request was made to allow her to attend counselling on 20.6.2019 so that she could get the MBBS Degree via fax, that request was also refused.

19.4 The fact that she had produced “MBBS passing certificate” and proof of applying for the Degree Certificate was also put forth in the representation.

19.5 The representation ended with a plea that she should be allotted a seat as communicated to her on 19.06.2019. A reply to the assertions made was sought from the NBE within the next three days by Dr. Shidore *via* this communication.

20. Concededly, NBE did not respond to this representation.

21. Given the fact that there was no response, Dr. Shidore approached this court *via* the instant writ petition.

22. The writ petition was instituted on 6.07.2019.

23. The petition was listed in the court for the first time on 8.07.2019 when the NBE was represented by its counsel. The counsel sought time to make submissions on the matter. Since then, the NBE has filed a counter-affidavit dated 7.08.2019. Dr. Shidore, thus, filed her rejoinder on 13.08.2019.

24. It may be relevant to note that on 13.09.2019 when the matter was being heard, I had directed the counsel for the NBE to revert with instructions as to whether or not a seat was available in the colleges in which preference was given by Dr. Shidore; in particular, in RCSM Govt. Medical College, Kolhapur.

25. On 17.9.2019, counsel for the NBE confirmed that one seat was, in fact, available in the aforementioned college. The counsel, on that date, went

on to state that though the seat was vacant it could not be allocated to Dr.Shidore as the cut-off date i.e. 30.06.2019 had been crossed.

W.P. (C) No. 7581/2019 (Dr. Jaya)

26. Dr. Jaya completed the MBBS degree course from Pt. J. N. M. Medical College, Raipur affiliated to Pt. Ravishankar Shukla University, Raipur, Chhattisgarh in and about 2003. Thereafter, as required, she completed her Compulsory Rotary Internship (one-year programme), as a Resident Intern, with the Pt. J. N. M. Medical College, Raipur. This internship spanned between 08.09.2003 and 7.09.2004.

26.1 Dr. Jaya was issued a provisional certificate by the aforementioned university on 06.11.2004.

27. The certificate of registration was obtained by Dr. Jaya from the Chhattisgarh Medical Council, Raipur, Chhattisgarh on 29.12.2004.

28. Like in the other matter, Dr. Jaya sat for the NEET-PG 2019 exam in and about January 2019. Dr. Jaya qualified her exam and on the merit list, she was ranked 34632.

29. As indicated hereinabove, Dr. Jaya was called for the final round of counselling *via* an undated communication issued in that behalf by the NBE. Dr. Jaya's counselling, as indicated hereinabove, was held on 21.06.2019. As in Dr. Shidore's case, the proviso to paragraph 7 of the CPL issued to Dr. Jaya contained an error. The error was similar to the one found in Dr. Shidore's CPL, wherein, in the proviso instead of "MBBS Qualification", reference was made to "Post Graduate Diploma Qualification"

30. Concededly, Dr. Jaya did not have, at the time of counselling, in her possession, the original MBBS degree and therefore, what she produced at that juncture was the provisional pass certificate pertaining to MBBS course along with other requisite documents.

31. Since Dr. Jaya's request for allocation of a seat was declined, she filed a representation with the NBE *via* her husband, one Mr. Vivek Narayan Bajpai on 22.06.2019.

31.1 *Inter alia*, in this representation, Dr. Jaya sought to bring to fore the aspect that when she sought to rely upon the provisional pass certificate relating to the MBBS course to assert that she met the eligibility criteria, the same was not accepted as she was told that the CPL issued by the NBE contained a typographical error.

32. Unlike in Dr. Shidore's case, the NBE replied to Dr. Jaya's representation vide e-mail dated 24.06.2019. In this communication, all that the NBE put forth to reiterate its stand *qua* Dr. Jaya, was paragraph 7 of the Handbook. There was no denial of the fact that CPL contained an error.

33. Since Dr. Jaya was not satisfied with the reply that she received from NBE, she filed the present writ petition on 12.07.2019.

34. The petition was listed for the first time before the Court on 16.07.2019 when a notice was issued. The NBE was represented by its counsel on that date. The submission made on behalf of the NBE was that since the issue which was raised in this petition was similar to the issue

raised in Dr. Shidore case (i.e. W.P. (C) No. 7255/2019), the matters be re-notified for the date on which W.P. (C) 7255/2019 was listed.

34.1 The Court acceded to the request made on behalf of the NBE and accordingly, listed this writ petition on the same date on which the other petition was listed.

34.2 Besides this, the Court directed Dr. Jaya to produce her original MBBS degree on the next date of hearing.

35. The record reveals that on 13.09.2019, counsel for the NBE was asked to take instructions as to whether a seat was available in one of the 7 colleges referred to in the order *qua* which preference had been given by Dr. Jaya.

36. On 17.09.2019, the counsel for the NBE reverted with instructions, to the effect, that no seat was available in Ramkrishna Care Hospital, Raipur, Chhattisgarh.

36.1 Given this position, counsel for the NBE was asked to verify as to whether any seat was available in the other institutions referred to in the order dated 13.09.2019.

36.2 Accordingly, on 26.09.2019, counsel for the NBE informed the Court that one seat was available in General Medicine in JLN Hospital & Research Centre, Chhattisgarh.

Submissions of counsel:

37. It is in this background that arguments have been advanced on behalf of Dr. Shidore by Mr. Puneet Yadav, Advocate, while on behalf of Dr. Jaya

by Mr. Kaustubh Shukla, Advocate. Insofar as the NBE is concerned, submissions were made by Mr. Kirtiman Singh, Advocate.

38. The submissions made on behalf of the petitioners can be, broadly, paraphrased as follows:

38.1 The petitioners should not be denied a seat only because the mode of proof to establish that they had acquired the MBBS course was different from the one which was prescribed by the NBE via provisions made in that behalf in its Handbook.

38.2 Since this aspect concerned only about placement of relevant proof before the NBE concerning the fulfillment of the eligibility criteria (i.e. the basic qualification), the NBE could not have rejected the petitioners' claim to the seat only because the mode of proof was different from the one prescribed.

38.3 There is no doubt that the petitioners met the eligibility criteria, the NBE ought to have given time to the petitioners to place the original MBBS degree certificate on record, at least till the date of joining, if not later.

38.4 Insofar as Dr. Shidore was concerned, she had informed the NBE *via* her representation dated 25.06.2019 that she had in her possession the original MBBS Degree.

38.5 Since the date of joining or the cut-off date was 30.06.2019, the NBE ought to have allocated a seat to Dr. Shidore as this aligned with the provisions of paragraph 7.4.4 (a) read with the proviso of the Handbook.

38.6 As a matter of fact, insofar as the petitioners were concerned, the confusion was caused by what was written in the CPL which required the petitioners to produce either the original MBBS degree or the provisional pass certificate. The proviso contained in the CPL did not relate to undergraduate degrees. It is for this reason that petitioners did not feel the need for making available the original MBBS certificate on the date of the final round of counselling.

38.7 In support of their pleas, reliance was placed by the counsel for the petitioners on the following judgments: -

- (i) Judgment dated 24.07.2018, passed in W.P. 12002 (W) of 2018, titled ***Dr. Arnab Makar vs. The West Bengal University of Health Sciences & Ors.***
- (ii) Judgment dated 11.08.2015, passed in W.P. (C) 6985/2015, titled ***Sachin Katyal vs. University of Delhi & Anr.***
- (iii) ***K. Devaraj vs. The Secretary to Government, Education Department***, 2006 (1) CTC 379
- (iv) ***Dolly Chhanda vs. Chairman, Jee and Others***, (2005) 9 SCC 779
- (v) Judgment dated 28.11.2018, passed by the Supreme Court, in Civil Appeal No.11433/2009, titled ***Dr. Vinayak Varma vs. Medical Counselling Committee & Ors.***

39. On the other hand, Mr. Kirtiman Singh who appears on behalf of the NBE resisted the relief sought by both the petitioners by adverting to the following: -

39.1 It was contended by Mr. Singh that petitioners could not take advantage of the error committed in the CPL for the reason that the documents/certificates that the candidates had to produce on the day of the final round of the counselling were listed out not only in the handbook but also in the two public notices dated 25.03.2019 and 04.06.2019.

39.2 The argument is that the petitioners were all along aware that they had to produce the original MBBS degree and that only those who had cleared their MBBS course in 2018 could produce, in the alternative, the provisional pass certificate.

39.3 Furthermore, according to the learned counsel, these provisions also clearly spelled out that in case a candidate had cleared his/her MBBS course prior to 2018 and that on the date of the counselling, the candidate had not been handed over his/her MBBS degree, the candidate could, in place of the same, produce a letter from a competent authority of the concerned University/Board stating that he/she had not been issued the MBBS degree.

39.4 According to the learned counsel, the submission made on behalf of the petitioners that they could produce such proof from the competent authority if not on the date of counselling, that is, when verification was done, then, on the date of joining of the allotted institute, was flawed as the documents and certificates by the candidates had to be produced both on the

date of the counselling as well as at the time when he/she joined the allotted institute.

39.5 In other words, according to Mr. Singh the production of documents and certificates at the time of joining the allotted institute was in addition to verification being conducted at the stage of counselling.

39.6 Furthermore, learned counsel submitted that there was a reason as to why such provision has been made in paragraph 7.4.4 of the Handbook.

39.7 The contention was that the score obtained by the candidate in the NEET-PG 2019 was valid for allotment of seats not only by the NBE against the DNB courses but also valid for seats allotted by Director General of Health Services against the All India quota and State Authorities under the State quota. In short, the submission was that one candidate should not block the seats which are offered courses under the other two regimes.

39.8 It was, therefore, Mr. Singh's contention that production of original MBBS degree or the letter from the competent authority of the concerned University/Board that original MBBS degree had not been issued to the candidates was necessary as such process prevented seats from being blocked and reduced substantially the probability of seats being wasted.

39.9 Mr. Singh distinguished each of the judgments cited on behalf of the petitioners and in support of his contentions relied upon the following judgments:

- (i) Judgment dated 03.05.2016, passed in W.P. (C) 3538 of 2016, titled ***Pooja Verma vs. GGSIPU & Ors.***

- (ii) Order dated 06.05.2016, passed in LPA 284/2016, titled ***Pooja Verma vs. GGSIPU & Ors.***
- (iii) Judgment dated 22.11.2016, passed in W.P. (C) 11071 of 2016, titled ***Anandita Puri vs. GGSIPU & Ors.***
- (iv) ***Mridul Dhar vs. UOI & Ors.***, (2005) 2 SCC 65.
- (v) ***Priya Gupta vs. State of Chattisgarh & Ors.***, (2012) 7 SCC 433.
- (vi) ***MCI vs. Digant Jain & Ors.***, MANU/DE/3674/2017.
- (vii) Judgment dated 21.06.2019, passed in W.P. (C) 747 of 2019, titled ***Education Promotion Society for India & Anr. vs. UOI & Ors.***
- (viii) Order dated 27.08.2019, passed in W.P. (C) 7400 of 2019, titled ***Dr. Rakesh Kumar vs. NBE & Anr.***
- (ix) Kinjal Rajnikant Patel & Ors. vs. NBE & Ors., MANU/DE/2235/2016.

40. In a nutshell, Mr. Singh emphasized that since the petitioners had neither produced on the date of counselling their respective MBBS degrees nor a letter from the competent authority establishing that fact, they necessarily could not lay the claim to the seats which are now lying vacant.

41. It was also Mr. Singh's contention that since the cut-off date was 30.06.2019, the petitioners could not now join the course as that would violate the principle set forth in the judgments cited by him.

Analysis and Reasons:

42. I have heard the learned counsel for the parties and perused the record.

43. The issue as noticed by me during my narration veers essentially around the mode and manner in which the petitioners were required to prove that they had fulfilled the eligibility criteria of having passed the MBBS course.

44. The NBE ousted the candidature of the petitioners even though they were otherwise qualified only on the ground that they did not have in their possession either the MBBS degree certificate or a letter from the competent authority of the concerned University/Board evidencing the fact that the original MBBS degree had not been issued to them.

44.1 Therefore, in my view, what I am required to consider is: as to whether the NBE applied the provision provided in this behalf in the appropriate manner?

45. As noticed above, the argument advanced on behalf of the petitioners was that if they did not have the original MBBS degree then as per the proviso to paragraph 7.4.4 (a) of the Handbook they could produce a letter from the competent authority of the concerned University/Board, stating so, which could be furnished at the time of counselling or on the date the candidate joined the allotted institute.

46. Since I have already extracted the relevant provision in the earlier part of my judgment, to avoid repetition, I would not wish to extract the same

once again but only use the extract to draw my inferences. Thus, in my view, a close perusal of the paragraph 7.4.4(a) along with the proviso would show that candidates who had passed the MBBS course before 2018 were required to establish the fulfillment of his/her eligibility criteria in either of the following ways :

- (i) by actually producing the original MBBS degree certificate or
- (ii) by placing on record a letter from the competent authority of the concerned University or Board that even though the candidate had cleared the MBBS course, the MBBS degree certificate had not been issued to him.

47. The point of difference in the arguments advanced by the counsel for the parties is as regards the end-stage. In other words, whether such a letter from the competent authority could be produced latest by the date of counselling which is also the date when document/certificate verification was carried out or was it the date when the candidate joined the allotted institute?

48. Mr. Singh has argued that the letter from the competent authority had to be furnished both at the time of counselling as also on the date of joining the allotted institute.

49. I must confess that the proviso has not been happily framed.

50. That being said, in the instant case, none of the petitioners have in their possession a letter from the competent authority of the concerned University/Board holding out that the original MBBS degree certificate had

not been issued to them. In some cases, this situation obtains even after candidates have made an application in that behalf. Dr. Shidore is a case in point. She had applied for the issuance of her MBBS degree certificate on 08.02.2019. She was issued her MBBS degree certificate only on 24.06.2019.

51. Notably, in these cases, the petitioners are relying upon their respective original MBBS degree certificate. As alluded to above, Dr. Shidore acquired her MBBS degree certificate on 24.06.2019 i.e. before the cut-off date i.e. 30.06.2019 while Dr. Jaya acquired her MBBS degree after the cut-off date.

52. Insofar as Dr. Shidore was concerned, she sought to establish the fact that she had fulfilled the eligibility criteria by relying upon, amongst others, a document of unimpeachable credibility which is the original MBBS degree certificate, *albeit*, after the counselling date but before the cut-off date. Dr. Shidore, as adverted to hereinabove, had submitted a representation to NBE on 25.06.2019 in which she had stated so in as many words. The NBE for the reasons best known to it did not respond to her representation. Mr. Singh though in his submissions has given a different turn to the proviso appended to paragraph 7.4.4(a) by submitting that the verification process is to be carved out both on the date of counselling as well the date of joining; an aspect which I will deal with in the latter part of my judgment.

53. Moving on with the discussion, I must indicate herein, before I go further that while in her representation dated 25.06.2019 Dr. Shidore had alluded to the fact that she was entitled to allotment of a seat in the DNB

(Post MBBS) Course as she was within the cut-off date, this aspect has not been articulated with specificity in the writ petition.

53.1 This point was, however, argued and dealt with by both sides since the foundation for the same was laid in Dr. Shidore's representation to which I have referred above.

53.2 As adverted to hereinabove, the NBE did not respond to Dr. Shidore's representation dated 25.06.2019. The NBE could have issued a rejoinder putting forth its interpretation of the provision as is now sought to be projected by Mr. Singh. That being said this by itself cannot be the reason to reject NBE's stance, if it is otherwise tenable.

53.3 Given this factual backdrop, I have examined paragraph 7.4.4(a) along with the proviso. Having looked at the framework of the provision, in my view, the interpretation of the clause should be such that it balances the interest of not only the candidate who is being considered for allotment of the seat but of all those who are waiting in the queue.

53.4 The concerned Counselling Committee of the NBE, in my view, lost focus of the fact that cases of the petitioners were poised at the stage of verification of documents and/or certificates to enable it to conclude that they in point of fact met the eligibility criteria, the eligibility criteria being acquisition of MBBS degree. No candidate can claim admittance to a post-graduate course unless he or she has obtained the basic degree (with stipulated percentage wherever provided on or before cut-off date); as there can be no dilution *qua* the eligibility criteria. Those who haven't will have to await admittance in the following session. However, those who have

passed may rely upon documents to establish the factum of having qualified the MBBS course.

53.5 The question is should such candidates not be given a greater leeway by interpreting the provision in issue purposefully and if I may say so more meaningfully. This is especially so when there was enough and more material already on record for concerned counselling authority to gather that both petitioners had in their possession acquired the basic qualification i.e. MBBS degree.

53.6 Obeisance to letter (and that too not completely) rather than the object of the provision led to the unfair denial of seats to the petitioners.

53.7 In this context let me advert to only one document each which was placed before the Counselling Committee by the petitioners. While Dr. Shidore had produced a “Passing Certificate” dated 23.02.2016, Dr. Jaya had produced a “Provisional Certificate” dated 06.11.2004. Both the documents bore the signatures of the competent authorities in the respective universities.

53.8 The question then which the NBE needed to ask itself was should it not give the petitioners the leeway to produce the original MBBS degree certificate or a letter from the competent authority, latest by the date when they joined the allotted institute? In my view, NBE ought to have granted that latitude to the petitioners.

53.9 As noticed hereinabove, Dr. Shidore had managed to acquire the original MBBS degree on 24.06.2019 which she sought to place before the

NBE on 25.06.2019. Had time been given to Dr. Shidore till the date of joining of the allotted institute, she would have been able to satisfy the NBE that what she had portrayed all along which was that she had acquired the eligibility qualification was, in fact, the correct state of affairs.

54. Therefore, in the case of Dr. Shidore, I have no doubt that the NBE misapplied paragraph 7.4.4(a) of the Handbook by not granting her time to produce the original MBBS degree or a letter from the competent authority that she had not been issued the MBBS degree certificate till the date of joining the allotted institute.

55. Insofar as Dr. Jaya is concerned, there is a wee bit of difficulty, which is, that she acquired her MBBS degree certificate only after the cut-off date had been crossed. According to Dr. Jaya's counsel, the CPL caused confusion in as much as it adverted to an incorrect proviso.

55.1 In my opinion, this stand of Dr. Jaya cannot be wholly correct. Mr. Singh is right in contending that not only the Handbook but also the two public notices pointed out as to what was required to be done by the candidates who had passed their MBBS exam before 2018 and did have their original MBBS degree certificate.

55.2 In other words, as correctly argued by Mr. Singh, the candidate was made aware more than once *via* the aforementioned documents that if he or she was not in possession of the original MBBS degree certificate, a letter from the competent authority stating that the original MBBS degree certificate had not been issued was required to be produced.

55.3 That being said, the question is was Dr. Jaya informed by the NBE that even though the CPL adverted to an incorrect proviso it could still produce the necessary proof of having passed the MBBS course till the date of joining the allotted institute?

55.4 The NBE *via* its response dated 24.06.2019 failed to alert Dr. Jaya to this possibility. The fact, though, remains that Dr. Jaya acquired the original MBBS degree much after the cut-off date i.e. 30.06.2019.

56. It is, therefore, difficult to assess, at this juncture, that if Dr. Jaya had been informed that she could place the necessary proof of having passed the MBBS course by 30.06.2019, what would have happened.

57. The argument advanced by Mr. Singh that paragraph 7.4.4 of the Handbook is a wholesome provision as it prevents blocking of seats by candidates, has weight, except in different circumstances. This argument, in my opinion, cannot be applied to a case where no such situation arises. This is not a case where the candidate had blocked a seat either under the All India quota or the State quota.

58. It is not even the NBE's case that the petitioners had taken chance elsewhere and thereafter participated in the counselling for the DNB (Post MBBS) Course.

59. The petitioners, in fact, perhaps given their rank, had put all their eggs in one basket. Therefore, to deny the petitioners claim for a seat in DNB (Post MBBS) Course when seats are available would be, in my view, both unfair and unreasonable. I do realize that there is a very forceful argument

advanced on behalf of the NBE that the concerned courses have already commenced.

60. This argument needs consideration but then one cannot lose sight of the fact that because a Court is inundated with matters, it cannot, even if it wants, adjudicate upon all causes on the first date of institution. These are matters, which, as colloquially put, want adjudication “as of yesterday”. Therefore, interim orders of necessity have become the mainstay in such jurisdictions.

61. Take for example these two cases. What stopped the Counselling Committee of the NBE from establishing a direct interface with their counterparts *via* emails, fax, video conferencing.

62. Docket-explosion requires practical ingenuity. The concerns relating to cut-off dates can be addressed only if authorities who are required to grant admittance were to use technology more imaginatively.

63. In the age of technology, where internet, facsimile, and telephones are available, it amazes me as to how the right of a candidate to seek admission is denied by simply refusing to verify something which is only an e-mail, fax or a phone call away.

64. Such incidents are noticed even where candidates seek admission in postgraduate courses in the university from which they would complete their graduation.

66. Each of these judgments has moulded the relief in a manner that the chasm between justice and law is narrowed as otherwise, the disillusionment amongst the litigants would end up degrading the efficacy of the judicial system.

68. The only reason that the prescribed 10% weightage which was to be granted to medical diploma holders was denied was that they were unable to produce the diploma certificates before the date of actual selection. The conditions provided in the prospectus which the court was required to grapple with read as follows:

(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. *Certificates to be produced: In all cases true copies of the following documents have to be produced :-*

(k) *Any other certificates required along with the application.*

xxx

xxx

xxx”

69. Interestingly, in this case the State of Kerala *via* its Special Secretary had taken a more benign view which was deprecated by the High Court. The judgment in this case was authored by Mr. Justice V.R. Krishna Iyer (as he then was), who felicitously made the following observation and in doing so drew a bright-line between the proof of having obtained the diploma as against factum of having attained the qualification.

“19. Now we come up against the other limb of the argument which appealed to the High Court. The three candidates already admitted to the ophthalmology course secured their seats on the basis of ‘diploma marks’. Had they no diplomas they would have been screened out. The High Court has taken the view that the diplomas of the appellants should have been excluded from consideration by the selection committee. Why? The ground is given by the Full Bench in appeal thus:.....

20. There is nothing unreasonable or arbitrary in adding 10 marks for holders of a diploma. But to earn these extra 10 marks, the diploma must be obtained at least on or before the last date for application, not later. Proof of having obtained a diploma is different from the factum of having got it. Has the candidate, in fact, secured a diploma before the final date of application for admission to the degree course? That is the primary question. It is prudent to produce evidence of the diploma along with the application, but that is secondary. Relaxation of the date on the first is illegal, not so on the second. Academic excellence, through a diploma for which extra mark is granted, cannot be denuded because proof is

produced only later, yet before the date of actual selection. The emphasis is on the diploma; the proof thereof subserves the factum of possession of the diploma and is not an independent factor. The prospectus does say:

“(4)(b) 10% to diploma holders in the selection of candidates to M.S., and M.D., courses in the respective subjects or sub-specialities.

13. Certificates to be produced: In all cases true copies of the following documents have to be produced:

(k) Any other certificates required along with the application.”

This composite statement cannot be read [in] [a] formalistic fashion. Mode of proof is geared to the goal of the qualification in question. It is subversive of sound interpretation and realistic decoding of the prescription to telescope the two and make both mandatory in point of time. What is essential is the possession of a diploma before the given date; what is ancillary is the safe mode of proof of the qualification. To confuse between a fact and its proof is blurred perspicacity. To make mandatory the date of acquiring the additional qualification before the last date for application makes sense. But if it is unshakeably shown that the qualification has been acquired before the relevant date, as is the case here, to invalidate this merit factor because proof, though indubitable, was adduced a few days later but before the selection or in a manner not mentioned in the prospectus, but still above-board, is to make procedure not the handmaid but the mistress and form not as subservient to substance but as superior to the essence.

21. Before the selection committee adds special marks to a candidate based on a prescribed ground it asks itself the primary question: Has he the requisite qualification? If he has, the marks must be added. The manner of proving the qualification is indicated and should ordinarily be adopted. But, if the candidate convincingly establishes the ground, though through a method different from the specified one, he cannot be denied the benefit. The end cannot be undermined by the means. Actual excellence cannot be obliterated by the choice of an

incontestable but unorthodox probative process. Equity shall overpower technicality where human justice is at stake.

22. The present case is a capital illustration of nominalism battling with realism for judicial success. Both sides admit that the appellants before us had secured diplomas. They further admit (ignoring for a moment the submission on 2% for outsiders) that if the diploma scores were added, the applicants, by the measure of marks, deserve to be selected, provided the diploma obtained in the examination held in 1979 is within time. Then, why did the High Court upset their selection? Because the certificates of diploma were not attached to the applications and communication by the Registrar of the University to the selection committee was an unauthorised mode of proof, deviating from the prospectus, though authentic in fact. Two flaws vitiate this verbally virtuous approach. True, the prospectus directs that certificates shall be produced along with the applications for admission. The purpose obviously is to have instant proof of the qualification.

23. We are aware that when a statute vests a public power and conditions the manner of exercise of that power then the law insists on that mode of exercise alone. We are here unconcerned with that rule. A method of convenience for proving possession of a qualification is merely directory. Moreover, the prospectus itself permits government to modify the method, as the learned Single Judge has pointed out. In this view, we see nothing objectionable with the government directive to the selection committee, nor in the communication to the selection committee by the university, nor even in their taking into consideration and giving credit for diplomas although the authentic copies of the diplomas were not attached to the application for admission. A hundred examples of absurd consequences can be given if the substance of the matter were to be sacrificed for mere form and prescriptions regarding procedures.

24. It is notorious that this formalistic, ritualistic, approach is unrealistic and is unwittingly traumatic, unjust and subversive of the purpose of the exercise. This way of viewing problems dehumanises the administrative, judicial and even legislative

processes in the wider perspective of law for man and not man for law. Much of hardship and harassment in administration flows from over-emphasis on the external rather than the essential. We think the government and the selection committee rightly treated as directory (not mandatory) the mode of proving the holding of diplomas and as mandatory the actual possession of the diploma. In actual life, we know how exasperatingly dilatory it is to get copies of degrees, decrees and deeds, not to speak of other authenticated documents like mark-lists from universities, why, even bail orders from courts and Government Orders from public offices. This frustrating delay was by-passed by the State Government in the present case by two steps. Government informed the selection committee that even if they got proof of marks only after the last date for applications but before the date for selections they could be taken note of and secondly the Registrars of the Universities informed officially which of the candidates had passed in the diploma course. The selection committee did not violate any mandatory rule nor act arbitrarily by accepting and acting upon these steps. Had there been anything dubious, shady or unfair about the procedure or any mala fide move in the official exercises we would never have tolerated deviations. But a prospectus is not scripture and common sense is not inimical to interpreting and applying the guide-lines therein. Once this position is plain the addition of special marks was basic justice to proficiency measured by marks.

25. We thus reach the conclusion that the three candidates who had been eventually admitted by the selection committee could not be ousted merely for the reason that the certificate of diploma had not been produced together with the application for admission. Nor, indeed, could government be faulted for issuing a directive to the selection committee that applications from students of the diploma course could be considered subject to the condition that they would “produce the diploma certificates before finalising the selection to post-graduate courses”. The equity of this instruction of the government comes into bold relief when we realise that no party in this

Court has a case that the candidates admitted by the selection committee did not secure a diploma in ophthalmology.

26. Even so, there is a snag. Who are the diploma holders eligible for 10 extra marks? Only those who, at least by the final date for making applications for admissions possess the diploma. Acquisition of a diploma later may qualify him later, not this year. Otherwise, the date-line makes no sense. So, the short question is when can a candidate claim to have got a diploma? When he has done all that he has to do and the result of it is officially made known by the concerned authority. An examinee for a degree or diploma must complete his examination — written, oral or practical — before he can tell the selection committee or the court that he has done his part. Even this is not enough. If all goes well after that, he cannot be credited with the title to the degree if the results are announced only after the last date for applications but before selection. The second condition precedent must also be fulfilled viz. the official communication of the result before the selection and its being brought to the ken of the committee in an authentic manner. Maybe, the examination is cancelled or the marks of the candidates are withheld. He acquires the degree or diploma only when the results are officially made known. Until then his qualification is inchoate. But once these events happen his qualification can be taken into account in evaluation of equal opportunity provided the selection committee has the result before it at the time of — not after — the selection is over. To sum up, the applicant for post-graduate degree course earns the right to the added advantage of diploma only if (a) he has completed the diploma examination on or before the last date for the application, (b) the result of the examination is also published before that date, and (c) the candidate's success in the diploma course is brought to the knowledge of the selection committee before completion of selection in an authentic or acceptable manner. The prescription in the prospectus that a certificate of the diploma shall be attached to the application for admission is directory, not mandatory; a sure mode, not the sole means. The delays in getting certified copies in many departments have become so exasperatingly common that

realism and justice forbid the iniquitous consequence of defeating the applicant if, otherwise than by a certified copy, he satisfies the committee about his diploma. There is nothing improper even in a selection committee requesting the concerned universities to inform them of the factum and get the proof straight by communication therefrom — unless, of course, this facility is arbitrarily confined only to a few or there is otherwise some capricious or unvaracious touch about the process.

27. Judged by the above tests it is conceded that while the Calicut University's diploma holders had completed their examination before the last date for M.D. applications and produced the certificate before the selection, the Kerala University diploma holder completed his diploma examination including publication of results only after the last date for applications and produced the certificate before the selection. By this token he is ineligible for admission because his diploma result was published only after the last date for applications. The accident of time has cheated him even as in human affairs generally, be it individual or collective, fortune ebbs and flows, influenced critically by happenstances of time and circumstances of life. That is the Relativity of Life, if one may look at problems philosophically. We, therefore, hold that Appellants 2 and 3 are entitled to admission and their appeal must succeed. By the same token the appeal of Appellant 1 must be dismissed.

28. To dismiss an appeal is merely to declare that judicial remedy will not issue and not that by other processes justice should not be sought or granted. From the humane perspective and with a view to helping Appellant 1 to pursue his relief through the university or other appropriate State agency, we directed the impleadment of the Indian Medical Council which is the statutory body concerned, at the national level, with higher medical degrees and courses. The Medical Council has not appeared before the court though its presence would have helped the forensic process to heal the fractured academic course. But we cannot wait longer. It behoves the State to give academic justice — not legal remedy — to Appellant 1 if

circumstances permit, having regard to the fact that, with diploma qualification, he has spent months in doing his ophthalmology degree course. In law he fails, in justice he need not, if marginal adjustments by increasing one seat more were possible without injury to academic efficiency. What we mean is that though Appellant 1 has no legal claim to a seat, the overall circumstances will merit compassionate consideration, and we direct the Kerala University and the Indian Medical Council to permit him to complete his course by adding one more seat, for this year only, to the opthalmic degree course.

(Emphasis is mine)

70. The judgment in **Charles K. Skaria** case was followed by the Supreme Court in **Dolly Chhanda v. Chairman, JEE & Ors., (2005) 9 SCC 799**. This was a case where the petitioner before the court sought admission in the MBBS course. The petitioner's candidature was rejected on the ground that the certificate which she had produced from the Zila Sainik Board, on the date of counselling, showed that she was 'not eligible'. Consequently, being the petitioner's claim for being considered for seats reserved for wards of military personnel who had been disabled/killed in war/hostilities (in short "MI Category") failed.

71. What emerged in the case was that Zila Sainik Board had committed a mistake in inserting the expression "not eligible". Therefore, the petitioner who was ranked 20 in the Joint Entrance Examination, 2003 (JEE 2003) was declined admission to the MBBS course in the MI Category while others whose names appeared below her in the merit list were admitted.

72. The facts, as set out in the judgment show that despite the petitioner placing alternate proof concerning the disability of her father in the form of

the disability certificate issued by the army and also thereafter placing on record a fresh certificate issued by the Zila Sainik Board wherein the mistake stood rectified, she was not considered even in the subsequent rounds of counselling.

73. The argument advanced on behalf of the respondents, in that case, was that since she was rejected in the first instance on the ground of ineligibility, she could not be considered in the subsequent rounds.

73.1 The court repelled this argument and while doing so, made the following observations in paragraph 7 of the judgment:

“7. The general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in [the] application form, as the case may be, unless there is an express provision to the contrary. There can be no relaxation in this regard i.e. in the matter of holding the requisite eligibility qualification by the date fixed. This has to be established by producing the necessary certificates, degrees or marksheets. Similarly, in order to avail of the benefit of reservation or weightage, etc. necessary certificates have to be produced. These are documents in the nature of proof of holding of particular qualification or percentage of marks secured or entitlement to benefit of reservation. Depending upon the facts of a case, there can be some relaxation in the matter of submission of proof and it will not be proper to apply any rigid principle as it pertains in the domain of procedure. Every infraction of the rule relating to submission of proof need not necessarily result in rejection of candidature.”

(Emphasis is mine)

74. I must also indicate that by the time the judgment was rendered by the Supreme Court in **Dolly Chhanda's** case, the academic year was already over and consequently, a direction was issued to accommodate the petitioner in the "current academic year". This direction of the Supreme Court is contained in paragraph 10 of the judgment, which for the sake of convenience, is set forth hereafter:

"10. The appellant had qualified in JEE-2003 but the said academic year is already over. But for this situation the fault lies with the respondents, who adopted a highly technical and rigid attitude, and not with the appellant. We are, therefore, of the opinion that the appellant should be given admission in MBBS course in any of the State medical colleges in the current academic year."

(Emphasis is mine)

75. Mr. Kirtiman Singh, learned counsel, appearing on behalf of the NBE, has sought to distinguish the judgment by referring to the facts that I have already mentioned hereinabove and while doing so has also referred to the judgment of this court in **Dr. Vineet Relhan v. UPSC, 2010 SCC OnLine Del. 127**.

76. To my mind, nothing that Mr. Singh has said would have me conclude that the ratio of the judgments rendered by the Supreme Court in **Charles K. Skaria** and **Dolly Chhanda's** case would not apply to the facts obtaining in the present case.

77. Insofar as the approach adopted by this court in **Dr. Vineet Relhan** is concerned, the same came up for consideration before the Supreme Court in

UPSC v. Gyan Prakash Srivastava, (2012) 1 SCC 537. This judgment was though not cited by Mr. Kirtiman Singh. The facts obtaining in ***UPSC v. Gyan Prakash Srivastava*** were briefly as follows:

77.1 The UPSC had rejected the respondent's candidature to the post of Legal Advisor-cum-Standing Counsel on the ground that he had been unable to produce his LL.B. degree. The respondent, however, had placed before the Selection Committee his enrolment certificate issued by the Bar Council and other documents which demonstrated that he had obtained a degree in law. The court, in this behalf, found that the respondent had held legal portfolios for two decades in different departments of the Central Government.

77.2 This court had in fact struck-down the decision of the UPSC in rejecting, as noticed above, the candidature of the respondent to the post of Legal Advisor-cum-Standing Counsel. It is in this backdrop that the UPSC relying on various judgments including ***Dr. Vineet Relhan's*** case approached the Supreme Court for relief.

77.3 The Supreme Court noticed, *inter alia*, the judgments rendered in ***Charles K. Skaria*** and ***Dolly Chhanda*** and repelled the contention of the UPSC. The court, in particular, was called upon to deal with the condition contained in paragraph 7 of the advertisement which for the sake of convenience, is extracted hereafter:

“7. Certificate to be attached:

Candidates should note that they should attach with their applications attested/self-certified copies of the following documents:

(i) Matriculation or equivalent certificate in support of their declaration of age.

(ii) Degree or diploma certificate or other certificates in support of their educational qualifications;

Note I: original certificate should not be sent with the application. these should be produced at the time of interview.

Note II: Candidates should note that only the date of birth recorded in the matriculation, higher secondary examination certificate or any equivalent certificate on the date of submission of application, will be accepted by the Commission. Marksheet, admit card as a proof of date of birth will not be accepted. No subsequent request for its change will be considered or granted.

Note III: If no copies of the above certificates are sent with the application, it is liable to be rejected and no appeal against its rejection will be entertained.

Note IV: The period of experience rendered by a candidate on part-time basis, daily wages, visiting/guest faculty will not be counted while calculating the valid experience for shortlisting the candidates for interview.”

77.4 The ratio of the judgment is found in paragraph 23, which is extracted hereafter:

“23. In our view, even though the Division Bench of the High Court in UPSC case [WP (C) No. 10058 of 2009 decided on 25-1-2010 (Del)] was right in not entertaining the respondents' plea that they could not produce LLB degree certificates because the same had not been made available by the university, it is not possible to approve the view that enrolment certificates issued by the Bar Council were not sufficient for treating the respondents eligible for the post of Assistant Public Prosecutor. Unfortunately, the Division Bench of the High Court did not give due weightage to the essential qualifications specified in the advertisement i.e. a degree in Law of a recognised university or equivalent and 3 years' experience at the Bar and the fact that one can gain experience at the Bar

only by practising as an advocate and for that purpose enrolment with the Bar Council is sine qua non and, as mentioned above, the requirement of having passed the requisite examination in law is a must for enrolment as an advocate with the Bar Council.”

(Emphasis is mine)

78. This approach has found favour with several high courts. For the sake of convenience, a reference is made to those judgments as well:

- a) ***K.R. Rohit vs. Directorate of Medical Education***, 2014 SCC OnLine Mad 4917.
- b) ***Member Secretary, Tamil Nadu Uniformed Services Recruitment Board Chennai and Ors. vs. Muthuraman***, 2018 (4) SLR 418.
- c) ***Dr. Ujala Nyola vs. University of Rajasthan Through Its Registrar and Another***, 2019 SCC OnLine Raj 1.

79. If one were to distill the ratio of the judgments adverted to above what would come through is that while there can be no dilution of the essential eligibility criteria prescribed for gaining admission to the course, a distinction has to be drawn between the factum of a candidate having acquired the eligibility qualification(s) on or before the cut-off date as against the proof required to establish this fact.

80. A mere inability to produce the original degree or certificate on the cut-off date cannot be the reason for denying admission as long as there is material available with the Counselling Committee or the authority charged with the responsibility of admitting the student which is demonstrative of the

fact that a candidate has acquired the eligibility qualification or met the eligibility criteria.

81. Apart from anything else, such conditions that require the production of original certificates depicting attainment of eligibility criteria by a certain date have been held by the courts as being directory and not mandatory.

82. I must also indicate that ***Dr. Rakesh Kumar's*** case was cited before me. That case, though facially runs close to the facts obtaining in the instant case, is distinguishable for the following reason.

82.1 The petitioner in that case was unable to explain as to why he had not obtained his MBBS degree for nearly a decade. More importantly, as to whether a seat was in fact available on the date of the disposal of the case did not emerge from the record.

83. Before I conclude, the other overarching argument that Mr. Singh has advanced is that no relief can be granted to the petitioners once the cut-off date is crossed. This argument would suggest that even if the Court were to hold that the NBE was wrong in declining admission to the petitioners in the DNB (Post MBBS) course, it can only wring its hands and do nothing.

83.1 In this behalf, I have already referred to the judgements of the Supreme Court in ***Charles K. Skaria*** and ***Dolly Chhanda's*** case. Besides these cases, the Supreme Court in ***Dr. Vinayak Varma***, after noticing the judgements of the Court in ***Mridul Dhar*** and ***Ashish Ranjan vs. UOI***, 2016 (11) SCC 225, granted relief and while doing so made the following crucial observations.

“22. It is a case of illegal deprivation of admission in spite of the fact that the rights were protected vide High Court's order dated 18th May, 2018 extracted herein above as well as vide order dated 31st May, 2018 the appellant has been made to suffer for no fault on his part. It is settled proposition when court has protected interest. The Maxim Actus Curiae Neminem Gravabit comes to rescue of appellant. It would be travesty of justice in the facts of the case to deny him admissions on the ground that 31.05.2018 cut-off date for admission is over.

84. Therefore, in sum, what emerges, insofar as the present case is concerned, and is something that the NBE could adhere to in the succeeding academic sessions as well:

(i) A candidate should have acquired the eligibility qualification or met eligibility criteria before the cut-off date (in this case 30.06.2019). Where the eligibility qualification or eligibility criteria are met after the cut-off date, the candidate can seek admission only in the academic sessions which would follow thereafter.

(ii) In case, a candidate can place on record material which unerringly points to the direction that he or she has acquired the eligibility criteria, latitude should be given to produce the original certificate(s), *albeit*, within a reasonable time.

(iii) The Counselling Committees or authorities who were charged with the responsibility of admitting the students should be able to use information technology tools to establish contact with their counterparts so that deserving candidates do not lose their chance of admittance to the designated course only because they do not have in their possession the original certificate(s). To facilitate this exercise, the concerned Counselling

Committee or those who were charged with the responsibility of admitting students should use the internet, video conferencing facilities, facsimiles, and phones. The NBE would serve the interest of students if it collects the contact details of their counterparts, if not all, of at least known colleges and institutes. The administrative difficulty in collecting such data ought not to come in the way of denying what is otherwise rightfully due to a candidate.

(iv) The concerned Medical Boards will do well if they were to upload the particulars of doctors registered with them on their respective web-portals. This would enable the counselling committees to cross-verify the information given by the candidates at the touch of a button.

(v) Insofar as the proviso to paragraph 7.4.4(a) of the Handbook is concerned, to my mind, it enabled a candidate who had passed the MBBS course before 2018 to produce proof of having acquired the qualification either on the date of counselling or on the date when the candidate joined the allotted institute. Since the proviso is incorporated in paragraph 7.4.4(a) of the Handbook for the benefit of the students, the more purposeful and, if I may say so, a meaningful interpretation would be the one which is given above.

Conclusion:

85. As noticed hereinabove, there are two seats available, one in RSCM Government Medical College, Kolhapur and the other in JLN Hospital & Research Centre, Chhattisgarh. Dr. Shidore has given RSCM Government Medical College, Kolhapur, as one of her choices. Likewise, Dr. Jaya has

given JLN Hospital & Research Centre, Chhattisgarh as one of her choices. This aspect is alluded to in the order dated 13.09.2019.

86. In Dr. Shidore's case, since she had obtained her original MBBS degree before the cut-off date, to my mind, the NBE was wrong in rejecting her candidature.

87. Insofar as Dr. Jaya is concerned, she obtained the original MBBS degree certificate after the cut-off date. One would have, perhaps, declined the relief to her if I was convinced that she did not have the necessary qualification and given credence to the reality that the admission process has to close at some point in time. Notably, the NBE in its response dated 24.06.2019 did not advert to the fact that she could obtain the proof of having qualified the MBBS course before the date of joining the allotted institute. Dr. Jaya is now in possession of the MBBS degree certificate. Thus, given the fact that a seat is available which if not allotted to the petitioner would get wasted, I am inclined to direct the NBE to allot a seat in JLN Hospital & Research Centre, Chhattisgarh to Dr. Jaya.

88. The captioned writ petitions are disposed of in the aforesaid terms. Accordingly, CM APPL. 30114/2019 and CM APPL. 31549/2019 shall also stand closed.

RAJIV SHAKDHER, J

OCTOBER 10, 2019/c/aj