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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No. 2943 of 2020

Jailata Baghel D/o Shri Sohanlal Baghel Aged About 19 Years R/o Village Shahketta, Block Bhanupratappur, District Kanker Chhattisgarh

---- Petitioner

Versus

1. Union of India, through the Secretary, Department of Higher Education, Ministry of Education, Shastri Bhawan, New Delhi 110001
2. Chairman National Testing Agency (NTA), C-201A/8, Sector-62, IITK Outreach Centre, Noida-201309
3. State of Chhattisgarh, through the Secretary, Department of Health & Family Welfare, Mantralaya, Atal Nagar, District Raipur Chhattisgarh
4. Director, Directorate of Health Education, Old Nurses Hostel, DKS Bhawan Parisar, Raipur Chhattisgarh
5. President, Counselling Committee, Directorate of Health Education, Old Nurses Hostel, DKS Bhawan Premises, Raipur Chhattisgarh

---- Respondents

For Petitioner : Shri Anish Tiwari, Advocate.
For Respondent No. 1/UoI : Shri Ramakant Mishra, Assistant Solicitor General
For Respondent No. 2 : Shri P.R. Patankar, Advocate.
For Respondent No. 3 to 5 : Shri Chandresh Shrivastava, Deputy Advocate General

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AND

Writ Petition (C) No. 2975 of 2020

Pintu Ram S/o Late Shri Sudru Ram Aged About 20 Years R/o Bade Karli, Tahsil Gidam, District Dantewada, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
2. The Director Medical Education, Old Nurses Hospital, D. K. S. Bhawan Parisar, Raipur District Raipur Chhattisgarh

---- Respondents

For Petitioner : Shri Akash Pandey and Shri Mayank Chandrakar, Advocates.
For Respondents/State : Shri Chandresh Shrivastava, Deputy Advocate General

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Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

***Per* P. R. Ramachandra Menon, Chief Justice**

25.11.2020

1. Denial of the chance to participate in the counselling process for admission in the Medical Course UG 2020 in the Scheduled Tribe (for short 'the ST') category by the Respondents for having filled up the online application with reference to claim under the Economically Weaker Section (for short 'the EWS') category, made the Petitioners to file the above writ petitions. In the former case i.e. WP(C) No. 2943 of 2020, while seeking for a direction to the Respondents to consider the candidature of the Petitioner under the ST category and conduct fresh counselling, the relevant Rule i.e. 7(i) of Annexure P/1 Rules i.e *Chhattisgarh Chikitsa, Dant Chikitsa Evam Bhautik Chikitsa (Physiotherapy) Snatak Pravesh Niyam - 2018,* is sought to be declared as *ultra vires* to the provisions of the Constitution of India, insofar as the said Rule provides that once the application form has been submitted, no further changes can be made in the application. In the latter case i.e. WP(C) No. 2975 of 2020, there is no challenge to the Rules.

2. We heard Shri Anish Tiwari, the learned counsel for the Petitioner, Shri Ramakant Mishra, the learned Assistant Solicitor General for the 1st Respondent/Union of India, Shri P.R.Patankar, the learned counsel for the 2nd Respondent and Shri Chandresh Shrivastava, the learned Deputy Advocate General appearing on behalf of the 3rd to 5th Respondent/State in WP(C) No. 2943 of 2020. As far as WP(C) No. 2975 of 2020 is concerned, we heard Shri Mayank Chandrakar and Shri Akash Pandey, the learned counsel for the Petitioner as well as Shri Chandresh Shrivatava, the learned Deputy Advocate General appearing on behalf of the Respondents/State.

3. The common case of the Petitioners is that they are members of ST category and are residing in a far remote village without much access to internet. They completed +2 level and participated in the NEET examination, in which the Petitioner {in WP(C) No. 2943 of 2020} scored a total of 424 marks out of 720; whereas the other Petitioner {in WP(C) No. 2975 of 2020} scored a total marks of 346 out of 720. Both the Petitioners sought to register themselves by submitting their applications online. According to them, because of some technical fault of the server, their relevant category as 'ST' was not appearing on the screen, but for showing the category as 'EWS', to proceed with. It is also pointed out that the applications were caused to be submitted through the facility available in a nearby online shop. Instead of showing the category as 'ST', it came to be shown as 'EWS'. It is further pointed out that in all other proceedings including the application for participation in NEET, admit cards and such other documents produced, their caste status is shown as 'ST' and there could not have been any ambiguity in this regard. Inspite of the eligibility of the Petitioners to be given admission in the first round of counselling itself, by virtue of the higher marks, it is submitted that their candidature is rejected with reference to Rule 7(i) of the Annexure P/1 Rules and less meritorious candidates belonging to the 'ST' category have been given admission. This made the Petitioners to the approach this Court by filing the writ petitions, as aforesaid.

4. Shri Anish Tiwari, the learned counsel appearing for the Petitioner {in WP(C) No. 2943 of 2020} submits that the impugned (Annexure P/1) Rule is arbitrary, illegal and *ultra vires* to the Constitution of India. It is pointed out that the Petitioner being not much familiar with computer and being a member of 'ST' category, coming from a far remote village, ought not to have been ousted from the field of selection with reference to the mistake in the online application for registration in the counselling, more so, when all other documents before the Respondents clearly showed that the Petitioner belonged to the 'ST' category.

That apart, the Petitioner might not be put to hardships because of the fault in the server, which only showed the option category as 'EWS' and this technical glitch is discernible from Annexure P/8 notice issued by the 4th Respondent on 11.11.2020. According to the learned counsel, the only way of filling the application form for counselling was by 'online' and a person like the Petitioner who has suffered much economic backwardness all throughout the life, cannot be expected to be well versed with the modern technology/internet. The mistake was only a human error and the impugned (Annexure P/1) Rules do not permit to undo the trivial mistake of a meritorious candidate and therefore, the same is unreasonable and hampers the concept of 'excellency in higher education'. Similar submissions are made by Shri Akash Pandey, the learned counsel appearing for the Petitioner in WP(C) No. 2975 of 2020, though the validity of Annexure P/1 Rules has not been subjected to challenge in the said writ petition. Both the learned counsel sought to place reliance on the verdicts passed by a Division Bench of the Punjab and Haryana High Court in ***Haryana Staff Selection Commission v. Sarla & Others***; Letters Patent Appeal No. 320/2019 (O&M) dated 22.02.2019 and a judgment of the Delhi High Court reported in ***Ajay Kumar Mishra v. Union of India & Others***; {2016 (160) DRJ601}.

5. Shri Chandresh Shrivastava, the learned Deputy Advocate General appearing on behalf of the Respondent/State submits that there is absolutely no merit or bonafides in the petitions and that the idea and understanding of the Petitioners as to the scope of Annexure P/1 Rules is thoroughly wrong and misconceived. He further submits that the challenge raised against the validity of the Annexure P/1 Rules, stating as *ultra vires* to the Constitution of India, is only a bald one; without satisfying the minimum requirements as to the circumstances under which a Rule can be challenged, as made clear by the Apex Court on many a times. Competence of the Rule making authority is also not under challenge and the only ground raised is that the said Rules do not provide for correcting the

mistake appeared in the application and hence, it is unreasonable. It is factually incorrect, as disclosed from Rule 7(iv) and also from clause (3) of Annexure P/7 under the heading 'आन–लाईन पंजीयन आवश्यक जानकारी' which clearly provides for correction of the mistake, in the manner as provided therein.

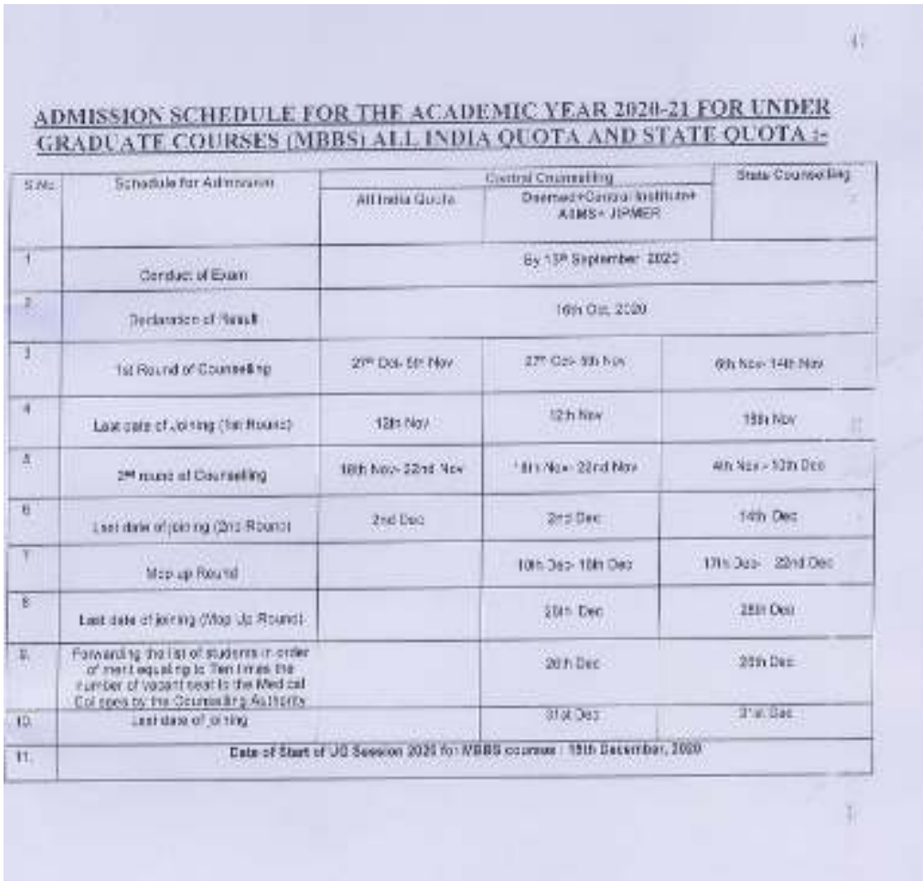
6. Rule 7(i) of Annexure P/1 which is put to challenge in WP(C) No. 2943 of 2020, reads as follows:

> "7. (i) उपरोक्त उल्लेखित अनुसार प्रावीण्य सूची घोषित होने के बाद, ऑनलाईन आवेदन छत्तीसगढ़ राज्य की सीटों हेतु आमंत्रित किये जायेंगे । ऑनलाईन आवेदन के समय प्रविष्ट की हुई पात्रता या अन्य कोई भी जानकारी जैसेः मूल निवासी, श्रेणी, संवर्ग, सीटों का प्रकार, महाविद्यालय चयन (option) इत्यादि अपरिवर्तनीय होंगे । अतः विशेषकर अपनी श्रेणी, संवर्ग चयन करने के पूर्व अपने वांछित प्रारूप में वांछित समयावधि के प्रमाण पत्र का निरीक्षण अवश्य कर लें।"

7. It is true that the said Rule clearly says that sufficient care and caution shall be taken while effecting the entries and exercising the options and that any wrong entry cannot be corrected. However, clause (iv) of the very same Rule clearly provides that it could be got corrected if there is any mistake, in the manner as stipulated therein. For convenience of reference, we extract the said clause herein :

> "7. (iv) ऑनलाईन काउंसिलिंग शुल्क के रूप में अनारक्षित श्रेणी एंव अन्य पिछडा वर्ग श्रेणी हेतु राशि रूपये 1000/– (रू. एक हजार मात्र) तथा अनुसूचित जनजाति, अनुसूचित जाति हेतु रूपये 500/– (रू. पांच सौ मात्र) तथा अप्रवासी भारतीय नियतांश हेतु रूपये 10000–/ (रू. दस हजार मात्र) संचालक चिकित्सा शिक्षा को देय होगी ।
>
> **यदि राज्य के ऑनलाईन आवेदन में कोई त्रुटि हो जाती है तो ऑनलाईन पंजीयन की अंतिम तिथि के पूर्व संशोधन शुल्क रू. 1000–/ जमा कर संशोधन कर सकेंगे** ।"

8. Attention of the Court is drawn by the learned Deputy Advocate General to Annexure P/6 notice dated 30.10.2020 as to the schedule of the UG Counselling 2020, which is extracted below:



ADMISSION SCHEDULE FOR THE ACADEMIC YEAR 2020-21 FOR UNDER GRADUATE COURSES (MBBS) ALL INDIA QUOTA AND STATE QUOTA :-

S.No.	Schedule for Admission	Central Counselling		State Counselling
		All India Quota	Deemed+Central Institute AIIMS+ JIPMER	
1	Conduct of Exam	By 13th September 2020		
2	Declaration of Result	16th Oct, 2020		
3	1st Round of Counselling	29th Oct- 5th Nov	27th Oct- 5th Nov	6th Nov- 14th Nov
4	Last date of Joining (1st Round)	12th Nov	12th Nov	15th Nov
5	2nd round of Counselling	16th Nov- 22nd Nov	13th Nov- 22nd Nov	4th Nov - 10th Dec
6	Last date of joining (2nd Round)	2nd Dec	2nd Dec	14th Dec
7	Mop up Round		10th Dec- 18th Dec	17th Dec- 22nd Dec
8	Last date of joining (Mop Up Round)		23rd Dec	28th Dec
9.	Forwarding the list of students in order of merit equaling to Ten times the number of vacant seat to the Medical Colleges by the Counselling Authority		26th Dec	29th Dec
10.	Last date of joining		31st Dec	31st Dec
11.	Date of Start of UG Session 2020 for MBBS courses : 15th December, 2020			

9. It is pointed out with reference to Annexure P/7 dated 07.11.2020 that the online application for registration for counselling was to be done from 07.11.2020 (4:30 pm) to the last date on 12.11.2020 (11:59 pm). The candidates were also alerted as to the right to get the mistake if any, to be corrected online as per clause (3) under the head 'आन–लाईन पंजीयन आवश्यक जानकारी', which is reproduced below:

> **<u>आन–लाईन पंजीयन आवश्यक जानकारी</u>**
>
> 1. XXX XXX XXX
> 2. XXX XXX XXX
> 3. यदि ऑन–लाईन आवेदन पूर्ण करने के बाद Lock & Submit भी कर चुके है, तथा **<u>ऑनलाईन आवेदन में परिवर्तन करना चाहते है तो, परिवर्तन हेतु एडीट (Edit)शुल्क रू.1000/– (रू. एक हजार मात्र) जमा कर, अंतिम तिथि तक परिवर्तन कर सकेंगे।</u>**

10. This being the position, the contention of the Petitioners that no opportunity was available to the Petitioners to correct the mistake is incorrect, and that they had not filed any such application to get the mistake corrected at any point of time, despite the opportunity provided in the relevant Rules. As it stands so, the challenge raised against the Annexure P/1 Rules, stating that it is arbitrary and

unreasonable, is not correct or sustainable. For the very same reason, the verdicts passed by the Division Bench of the Delhi High Court and Punjab & Haryana High Court (supra) are also not applicable to the case in hand.

11. It is relevant to note that the Petitioners have not mentioned anything with regard to the rights conferred upon them in Annexure P/1 Rules, as to the opportunity and circumstances and the modality for seeking correction of mistake, if at all any crept in while making the online application. There is no case that they have made any such application satisfying the requirement as stipulated in the relevant Rules within the stipulated time, but for some vague representation stated as preferred, that too, after expiry of the time limit.

12. After hearing both the sides, we are of the firm view that the Petitioner in WPC No. 2943 of 2020 has not demonstrated the alleged arbitrariness, unreasonableness of the impugned Rules or how the said Rule violates the Constitution of India, but for the vague averments; which by itself has turned to be wrong in view of the specific provision available in Annexure P/1 itself to have the mistake corrected, if any. Under Rule 7(iv) and as per clause i.e. clause (3) in Annexure P/7 notice, correction, if any could be sought to be effected in the manner as provided therein. This being the position, the challenge against Annexure P/1 Rules fails and the Petitioners in both the cases having not sought to effect correction of the mistake as to their caste status by pursuing the remedy as provided under the relevant Rules, cannot be heard to say that any of their rights is infringed in the hands of the Respondents. Non-consideration of the candidature of the Petitioners by the Respondents is quite in conformity with the Rules and the Respondents cannot be blamed on any count.

13. However, there is no dispute the Petitioners belong to 'ST' category, as borne by other materials/documents filed by them in support thereof. When other similarly candidates belonging to the ST category suffering similar backwardness could

submit their applications showing their caste status correctly, they cannot be put to any disadvantage if any indulgence is shown to the Petitioners. It is a fact that there are only 'two' counselling exercises and if any seats are lying vacant, it will go to the 'mop-up round', to be conducted between 17th to 22nd December, 2020 in respect of the State quota. If any seats are lying vacant under the 'ST' quota even after the second round of counselling, to be taken forward to the mop-up round, we are of the view that the candidature of the Petitioners who actually belong to the 'ST' category and have already registered for counselling (though wrongly showing their category as 'EWS' by mistake) could be considered for admission in the 'ST' category before throwing such seats open to be filled up in the mop-up round. This will cause no prejudice to the Respondents or any other candidate. It is ordered accordingly.

14. Both the writ petitions are disposed of with the limited relief, as above.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Amit