

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5033 OF 2020

Sharvari D/o Ulhas Kondpalle and another.. Petitioners

Versus

The State of Maharashtra and others .. Respondents

Shri V. J. Dixit, Senior Advocate a/w Shri S. V. Dixit, Advocate for Petitioners.

Mrs. M. A. Deshpande, Addl.G.P. for Respondent Nos. 1 and 3.

Shri M. D. Narwadkar, Advocate for the Respondent No. 2.

Shri S. K. Kadam, Advocate for the Respondent No. 4.

Shri A. G. Talhar, A.S.G. for the Respondent No. 5.

**CORAM : S. V. GANGAPURWALA AND
SHRIKANT D. KULKARNI, JJ.**

CLOSED FOR ORDER ON : 30.07.2020

ORDER PRONOUNCED ON: 20.08.2020

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

. The petitioners assail the Notice No. 19 dated 15.07.2020 issued by the respondent No. 2 thereby reducing the eligibility criteria in as much as reducing bench mark percentile. The petitioners also seek relief to permit them to submit fresh preference irrespective of earlier preferences for admission to post graduate medical course. The petitioners amended the petition on 23rd July, 2020 and further contended that those who are higher in merit than the petitioners and had not registered earlier should not be permitted to get themselves newly

registered. The petitioners also assail the order dated 21.07.2020 rejecting the contention of petitioners to allow them to fill in fresh preferences after the interim order passed by this Court.

2. Mr. V. J. Dixit, the learned senior advocate for petitioners submits that, the petitioners are graduate medical students and have completed M.B.B.S. course. They are qualified for admission to medical post graduate seats as per merit secured by them in NEET - PG - 2020 examination. The entire admission process is to be conducted under the provisions of the Maharashtra Unaided Private Professional Education Institutions (Regulating of Admission and Fee) Act, 2015 and the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the full time Professional Post Graduate Medical and Dental Courses) Rules, 2017. The procedure for admission for all Government/Corporation/Government Aided Medical Colleges in the State of Maharashtra for State quota is carried out in accordance with the procedure laid in Government Resolution dated 29.01.2018 and as per the rules framed by the Government. The respondent No. 2 has published information brochure with the permission of the respondent No. 1 for registration, counseling, documents verification, preference form filling and admission process. The petitioners filled in their applications and also gave their preferences at the relevant time. The petitioner No. 1 is placed in the merit list at Sr. No. 41444 and the petitioner No. 2 at Sr. No. 19961. The petitioner No. 1 was allotted the college as per the rank. The petitioner No. 1

joined the allotted college, however, seat was not retained in order to participate in further round anticipating allotment of seat at better college. The petitioner No. 2 has not been allotted any college till completion of second round.

3. The learned senior advocate further submits that, the mop up round I was to commence on 15th July, 2020. On 14th July, 2020, the respondent No. 5 approved reduction of cut off marks for NEET – PG - 2020 and revised qualifying percentile. Pursuant thereto the National Board of Examination also published notice communicating reduction in minimum qualifying percentile. The schedule of mop up round was thereafter modified. The qualifying percentile is reduced by 20 percentile for each category. The newly eligible candidates were allowed to submit online preference form from 18.07.2020 to 20.07.2020. Less meritorious candidates, who are now eligible by reduction of eligibility criteria are having opportunity to give their preferences after two rounds of admission are over. They have better idea while filling their preferences, however, already registered candidates cannot change their preferences given before the first round. This has deprived the registered meritorious candidates from applying to vacant seats available at various colleges at this stage and facilitates less meritorious candidates to apply at better colleges. They would be better placed than already registered candidates. The same is arbitrary.

4. The learned senior advocate for the petitioner further

submits that, the respondent No. 2 cannot issue notice reducing percentile in contravention of the provisions of the Act and Rules, so also information brochure. Rule 8(2)(a) contemplate 50 percentile for general category as eligibility criteria. The same could not have been reduced.

5. The learned senior advocate further submits that, those meritorious candidates who had not registered during the earlier round are now permitted to register themselves. The same is illegal. At the relevant time those persons who were higher in merit than the petitioners did not register themselves. Now they are again given opportunity to register themselves thereby depriving the right of the petitioners to get better seat and better college as their place in the merit would come down. The Act or the Rules do not permit such students to register subsequently. The reliance placed by the respondents on the admission process of the year 2018 is misplaced. In 2018, the percentile was reduced at the subsequent round and only those candidates who would be eligible after reducing the percentile were only permitted to register and those candidates who had not earlier registered themselves as per the percentile prevailing were not permitted to register after the reduction of the percentile. The learned senior advocate in the alternate submits that, same procedure ought to have been followed. The learned senior advocate relies on Clause 14.22 of the brochure and submits that all candidates admitted in first round, second round and secured the admission but not filled status retention form are eligible for mop up round. According to the learned senior advocate, there is

no impediment for the respondents to permit the petitioners to register afresh so as to give preference. According to the learned senior advocate this Court under the interim order dated 20th July, 2020 directed the respondents to reconsider the contention of the petitioners and further directed that the authorities should not place finger on the clauses of the brochure, but consider the situation that has arisen because of lowering the percentile. The respondents instead of reconsidering the stand of the petitioners on its own merits, mechanically rejected the claim referring to the clause 14 of the Rules. The same is illegal. The petitioners ought to be given equal opportunity.

6. Mr. Narwadkar, the learned advocate for the respondent No. 2 submits that, the grievance of the petitioner is unreasonable. The petitioner No. 1 filled in the online preference form and opted for as many as 144 preference options. The petitioner No. 1 was allotted Pediatric in NKP Salve, Nagpur under management quota in round 2. The petitioner No. 1 joined said college on 13.07.2020, but the petitioner No. 2 while filling online preference form given 17 preferences. However, the petitioner No. 2 was not allotted any college. The Medical Council of India and the National Board of Examination lowered the minimum qualifying percentile. The respondent thereafter was required to re-schedule the admission process and accordingly notice No. 19 was published. According to the learned counsel, due to lowering of the percentile, more candidates would be eligible to apply, but they would be lower in merit than the petitioners. The sequence of preference does not

dilute the merit. The candidates are selected by the system on the basis of choice of college, choice of course, nature of quota, etc. The merit is not compromised. The merit will be strictly adhered too.

7. Rule 14.1, 14.2, 14.8 and 14.11 stipulates that, once the choices of courses and colleges are given, same shall be final and irrevocable. Therefore, none of the candidates participating in the admission process for NEET – PG – 2020 was permitted to give fresh preference.

8. The learned advocate for the respondent No. 2 further contends that, certain seats remained vacant prompting the Medical Council of India and National Board of Examination to lower the percentile. Pursuant to the interim order passed by this Court on 20th July, 2020, the authority reconsidered the said aspect. Taking into account all the aspects, the authority did not accept the contention of the petitioners to allow them to fill in fresh preference form. The same would not be permissible as per the rules, nor would be viable.

9. We have considered the submissions canvassed by the learned counsel for respective parties. The last date for admission to the NEET – PG – 2020 is 31st July, 2020. The matter was heard late in the evening on 30th July, 2020, when the 02nd mop up round was also held.

10. The petition was initially filed on the premise that

students who are lower in merit would be permitted to fill in preference form upon knowing availability of vacant seats during the mop up round. The less meritorious students than the petitioners will stand a better chance of getting admission in better college. The respondent No. 2 in its affidavit has specifically clarified that the sequence of preferences does not dilute the merit. The merit is not compromised. The system opts for the meritorious candidate and gives the first option to the more meritorious candidate. Realising this the petitioners amended the petition on 24th July 2020 and contended that, those who are higher in merit than the petitioners and had not registered earlier should not be permitted to get themselves newly registered. It is the case of petitioners that, those candidates more meritorious than the petitioners who had not registered are also permitted to register and participate in the admission process thereby hampering the rank of the petitioners.

11. Clause 14.22 states that, a candidate admitted in 1st round, 02nd round and secured admission, but not filled status retention form are eligible for mop up round, so also who are wait listed and whom choice was not available during first and second round are also eligible.

12. Clause 14.1 of the brochure provides that candidate can fill in online preference form multiple times before clicking submit button. Once submit button is clicked, then there is no provision to change the preferences. Clause 14.2 of the brochure further says that, for second and subsequent rounds (if any) no separate

online preferences will be filled in by the candidates. The choices of courses and colleges once entered online shall be final and irrevocable. This final data shall be used in the entire selection process. Clause 14.8 of the brochure states that, in second round if number of seats are increased in the existing seats in the same subject and in the same institute, then fresh preferences will not be called.

13. Reading the rules, it is manifest that, once a person has filled in the preference form, the same is not subsequently allowed to be changed. Clause 16.2 of the brochure further states that, seat distribution chart is subject to change as per instruction of MCI/Transfer of PG teacher/availability of surrendered seats from All India Quota/affiliation from university, etc.

14. Now, those candidates more meritorious than the petitioners and subsequently allowed to fill in the registration form are not before us. It would not be possible to pass adverse order against them in their absence. Even as it is the amendment challenging the said aspect was made only on 24th July, 2020 and was not part of original petition. The affidavit thereafter is filed on 29th July, 2020 and the matter was heard on 30th July, 2020 and the last date for admission was 31st July, 2020. The candidates higher in merit, than the petitioners and who had found place in the merit list and had filled preferences ought to be made parties in the present petition. In their absence, we do not propose to pass orders against them.

Those persons who are lower in merit would not affect the chances of the petitioners as has been stated in the affidavit filed by the respondent No. 2.

15. In the light of the above, we do not find it appropriate to interfere in the admission process that has been undertaken and concluded.

16. The writ petition as such stands disposed of. No costs.

[SHRIKANT D. KULKARNI, J.] [S. V. GANGAPURWALA, J.]

bsb/Aug. 20