

HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 6 of 2021

*(Arising out of order dated 03.12.2020 passed by this Court in
WPC No. 2947 of 2020)*

- National Medical Commission Through Secretary, Pocket - 14 Sector - 8, Dwarka Phase - 1, New Delhi.

---- Petitioner

Versus

1. Sujal Garg S/o Shri Mahesh Kumar Agrawal Aged About 18 Years R/o House No. 120, Ward No. 15, Behind Railway Colony, Sakti, District Janjgir Champa Chhattisgarh.
2. State Of Chhattisgarh Through The Secretary Department Of Health And Family Welfare Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
3. The Director Medical Education Directorate Medical Education Old Nurses Hostel Dks Bhawan, Raipur Chhattisgarh.
4. Government Medical College (Bharat Ratna Shri Atal Bihari Vajpyee Memorial Medical College) Rajnandgaon, District Rajnandgaon Chhattisgarh.
5. Government Medical College Ambikapur (Surguja), Chhattisgarh.
6. Union Of India Through Secretary, Department Of Health And Family Welfare, Nirman Bhawan, New Delhi.

---- Respondents

For Petitioner	:	Mr. Ranbir Singh Marhas, Standing Counsel
For Respondent No.1	:	Mr. Kshitij Sharma, Advocate
For Respondents No.2 to 5 : /State	:	Mr. Ashish Tiwari, Government Advocate and Mr. Siddharth Dubey, Dy. Government Advocate
For Respondent No.6	:	Mr. Amit Banerjee, Advocate appears on behalf of Mr. Ramakant Mishra, Asst. Solicitor General

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

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per, P. R. Ramachandra Menon, Chief Justice

14.01.2021

1. This petition has been preferred by the National Medical Commission, seeking to review the verdict passed by this Court on 03.12.2020 in WPC No. 2947 of 2020 (Annexure-A/1), whereby filling up of a seat in the EWS

category in the Government Medical College, Ambikapur was ordered to be finalized.

2. The deliberation on the subject with reference to the 4th Respondent Government Medical College, Ambikapur as discussed in paragraphs 6 and 7 is relevant and hence we reproduce the same to avoid repetition.

“6. Coming to the other Institution i.e. Respondent No. 4/Government Medical College Ambikapur, the case is that there was some confusion with regard to the number of seats to be provided in the EWS quota; for the reason that in respect of the said Institution, though it was established in the year 2016, the base year '2019-2020' was a 'zero year'. In the said circumstance, some proceedings have been issued seeking for permission to enhance the number of seats by 25% so as to implement the EWS quota in the 4th Respondent-Institution at Ambikapur.

7. After setting instructions, it is submitted by Shri R.S. Marhas, the learned Standing counsel for the Respondent No. 5, that in view of the peculiar situation in respect of the 4th Respondent-Institution, the matter ought to have been taken up by the State by approaching the Commission. In the instant case, instead of approaching the Commission (the then Indian Medical Council), the State Government moved the Central Government, Ministry of Health & Family Welfare seeking for permission to enhance the seats. However, considering interest of the eligible candidates as of paramount importance, it has been decided by the National Medical Commission that appropriate steps should be pursued by moving the Central Government for providing additional seats and to have the same given effect to. The learned counsel submits that requisite extent of additional seats will be caused to be provided by the Government on the basis of recommendation given by the National Medical Commission as a “one time measure”, to accommodate the EWS candidates.”

3. Based on the observation made in the above paragraphs, the relief was moulded; particularly, on the basis of submissions made across the Bar as mentioned in the judgment, whereby the 4th Respondent Institution was permitted to give admission to the eligible students in the EWS category, making it clear that it shall be treated as a 'special case', by 'one time measure', as insisted by the National Medical Commission.
4. It is pointed out by the Review Petitioner that the submissions were made across the Bar when the matter was finalized on 03.12.2020, without noting the clear mandate given by the Apex Court as per the order dated 14.09.2020 in Miscellaneous Application No(s). 1528/2020, whereby the last date for granting 'Letter of Permission' for establishing the Medical Colleges as well as increasing the intake capacity of the existing Medical Colleges / Renewal of Permission under Section 10A of the IMC Act, 1956, in respect of MBBS course for the academic session 2020-21 was to 15.10.2020. The direction given by the Apex Court cannot be watered down and no further sanction can be got from the Central Government and as such, no further steps could be pursued by the National Medical Commission as well; appears to be the contention of the Review Petitioner. It is in the said circumstance, that the judgment passed on 03.12.2020 in WPC No.2949 of 2020 is sought to be recalled.
5. Mr. Ranbir Singh Marhas, the learned Standing Counsel appearing for the National Medical Commission / Review Petitioner made

submissions in terms of the contents of the Review Petition and expressed regrets and apology for his incorrect submissions made before this Court; adding that the learned counsel was not aware of the cutoff date mentioned by the Apex Court as noted above.

6. Mr. Kshitij Sharma, the learned counsel appearing for Respondent No.1 submits that the above order passed by the Apex Court is only in respect of Section 10A of the IMC Act, 1956 and that it does not apply to a case involving admission to EWS category, which is sought to be disputed by the learned counsel appearing for the Review Petitioner.
7. The submission made by Mr. Kshitij Sharma is however sought to be supported by Mr. Siddharth Dubey, the learned counsel appearing for the State. It is also submitted that there is no delay on the part of the State Government in making the application for getting sanction for higher intake so as to admission to the EWS category. The recognition was given by the Central Government only on 24.09.2020, which was stated as communicated on 05.10.2020 as per records, and within two days, necessary application was put in by the State Government to the Ministry of Health and Family Welfare, which hence is stated as well within the cutoff date 15.10.2020 as noted by the Apex Court. But, going by the said order, the last date mentioned by the Apex Court is for grant of 'Letter of Permission' and not for submitting the application. We sought instructions from the part of the Central Government as well,

but further time is sought for on behalf of the learned Assistant Solicitor General in this regard.

8. The question is whether there is any “error apparent on the face of the record” to invoke the power of review; with regard to the submissions made on 03.12.2020, when the matter was disposed off, as recorded in paragraphs 6 and 7 and the order of the Apex Court passed on 14.09.2020 in Miscellaneous Application No(s). 1528/2020, which has been quoted in the review petition. Admittedly, scope of said order passed by the Apex Court was not a subject matter considered by this Court on 03.12.2020, when the WPC was finalized; which is to be considered separately. The above order is stated as not within the knowledge of the learned counsel appearing for the National Medical Commission who addressed the Court on the relevant date; which led to the submissions made by the learned counsel that appropriate steps should be taken by taking the matter before the Government for providing additional seats and to have the same given effect to. It was accordingly, that the learned counsel submitted that the requisite extent of additional seats could be caused to be provided by the Government, on the basis of the recommendation given by the National Medical Commission as a 'special case' by 'one time measure' to accommodate the EWS candidates.
9. In the above circumstance, we find that the Review Petitioner has brought out a tenable ground to cause the matter to be considered

on merits, also with reference to the order passed by the Apex Court on 14.09.2020 in the Miscellaneous Application No(s). 1528/2020, as mentioned above. Since the judgment passed by us on 03.12.2020 in WPC No.2947 of 2020 was on the basis of the concession made by the learned counsel for the Review Petitioner (which is evident from the concluding paragraphs, holding that it will be treated as a 'special case' by 'one time measure'), we find that the verdict in the writ petition requires to be reviewed.

10. Accordingly, the judgment dated 03.12.2020 passed in WPC No. 2947 of 2020 stands recalled. The Review Petition is allowed and the WPC No. 2949 of 2020 is ordered to be listed for further consideration tomorrow i.e. on 15.01.2021 along with WPC No.37 of 2021.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge