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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (C) No.1058 of 2021**

1. Sanskriti Sonker D/o Rajendra Prasad Sonker Aged About 20 Years R/o Behind Railway Community Hall, Ward No. 02, Manendragarh, District Koriya Chhattisgarh
2. Pragya Sahu D/o Rajesh Sahu Aged About 21 Years R/o Flat No. 302, Block -42, Sector-29, Naya Raipur, Raipur Chhattisgarh

---- Petitioners**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Medical Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Raipur Chhattisgarh
2. Union of India Through Directorate General of Health Services, Ministry of Health And Family Welfare, Nirman Bhawan, New Delhi
3. Directorate of Medical Education, Old Nurses Hostel, D. K. S. Parisar, Raipur, Chhattisgarh
4. Dental Council of India Aiwan-E-Galib Marg, Kotla Road, Temple Lane, Opp. Mata Sundari College For Women, New Delhi India

---- Respondents

For Petitioners : Smt. Surya Kawalkar Dangi, Advocate
 For Respondent/State : Shri Vikram Sharma, Deputy Government Advocate

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

Order on Board**Per P. R. Ramachandra Menon, Chief Justice****17.02.2021**

1. The Petitioner has moved this Court with the following prayers:

“10.1 That this Hon'ble High Court may kindly be pleased to direct the respondent No.3 to allow the petitioners to participate in the counseling process initiated pursuant to the notification dated 12.02.201 (Annexure P/1).

10.2 That this Hon'ble High Court may kindly be pleased to direct the respondent No.2 to extend the benefit of relaxation of marks by 10 percentile to the petitioners in light of the judgment rendered by Hon'ble Supreme Court in the matter of Harsit Agrawal and Ors. Vs. Union of India and Others (Writ Petition (C) No.54/2021).

10.3 Any other relief, which this Hon'ble Court deems, fit in the facts and circumstances may also be granted in favour of the petitioner.”

2. The grievance is mainly with regard to the non-extension of the benefit given by the Apex Court as per verdict dated 08.02.2021 passed in Writ Petition (C) No.54 of 2021 (*Harshit Agarwal & Ors. v. Union of India & Ors.*). The operative portion as contained in paragraph-14 is to the following effect :

“14. For the aforementioned reasons, we set aside the decision of the first Respondent dated 30.12.2020 to not reduce the minimum marks for admission to BDS course as it suffers from the vices of illegality and irrationality. We direct that the vacant seats in first year BDS course for the year 2020-2021 shall be filled up from the candidates who have participated in the NEET (UG) courses for the year 2020-2021 after lowering the percentile mark by 10 percentile. The candidates belonging to the general category who have secured 40 percentile shall be eligible to be considered for admission in the first year BDS course for the year 2020-2021. Likewise, students belonging to the SC/ST/OBC categories shall be qualified if they have secured 30 percentile. In so far as General candidates with bench mark disabilities specified under the

Rights of Persons with Disabilities Act, 2016, they would be eligible if they have secured 35 percentile. The admissions shall be made strictly in accordance with merit and the admission process shall be completed by 18.02.2021. Any other student who has qualified in NEET (UG) – 2020 even without lowering the minimum marks and is willing to participate in the admission process shall also be considered for admission to BDS course.”

3. When the matter came up for consideration before this Court yesterday, following order was passed :

“Smt. Surya Kawalkar Dangi, Advocate for the petitioners.

Shri Vikram Sharma, Deputy Government Advocate for the State.

Shri Ramakant Mishra, Assistant Solicitor General for the Union of India.

Smt. Surya Kawalkar Dangi, the learned counsel for the petitioners points out that pursuant to Annexure P-2 verdict passed by the Supreme Court, the requisite percentile has been lowered by 10% in the unreserved category, 5% in the Person with Disability (PWD) and 10% in case of SC/ST/OBC category. The first petitioner belongs to SC category whereas the second petitioner is of OBC category and both the petitioners are thus entitled to have the benefit of lower percentage, as ordered by the Supreme Court, to decide the question of admission to the BDS course. Referring to the notice of counselling issued by the respondents, the learned counsel submits that the benefit of the Supreme Court's verdict is

being extended only to the unreserved segment and not to the reserved categories and hence the grievance.

Shri Vikram Sharma, the learned Deputy Government Advocate submits that seats are available only in the unreserved category and no seats are available in the SC/ST/OBC category. It is also pointed out by the learned counsel that prior to passing of the verdict by the Apex Court, since there was nobody else to be accommodated on the basis of merits, the unfilled seats available in the SC/ST/OBC category had already been converted into unreserved category as per the relevant rules.

But here, one question has to be considered whether the present exercise that is being done by the respondents to fill-up the vacancies in unreserved category is in the respect of such seats which got converted from SC/ST/OBC category or not ? If they are converted seats, by virtue of the Supreme Court's judgment, these converted seats may have to be reverted to the SC/ST/OBC category, so as to give effect to the verdict passed by the Supreme Court.

The learned State Counsel seeks for time to get instructions.

Post it for further consideration on
17.02.2021.”

4. Pursuant to the observation in the said order, today when the matter is taken up for consideration, Shri Vikram Sharma, the learned Deputy Government Advocate representing the State, submits on the basis of instructions received that, the seats which were lying vacant in the reserved segments as on 31.01.2021, were converted as the general

seats, whereas the verdict was passed by the Apex Court only later on 08.02.2021. There is no dispute that the verdict passed by the Apex Court has to be given effect, by letter and spirit.

5. In the said circumstance, the learned counsel fairly submits that necessary steps will be pursued to identify the slots for both the Petitioners herein (SC for the 1st Petitioner and OBC for the 2nd Petitioner) and to give them admission in the BDS course.
6. Since the admissions to BDS course is to come to an end by tomorrow i.e. on 18.02.2021, we do not find it necessary to pass any other order. In the said circumstance, it shall be for the Petitioners to approach before the DME for taking further steps forthwith.
7. The writ petition is disposed off accordingly.

Certified copy today.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge