

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 39 of 2021**

- Shivani Wadhwani D/o Gurumukh Das Wadhwani Aged About 22 Years R/o Padum Nagar, Bhilai - 3, Charoda, District Durg Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Health And Family Welfare Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh
2. Director Of Medical Education State Of Chhattisgarh Through Its Director, Medical Education, Old Nurses Hostel, Dks Bhawan, Campus, Raipur, District Raipur Chhattisgarh
3. National Medical Commission Through Its Secretary General, Pocket 14, Sector 8, Dwarka, Phase - I, New Delhi, Pin Code 110077, District : New Delhi, Delhi
4. Dean Bharat Ratna Late Shri Atal Behari Vajpayee Memorial Medical College, Rajnandgaon, District Rajnandgaon Chhattisgarh
5. Manjari Agrawal (Minor) Through Mother And Natural Guardian Smt. Seema Devi Agrawal @ Seema Agrawal W/o Shri Ramesh Kumar Agrawal, Aged About 45 Years, R/o Ward No. 24, Gali No. 02, Ramnagar, Gokul Nagar, Gudhiyari, Raipur, Tahsil And District Raipur, Chhattisgarh, Pin 492011.
6. Shivendra Shukla S/o S.N. Shukla Aged About 21 Years R/o House No. 962, Street No. 18, Shanty Nagar, Supela, P.O. Supela Bhilai, District Durg Chhattisgarh 491001

---- Respondents

For Petitioner	:	Shri Manoj Paranjpe, Advocate
For Respondent / State	:	Shri Vikram Sharma, Dy.G.A.
For Respondent No.3 / NMC	:	Ms. Anubhuti Marhas, Advocate
For Respondent No.5	:	Shri Rajkamal Singh, Advocate

&**WPC No. 3396 of 2020**

Shivendra Shukla S/o S.N. Shukla Aged About 21 Years R/o House No. 962, Street No. 18, Shanty Nagar, Supela, P.O. Supela Bhilai District Durg Chhattisgarh. 491001

---- Petitioner

Versus

1. State Of Chhattisgarh Directorate Of Medical Education, Through Director, Old Nurses Hostel Building, D.K.S. Bhawan Parisar, Raipur, District Raipur Chhattisgarh
2. Dean, Bharat Ratna Late Shri Atal Behari Vajpayee Memorial Medical College, Near Neeraj Public School, GE Road NH 46 Village Pendri District Rajnandgaon 491441 (Chhattisgarh)
3. Department Of Medical Education, Through Additional Chief Secretary, Mahanadi Bhawan, New Raipur, Atal Nagar, Police Station Rakhi, District Raipur Chhattisgarh
4. National Medical Commission, Through Its Chairperson, Pocket-14, Sector 8, Dwarka Phase-1, New Delhi 110077

---- Respondents

For Petitioner	:	Shri UNS Deo and Shri Ashish Shukla, Advocates
For Respondent / State	:	Shri Vikram Sharma, Dy.G.A.
For Respondent No.4	:	Ms. Anubhuti Marhas, Advocate

D.B.:- Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order On Board****13/01/2021**

The aforesaid two writ petitions are being disposed off by this common order as the admission and cancellation of admission of the petitioners and private respondents in these cases are said to be interlinked.

2. WPC No.3396/2020 has been filed by Shivendra Shukla, a candidate desirous of seeking admission to medical courses in the State of Chhattisgarh by virtue of his selection and placement in the merit list after clearing NEET examination held in 2020.

The petitioner – Shivendra Shukla was selected in the NEET examination and was placed at serial no.74747 (NEET overall rank). A list was drawn and counseling was arranged. In the course of counseling, the petitioner was allotted a seat of MBBS in EWS quota in the college of respondent No.2 (in WPC

No.3396/2020). The petitioner approached the Dean of the college for admission. His credential / certificates were scrutinized, however, the Dean found that the petitioner – Shivendra Shukla was not entitled to admission because his EWS certificate was issued on 16/12/2020 which is after the last date for online registration for counseling. Aggrieved by this order, Shivendra Shukla filed this petition.

3. The petitioner, in other petition, namely Shivani Wadhwani, was also a successful candidate in NEET examination and was granted NEET overall rank i.e. 89916. She was also offered admission in MBBS course and as a result of counselling, she was allotted seat in the institution of respondent No.4. However, later on, this petitioner was not offered admission as a result of re-drawal of merit list of EWS category and admission of this petitioner – Shivani Wadhwani was rejected. Aggrieved by the rejection, she approached this Court. The petitioner – Shivani Wadhwani gathered information that as two other candidates of EWS category namely Manjari Agrawal and Shivendra Shukla had filed two separate writ petitions and interim orders were passed in those cases, probably for that reason, she has been excluded from the list.

4. Learned counsel appearing for the petitioner – Shivendra Shukla would argue that the operating reason for denial of admission to this candidate is because though the EWS certificate for 2020-2021 has been issued after the cut off date of registration, this petitioner had already submitted EWS certificate for the year 2019-2020. Later on, when the situation was clarified, he obtained EWS certificate for the year 2020-2021 and it was also submitted before the authority, but the same was ignored. According to him, under the scheme of rules, exercise of scrutiny of EWS category status lay in the hands of DME (Department of Medical Education) at the time of counseling and once he has cleared, the admission authority of the college could not sit upon the decision. In support of his submission, learned counsel

placed reliance on the order passed by the Division Bench of this Court in the case of **Naaz v. State of Chhattisgarh** in WPC No.2965/2020.

5. Learned counsel appearing for the State would argue that the issue in the case of **Naaz** (supra) is distinguishable on facts because in that case, the scheme of rule was not brought to the notice of the Court. According to him, the Dean of the college, where admission is proposed, has not only authority to scrutinize the documents which are placed before him but also to verify and re-scrutinize all those credential / certificates which were earlier submitted before the DME at the time of counseling.

6. Learned counsel appearing for the petitioner – Shivani Wadhwani would argue that Shivani was offered admission in the college based on her own merit of EWS candidature which had nothing to do with the admission of Manjari Agrawal and Shivendra Shukla because Manjari Agrawal was granted admission prior to Shivani Wadhwani and further, Shivani Wadhwani and Shivendra Shukla were simultaneously placed in the same merit list and were offered admission simultaneously against two separate seats. Therefore, even if Manjari Agrawal and Shivendra Shukla filed writ petitions and some interim orders were passed in those cases, there was no occasion to disturb admission of Shivani Wadhwani. He would argue that it is not a case of forgone conclusion that opportunity was not required to be granted to Shivani Wadhwani. He would further argue that re-drawal was not proper and there was no occasion of re-drawal of EWS category seats. According to him, this having not been done, her exclusion from merit list is completely illegal and in utter violation of principles of natural justice. It is next submitted that Shivani Wadhwani has been subjected to extreme prejudice because she was initially offered admission and as per the rules, she had to give up BDS course which she was already pursuing since one year. She had also to deposit bond money of Rs.5 lakhs because of leaving the BDS course in the mid stream. Now, at this stage, the

petitioner – Shivani Wadhwani has given up her BDS course because of provisional allotment of seat in MBBS course and her exclusion from the list, at this distance of time, leaves her in lurch and she cannot go back to the old position. Therefore, the action of the respondent caused extreme prejudice and that too without offering any opportunity of hearing to her.

7. Learned counsel appearing for Shivani Wadhwani has filed intervention application stating that Shivendra Shukla is not entitled to any relief as he has not prayed for setting aside order of the Dean declaring him ineligible for the reason that EWS certificate was not in accordance with the rules. For this purpose, he placed reliance upon **Krishna Priya Ganguly and others v. University of Lucknow and ors. with Principal, King George's Medical College, Lucknow, U.P and anr. v. Dr. Ved Parkash Gupta and ors., (1984) 1 SCC 307, Bharat Amratlal Kothari and anr. v. Dosukhan Samadkhan Sindhi and ors., (2010) 1 SCC 234 and Manohar Lal (dead) by LRs v. Ugrasen (dead) by LRs. And ors with Ghaziabad Development Authority v. Ugrasen (dead) by LRs. and ors., (2010) 11 SCC 557.**

8. Learned State counsel in reply to petition filed by Shivani Wadhwani referred to averments made in paragraph 8 and 9 of the return to submit that in the present case, occasion to redraw the list and subsequent exclusion of Shivani Wadhwani from the list arose as a result of compliance of interim orders passed by this Court in the case of Manjari Agrawal and Shivendra Shukla. He would submit that re-drawal of the select list was required to be done in compliance of the judicial order and that alone was the basis for exclusion of Shivani Wadhwani. Therefore, this is a case of exceptional nature and even if opportunity of hearing was not afforded to Shivani Wadhwani, she is not entitled to any relief.

9. Learned State counsel would submit that action of the respondent / Dean is strictly according to the orders passed by this Court in various cases filed by

candidates and time and again, various directions were issued, due to which, the list was drawn and re-drawn and due to this, name of Shivani Wadhwani was excluded.

Learned counsel appearing for respondent No.5 / Manjari Agrawal in WPC No.39/2021 would submit that admission of Manjari Agrawal was much prior to grant of admission to the petitioner – Shivani Wadhwani and therefore, this petitioner could not have challenged the admission of Manjari Agrawal. He would submit that as far as Shivani Wadhwani is concerned, her exclusion is from the EWS category for the reason of re-drawal of the list because of interim orders passed in various cases. Further, Manjari Agrawal stands much higher in the list above Shivani Wadhwani. Further submission, as has been stated in other cases, the exclusion of Manjari Agrawal from the list of scrutinized candidates on the ground that she was not domicile of the State of the Chhattisgarh, is misconceived.

10. We have heard learned counsel for the parties in the above two writ petitions.

11. As far as the petition filed by Shivendra Shukla is concerned, we find that this petitioner had already uploaded EWS certificate though issued for the year 2019-2020, well within the period prescribed. Those documents were not rejected at the time of counseling by the DME. The documents submitted by the petitioner Shivendra Shukla was admitted and accepted and as a result of counseling, he was offered admission in the institution of respondent No.2. It is only when this petitioner approached the Dean of respondent No.2 that the Dean refused to grant admission on the ground that EWS certificate for the year 2020-2021 was issued and submitted after the cut-off date for registration. It is not in dispute that the petitioner had been issued EWS certificate for the year 2020-2021 which he had submitted before the Dean of the admitting college / respondent No.2.

12. If that be admitted and undisputed facts of this case, we are of the considered view that the issue in this petition is squarely covered by the order passed by the

Division Bench of this Court in the case of **Naaz** (supra). In that case, facts were identical. In that case also, the petitioner, desirous of seeking admission in medical courses in EWS certificate, has submitted EWS certificate for the year 2019- 2020. At the stage of counseling, no objection was raised by the DME, certificates were accepted and pursuant to counseling, the candidate was offered admission. It was only later on, when the petitioner approached the institution, he was denied admission saying that EWS certificate for the year 2020-2021 was issued after cut-off date of registration. In the identical facts and circumstances, as in the present case, the Coordinate Bench examined *Chhattisgarh Chikitsa, Dant Chikitsa evam Bhautik Chikitsa Snatak Pravesh Niyam, 2018* (for short 'the Rules of 2018') particularly Rule 7 and came to the conclusion that as far as scrutiny of EWS certificates is concerned, it lays in the hands of the DME and when the DME has not raised any objection, the college authority could not have re-scrutinized or rejected EWS certificate on any ground. It was held that the set of credentials which are required to be scrutinized, are all those set of documents which needs verification by the college authorities. The EWS certificate was considered to be important for consideration of the DME. In this regard, we may usefully refer to findings recorded by the Coordinate Bench in **Naaz** (supra) as below -

“8. The learned counsel points out that documents mentioned under Rule 7(xxi)(A) of the 2018 Rules are the documents required for counseling which is an exercise pursued by the DME, whereas the documents mentioned under 7(xxi) (B) are the relevant documents to be dealt with by the Institution. The Income Certificate, to declare the status in the EWS segment is a document to be considered by the DME as per the relevant Rules. The income status of the Petitioner was in fact verified in the light of the relevant documents and having found the Petitioner eligible, the 3rd Respondent/DME issued Annexure-P12 provisional allotment letter. The remaining exercise to be completed by the 2nd Respondent was only to verify the original documents and not to go beyond the allotment already given by

the DME vide Annexure-P/12.

9. In this context, it is relevant to note that Annexure-P1 rejection of the candidature has been issued by the 2nd Respondent with reference to Rule 7(iii) of the 2018 Rules; which is reproduced below :

“7. काउंसिलिंग प्रक्रिया – XXX XXX XXX

(iii) ऑनलाईन काउंसिलिंग में पंजीयन हेतु निर्धारित अंतिम तिथि तक उपरोक्तानुसार उल्लेखित मूल दस्तावेज अपलोड नहीं किये जाने पर अभ्यर्थी काउंसिलिंग प्रक्रिया हेतु अपात्र होगा । पंजीयन की अंतिम तिथि के पश्चात जारी किये हुए मूल दस्तावेज मान्य नहीं होंगे । उक्त तिथि तक प्रमाण पत्र प्राप्त कर अपलोड किये जाने का दायित्व पूर्ण रूपेण अभ्यर्थी का होगा ।

10. It is true that the relevant documents which are sought to be relied on have to be uploaded before the cut-off date. In the instant case, the Petitioner had uploaded Annexure-P/10 Income Assessment Certificate dated 16.01.2020 before the cut-off date, in support of her claim, to be in EWS category. It is true that the said certificate was for the year 2019-20, but no objection was ever raised by the DME in this regard, who was convinced of the EWS status of the Petitioner. The DME did require the Petitioner to produce any fresh certificate to ascertain the status as on date. It was the original of Annexure-P/10 certificate that was required to be verified by the College Authorities in the process of granting admission as required in Annexure-P/12. On pointing out the technical defect by the 2nd Respondent, the Petitioner rushed to the Competent Authority and obtained Annexure-P/13 certificate dated 20.11.2020, mentioning the validity as far 2020-21 and the same was produced before the 2nd Respondent, which however came to be rejected with reference to Rule 7(iii) as mentioned above. Annexure-P/13 is only an updated certificate of Annexure-P/10 and this was also admittedly produced before the 2nd Respondent on the same day i.e. 20.11.2020. It cannot be treated as a 'fresh document' or new material to oust the candidature of the Petitioner, who has come

out meritorious in the process of selection and was given provisional allotment by the 3rd Respondent/DME as per Annexure-P/12.

11. Mr. Ranbir Singh Marhas, the learned Standing Counsel appearing for the 4th Respondent submits that, the merit of the candidate is of paramount importance; to get admission to the Course in question. By virtue of the course pursued by the 2nd Respondent in rejecting of the candidature of the Petitioner as per Annexure-P1, the seat may have to be given to a less meritorious candidate, who is standing next in the queue after the Petitioner. Since the status of the Petitioner remains to be in the EWS category as certified in Annexure-P10 for the year '2019-20', which status has been accepted by the DME for issuing Annexure-12 provisional allotment order and since the said status is continuing even as on date, as affirmed by the Competent Authority vide Annexure-P/13, we are of the view that the claim of the Petitioner is liable to be sustained. The rejection of the candidature of the Petitioner by Annexure-P/1 is not correct or sustainable and in the said circumstance, it stands set aside. The 2nd Respondent is directed to consider the Petitioner as belonging to the EWS category as disclosed from Annexure-P/10, read with Annexure-P/13 and give admission to her in a seat in the EWS category, based on Annexure-P/12 allotment, subject to satisfaction of the other requirements, in accordance with law, forthwith. The writ petition stands allowed.”

13. Though an objection with regard to there being no specific relief prayed for by Shivendra Shukla has been taken, we consider that petitioner – Shivendra Shukla in his grounds has made specific averments clearly stating that he intends to challenge action of authorities who had denied him admission. Therefore, on this ground, we are not inclined to dismiss the petition.

14. In the result, the petitioner of Shivendra Shukla is allowed. Respondent No.2 / Dean is directed to admit Shivendra Shukla against the EWS seat which was offered to him and in respect of which, there is interim order passed in his favour.

We have made it clear that this order is not going to affect the case of other candidates namely Shivani Wadhwani and Manjari Agrawal because Shivendra Shukla and Shivani Wadhwani were offered admission simultaneously against two separate seats and by that time, Manjari Agrawal was already admitted and that too in different institution.

15. As far as petition of petitioner – Shivani Wadhwani is concerned, in our considered opinion, her petition also deserves to be allowed only on the ground of violation of principles of natural justice as Shivani Wadhwani was placed in the list of selected candidate and during counseling also, she was able to secure a seat in MBBS course and was granted provisional admission by the order of the DME but later on, the list on the basis of which she was offered admission itself was changed and her name was excluded from the list stating that she had no occasion for seeking admission in the college. By that time, Shivani Wadhwani had given up BDS course wherein she had completed almost one year. Not only this, she had also deposited bond amount of Rs.5 lakhs. After having done all this, exclusion of this petitioner from the list left her in lurch.

Though learned State counsel would submit that exclusion of Shivani Wadhwani was result of re-drawal of list in compliance of various interim orders passed in the cases of Sifatpal Singh Arora, Manjari Agrawal and Shivendra Shukla, we find that offer of admission to Shivani Wadhwani was not only simultaneous to Shivendra Shukla but also after admission offered to Manjari Agrawal. This *prima facie* shows that she was offered admission against seat other than the seats against which Shivendra Shukla and Manjari Agrawal were offered admission. Therefore, the petitioner was entitled to opportunity of hearing and it cannot be said to be a case of useless formality as held in the case of **Aligarh Muslim University and ors. v. Mansoor Ali Khan, (2000) 7 SCC 529**. The facts of this case with regard to simultaneous placement and exclusion are neither admitted nor

indisputable. Once the matter requires enquiry, it was open for the petitioner to satisfy the authority that her exclusion was not warranted merely because this Court had passed various orders much less interim order passed in the case of Manjari Agrawal and Shivendra Shukla. This would suffice and support our conclusion that exclusion of petitioner – Shivani Wadhwani from the list was required to be preceded by affording her an opportunity of hearing. Admission and cancellation of admission or withdrawal / exclusion from the list of selected candidates are serious matters. Unless exceptional rule is applicable, in our opinion, the action will have to be declared as illegal and inoperative in law. Therefore, the petition of Shivani Wadhwani is also allowed.

16. We may clarify at this stage that Manjari Agrawal has separately filed a petition because her admission was canceled on account of stated reasons that she had to be excluded from selection process as result of change of her inclusion as domicile of State of Chhattisgarh. That examination would be separately done while hearing in the case of Manjari Agrawal and other connected matters.

The authorities shall act in due compliance of the order upon production of web copy without insisting on production of certified copy.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge