

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

920 WRIT PETITION NO.5905 OF 2021

SACHINKUMAR GOVINDSINGH RAJPUT
VERSUS
THE UNION OF INDIA AND OTHERS

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Advocate for Petitioner : Mr. A. N. Sabnis
ASG for Respondent no.1: Mr. A.G. Talhar
Advocate for Respondent no.4 :Mr. S.K. Kadam

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

DATED : 7th APRIL , 2021.

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PER COURT :

1. The petitioner seeks direction against respondents to admit the petitioner for the super specialty course in Cardiologist subject.

2. Mr. Subnis, learned counsel for the petitioner submits that the petitioner had appeared for NEET exam for the purpose of admission to the super specialty courses. The candidate was required to possess 50% percentile marks so as to be eligible for admission to the super specialty courses. Subsequently, the

commission recommended reduction of the qualifying percentile by 5% i.e. from 50% to 45%. Pursuant thereto, on 30th January, 2021 the National Board of Examination issued a notice providing revision of qualifying percentage for the super specialty courses. For the Cardiology subject the cut off marks was reduced to 154. The petitioner has secured 154 marks making him eligible for admission to DM Cardiology. The learned counsel submits that the petitioner is a medical practitioner and is rendering services in this difficult time of Covid-19 pandemic. Pursuant to the order of Supreme Court the last date for admitting students to the super specialty courses was extended to 8th of February, 2021. The fact of extension of cut off date as well as reduction of percentile could not be noticed by the petitioner because of the short notice. A notice was published by the National Commission on 3rd February, 2021. Pursuant to the said notice, the candidates for participating in the mop up round had to register from 01.00 p.m. to 7.00 p.m. The payment was to be done from 1.00 p.m. to 8.00 p.m. The choice filling was from 01.00 p.m. to 11.15 p.m. The choice locking facility was available from 9.00 p.m. to 11.15 p.m. The entire exercise was to be completed on or before 11.59 p.m. on the same day i.e. on 03.02.2021. As the petitioner at relevant

time was suffering from illness and was hospitalized, he could not notice the publication of the schedule. The petitioner could learn about the extension and reduction of percentile only in second week of March, 2021. The petitioner approached the respondent by making a representation on 23rd March, 2021. The same is not considered. The vacancies are available with respondent no.5-college at Aurangabad as well as at Mumbai for DM Cardiology subject. The learned counsel submits that considering these extraordinary circumstances this court can direct the respondents to admit the petitioner even after the cut of date. As on date, 70 seats in DM Cardiology are vacant all over India. They would go waste in spite of availability of deserving candidates. This court may exercise its jurisdiction under Article 226 of the Constitution of India. The learned advocate relies on the judgment of the Apex Court in the case of ***National Medical Commission vs. Mothukuru Sriyah Koumudi and others, reported in 2020 SCC OnLine SC 992*** and another judgment of the Apex Court in case of ***S. Krishna Sradha vs. The State of Andhra Pradesh and others, reported in 2019 SCC OnLine SC 1609***.

3. Mr. Kadam, learned counsel submits that the date for

admission to the super specialty course was extended to 8th February, 2021 under the orders of the Apex Court. The percentile was lowered. The petitioner has got 154 marks and as per the revised lower percentage the petitioner had the 45% percentile. The petitioner failed to apply as per the mop up round under schedule. The petitioner cannot be considered for admission after the cut of date.

4. The cut of date for admission is fixed. The Apex Court in the present case had extended the cut off date for admission to super specialty courses up to 8th February, 2021. The same would be sacrosanct. Passing orders directing admission after the cut off date in the present facts of the case would be improper and not in tune with the propriety. It would tantamount to extending the last cut off date fixed by the Apex Court.

5. The judgments relied by Mr. Sabnis learned counsel for the petitioner may not inure to the benefit of the petitioner. In case of National Medical Commission (supra) a candidate was provisionally admitted to the M.S. (General Surgery) course. In that case the candidate contended that he approached the

college before the last date prescribed for admission, whereas respondent no.2 college therein insisted that the candidate did not turn up for admission before the last date. The High Court recorded a finding that the candidate had visited the college on 29/07/2020 i.e. before the last date. The candidate also paid the university fees on 29/07/2020 i.e. before the last date. The Apex Court concluded that the candidate was not at fault.

6. In case of S.Krishna Sradha (supra) the Apex Court held that under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate pursued his legal right without any delay and the fault is only on the part of authorities or that there is apparent breach of the rules and regulations the court under exceptional circumstances and in the rarest of rare cases direct admission in the same or by directing increasing of seats. Apex Court further laid down a word of caution that such relief can be granted only in exceptional circumstances and in the rarest of rare cases.

7. In the present matter, the petitioner as per qualifying percentile of 50% was not eligible for admission to the super specialty course. The National Commission took a decision to

lower qualifying percentile by 5% i.e. from 50% to 45%. After the qualifying percentile was reduced the petitioner possessed the necessary qualifying percentile. It appears that the Commission filed application before the Apex Court requesting for extending the last cut off date for admission. The Apex Court under its order dated 28th of January, 2021 passed in M.A. No.133 of 2021, M.A. No. 145 of 2021, M.A. No. 147 of 2021 and M.A. No. 152 of 2021 in Writ Petition No. (c) 76 of 2015 extended the cut off date for the admission to the super specialty course upto 8th February, 2021.

8. It appears that pursuant to the orders of the Apex Court a notice was published by the Director of Health Services on 3rd February, 2021 giving the schedule for the candidates to apply. The petitioner at the relevant time did not apply. It is the contention of the petitioner that the petitioner was not well and was admitted in the hospital up to 5th March, 2021. Be that as it may, the petitioner did not apply till the last cut off date for admission. For first time the petitioner on 23rd March, 2021 represented to the National Medical Commission to consider his candidature for admission to the DM Cardiology course in the respondent no.5 -college. The said application was made more

than 1 & 1/2 month after the cut off date.

9. In the present matter, we do not find that the authorities were at fault. We also do not find that the petitioner had approached the authority or the court at the earliest. When the authorities cannot be faulted with and the fault is attributable to the petitioner, the exceptional circumstance as considered by the Apex Court in case of S. Krishna Sradha (supra) does not arise.

10. In light of that, though Mr. Sabnis, learned counsel for the petitioner with all his erudition tried to impress upon us that the case of the petitioner be considered and that the seats are still vacant, we are not inclined to accept the said contention. Writ petition is disposed of. No costs.

(SHRIKANT D. KULKARNI, J.) (S. V. GANGAPURWALA, J.)

vsm/-