

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Writ Petition No.1870 of 2021

Date of decision: 12th February, 2021

Moanna Rai

...Petitioner

Versus

State of Punjab & Others

...Respondents

(Heard through Video-Conferencing)

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Vikas Bahl, Senior Advocate with
Ms. Priyanka Kansal, Advocate and
Mr. Nakul Sharma, Advocate
for the petitioner.

Mr. S.P.S.Tinna, Addl. AG, Punjab,
for respondent No.1-State.

Mr. Nitin Kaushal, Advocate,
for respondent No.2.

Mr. Bhrigu Dutt Sharma, Advocate,
for respondent No.3.

Dr. P.George Giri, Advocate,
for respondent No.4.

* * * * *

MEENAKSHI I. MEHTA, J.

By way of the instant petition, the petitioner has sought the
indulgence of this Court for issuance of a writ in the nature of certiorari
setting aside the selection list dated 13.01.2021 to the extent of granting

admission to respondent No.4 who belongs to Category 2B and also quashing the List/Circular dated 09.01.2021 on account of its showing the vacancy of one seat in the Combined Christian Minority Quota, i.e. 2A to 2G, in Christian Medical College, i.e. respondent No.3 (here-in-after referred to as “CMC Ludhiana”) which is contrary to the List/Circular dated 08.01.2021 wherein the vacancy of the seat in Category 2D of the Christian Minority Quota in the said College, has been shown for the Session 2020-21. The petitioner has further prayed for issuance of a writ in the nature of mandamus directing respondents No.2 and 3 to consider her for admission in the MBBS Course in the above-said College under the afore-mentioned Category 2D.

2. Bereft of unnecessary details, the facts, as canvassed by the petitioner in the instant petition, are that she had cleared 10+2 (medical stream) exam of the CBSE from Holy Cross Senior Secondary School, Lodhi Para Kapa, Raipur, Chhattisgarh. She appeared in NEET exam on 13.09.2020 and secured All India Ranking at Sr.No.577795. CMC, Ludhiana issued a Prospectus for the admission to MBBS/BDS Courses in the Medical/Dental Institute wherein it was mentioned that the admission in the said Courses would be given on the basis of eligibility and the merit obtained in the NEET(UG) 2020 and also with the approval of respondent No.2-Baba Farid University of Health Sciences, Faridkot (here-in-after referred to as “respondent No.2-University”) as the said College is affiliated to the same. The selection guidelines of CMC, Ludhiana are approved by the Medical Council of India as well as the Dental Council of India. Total number of the seats allotted to respondent No.3-CMC, Ludhiana for MBBS Course, is 75 and these seats are allocated to different categories as tabulated below:-

Category	Category Code	75 Seats
Open General	1	<u>8 (Punjab)</u> 4 (All India)
Christian Minority with Service Commitment	2	(48)
A	2A	15
B	2B	6
C	2C	6
D	2D	6
E	2E	6
F	2F	6
G	2G	3
SC/ST from Punjab	3	3
BC/OBC from Punjab	4	1
NRI (All India)	5	11

“AREA WISE DISTRIBUTION FOR SEATS & UNION TERRITORIES: Christian Minority with Service Commitment Category-MBBS and BDS-Category 2:

- A – Punjab
- B – Andhra Pradesh, Karnataka, Kerala, Puducherry, Tamil Nadu, Telengana.
- C - Goa, Maharashtra, Gujarat, Daman & Diu, Dadra & Nagar, Haveli, Rajasthan, Lakshadweep.
- D – Madhya Pradesh, Chhattisgarh, Orissa, Jharkhand, West Bengal, Andaman & Nicobar, Islands.
- E – Uttar Pradesh, Bihar, Uttarakhand, Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Sikkim, Tripura.

F – Jammu & Kashmir, Himachal Pradesh, Delhi, Haryana, Chandigarh.

G – Service Commitment with CMC Ludhiana & its Outreach Centers. Candidates applying in the 2G category should have their forms endorsed by the Director, Christian Medical College Ludhiana, as per details given on page 26.”

In the eventuality of the seats of any of the afore-said categories having remained vacant, the same are to be filled up in accordance with the procedure as provided in the above-said Prospectus which has been further clarified vide Instructions dated 23.12.2020 and the conjoint reading of the same makes it clear that in case of any seat of any category having fallen/ remained vacant, the same is to be filled up by offering it first to the candidate from that particular category and when no candidate of the said category is left, then the Combined Merit List is to be looked into for filling up the same.

3. The petitioner has, further, averred that the first round of counselling for admission in CMC Ludhiana was held from 13.11.2020 to 15.11.2020 and the second round of counselling was held during the period from 05.12.2020 to 10.12.2020 but six seats remained vacant under the NRI category and the same were duly filled up in the Mop-Up round of counselling. She had also applied for and had got her name registered for the Mop-Up round of counselling under Category 2D while depositing the requisite fee of Rs.1(one) lac for this purpose. Thereafter, respondent No.2-University issued/uploaded the provisional vacancy position of the seats on its website wherein one seat of Category 2D was shown to be vacant in CMC, Ludhiana and thus, she was the only eligible candidate for filling up the same but thereafter, on 09.01.2021, the said provisional vacancy position

of the seats was again uploaded by respondent No.2-University on its website wherein one seat was shown to be vacant in CMC Ludhiana under the Christian Minority Quota (Combined) which includes all the categories from 2A to 2G. Then, respondent No.2-University notified for holding the Stray Vacancy round of walk-in counselling (Physical) on 13.01.2021 and she had also participated in the said round of counselling on that day but despite her being eligible for the seat which fell vacant in Category 2D, respondent No.4, who belongs to Category 2B, has been illegally and arbitrarily granted admission against the said seat.

4. It is pertinent to mention here that respondent No.1 did not file any written-reply in the present petition.

5. However, respondent No.2-University filed its short reply wherein it has contested the claim of the petitioner, inter-alia, on the grounds that in the first and second rounds of counselling, the seats reserved for the Minority Quota were offered to the candidates as per the Admission Policy, enshrined in the Information Brochure issued by the Christian Medical College for the Session 2020-21. During the second round of counselling, firstly the seats were offered to the Minority Quota candidates as per their eligibility and after exhausting all the candidates of the said Quota, the remaining vacant seats of Categories 2A to 2G of the Minority Quota were converted into Category 2 (Combined Merit List) seats and were offered accordingly. Thereafter, fresh applications were invited for the Mop-Up round of counselling and the petitioner applied for the same and got registered at Sr. No.904716. As per the Policy mentioned in the Information Brochure, all the remaining vacant seats were offered to Category 2 (Combined Merit List) in the Mop-Up round but in view of the NEET merit, no seat was allotted to the petitioner in this round under the said

Category 2 and all the seats of CMC, Ludhiana were filled up at that stage.

6. Respondent No.2 has also asserted that after the Mop-Up round of counselling, one candidate, belonging to Category 2D of the Minority Quota, surrendered the seat in CMC Ludhiana and the same was displayed as the tentative vacancy with the remarks that the final vacancy would be displayed at the time of Stray Vacancy round of the counselling. Later-on, in view of the communication received from CMC Ludhiana, the afore-said information regarding tentative vacancy was rectified and the said vacancy was displayed as a vacancy under Category 2 (Combined Merit List) to be filled up during the Stray Vacancy round of counselling scheduled to be held on 13.01.2021. Total 183 candidates had applied for the said round, out of which the provisional merit list of 14 candidates of Christian Minority was displayed wherein the petitioner was placed at Rank No.13 as per the NEET merit whereas respondent No.4 was placed at Sr.No.1 therein as she had secured 432 marks and therefore, she was provisionally selected for the above-mentioned vacant seat having arisen in CMC Ludhiana.

7. Respondent No.3, in its separately filed written-statement, has controverted the averments of the petitioner, inter-alia, on the grounds that she (petitioner) has not come to the Court with clean hands and has suppressed/concealed the material facts. The procedure for filling up the vacant seats, as provided in the Information Bulletin at page No.11, is as under:-

Vacancy in Category	Will be filled first from	Then	Then
1	2(Combined Merit List)	4	3
2 (A,B,C,D,E,F,G)	2 (Combined Merit List)	1	4
3	4	1	2(Combined Merit List)

4	3	1	2 (Combined Merit List)
5	2 (Combined Merit List)	1	

The vacancies in CMC Ludhiana have been filled up while following the above-detailed pattern. The petitioner had not applied for participating in the counselling process at the initial stage, i.e for the Ist and IInd rounds and rather, she had applied for and had participated in the same at the stage of the Mop-Up round, i.e the stage when all the vacancies were transferred to and were available in the Combined Merit List and she was well-versed with all the rules and the procedure to be followed for seeking admission, as described in the Information Bulletin. In fact, no candidate from Category 2A was available during the Second round of counselling and therefore, six vacant seats of the said category were transferred to and were filled up from the Combined Merit List of Categories 2A to 2G. One seat, which fell vacant under Category 2D after the Mop-Up round of counselling, was required to be transferred to the Combined Merit List of Categories 2A to 2G as provided in the Information Bulletin and was not to be filled up from the candidates of Category 2D. At the time of the Stray Vacancy round of counselling, respondent No.4, being more meritorious with 432 marks vis-a-vis the petitioner who had secured only 180 marks, was found to be entitled for the afore-said vacant seat and was, accordingly, offered the same and was granted the admission. Respondent No.4 has already joined the Course and is pursuing her studies and this petition deserves dismissal with heavy cost.

8. Respondent No.4 also preferred to file her counter-affidavit (reply) wherein she has specifically deposed that the seat, which fell vacant under Category 2D because of the candidate named Bibhu Prasad Sagariya

having left the same, was to be filled up in the Stray Vacancy round from the Combined Merit List of Categories 2A to 2G. There was no vacant seat under Category 2D even at the time when the petitioner applied for her admission in CMC, Ludhiana at the stage of the Mop-Up round of counselling and this fact makes it explicit that she had not applied for any vacant seat under the above-mentioned category. She (respondent No.4) has been granted admission in the said Course because of her having secured higher marks than the petitioner in the NEET exam and she has prayed that this petition be dismissed.

9. We have heard learned counsel for both the parties in the present petition and have also perused the file thoroughly.

10. Learned counsel for the petitioner has pointed out that the petitioner belongs to Category 2D of Christian Minority Quota and the clarification of CMC Ludhiana, annexed at page No.66 of the paper-book, provides that in case, any of the Christian category vacancies cannot be filled up from that particular category due to there being no eligible applicant, then it will be filled from the Combined Merit List of Christian Minority Quota, merit-wise, as per the pattern of filling up of the seats given in the Information Bulletin and the said Bulletin (Annexure P-6 at page No.46 of the paper-book) provides the procedure for filling up the vacant seats for MBBS Course and Annexure P-16, i.e tentative provisional vacancy position displayed for Stray Vacancy round, shows the vacancy of one seat of Category 2D in CMC, Ludhiana and he has contended that the petitioner, being a candidate of the said category, was entitled to get admission against the said vacant seat but respondent No.2-University, vide Annexure P-17, illegally displayed the said vacant seat to be existing under the Christian Minority Quota (Combined), i.e Categories 2A to 2G and

respondent No.4 was wrongly offered that seat despite the fact that she belonged to Category 2B as specified in Annexure P-18, i.e the provisional merit-list of the candidates who appeared for Stray Vacancy round of counselling as held on 13.01.2021. To buttress his contentions, he has placed reliance upon the **S.Krishna Sradha vs. State of Andhra Pradesh & Ors. 2020 AIR(SC) 47; Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai, 1998(8) SCC 1; Harbanslal Sahnia and another vs. Indian Oil Corpn. Ltd. and Others 2003(2) SCC 107 and Union of India & Ors. vs. Tania Construction Pvt. Ltd. 2011(3) SCC (Civil) 117.**

11. Per contra, learned counsel for the respondents have argued that in the eventuality of any seat having remained vacant after the Ist and IInd rounds of counselling for admissions in the afore-said Course, the same was to be shifted to the Combined Christian Minority Quota including Categories 2A to 2G and was to be filled up accordingly in the Mop-Up round and if it still remained vacant, then the same was to be so filled up in the Stray Vacancy round and respondents No.2 and 3 have strictly followed the above-mentioned pattern as prescribed in the Information Bulletin Annexure P-6 as well as the said Instructions at Page 66 of the paper-book. They have further argued that the petitioner could not succeed to get a seat in CMC, Ludhiana even in the Mop-Up round and even otherwise, no seat of the said Category 2D was vacant at that time and rather, one seat of Category 2D fell vacant on account of one selected/successful candidate of the said category, named Bibhu Prasad Sagariya, having left the same after the Mop-Up round and hence, the merit-list of the Stray Vacancy round of counselling was prepared while considering the Combined Merit List of Christian Minority Quota on the basis of the performance of the candidates in NEET (UG) exam and the petitioner had got only 180 marks whereas respondent No.4

had obtained 432 marks in the said exam and it being so, it is quite clear that respondent No.4 has been granted admission in CMC Ludhiana strictly in accordance with the prescribed rules and procedure.

12. Undisputedly, the petitioner belongs to Category 2D of the Christian Minority Quota. Annexure P-9 is the Provisional Allotment List of the First round of online counselling wherein at page No.71 of the paper-book, all the six seats of Minority Quota Category 2D in CMC, Ludhiana are shown to have been allotted. Annexure P-11 is the Provisional Allotment List of the Second round of online counselling which shows that no seat under the Minority Quota Category 2D had been allotted to anyone in the said College meaning thereby that in the first round of counselling, all the six seats, as allocated under the said category, had been filled up. Annexure P-13 is the document showing the deposit of Rs.1 (one) lac by the petitioner on 22.12.2020 as the registration fee. As is explicit from Annexure P-12, i.e the Schedule for the Mop-Up round of online counselling as notified by respondent No.2-University, the same was to be held during the period from 22.12.2020 to 23.12.2020 and this fact makes it crystal clear that the petitioner had got herself registered at the stage of Mop-Up round of counselling.

13. Further, a bare perusal of Annexure R-4/2, i.e the list showing the tentative provisional vacancy position for Mop-Up round in respondent No.3-CMC, Ludhiana as on 22.12.2020, i.e the day of deposit of the above-said registration fee by the petitioner, reveals that no seat under Category 2D of the Christian Minority Quota was vacant. This list itself speaks volumes of the fact that the petitioner could not have been considered for her admission in the said Course in CMC Ludhiana under Category 2D even in the Mop-Up round but despite this fact, she had applied for participating in

the afore-said round of counselling and these facts lead to the inference that she was well aware of the fact that after the second round of counselling, the remaining left over vacant seats were to be filled up from the Combined Merit List of the Christian Minority Quota. Annexure P-14 is the Provisional Allotment List of the Mop-Up round of online counselling showing six seats of “Minority Quota 2A to 2G NRI” having been filled up with the last candidate having secured 435 marks in the NEET exam and this fact goes to show that the petitioner, with the score of 180 marks in the said exam, could not succeed in getting any seat allotted to her, in the Mop-Up round of counselling.

14. Then, as regards the above-said discrepancy in Annexures P-16 and P-17, i.e the lists showing the tentative provisional vacancy position in CMC, Ludhiana for Stray Vacancy round, initially as the vacancy of one seat in Category 2D and subsequently, in the Christian Minority Quota (Combined) 2A to 2G respectively, it is worth-while to mention here that Annexure R-2/1 is the letter dated 06.01.2021 as addressed by CMC, Ludhiana to respondent No.2-University wherein it has been intimated that as of 31.12.2020, all the candidates had reported in the College for MBBS Course Session 2020 but thereafter, one candidate named Bibhu Prasad Sagariya had resigned from the seat and the latest vacancy position for the Stray Vacancy round, as reported therein, was that one seat of Christian Minority Quota (2A to 2G Combined) had fallen vacant. Further, Annexure R-3/1 is the letter dated 06.01.2021 as issued by CMC Ludhiana informing respondent No.2-University therein about its having no objection for showing the seat left by the above-said selected candidate of Category 2D, as the vacant seat in Christian Minority Combined List 2A to 2G for the said Course. However, in Annexure P-16, i.e the list showing the tentative

vacancy position as on 08.01.2021, the afore-said vacant seat is displayed under Category 2D but Annexure R-3/2 is the letter dated 09.01.2021 issued by CMC, Ludhiana to respondent No.2-University intimating therein that the said vacant seat in MBBS Course in the College was incorrectly being shown on the website of the University as 2D(1) and the same should be shown as a vacant seat in Combined Minority List (2A to 2G).

15. To add to it, respondent No.2-University, in para no.13 of its reply, has categorically asserted that in response to the call received from the authorities of CMC, Ludhiana, the seat, as surrendered by the said candidate under the Minority Quota 2D Category, had correctly been described as per the Policy and was displayed as being vacant under the Combined Merit List, i.e under 2A to 2G Categories, for being filled up during the Walk-in Physical Stray Vacancy round of counselling. Even otherwise, as per the Information Bulletin and the afore-discussed Instructions as issued by CMC, Ludhiana, the seats of the Christian Minority Quota under any category, which remained vacant, were to be filled up from the Combined Merit List of Categories 2A to 2G. All the above-discussed facts and circumstances lead to the only irresistible conclusion that one seat of Category 2D had, inadvertently, been shown to be vacant in Annexure P-16 and this error had been rectified by respondent No.2-University vide Annexure P-17 in pursuance of the afore-mentioned letter Annexure R-3/2 and therefore, Annexure P-16 does not entitle the petitioner at all to claim the allotment of the above-said vacant seat to her for her admission in the MBBS Course in respondent No.3-CMC, Ludhiana.

15. The observations as made by the Apex Court in **S.Krishna Sradha** (supra), **Whirlpool Corporation** (supra), **Harbanslal Sahnia and another** (supra) and **Union of India & Ors.** (supra) do not further the cause

of the petitioner because in **S.Krishna Sradha** (supra), it has been held that if a candidate is meritorious and no fault is attributable to him and he has pursued his legal right expeditiously without any delay, he cannot be denied the admission because the cut-off date has passed but however, in the case in hand, as discussed earlier, the petitioner has secured 180 marks only and respondent No.4 has secured 432 marks in NEET exam and thus, respondent No.4 is, apparently, more meritorious vis-a-vis the petitioner. Further, in **Whirlpool Corporation** (supra), **Harbanslal Sahnia and another** (supra) and **Union of India & Ors.** (supra), all that has been held is that the availability of any alternative efficacious remedy is not an absolute bar to invoke the writ jurisdiction whereas the instant writ petition has been entertained and no opinion regarding the same being not maintainable has been expressed by us in the preceding paragraphs.

16. As a sequel to the fore-going discussion, it follows that this petition is devoid of any merit and the petitioner cannot be granted the relief as claimed therein. Resultantly, the instant petition, being sans any merit, deserves dismissal. We order accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

12.02.2021.

seema

<i>Whether speaking/reasoned?</i>	<i>Yes/No</i>
<i>Whether Reportable?</i>	<i>Yes/No</i>

