

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CWP No. 22753 of 2020 (O&M)

Date of decision:- 09.02.2021

Rumiel

....Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE  
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

**Present:-** Mr. Mukesh Kumar Verma, Advocate, for the petitioner.  
Mr. Deepak Balyan, Addl. Advocate General, Haryana.  
Mr. M.S.Longia, Advocate, for respondent No.3.  
Mr. Nilesh Bhardwaj, Advocate, for respondent No.4.  
Mr. Angrej Singh, Advocate, for respondent No.17.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

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**RAVI SHANKER JHA, CHIEF JUSTICE (ORAL)**

The petitioner who had appeared in the NEET-2020 examination seeking admission in the MBBS course has filed this petition being aggrieved by denial of admission in the government college under the Scheduled Caste (deprived) category. The petitioner has also prayed for quashing of the order dated 30.12.2020 passed by respondent No.2-Appellate Authority rejecting the appeal filed by her as well as the order allotting a seat to her in the private medical college in the first round of counseling. The petitioner has also prayed for quashing the admission granted to respondents No.5 to 17 in the MBBS course in Government College in violation of the rule of merit on the ground that she has obtained more marks in the NEET-2020 than the aforesaid respondents.

2. Brief facts leading to the filing of the present petition are that the petitioner having obtained 442 marks in NEET-2020 examination applied for admission in the State of Haryana under the Scheduled Caste

category. The first counseling for making admission in MBBS course took place on 15.11.2020 and thereafter provisional allotment list was issued on 21.11.2020, according to which the petitioner was allotted a MBBS seat in a private medical college, namely, NC Medical College and Hospital, Israna in the scheduled caste category. The petitioner as per the schedule and provisions for filing objections prescribed by the authorities objected to allocation of a seat in a private college as a scheduled caste candidate. It is stated by the petitioner that she immediately thereafter filed a representation on 21.11.2020/22.11.2020 (Annexure P-8) informing the respondent-authorities that the petitioner had by mistake filled up the form mentioning her category as scheduled caste whereas the petitioner infact belongs to the scheduled caste (deprived) category. The petitioner was informed vide order dated 22.11.2020 received on 24.11.2020, that her case had been considered as a schedule caste candidate in accordance with the category mentioned by her in her form and therefore, she had been allotted a private medical college on the basis of her merit in that category.

3. The petitioner thereafter filed a Civil Writ Petition No.22573 of 2020 before this Court which was decided by this Court on 02.12.2020 whereby this Court on a statement being made by the learned Additional Advocate General, Haryana, relegated the petitioner to the Appellate Authority in terms of Clause 11(x) of the Haryana Government Gazette Extra Ordinary Notification dated 29.10.2020 wherein the procedure for admission in MBBS/BDS courses has been prescribed. The petitioner's father thereafter applied for change of petitioner's category from scheduled caste to scheduled caste (deprived) on 04.12.2020 which was permitted and thereafter the petitioner participated in the second round of counseling held

on 12.12.2020. In terms of her changed category, the petitioner was allotted a BDS seat in Pandit Bhagwat Dayal, PGIMS, Rohtak as a scheduled caste (deprived) candidate. On 24.12.2020, the State authorities issued a fresh notice for registration of candidates for the mop-up round wherein the petitioner again participated as a scheduled caste (deprived) candidate but did not take admission as she did not get the college of her choice.

4. Being aggrieved, the petitioner filed the present writ petition on 27.12.2020 challenging the proceedings of the first round of counseling and claiming consideration of her case as a scheduled caste (deprived) candidate for admission on a government seat. On 30.12.2020, the Director General, Medical Education & Research, Haryana, considered the appeal filed by the petitioner pursuant to the observations made by this Court in Civil Writ Petition No. 20573 of 2020 and dismissed the same reiterating the fact that the petitioner had applied as a scheduled caste candidate and not as a scheduled caste (deprived) candidate and therefore, her claim for being considered as a scheduled caste (deprived) candidate in the first round of counseling was untenable. The petitioner has consequently amended the petition challenging the order passed by the Appellate Authority as well.

5. Learned counsel for the petitioner has alleged that admittedly the petitioner is a “Khatik” by caste which is a scheduled caste (deprived) as mentioned at Sr. No. 19 in Annexure II to the Notification dated 29.10.2020 (Annexure P-3) in respect of which she also possesses a certificate and in such circumstances the respondent-authorities were bound to consider her candidature as a scheduled caste (deprived) category candidate inspite of the fact that the petitioner had filled up the form as a scheduled caste candidate and not as a scheduled caste (deprived) candidate, more so as the said

omission on the part of the petitioner was a *bonafide* mistake which should have been permitted to be corrected by the respondent-authorities.

6. The petitioner has also alleged that the petitioner has obtained 442 marks in the NEET examination which are much more than the marks obtained by respondents No.5 to 17 and certainly more marks than respondent No.17 who has obtained only 408 marks *inspite* of which they have been allotted seats in the government college while the petitioner has been allotted a seat in a private medical college. The petitioner submits that as the mistake on her part being *bonafide*, the authorities should have considered her claim under the scheduled caste (deprived) category but as they have not done so at the stage of first round of counseling, the first round of counseling be quashed and the petitioner be allotted a seat in the Government College in preference to and in place of respondent No.17. The challenge is confined to the first round of counseling.

7. It is pertinent to note that this submission has been made by the petitioner as the petitioner has given up her claim as far as it relates to respondents No. 5 to 16 and on that count the notice in this petition was issued only to respondent No.17.

8. The respondent authorities as well as the respondent No.17 while opposing the petition and the contentions raised by the petitioner have submitted that a total of 114 seats have been reserved for scheduled caste category out of which 57 have been reserved for the scheduled caste (deprived) category. It is submitted that the fact that the petitioner did not apply under the scheduled caste (deprived) category but infact applied as a scheduled caste candidate is not disputed and is an admitted fact and therefore, as per the rules and the notification issued by the State of Haryana,

the petitioner's claim for admission was considered under the category mentioned by her in her form, namely, scheduled caste category.

9. The respondents have pointed out and drawn the attention of this Court to clause 16(g) of the General Instructions mentioned in the notification dated 29.10.2020, Annexure P-3, which specifically provides that *"in case a candidate does not fill up his reserve category in his application form, he/she will not be subsequently considered for admission against that category"*. It is submitted that in such circumstances, the petitioner's claim for considering her case as a scheduled caste (deprived) category candidate is misconceived.

10. The respondents have further stated that as per the schedule for counseling issued on 14.11.2020 (Annexure P-4), registration on online portal was to be undertaken from 15.11.2020 to 18.11.2020; editing in the form was permitted up to 19.11.2020; locking of choice was also to be made by the same date; the provisional allocation of seats was to be notified on 21.11.2020 and grievances regarding provisional allocation of seats were to be raised up to 22.11.2020 whereafter reallocation of seats would be undertaken on 23.11.2020.

11. It is submitted that undisputedly the petitioner had applied under the scheduled caste category and did not request for correcting the same till 19.11.2020 which was the last date for doing so, therefore, the petitioner's claim was considered under that category. After the first counseling was over, the petitioner belatedly approached the authority in this regard but the same could not be considered in terms of clause 16(g) of the procedure notified vide Annexure P-3.

12. It is submitted that subsequently in lieu of the order passed by this Court in Civil Writ Petition No. 20415 of 2020 filed by Sachin and Dhitika on 27.11.2020 directing the Director General, Medical Education & Research, Haryana to decide their appeals, the Director General granted relaxation by way of one chance to change the category/editing the application form for the second round of counseling and extended the benefit of this relaxation to all the candidates and issued an order to this effect on 28.11.2020 vide Annexure P-13.

13. The petitioner's father in terms of the order passed by the Appellate Authority on 28.11.2020 made a request through email for the first time on 04.12.2020 before the respondent-authorities for change of category in the second round of counseling from scheduled caste to scheduled caste (deprived) category, wherein the petitioner admitted the fact that she had mistakenly filled the form under the scheduled caste category. This request was made by the petitioner for the first time on 04.12.2020 much after the first round of counseling and was entertained only because of the relaxation granted by the Appellate Authority permitting such change as a onetime measure, that to, for second round of counseling alone.

14. The respondents have pointed out that after the change was permitted, the second round of counseling was held on 15.12.2020 wherein the petitioner participated as a scheduled caste (deprived) category candidate and was allotted a seat in the BDS course in Pandit Bhagwat Dayal, PGIMS, Rohtak on merit in accordance with the seats available for counseling during the second round.

15. The petitioner also participated in the mop up round counseling held on 30.12.2020 but decided not to seek allocation of the seat as she was again getting a seat in a private college. It is submitted that the Appellate Authority in terms of the directions in the petition filed by the petitioner rejected the appeal filed by the petitioner claiming consideration of her case in the first round of counseling as a scheduled caste (deprived) candidate by passing a speaking order on 30.12.2020 (Annexure P-26).

16. Learned counsel appearing for the respondents submits that in view of the aforesaid facts and circumstances it is evident that the present case is not one where the petitioner had applied under the scheduled caste (deprived) category but was deliberately and mistakenly not considered as a scheduled caste (deprived) category by the respondent authorities during the first round of counseling. It is submitted that admittedly the instant case is one where the petitioner had applied as a scheduled caste candidate and was considered in that category and could not have been considered in the scheduled caste (deprived) category on that count and therefore, there is no mistake or fault on the part of the authorities in considering the case of the petitioner as a scheduled caste candidate.

17. It is further submitted that a category once filled up by the candidate in the application form cannot be permitted to be changed subsequently in terms of Clause 16(g) of the notification (Annexure P-3) and in such circumstances, her claim had to be and was rightly considered under the schedule caste category for allotment of a seat in the first round of counseling. It is stated that subsequently in view of the order dated 27.11.2020 passed by this Court in Civil Writ Petition No. 20415 of 2020, the competent authority took a decision to grant relaxation permitting the

applicants to change their categories only for the second round of counseling and this relaxation was granted to all the candidates who wished to make such a change. It is submitted that the petitioner's father for the first time made a request for change of the category from scheduled caste to scheduled caste (deprived) on 04.12.2020 which was permitted and thereafter the petitioner participated in the second round of counseling on 15.12.2020 as a scheduled caste (deprived) candidate.

18. It is further submitted that the Appellate Authority took all the aforesaid facts into consideration as well as the fact that the candidate was granted time only up to 19.11.2020 to correct or edit the admission form but the petitioner did not do so prior to the first counseling and on the contrary participated in the first round of counseling as a scheduled caste candidate, therefore, no fault can be found with the action taken by the respondent-authorities as the same is in accordance with the prescribed procedure. The Appellate Authority has also taken into consideration the fact that the petitioner was permitted to participate in the second round of counseling as a scheduled caste (deprived) candidate after the petitioner applied for and was permitted to change the category from scheduled caste to scheduled caste (deprived) on 04.12.2020 and was thereafter allotted a seat of BDS course in Pandit Bhagwat Dayal, PGIMS, Rohtak in accordance with her merit and the seats available for counseling at that point of time.

19. The respondents submit that the last date for granting admission had been extended up to 15.01.2021 by the Supreme Court vide order dated 11.01.2021 passed in MA No.2282 of 2020 in WP(C) No.76 of 2015. It is stated that as the last date for admission is over, no relief can now be granted to the petitioner and the petition deserves to be dismissed as her case does

not fall within the exception to this rule as laid down in the case of ***S.Krishna Sradha v. State of Andhra Pradesh 2019 SCC online (SC) 1609***.

In support of their submissions, the respondents have relied upon the decisions of the Supreme Court in the cases of ***Medical Council of India v. Madhu Singh and others 2002(7) SCC 258; Mridul Dhar (Minor) and another v. Union of India and others 2005(2) SCC 65; Medical Council of India v. Manas Ranjan Behera and others 2010(1) SCC 173; Priya Gupta v. State of Chhattisgarh and others 2012(7) SCC 433; Chandigarh Administration and another v. Jasmine Kaur and others 2014(10) SCC 521 and S.Nihaal Ahmed v. Dean elammal Medical College Hospital and Research Institute and others 2016(1) SCC 662***.

20. It is further submitted by the respondents that even in the light of the decision rendered by the Supreme Court in case ***S.Krishna Sradha v. State of Andhra Pradesh 2019 SCC online (SC) 1609***, no relief can be granted to the petitioner as no fault or mistake can be attributed to the respondent-authorities in the admission process and infact the mistake is admittedly attributable to the petitioner herself.

21. We have heard learned counsel for the parties at length.

22. The admitted and undisputed facts that emerge from the averments and documents in the petition as well as from the submissions of the parties are that the petitioner has obtained 442 marks in NEET-2020 examination; that the petitioner applied for admission under the scheduled caste category and not under the scheduled caste (deprived) category; that her case for admission was considered by the respondent-authorities under the scheduled caste category in the first round of counseling; that she was allotted an MBBS seat in a private college in accordance with her merit; that

subsequently the petitioner and others were permitted to change their categories as a onetime measure for the second round of counseling vide order dated 27.11.2020; that the petitioner thereafter for the first time applied for change of her category from scheduled caste to scheduled caste (deprived) on 04.12.2020 and was permitted to do so; that the petitioner was thereafter permitted to participate in the second round of counseling as a scheduled caste (deprived) candidate and was allotted a BDS seat in Pandit Bhagwat Dayal, PGIMS, Rohtak which the petitioner refused to accept; that the petitioner participated in the mop up round of counseling but being unhappy with the allotment of seat chose not to accept the same; that the Appellate Authority after taking all these aspects into consideration and by recording a finding to the effect that the petitioner had applied as a scheduled caste category candidate and was therefore, considered as such in the first round of counseling for which no fault could be attributed to the respondent-authorities rejected her appeal and that the last date for admission i.e. 15.01.2021 is over.

23. From a perusal of clause 16(g) of the procedure for admission in MBBS/BDS courses notified by the State by notification dated 29.10.2020 (Annexure P-3), it is evident that a candidate who fails to fill up and specify his or her reserve category in the application form would not be subsequently considered for admission under the category not mentioned in the application form. In other words the candidate is bound by the category mentioned in the application form and no change in the application is permissible after the last date for editing or correcting the form is over.

24. In the instant case, it is an admitted fact that the petitioner applied as a schedule caste and not as a schedule caste (deprived) candidate

and did not make any correction or change in the form till last date prescribed for the same, namely, 19.11.2020. In fact, admittedly, the petitioner did not make any request for change of category or raise any objection while participating in the first round of counseling and did so only after publication of the provisional allotment list as she was unable to obtain admission in the Government quota.

25. In view of the aforesaid analysis, the claim of the petitioner for consideration of her case in the first round of counseling as a schedule caste (deprived) category candidate inspite of the admitted fact that the petitioner had applied as a schedule caste candidate has no merit and deserves to be rejected in the light of clause 16(g) of the notification dated 29.10.2020 (Annexure P-3) which specifically prohibits any such change or consideration after 19.11.2020. The procedure followed by the respondents is in accordance with law and cannot be found fault with.

26. We also find force and express our agreement with the submission of the learned counsel for the respondents to the effect that the Supreme Court in a series of judgments has categorically held that no relief of admission or claim thereof can be considered after the last date of admission is over which in the instant case is 15.01.2021, except in the circumstances and eventualities culled out in the decision in the case of ***S.Krishna Sradha v. State of Andhra Pradesh*** (supra).

27. The only question that remains open for this Court to consider and decide is as to whether the petitioner is entitled to and can be granted any relief after the cut of date in the present case in which the petitioner and not the respondents are at fault, in terms of the decision of the Supreme Court in ***S.Krishna Sradha v. State of Andhra Pradesh*** (supra). The

Supreme Court in the aforesaid decision, while answering the questions referred to it namely, whether a meritorious candidate can be denied admission after the lapse of the cut of date though the candidate is meritorious and is not at all at fault and who had pursued his/her legal remedy/right expeditiously without delay, has held as under:-

**“33.** In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed - 30<sup>th</sup> September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30<sup>th</sup> September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30<sup>th</sup> October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in

breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.”

28. From the perusal of the above it is apparent that the reliefs enumerated by the Supreme Court can be granted even after the cut of date to only those students who though meritorious have been denied admission in the MBBS course illegally or irrationally on account of a mistake or fault on the part of the authorities and not on the part of the students and who have approached the Court in time and have diligently pursued their remedy before the Court.

29. In the facts and circumstances of the present case and in the light of the law laid down by the Supreme Court, no relief can be granted to the petitioner as we have categorically held that no fault or mistake has been committed by the authorities while considering her case for admission in the first round of counseling and on the contrary it is the petitioner who has herself committed a mistake in filling up her admission form by mentioning

her category as a scheduled caste and not as a scheduled caste (deprived). Moreover, the petitioner has also not been diligent as inspite of the fact that the petitioner had the chance and opportunity to correct or edit her admission form prior to the commencement of the first round of counseling by 19.11.2020, the petitioner chose not to do so nor did the petitioner object to the consideration of her claim as a scheduled caste candidate at any point of time before or during the first round of counseling and only did so for the first time after the first round of counseling was over. Quite apart from the above, the petitioner for the first time sought for change of her category from scheduled caste to scheduled caste (deprived) on 04.12.2020 much after the first round of counseling that too on the basis of one time change/relaxation granted by the authorities vide order dated 28.11.2020 only for the purpose of participating in the second round of counseling.

30. In the circumstances, we are of the considered opinion that no fault can be found with the action of the respondent-authorities while conducting the counseling nor is any perversity or illegality present or evident in the order passed by the Appellate Authority in rejecting the petitioner's appeal. We are also of the considered opinion that on account of the fact that the last date is over, the relief for admission or for quashing the first round of counseling made by the petitioner is meritless and deserves to be rejected. The petition filed by the petitioner being meritless is accordingly dismissed.

**(RAVI SHANKER JHA)**  
**CHIEF JUSTICE**

**(ARUN PALLI)**  
**JUDGE**

**09.02.2021**

ravinder sharma

|                          |        |
|--------------------------|--------|
| Whetherspeaking/reasoned | Yes/No |
| Whethereportable         | Yes/No |