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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11845 OF 2022
WITH
INTERIM APPLICATION (ST.) NO.24654 of 2022**

1. Dr.Nipun Tawari,
Age : 24 years, Occu: Student,
Residing at 3B - 1402, Siddhachal Ph-6,
Vasant Vihar,
Thane (West) - 400 610.
Mobile No. 9769702591
Qualification :- MBBS,
College :- Government Medical College,
Miraj,
NEET Score : 575, All India Rank :-2584
Category :- Open
2. Dr.Srinath Amudan,
Age :- 25 years, Occu :- Student,
Residing at A-2, Akshaya, Chhedanagar,
Chembur, Mumbai - 400 089.
Mobile No.9819974087.
Qualification :- MBBS
College :- Dr.Vaishampayan Memorial
Government Medical College.
NEET Score : 541, All India Rank : 5669,
Category : Open
3. Dr.Pandurang Bibavanekar
Age : 26 Years, Occu : Student,
Residing at A/57, Teen Dongari Police
Quarters,
Goregaon West - 400 063.
Mobile No.9870389638
Qualification :- MBBS
College : Grand Government Medical
College, Mumbai
NEET Score : 550 All India Rank :-4665,
Category :- OBC
4. Dr.Indrani Sujit Raut,
Age : 27 Years, Occu: Student,

Residing at Savoy Raheja Gardens,
 LBS Marg,
 Opp. Tip Top Plaza, Thane West 400604.
 Mobile No. 7887993686
 Qualification :- MBBS
 College :- Ashwini Rural Medical College,
 Solapur
 NEET Score : 556, All India Rank : 4129,
 Category :- Open

5. Dr.Saurabh Munde,
 Age: 24 Years, Occu: Student,
 Residing at Patwari Colony, Shegaon -
 444203
 Mobile NO.9324591848
 Qualification :- MBBS
 College :- Lokmanya Tilak Municipal
 Medical College.
 NEET Score : 645, All India Rank : 172,
 Category :- Open
6. Dr.Pruthvi Narayan Mitta,
 Age: 25 years, Occu: Student,
 Residing at 56/5 Telengi Pachha Peth,
 Solapur, 413005.
 Mobile No.9823215215
 Qualification :- MBBS
 College :- Lokmanya Tilak Municipal
 Medical College, Sion, Mumbai
 NEET Score : 547, All India Rank :- 4890
 Category :- OBC
7. Dr.Harshal Dattatraya Nawale,
 Age : 24 years, Occu: Student,
 Residing at A/902, Saiffee Park,
 Mazgaon, Mumbai - 400 010
 Mobile No. : 7738040332
 Qualification :- MBBS
 College :- Smt.Kashibai Navale Medical
 College, Pune
 NEET Score : 469, All India Rank :-
 18153,
 Category : Open

8. Dr.Aftabh Khan Aslamkhan Pathan,
Age : 25 years, Occu: Student,
Residing at 2/4, Tilak Chowk, Kurduwadi,
District – Solapur.
Mobile No. : 9689124324
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
Medical College, Sion, Mumbai
NEET Score : 485, All India Rank :-
14869,
Category : OBC
9. Dr.Sagar Jawane,
Age : 26 years, Occu: Student,
Residing at 701, Anuron Towers, Savedi,
Ahmednagar 414003
Mobile No. : 7208360175
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
College, Sion, Mumbai
NEET Score : 397, All India Rank :-
37828,
Category : NTB
10. Dr.Shubham Shivcharanrao Bodkhe,
Age : 24 years, Occu: Student,
Residing at Bramanwada Chandur Bazar,
Amravati – 444720
Mobile No. : 9860914461
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
Medical College, Sion, Mumbai
NEET Score : 522, All India Rank :- 8324,
Category : OBC
11. Dr.Nagargoje Kiran Lalasaheb,
Age : 25 years, Occu: Student,
Residing at Wadgaon Gundha, Post
Adgaon, Taluka and District Beed –
431122.
Mobile No. : 9604070148
Qualification :- MBBS
College :- Dr.Ulhas Patil Medical College
and Hospital, Jalgaon

NEET Score : 533, All India Rank :- 6736,
Category : OBC

12. Dr.Prithviraj Bhagat,
Age : 24 years, Occu: Student,
Residing at Shiv Shankar Hospital and
Maternity Home, Sadashiv Nagar,
Tal : Malshiras, Dist. Solapur - 413111.
Mobile No. : 9673930049
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
Medical College, Sion, Mumbai
NEET Score : 590, All India Rank :- 1692,
Category : Open

13. Dr.Pravin Asaram Todekar,
Age : 25 years, Occu: Student,
Residing at Todekar Aasharam,
Pimpalgaon, Beed 431122.
Mobile No. : 8888671450
Qualification :- MBBS
College :- Maharashtra Institute of
Medical College & Research, Latur
NEET Score : 486, All India Rank :-
14431,
Category : EWS

14. Dr.Datta Vitthal Lokare,
Age : 25 years, Occu: Student,
Residing at Ram Mandir Chowk,
Wadhawani, Beed 431122
Mobile No. : 9075979979
Qualification :- MBBS
College :- Smt.Mathurabai Bhausaheb
Thorat Medical College, Nashik
NEET Score : 545, All India Rank :- 5232,
Category : OBC

15. Dr.Neha Suresh Beedkar,
Age: 24 years, Occu : Student
Residing at C72, Beedkar House,
Mondha Naka,
Shivshankar Colony,
Aurangabad - 431006

Mobile No. : 9653365791
 Qualification :- MBBS
 College :- Lokmanya Tilak Municipal
 Medical College, Sion, Mumbai
 NEET Score : 521, All India Rank :- 8446,
 Category : OBC

16. Dr.Ojasvi Pandey,
 Age : 25 years, Occu: Student,
 Residing at Village and Post Misiddipur,
 City Pratapgarh, Uttar Pradesh 230302.
 Mobile No. : 9140922160
 Qualification :- MBBS
 College :- Lokmanya Tilak Municipal
 Medical College, Sion, Mumbai
 NEET Score : 535, All India Rank :- 6475,
 Category : Open

17. Dr.Pankaj Chavan,
 Age : 26 years, Occu: Student,
 Residing at Mogramal Tanda,
 Tal: Majalgaon, Dist.: Beed, 431131
 Mobile No. : 7977785297
 Qualification :- MBBS
 College :- Lokmanya Tilak Municipal
 Medical College, Sion, Mumbai
 NEET Score : 482, All India Rank :-
 15306,
 Category : OBC/VJNT

18 Dr.Ritesh Kamalpratap Singh,
 Age : 26 years, Occu: Student,
 Residing at D/104, Kelipada CHS Ltd.,
 Thakur Village, Kandivali East,
 Mumbai 400 101.
 Mobile No. : 9049786392
 Qualification :- MBBS
 College :- Dr.Ulhas Patil Medical College
 and Hospital, Jalgaon
 NEET Score : 557, All India Rank :- 3983,
 Category : Open/EWS

19 Dr.Yatnesh Kamlesh Rai,
 Age : 25 years, Occu: Student,

Residing at Vasant Oasis, Marol Naka,
Andheri East, Mumbai – 400 059
Mobile No. : 797710859
Qualification :- MBBS
College :- Dr.Ulhas Patil Medical College
and Hospital, Jalgaon,
NEET Score : 530, All India Rank :- 7129,
Category : Open

20 Dr.Waqar Ahmed Khan,
Age : 25 years, Occu: Student,
Residing at Village : Mian Ka Purwa, Post
Sarkaura, Dist: Sultanpur,
Uttar Pradesh – 228155.
Mobile No. : 8097220892
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
Medical College, Sion, Mumbai
NEET Score : 586, All India Rank :- 1871,
Category : Open

21. Dr.Sparsh Rochwani,
Age : 24 years, Occu: Student,
Residing at Neat Arya Samaj Mandir,
Krishnapuraward, Dist: Gondia – 441601
Mobile No. : 8104734838
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
Medical College, Sion, Mumbai
NEET Score : 537, All India Rank :- 6272,
Category : EWS

22. Dr.Asad Agwan
Age : 24 years, Occu: Student,
Residing at Happy Haven, CHSL,
LJ Cross Rd. No.1, Near Living Room,
1st Floor, Flat No. 5 & 6,
Mahim, Mumbai – 400016
Mobile No. : 9167573874
Qualification :- MBBS
College :- Lokmanya Tilak Municipal
Medical College, Sion, Mumbai
NEET Score : 662 All India Rank :- 68,
Category : Open

... Petitioners

- VERSUS -

1. The State of Maharashtra,
Through its Department of Medical
Education and Drugs,
Mantralaya, Mumbai – 400 032.
 2. The Commissioner,
State CET Cell, Maharashtra State,
Having his office at 8th Floor,
New Excelsior Building, A.K.Nayak Marg,
Fort, Mumbai – 400001.
 3. The Director of Medical Education and
Research, St.Georges' Hospital
Compound,
Mumbai – 400001
- ... Respondents

Mr. Pramod N. Patil a/w Mr.Ajit Hon and Mr.Shyamsunder Solanke
i/b M/s.PNP & Associates for the Petitioner

Mrs.S.S.Bhende, A.G.P. for the State

Mr.Sameer Khedekar a/w Ms.Kshitija Ransing for Respondent no.2

Mr.Pandit Kasar for the Intervenor

Mr.V.M.Thorat for the Intervenor

**CORAM: S.V. GANGAPURWALA &
R.N. LADDHA, JJ.**

RESERVED ON: OCTOBER 11, 2022

PRONOUNCED ON: OCTOBER 14, 2022

JUDGMENT : (PER : S.V.GANGAPURWALA, J.)

1 The present Writ Petition is filed claiming following reliefs:

(a) hold and declare that the provisions of impugned Government Resolution dated September 26, 2022 cannot be made applicable for the purposes of admission to post graduate medical degree courses from the 50% State quota in any government or corporation medical college from the current academic year 2022-2023 and for this purpose issue appropriate writ and/or order.

(b) direct the Respondent Authorities to conduct the admission process of post graduate medical degree courses in respect of 50% State Quota for the academic year 2022-2023 without applying the 20% reservation in favour of the in-service candidates as per the impugned Government Resolution dated September 26, 2022.

2 Subsequently, the amendment has been carried out and the following prayers are added :

(b)1 quash and set aside the entire selection list for the post graduate medical degree seats published by the Respondent Authorities after conclusion of 1st Round of selection, a copy whereof is annexed at Exhibit - "G-4" hereto and for this purpose issue appropriate writ and / or order;

(b) 2 direct the Respondent Authorities to reconduct the first round of selection afresh by including the 282 seats reserved for in-service candidates in common pool and also by including the 274 seats which were kept out of the selection process from the first round as per Notice dated October 4, 2022 and for this purpose issue appropriate writ and / or order."

3 Mr.Patil the learned counsel for the petitioner strenuously contends that the petitioners had appeared for the National Eligibility Cum Entrance Test (NEET-PG 2022) examination. They are desirous of seeking admissions to the post graduate medical degree courses available at the disposal of respondent no.2.

4 It is submitted by the learned counsel for the petitioners that on or about September 21, 2022, the schedule of the admission process was published on the official website of respondent no.2. On or about September 26, 2022, the Revised Schedule was notified on the official website of respondent no 2 . Upon inquiry being made for the change of schedule, the petitioners were intimated that the respondent no.1 state has introduced a new reservation quota of 20% seats for in-service candidates with regard to the seats available in the government and corporation medical colleges in post graduate medical degree courses.

5 It is the contention of the learned counsel for the Petitioner

that the admission process had already commenced and that the respondent state provided reservation of 20% seats for in-service candidates in post graduate medical degree courses in the midst of admission process. The respondent no.1 could not have provided for the reservation after the admission process had commenced. The learned counsel submits that the rules of the game cannot be changed after the game is played. The learned counsel relies upon clause 7.2 of the Information Brochure for admission to Medical MD / MS / Diploma Post-Graduate Courses at Government / Corporation Medical Colleges for Maharashtra State Quota (50%) and unaided private / minority medical colleges : NEET-PG 2022. Relying upon the same, the learned counsel for the petitioners submits that from the state quota 50% seats are reserved for in-service candidates in the State Government services, who have served for atleast more than 3 years in remote and / or difficult areas for post graduate diploma courses. Reservation is not provided for in-service candidates to the post graduate degree courses. As admission process had commenced, admission has to be in consonance with the said rules. By introducing the notification

dated September 26, 2022 providing reservation of 20% seats for in-service candidates in post graduate medical degree courses, the entire scenario is sought to be changed. The same is not permissible .

6 The learned council to buttress the submission that after the commencement of the selection process, the reservation could not have been provided for in-service candidates, relies upon the judgment of the Apex Court in the Case of *Parmender Kumar and Others vs. State of Haryana and others*¹ and another judgment of the Apex Court in the case of *Dr. Prerit Sharma & Ors. vs. Dr. Bilu B.S. & Ors. dated November 27, 2020*.

7 The learned counsel for the petitioners submits that recently similar notification was the subject matter of consideration before the Madhya Pradesh High Court in the case of *Dr. Diwakar Patel vs. The State of M.P. and others. Madhya Pradesh High Court under its judgment and order dated September 22, 2022* and it is held that the

1 (2012) 1 SCC 177

applicability of the amendment is necessarily from the date of amendment for all those candidates for whom the selection process had not commenced. It cannot be made applicable to on going selection process. Any change of law or rules should have been brought into effect prior to that date and not subsequently. The court relied upon the judgment of the Apex Court in the case of State of Odisha and others vs. Dr.Himansu Sekhar Sahoo in SLP No.24234 of 2013 decided on July 30, 2013. The learned counsel further submits that gross injustice would be caused to the candidates because of the reservation provided to the in-service candidates during the midst of the admission process. It is further submitted that as per the reservation more than 282 posts would be reserved for in-service candidates. Only 52 candidates are qualified. Remaining seats would go vacant and these 52 seats would be filled in from these in-service candidates of clinical post graduate courses. The learned counsel submits that notification dated September 26, 2022 ought not to be made applicable for the current admission process.

8 It is further contended that the demand for clinical seats is higher than the para clinical and non-clinical seats and non-clinical seats are always the last preference to the students. In view of that, seats are required to be distributed in equal proportion to each of the quotas and categories. So also, preference to particular college is also subject matter of importance. There are total 1416 seats of post graduate medical degree courses. 282 seats are made available for in-service quota which has resulted in allocation of very high number of Clinical seats that too in most sought after colleges for in-service candidates. It is submitted that only 69 in-service candidates appeared for the NEET-PG held on May 21, 2022 and only 51 out of the said 69 were eligible for being considered for admissions to post graduate medical degree courses. On that ground also, the respondent state could not have reserved 282 seats in favour of in-service candidates and that too at such a belated stage when the selection process was at the advanced stage.

9 It is further contended that in fact on October 3, 2022, matter was on board. The learned G.P. made a statement that the first

round of admission process had not commenced. However, the same was erroneous. On October 3, 2022, first round of admission process was conducted and admissions have been taken by the in-service candidates also. As such, amendment is made thereby seeking directions to set aside the entire selection list for post graduate medical degree seats published by the respondent authorities after conclusion of first round of selection and by including the 282 seats reserved for in-service candidates in common pool and also by including the 274 seats which are kept out of the selection process from the first round as per notice dated October 4, 2022.

10 The learned A.G.P. and the learned counsel for the Intervenor submits that clause 7.2 of the brochure further provides that for in-service quota reservation, any change made by the Government from time to time will be applicable. Reliance is also placed on clause 21 of the same to contend that any amendment made by NMC / erstwhile Medical Council of India (MCI) / Central Government / State Government will be implemented.

11 According to the respondents, the admission process commenced subsequently and the online registration for NEET PG was made applicable upto September 27, 2022. The publication of general list of registered candidates was upto September 29, 2022 and thereafter, the process would commence . Notification dated September 26, 2022 cannot be said to be in the midst. It is further submitted that the 30% reservation was provided upto the year 2017-18 for in-service candidates. The same was disbanded. In-service candidates challenged the same by filing writ petition. After the notification was issued on September 26, 2022 the said writ petition was disposed off as a purpose of the writ petition stood served. It is further submitted that admissions have been taken up by 52 candidates. They are not parties to the writ petition. In their absence, no further orders can be passed cancelling the selection . Notification is not challenged.

12 We have considered the submissions. The first round of admissions it appears commenced on October 3, 2022. The online registration was to be made upto September 27,2022. On September

26, 2022, the respondent state issued notification giving 20% reservation to in-service candidates for post graduate medical degrees course seats. It appears that for this year, more than 200 seats have been increased for post graduate degree courses. It is also submitted by the respondents that till the year 2017-2018 reservation was provided for in-service candidates and that to upto 30%.

13 The Apex Court in the case of *Parmender Kumar and Others* (Supra) observed that the selection and admissions for the course in question had to be only in terms of stipulations contained in the prospectus. Once the results had been declared and a select list had been prepared, it was not open to the State Government to alter the terms and conditions just a day before counselling was to begin, so as to deny the candidates, who had already been selected, an opportunity of admission in the aforesaid courses. In the case of *Dr. Prerit Sharma & Ors.* (Supra) it is observed by the Apex Court that the Government order reserving 50 per cent seats for in-service doctors would be detrimental to the interests of the meritorious

Doctors as 50 per cent of the available seats in the State in Super Specialty Medical Courses will not be available to them. As the admission process was in the final stage, reservation for in-service Doctors was not permitted.

14 In the case of *Dr. Diwakar Patel* (Supra) it was held that the applicability of the amendment is necessarily from the date of amendment for all those candidates for whom the selection process had not commenced. It cannot be made applicable to on going selection process.

15 It appears that in the present case, petitioners have not challenged the notification dated September 26, 2022 providing 20% reservation for in-service candidates for the post graduate medical degree course. According to the petitioners, said notification should not be effective for the current academic year 2022-23. The petitioners in a way want this court to read down the notification as not being applicable for the current academic year 2022-23. For applying the doctrine of reading down, the notification has to be

subject matter of challenge.

16 The petitioners have not specifically challenged the said notification but has sought relief that the same will not operate from the current academic year. As observed above, for invoking the doctrine of reading down, there has to be challenge to the notification. Without challenging the notification, concept of reading down cannot be applied. Reliance can be had to the judgment of the Supreme Court in the case of *State of Rajasthan and others vs. Sanyam Lodha*², judgment of the Calcutta High Court in the case of *Akhil Bandhu Saha vs. The State of West Bengal and Ors. in Writ Petition No.36440 (W) of 2013 decided on 20.03.2014* and the judgment of the Uttarakhand High Court in the case of *State of Uttarakhand and Ors. vs. Brahm Pal Singh and Ors in Special Appeal Nos.494 of 2017 along with other connected matters decided on 26.04.2018*.

17 The first round is already over. About 52 in-service candidates

² (2011) 13 SCC 262

have been given admission. Those persons are not parties to the Writ Petition. Though subsequently amendment has been made challenging the selection list for the post graduate medical degree seats published by the Respondent Authorities after conclusion of 1st Round of selection, their rights would be affected. As such, they were required to be parties before the court.

18 It would appear that only 52 in-service candidates are eligible though the seats reserved are 282, those seats can be made available to the candidates other than in-service candidates. Those seats certainly would go vacant. It is not disputed that only 69 in-service candidates had appeared for NEET - PG 2022 examination. Reservation of 282 posts in such a scenario was unwarranted.

19 We had asked the learned A.G.P. as to whether these seats can be allotted in the second round to the candidates other than in-service candidates. The A.G.P. on instructions submits that same can only be made available in the MOP up rounds. In that case, it would

be injustice to more meritorious candidates because if candidate is allotted seat in second round then he is not allowed to participate in the mop up round. In that event, all these seats if are made available in the mop up round, less meritorious students would get the same.

20 We are considering these aspects because though on September 26, 2022 notification is issued granting 20% reservation to in-service candidates, the seats reserved would be 282 and only 69 in-service candidates had appeared for NEET - PG 2022 examination and only 52 have qualified. The government was well aware of it. As such, it would be in the interest of all, if these seats are made available for second round of allotment. Or the other option is, considering the peculiar facts and circumstances of the case, those candidates who are allotted seats in the second round be allowed to participate in the mop up round for these seats. Government is required to arrive at a practicable solution in that regard. It is submitted that tentatively second round would commence on October 15, 2022.

21 In light of that, we direct the Government / respondent authorities to consider distribution of seats remaining vacant of in-service candidates after 1st round for allocation in the second round.

22 Writ Petition is disposed of with aforesaid observation and directions. No costs.

23 In view thereof, Interim Application does not survive. The same is also disposed of.

(R.N. LADDHA,J.)

(S.V. GANGAPURWALA, J.)