

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION No. 1766 OF 2022.

Deepak Nandkishor Nimgade,
Aged about 24 years, Occupation
Student, Resident of Suyog Nagar,
Darwha Road, Behind Ekveera
Hotel, Yavatmal, Tahsil District
Yavatmal 445001, Maharashtra. Petitioner.

VERSUS

1.State of Maharashtra, through
Director of Medical Education and
Research Department, Mantralaya,
Mumbai.

2.State Common Entrance Test Cell,
through its Commissioner (NEET-UG)
State of Maharashtra, Fort,
Mumbai

3.Maharashtra University of
Health Sciences, Nashik through
its Registrar. Respondents.

Mr.Rugved Dhore, Advocate for the Petitioner.
Ms.Shamsi Haider, A.G.P. for Respondent No.1.
Mr.Nahush Khubalkar, Advocate for Respondent No.2.

**CORAM : NITIN JAMDAR AND
ANIL L. PANSARE, JJ.**

DATE : 4 APRIL 2022.

ORAL JUDGMENT (PER NITIN JAMDAR, J) :

The Petitioner has sought a direction to Respondent No.2 State Common Entrance Test Cell (CET Cell) to modify the provisional select list for Cap Round-2 and allot an appropriate seat to the Petitioner as per his standing in the State Merit List or modify the provisional select list for Cap Round-1. Alternate relief sought by the Petitioner is to permit him to participate in the Mop-up Round-2 of Health Science Courses NEET (UG) 2021-22 for preference to a better seat.

2. Heard Mr.Rugved Dhore, learned Counsel for the Petitioner, Ms.Shamsi Haider, learned A.G.P. for Respondent No.1 and Mr.Nahush Khubalkar, learned Counsel for Respondent No.2.

3. The learned Counsel for the CET Cell states that as on today, the Round-1 is over and even Mop-up Round-2 is over. The time for joining as per Mop Round-2 is till tomorrow. At this stage, we are considering the issue of a grant of relief.

4. The learned Counsel for the Petitioner submitted that

modifying the provisional select list for both Cap Round-1 and 2 may not be possible, but the Petitioners' prayer for permitting him to participate in Mop-up Round-2 to better his chances for a seat of his choice can be considered by the Court.

5. The relevant extract of the NEET (UG) 2021 Brochure is placed on record. Clause 10 therein deals with the Online preference filling process and selection process by Cap Computerized Round. In Clause 10.2, which is relevant, it is expressly stated that there is no provision for change once the preference is given. Clause 10.1 deals with the methodology of the process. In Clause 10.8 working of the Mop-up Round has been explained, and there is a specific reference to the Status Retention Form, which clause reads thus :

“10.8.

[a]

[b]

[c]

[d]

The candidate getting selected in the previous round will be considered for betterment in the subsequent round. The betterment herein means the higher preference exercised by the candidate. The Shift in such betterment shall be compulsory and mandatory except for those who have filled 'Status Retention Form. Such a candidate who has filled Status Retention form will not be considered for any subsequent rounds of selection process for the year 2021-22. The last date for filing Status Retention Form will be notified along with the selection list.

(emphasis supplied).

It is clear that Clause 10.8 refers to that a candidate who has filled in Status Retention Form will not be considered for any subsequent rounds of selection process.

6. The Petitioner took part in the admission Course to the Health Science conducted by the CET. The Petitioner appeared for NEET (UG) 2020-21 and stood at No.8117 in the State Merit List. In the provisional select list for MBBS Round-1, which was published on 31 January 2022, the name of the Petitioner was included in the first round of Cap, and he was allotted a seat in the MBBS Course in Government Medical College at Gondia. Accordingly, the Petitioner received a provisional selection letter on 1 February 2022 issued by the Dean, Government Medical College, Gondia. So also the admission order of the same date. The Petitioner submitted an online Status Retention Form for Government Medical College, Gondia, on 14 February 2022.

7. A notice came to be issued by the CET Cell on 12 February 2022 bearing No.16/NEET-UG-2021 in respect of preferences for the newly permitted Government Medical College at Sindhudurg. The Petitioner was desirous of availing this option. Accordingly, the Petitioner gave his preference to the Government Medical College, Sindhudurg, and he was allotted a seat in Medical College Sindhudurg on 8 March 2022. As per the notice dated 12 February 2022, the Petitioner cancelled his Status Retention to enable him to join the Medical College at Sindhudurg. According

to the Petitioner, he had no option but to join at Sindhudurg, and after that, considering that the Petitioner had cancelled his Status Retention, the Petitioner was desirous of participating in the Mop-up Round-2 to explore the possibility of better college. The Petitioner was not granted this opportunity, and he was informed that the Petitioner would continue as per his allotment at Government Medical College at Sindhudurg. Aggrieved by this stand taken by the Respondent CET Cell, the Petitioner has filed this petition.

8. The main contention of the Petitioner is based on the notice issued by the CET Cell on 12 February 2022. According to the Petitioner, this notice nowhere states that students, such as the Petitioner, after they cancel their Status Retention online, cannot participate in subsequent Mop-up Round for the seats which have remained vacant if the candidate is so desirous. According to the Petitioner, the stand now taken by the Respondent CET Cell that this cancellation of Status Retention is only for college at Sindhudurg is not reflected in the notice which misled the Petitioner to cancel his allotment at Government Medical College at Gondia. The learned Counsel for the Petitioner submits that reasons to an order cannot be supplied by filing an affidavit. The Learned Counsel relied the judgment of Hon'ble Supreme Court in case of *Commissioner of Police, Bombay .vrs. Gordhandas Bhanji*¹. The learned Counsel for the Petitioner also submitted that in the case of College at Pune, i.e. Bharat Ratna Atal Bihari Vajpayee Medical

¹ AIR 1952 SC 16

College, Pune, the notice issued on 17 March 2022 in identical circumstances clearly stated that candidates would be considered only for that college. Therefore, wherever the authorities wanted to stipulate a condition, they have stated so.

9. It is clear that the admission process is online and computerized. Once the Status Retention Form, which is a conscious choice, is submitted, the preference is locked, and others who have not submitted such Status Retention Form are alone entitled to participate. Any alteration of this methodology will disrupt the process of Mop-up Round and would have a cascading effect; therefore there is an emphasis on not changing the choices once Status Retention Form is given. This is the primary position that is well understood by all and is established.

10. The learned Counsel for CET Cell has pointed out that the Government Medical College at Sindhudurg was newly permitted with an intake capacity of 100 seats in the midst of the admission process and therefore a choice is given to the students to including those who had given Status Retention Form otherwise this new college would have been prejudiced. Since the choice was locked upon filing Status Retention Form it had to be unlocked/cancelled to give option of Sindhudurg college.. Considering the scheme in the Brochure it could not have been contemplated that the cancellation of the Status Retention Form in this circumstance would permit even those students who were

allotted Sindhudurg college to participate in the general Mop-up Round all over again for all purposes.

11. As regards the arguments of the Petitioner that in respect of Medical College at Pune there was a specific statement in the notice, the affidavit filed by the Respondent No.2 CET Cell states that certain students had called the CET Cell on the phone asking for clarification, their doubts were clarified and to have further clarity, a statement was inserted in the notice. From this, it cannot be said that the cancellation of the Status Retention Form in respect of the Medical College at Pune would be only for that college and in respect of College at Sindhudurg, the cancellation of Status Retention Form would be for entire Mop-up round. There was a clear mandate, of which everyone was aware, including the Petitioner, to submit the Status Retention Form and the reason for doing so. Therefore if it had to be cancelled or deviated for entire Mop up round, there had to be a specific stipulation in that regard in the notice. Only If such a clear indication was given, and Respondent had not permitted it, then that would amount to misrepresentation.

12. Further, it is not the case that the Petitioner sought clarification and was misled by the authorities. Nothing stopped the Petitioner to ask for clarification, which other students did. By, mere non referring to the fundamental rule of locking upon submission of Status Retention Form, cannot be deemed to have been deviated from. Once notice No.16 and the Brochure are read together, it is

clear that the cancellation of the Status Retention Form was only to apply to the Medical College at Sindhudurg. It is also not that the Petitioner is entirely removed from the process, as the seat has been allotted to him in Medical College at Sindhudurg.

13. Regarding the decision relied upon in the case of *Commissioner of Police, Bombay vs. Gordhandas Bhanji (supra)* by the learned Counsel for the Petitioner, the facts are totally different. That case pertained to an order passed by the Commissioner of Police in respect of grant of no objection for a Cinema House and Theatre and after when an order was passed against the Respondent therein and it did not give reasons which was sought to be supplemented by an affidavit. In this context, the Hon'ble Supreme Court referred to the factum of a document in the public domain. In the present case, the Brochure which lays down basic rule is in the public domain. Notice No.16 cannot not be read stand-alone, but it has to be read along with the Brochure and if both were read together was more than clear that the option of cancellation of the Status Retention Form was only for the college at Sindhudurg. The affidavit filed by the Respondent CET Cell explains the notice issued on 17 March 2022 in respect of College at Pune. The explanation that students called for clarification and the position which was already clear has been reiterated; cannot be considered as a made-up ground.

14. In light of this position, since the Petitioner had given

his Status Retention Form and cancelled the same only to join Medical College at Sindhudurg and, after joining the at college at Sindhudurg, cannot further participate in the Mop-up Round. No relief can be granted to the Petitioner in this petition.

15. Writ Petition is rejected.

(ANIL L. PANSARE, J)

(NITIN JAMDAR, J)

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