



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14162 OF 2023

Zohra Sultana Ataullah Khan
Age: 44 years, Occu: Service,
R/o Vidya Nagar, Parbhani.

... PETITIONER

V/s.

1. The State of Maharashtra
Through its Secretary,
Public Health Department,
Mantralaya, Mumbai – 032.
2. State Common Entrance Test Cell,
Government of Maharashtra,
8th floor, New Excelsior Building,
A.K. Nayak Marg,
Fort, Mumbai-01, Through its Commissioner/
Competent Authority.
3. The Director,
Directorate of Health Services,
Maharashtra State, 7th floor,
Arogya Bhavan, Saint George Hospital Road,
Fort, Mumbai 400001.
4. The Commissioner, Commissionerate of
Health Services, Maharashtra State,
8th floor, Arogya Bhavan,
Saint George Hospital Road,
Fort, Mumbai 400001.
5. The Deputy Director,
Health Services, Aurangabad-01.
6. The Dean,
Rajiv Gandhi Medical College,
Thane-Belapur Road, Kalwa West,

Budhaji Nagar, Kalwa, Thane-400 605.

7. National Medical Commissioner
Satarkta Bhavan, G.P.O. Complex,
Block-A, New Delhi – 110 023.
Through its Secretary.

... **RESPONDENTS**

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Mr. V.A. Dhakle, *Advocate for the Petitioner*
Mr. P.K. Lakhotiya, AGP for Respondent-State
Mr. M.D. Narwadkar, *Advocate for Respondent No.2*
Mr. S.K. Kadam, Advocate for Respondent No.7

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**CORAM : RAVINDRA V. GHUGE &
Y.G. KHOBRAGADE, JJ.**
DATE : 11th January, 2024

JUDGMENT (Per: Y.G. Khobragade, J.) :-

1. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. The Petitioner has put-forth prayer clause-A to D as under:

“A) To direct the respondents to permit the petitioner to join on unfilled seat in MD-Microbiology NEET- PG-2023 course in the respondent no.6 college as per her provisional selection letter dated 13.10.2023 in the Cap Stray Vacancy Rounds, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

B) To direct the respondent no.6 to grant admission to the petitioner in MD-Microbiology NEET-PG 2023 course on unfilled seat in the order of merit from in-service candidates quota in the Cap

Stray Vacancy Rounds, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

C) To direct the respondents to consider the request applications dated 23.10.2023 and 25.10.2023 made by the petitioner by granting her admission in MD-Microbiology NEET-PG-2023 course on unfilled seat in the order of merit from in-service candidates quota in the Cap Stray Vacancy Rounds as per her provisional selection letter dated 13.10.2023, by issuing a writ of mandamus or any other appropriate writ, order or direction as the case may be.

D) To direct the respondents to grant provisional admission to the petitioner in MD-Microbiology NEET-PG-2023 course on unfilled seat in the respondent no.6 college in the order of merit from in-service candidates quota, pending hearing and final disposal of this Writ Petition.”

3. We have considered the strenuous submissions canvassed on behalf of both the sides.

4. The Petitioner contended that she is working as a Medical Officer in Civil Hospital, Parbhani. The Respondent No.2 conducted NEET-PG 2023 examination for in service candidates. She being qualified MBBS and appointed as a Medical Officer with Government Civil Hospital on 17.04.2012. Presently, she is working in Civil Hospital, Parbhani w.e.f. 12.12.2018. As on date, more than twelve years, she served in tribal and rural area. The Respondent No.1-State Government introduced in service candidate quotas for post graduate course in State Government/Corporation/State and Central Government aided/

unaided Private/Minority Medical Colleges in State of Maharashtra. 20% Seats are reserved for in service candidates who are serving in the State Government for at least three years in remote/difficult/rural area. Accordingly, she appeared in pre-qualifying examination NEET-PG 2023 with due permission from the competent Authority. She secured All India Rank 199424 in said exam. Since, some seats were remained vacant in Government/Private Unaided/Minority Medical and Dental Colleges under the State quota after 3rd round, the Competent Authority decided to conduct online stray vacancy round to fill up the remaining vacant seats on 11.10.2023. The Petitioner was called for counseling online for allotment of seat. Accordingly, the Petitioner was granted provisional admission in M.D. (Microbiology) course in cap stray vacancy round 1 on the basis of merit on 13.10.2023 in the Respondent No.6-College with direction to physically join with the Respondent No.6-College by 05.30 p.m. on 15.10.2023. However, the Petitioner could not join as her minor daughter was admitted in private Hospital namely Samarth Pediatric Neuro-Cardiac Super Specialty Clinic due to 'Panitopolous Syndrome' from 12.10.2023 to 19.10.2023. As she could not physically join on 15.10.2023, the Respondents cancelled her seat. The Petitioner sent e-mail to Respondent No.2 on 20.10.2023, as well as, written application on 23.10.2023 and brought to the notice of Respondents about reasons for not joining with the Respondent No. 6 on the scheduled date. The Petitioner requested the Respondents to allow

her to join at the allotted seat, but Respondent No.2 failed to consider her request.

5. The learned advocate for the Petitioner submits that, the Petitioner was granted provisional admission to the M.D. (Microbiology) course on the basis of merit in NEET-PG 2023 examination, but due to imminent medical urgency of her minor daughter, she could not join with the Respondent no. 6 under the prescribed schedule on 15.10.2023 and the Respondent No.2 cancelled her admission because she fail to report within prescribed period.

6. The learned counsel for the petitioner submits that, the inaction of the respondents in not permitting the petitioner to join to unfilled seat in M.D. Microbiology NEET-PG-2023 course with the Respondent no. 6 in pursuance of provisional selection letter dated 13-10-2023 in the Cap Stray Vacancy Rounds is unjust and unreasonable. Hence, prayed for quashing and setting aside the same.

7. In support of his submissions the learned advocate appearing for the Petitioner has placed reliance on the following cases which are as under:

- i) **Priya Gupta V/s. State of Chhatisgarh & Ors.; AIR 2012 (SC) 2413,**
- ii) **Mridul Dhar (Minor) V/s. Union of India; 2005 AIR (SC) 666,**
- iii) **Asha V/s. PT. B.D. Sharma University of Health Sciences and Others; (2012) 7 SCC 389,**
- iv) **The West Bengal University of Health Sciences and Ors,. V/s. Dr. Paban Mandal & Ors.; 2018 SCC On Line 8871,**

- v) **S. Krishna Shradha V/s. State of Andhra Pradesh & Ors.; (2020) 17 SCC 465**
- vi) The Judgment passed in **Civil Appeal No.3940/2020** on 07.12.2020 by the Hon'ble Supreme Court in **National Medical Commission V/s. Mothu Sriyah Koumudi and Ors.**

8. Mr. M.B. Warbhuvan, Commissioner, State Common Entrance Test Cell, Maharashtra State has filed an affidavit in reply on behalf of Respondent No. 2 and strongly opposed the petition. Respondent no. 2 submits that, as per the merit list, a seat was allotted to the Petitioner under 1st CAP stray vacancy round in the Respondent No.6 College. As per the Rule prescribed under NEET-PG 2023 information brochure, it is mandatory that, the selected candidate is required to join physically with the allotted College within the prescribed schedule up to 15.10.2023 till 05.30 p.m. However, the Petitioner failed to report to Respondent No.6 to confirm the seat and no original documents are made available for physical verification as per the notice published on 11.10.2023. Therefore, the said seat/candidature of the Petitioner cannot be considered for the subsequent rounds.

9. The learned counsel for Respondent No. 2 further submits that the last date for admission for the PG course was 15.10.2023 and the Petitioner submitted representation on 25.10.2023. Respondent No.2 is required to follow the Rules and various guidelines issued by the Hon'ble Supreme Court for the Medical admissions and as such, due to provisional allotment of seat, no

right is created in favour of the Petitioner. Therefore, prayed for dismissal of the petition.

10. In support of these submissions the learned advocate for Respondent No.2 relied on **Ashish Ranjan and Ors. V/s. Union of India and Ors.; (2016) 11 SCC 225** and **Board of Governors in Supersession of Medical Council of India V/s. Dr. Priyambada Sharma and Ors.; (2022) 14 SCR 997**.

11. It is an admitted fact that, the Petitioner was working as a Government Medical Officer with the Primary Health Center and completed twelve years of her service. The Petitioner appeared in NEET-PG 2023 exam conducted on 13.10.2023 as an 'in service' candidate. The petitioner secured All India Rank 199424 in NEET entrance exam. The Petitioner was allotted Respondent No.6 College on 13.10.2023. As per terms and conditions of the selection letter, the Petitioner was directed to report physically with the Respondent No.6 College till 15.10.2023 up to 05.30 p.m., for verification of original documents and for confirmation of the seat. The Petitioner admitted that on 15.10.2023 at about 1.08 p.m., her daughter suffered from 'Panitopolous Syndrome' and was admitted in Samarth Pediatric Neuro-Cardiac Super Specialty Clinic for medical treatment w.e.f. 12.10.2023 to 19.10.2023. Therefore, she could not personally reach the Respondent No.6 College on the scheduled day as per condition no.7 of selection letter CAP stray

1st Round. Needless to say that by the present petition, the Petitioner has prayed for issuance of a Writ of Mandamus for directing Respondent No.6 to allow her to join M.D. (Microbiology) course in pursuance of her provisional selection letter in the CAP stray vacancy round.

12. In the case of **Priya Gupta** (*supra*), the Hon'ble Supreme Court framed guidelines and observed in Para no. 31 as under:

31. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:-

(a) Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such Institution/State, etc.

(b) The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

(c) Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

(d) *There shall be due channelization of selection and admission process with full cooperation and coordination between the Government of India, State Government, Universities, Medical Council of India or Dental Council of India and the colleges concerned. They shall act in tandem and strictly as per the prescribed schedule. In other words, there should be complete harmonisation with a view to form a uniform pattern for concerted action, according to the framed scheme, schedule for admission and regulations framed in this behalf.*

(e) *The college which grants admission for the current academic year, where its recognition/approval is granted subsequent to 15th July of the current academic year, shall be liable for withdrawal of recognition/approval on this ground, in addition to being liable to indemnify such students who are denied admission or who are wrongfully given admission in the college.*

(f) *Upon the expiry of one week after holding of the second counseling, the unfilled seats from all quotas shall be deemed to have been surrendered in favour of the respective States and shall be filled thereafter strictly on the basis of merit obtained in the competitive entrance test.*

(g) *It shall be mandatory on the part of each college and University to inform the State and the Central Government/competent authority of the seats which are lying vacant after each counseling and they shall furnish the complete details, list of seats filled and vacant in the respective states, immediately after each counseling.*

(h) *No college shall fill up its seats in any other manner.”*

13. In the case of **Mridul Dhar** (*supra*), the Hon’ble Supreme Court in Para Nos. 33 to 35 held as under:

“33. Before we come to matter of issue of directions, some other small aspects may also be considered. All seats under All India Quota deserve to be fully disclosed and published by a date to be specified by the DGHS so that at a glance, if required, it may be possible to verify whether the said quota has been correctly worked

out or not. The States shall file compliance report in regard to admission with the DGHS about annual admissions indicating adherence to the schedule and the seats taken into consideration for working out All India Quota and giving details of other seats. The compliance report shall give details of filling up of seats with names of students admitted and dates of admission. It shall be signed by the Principal/Director or Head of the medical institution by whatever name called and by Vice-Chancellor. The recalcitrant States, particularly officers personally will have to face consequences.

34. It was suggested by Mr. Tankha that MCI/DCI and also colleges shall be made answerable to a high-powered Committee which may be directed to be constituted for not following a fair and transparent procedure in its duties and obligation including carrying out inspections and sending reports by MCI/DCI to the Central Government on the basis whereof the requisite recognition is granted and to also look into other medical admissions related matters and matters relating to establishment of medical colleges and increase of intake etc. Various petitions are pending in this Court where grievance have been made in regard to inspections carried out by MCI/DCI and other aspects pointed out by learned senior counsel. The suggestion made about constituting a body like Ombudsman to which above authorities may be answerable deserves to be examined in depth by Ministry of Health and a report submitted to this Court.

35. Having regard to the aforesaid, we issue the following directions:-

1. All participating States and Union Territories, Board of Secondary Education shall declare 10 + 2 result by 10th June of every year and make available the marksheet to the students by 15th June.

The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed. the West Bengal would make available to the concerned students the marksheets by 15th June, 2005

Heads of Boards would be personally liable to ensure compliance.

2. *The time table mentioned in Notification dated 25th February, 2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State Medical/Dental Entrance Examination shall be declared before 15th of June.*

3. *The States/Union Territories shall complete the admission process of first round of State Level Medical/Dental College admission by 25th July i.e. a week before start of second round counseling or allotment of seats under All India Quota. The correct vacancy position shall be intimated by the Chief Secretary to the DGHS by 26th July. It shall be verified by the Head of the Institution/or Head of the Medical Institution/Health Department in the State.*

4. *It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territories and/or Health Secretaries to ensure compliance of the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.*

5. *All seats in All India Quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.*

6. *By 31st October, the State through Chief Secretaries/Health Secretaries shall file a report in regard to admissions with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant States, particularly officers personally will have to face consequences for violation.*

7. *The DGHS shall file by 31st January, 2005 report in regard to feasibility of conducting counseling through the process of video conferencing.*

8. *The DGHS shall file report within three months on the aspect of Section 10-A seats being subjected to 15 per cent All*

India Quota and about the increase of the quota from 15 per cent to 20 per cent.”

14. In the case of **Asha** (supra), the Hon’ble Supreme Court considered the following questions as under:

- (a) Is there any exception to the principle of strict adherence to the rule of merit for preference of courses and colleges regarding admission to such courses?*
- (b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?*
- (c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations?*
- (d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this Court governing the subject?”*

15. The Hon’ble Supreme Court answered the above questions in Para No. 38 as under:

“38. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

38.1. Question (a): The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.

38.2. Question (b): 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in Priya Gupta³. Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency,

admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in Priya Gupta and this judgment are found to be unexceptionally satisfied and the reasons therefor are recorded by the court of competent jurisdiction.

38.3. Questions (c) & (d): Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the court shall award compensation to d such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment. Where the admissions given by the authorities concerned are found by the courts to be legally unsustainable and where there is no reason to permit the students to e continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.”

16. In the case of **Ashish Ranjan** (*supra*), the Hon'ble Supreme Court approved the amendment to the time schedule under the medical council of India establishment of medical college regulation 1999. Therefore, it is mandatory on the part of the Respondent-Authorities to strictly follow the schedule of medical examination. In the case of **Board of Governors in Supersession of Medical Council of India** (*supra*), the Hon'ble Supreme Court observed in Para Nos. 20 to 26 as under:

"20. That so far as the time schedule prescribed by the Medical Council of India in its Regulations, 2000 of which reference has been made for the academic year 2019-20 for admission to the post-graduate medical courses is concern 2019.20 for be strictly followed and that, in any circumstance, is not to be deviated. Last date for admissions to the post-graduate medical course will not be extended after 31st May and the schedule has been prescribed in compliance of the judgments of this Court of which reference has been made in Mridul Dhar (Minor) and Another (supra) followed by this Court in Priya Gupta (supra) and Ashish Ranjan and Others (supra) and this Court has consistently held that the schedule for admission to the post-graduate medical courses must be followed strictly leaving no discretion to any authority to permit admissions over the cut-off date under schedule for admission to post- graduate medical courses i.e. 31" May.

21. That even when the complaints are made to this Court that large number of seats are lying vacant seeking extension of time to fill those unfilled undergraduate/post-graduate seats of medical courses, this Court always declined such requests and directed that schedule must be strictly adhered to.

22. This Court in Education Promotion Society for India and Another vs. Union of India and Others' held as under:-

"6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the Uol it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400-500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do postgraduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity

to fill up vacant seats. The schedule must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated." 23. Further, this Court in *Dr. Astha Goel and Others vs. Medical Counselling Committee and Others* held as under:-

"23. Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and when the Medical Counselling Committee and the Union of India have to adhere to the time schedule for completing the admission process and when the current admission of NEET-PG-2021 is already behind time schedule and ever after conducting eight to nine rounds of counselling, still some seats, which are mainly non-clinical courses seats have remained vacant and thereafter when a conscious decision is taken by the Union Government/the Medical Counselling Committee, not to conduct a further Special Stray Round of counselling, it cannot be said that the same is arbitrary. The decision of the Union Government and the Medical Counselling Committee not to have Special Stray Round of counselling is in the interest of Medical Education and Public Health. There cannot be any compromise with the merits and/or quality of Medical Education, which may ultimately affect the Public Health.

26. At the cost of repetition, it is observed and held that even after eight to nine rounds of counselling, out of 40,000 seats, 1456 seats have remained vacant, out of which approximately, more than 1100 seats are non-clinical seats, which every year remain vacant, of which the judicial notice has been taken by this Court in the case of Education Promotion Society for India (supra)."

24. In the given facts and circumstances, in our considered view, the interim orders passed by the High Court granting provisional admissions in the post-graduate medical courses in the months of June and July, 2019 by orders dated 04th June, 2019, 16th July, 2019 and 30 July, 2019 which were later made absolute by an order dated 04 November, 2019 are not legally sustainable.

25. The feeble submission made by the respondents' counsel that a sympathetic view may be taken on the premise that they have been allowed to continue in their respective post-graduate medical

courses for quite some time or few of them have completed the course in the interregnum despite the order of stay granted by this Court and the reliance placed on the judgment of this Court in Medical Council of India vs. Ritwik & Others', in our view, may not be of any assistance for the reason that it was a case where the student was selected in the counselling in the first year MBBS course but was not granted admission due to his inability to pay the fee before the last date i.e. 31 August, 2018 and he was allowed to continue and pursue the course by interim order passed by this Court. In the given peculiar facts and circumstances, his admission was approved under the order of this Court. As far as the cases of present respondents are concerned, they have participated in the second round of counselling but failed to get any seat in the post-graduate medical course because of lower rank in order of merit and by interim orders passed by the High Court, provisional admissions were granted to them ignoring the principle of merit which cannot be countenanced by this Court.

26. In our considered view, no sympathy can be shown to such students who have not only entered/admitted after 31 May of the year but their admissions were completely in contravention to the Regulations, 2000 and provisional admissions were granted by the High Court ignoring the principle of merit which is the sole touchstone for admission to the post-graduate courses based on the NEET examination, 2019 where admissions are made strictly in the order of merit-cum-preference and despite the stay order passed by this Court, if they are allowed to continue in post-graduate medical courses, the same would be completely illegal and such contemptuous action on the part of the authorities, cannot be approved by this Court.”

17. In the case in hand, though the Petitioner was selected for M.D. Microbiology P.G. course in the test examination NEET – PG 2023 and as per selection letter she was supposed to report to the Respondent No.6-College on 15.10.2023 till 05.30 p.m., but the Petitioner fail to report within stipulated period. Therefore, in our considered view, no right is created in favour of the

Petitioner on basis of the provisional selection for admission unless she complies with the rules/directions. Therefore, considering the facts and circumstances of the present case as well as the law cited *supra* and particularly in the case of **Asha (supra)**, no such directions can be issued against the Respondents to permit the Petitioner to join M.D. Microbiology course after lapse of schedule period.

18. Nevertheless, as per the brochure, the last date for securing admission was 15.10.2023. The Petitioner filed the present petition on 02.11.2023, much after the expiry of the schedule. If this court interferes with the admission process at this stage in these circumstances, it may certainly cause prejudice to the other student who might have secured the admission in subsequent CAP rounds. In view of above discussion, we do not find any merit in the present petition to interfere with the admission process initiated by Respondent No.2.

19. In view of the above, this **Writ Petition is dismissed**. Rule is discharged. No order as to cost.

[Y.G. KHOBRADE, J.]

[RAVINDRA V. GHUGE, J.]