

NEPPALI SAI VIKASH & ORS

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v.

UNION OF INDIA & ORS

(Miscellaneous Application No 735 of 2022)

In
(Writ Petition (Civil) No 124 of 2022)

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MAY 02, 2022

**[DR. DHANANJAYA Y CHANDRACHUD AND
SURYA KANT, JJ.]**

Education – Admissions – Post Graduate Medical Admissions – Reduction in percentile fixed for eligibility – Plea for further reduction in the percentile – Held: Not tenable – Proviso to Regn. 9(3) of the Post-Graduate Medical Education Regulations stipulates that the Central Government has the power to lower the minimum marks for admission to PG courses in consultation with the National Medical Commission when a sufficient number of candidates fail to secure minimum marks – On facts, Central Government in exercise of this power had already reduced the minimum marks in consultation with the National Medical Commission – After stray rounds were conducted on the reduction in the percentile, only 282 seats are left vacant – Central Government has taken a considered decision to not reduce the minimum marks further – The Court would not be inclined to interfere unless there is a manifest arbitrariness in the decision making process or in the decision – There is no arbitrariness here – Responding to the vacancies, the Union Government took a decision after due consideration, of reducing the percentile by 15 – The Court would not be justified in the exercise of the power of judicial review to direct a further reduction of 5 percentile since that would be trenching upon the academic/policy domain – Post-Graduate Medical Education Regulations 2000 – Regn.9(3) – Judicial Review – Scope.

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Education – Admissions – Post Graduate Medical Admissions – Need for filling up vacant seats vis-à-vis other considerations – Held: The need for filling up vacant seats, which undoubtedly is a matter of public interest has to be balanced with other considerations such as ensuring that the batch of admitted students commences the course, the standards of medical education are not diluted and

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- A *uncertainty is not created by ad-hoc reductions in the norms of eligibility.*

Harshit Agarwal v. Union of India, [Decision of two Judge Bench of Supreme Court in WP(C) 54 of 2021] – distinguished.

- B CIVIL ORIGINAL JURISDICTION : Miscellaneous Application No.735 of 2022.

In

Writ Petition (Civil) No.124 of 2022.

(Under Article 32 Of The Constitution of India)

- C Prashant Bhushan, Ramesh Allanki, Ms. Aruna Gupta, Srinivas Rao Pachwa, D. Rahuvawsy, Syed Ahmad Naqvi, Alig Raj, Advs. for the Petitioners.

Ms. Aishwarya Bhati, ASG, Ms. Ruchi Kohli, Aman Sharma, G. S. Makker, Siddhant Buxy, N. V. R. SSS Vara Prasad, Neeraj Kumar,

- D M/s Ramesh Allanki And Associates, Advs. for the Respondents.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, J.

- E 1. The Miscellaneous Application seeks revival of the petition under Article 32 of the Constitution. The petition was disposed of by an order dated 14 March 2022.

2. The grievance in the petition was that there were vacant post graduate medical seats and a reduction in the percentile fixed for eligibility will ensure that more candidates become eligible to fill up the vacancies.

3. The Union Government in the Ministry of Health and Family

- F Welfare¹ took a decision on 12 March 2022 to carry out a reduction of 15 percentile across all categories for admission to NEET PG courses. For the general category, the cut-off percentile has been fixed at 35, for the physically handicapped category at 30 and for the reserved SC/ST categories at 25.

- G 4. Mr Prashant Bhushan, counsel appearing on behalf of the petitioners, submits that even with the reduction which has been effected, there are still about 1,500 seats which are vacant in the states' quota and, hence, if a further reduction of 5 percentile is effected, some more candidates would be able to gain admission. Moreover, counsel submitted

H ¹ "MoH&FW"

that in the previous year, there was a reduction of 20 percentile and hence a further reduction of 5 percentile for this year may be considered because of the pandemic. A

5 Ms Aishwarya Bhati, Additional Solicitor General, has tendered a statement on behalf of MoH&FW, which is extracted in its entirety for convenience of reference: B

“Mop up Round

Total Seats	Joined	Vacant
6206	4,747	1459

Stray Round

Total Seats	Allotted*	Vacant
1459	1177	282**

*Results to be declared on 2nd May 2022. Last day of reporting is 7th May 2022. C

** Most of the seats that remain vacant are pre-para. These subjects are teaching subjects and usually remain vacant. D

- There are currently 600 seats under counselling for the deemed universities and the counselling would be completed by 7th May 2022. E

- The petitioner has prayed for an additional round of mop-up round to be conducted and to permit and facilitate the petitioners/ applicants and also similarly situated to participate in the NEET-PG Counselling 2021 and allot of the vacant seats under the available quota for the academic year 2021-22, from amongst all candidates who appeared for the NEET PG 2021 with no qualifying mark. F

- It is pertinent to mention that the current curriculum is already 4 months behind schedule and the another round of counselling is not in the best academic interest of the students. Further, the Ministry of Health and Family Welfare has decided in consultation with the National Medical Commission has decided that there shall be a reduction across all categories of 15 percentile for admission to the NEET PG courses. Thus, for the general category, the cut-off percentile is 35, for the physically handicapped general category 30 and for the reserved SC/ST 25. G

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- A • There are around 40,000 seats that are available for NEET PG counselling. 92,000 candidates/doctors were initially eligible for counselling for these seats. However, when the percentile was lowered vide communication dated 12th May 2022, another 25,000 candidates became eligible. Therefore, there are sufficient candidates that are available for counselling for the vacant seats and further lowering of percentile would not be in the interest of the public at large because the doctors have to deal with life and death situations and merit cannot be given a complete go-by.”
- B 6. The above statement indicates that initially 92,000 candidates were eligible for counselling for nearly 40,000 seats which were available for the post graduate courses. After the lowering of the percentile, 25,000 more candidates became eligible. A total of 6,206 seats were available in the mop up round and after 4,747 candidates joined, 1,459 seats remained vacant. In the stray round, out of 1,459 seats, 1,177 seats have been allotted, leaving 282 seats vacant. This data is for the all-India quota. The results are to be declared on 2 May 2022 and the last date for reporting is 7 May 2022.
- C 7. The data which has been placed on the record indicates that:
- E (i) A significant proportion of seats which remain vacant are in “pre-parasubjects”: these are teaching subjects where seats generally remain vacant;
- E (ii) The current term is already behind schedule and a considered decision has been taken to the effect that holding another round of counselling would not be in the best academic interest of students; and
- F (iii) As a result of a reduction of 15 percentile which was already made on 12 March 2022, another 25,000 candidates became eligible and it may not be in the best interest of medical education to effectuate a further reduction.
- G 8. The counsel for the petitioners relied on the judgment of a two-Judge Bench of this Court in **Harshit Agarwal v. Union of India**², where the petitioners had sought a direction to lower the minimum marks by 20 percentile in each category for NEET-UG 2020 for admission to the BDS course. Allowing the writ petition, the decision of the Central Government dated 30 December 2020 to not reduce the minimum marks for admission to the BDS course was set aside on the ground that it
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- H ²WP(C) 54 of 2021

suffered from illegality and irrationality. This Court directed that the vacant seats in first year BDS course for 2020-21 were to be filled after reducing the percentile by 10 points. However, the circumstances were different in that case. The Dental Council of India had recommended the lowering of the qualifying cut-off percentile to the BDS courses for the year 2020-21. The petitioners then submitted a representation to the Union Government seeking a reduction in the qualifying percentile based on the recommendation of the Dental Council of India. Sub-Regulation (ii) of Regulation II of the Dental Council of India, Revised BDS Course Regulations 2007 stipulates that the Central Government in consultation with the Dental Council of India may at its discretion, lower the minimum marks required for admission if a ‘sufficient’ number of candidates fail to secure the minimum marks. This Court in that case was deciding on the limited question of whether the decision of the Union Government to not reduce the percentile in spite of the recommendations of the Dental Council of India was arbitrary. It was observed that the contention of the Union of India that the percentile was not reduced because there were sufficient eligible candidates was erroneous since it had not considered vital facts on the ratio of seats available vis-à-vis eligible candidates:

“11. The stand of the Central Government is that there are seven candidates available for each seat and, therefore, there is no need to lower the minimum marks. This calculation of the first Respondent is without taking into account the fact that NEET (UG) 2020 is conducted for admission into different courses like MBBS, BDS, UG AYUSH and other medical courses. Admissions for UG AYUSH and other UG medical courses are included in the NEET for the first time from this year. That apart, it is clear from the letter of the Dental Council of India that NEET has been made mandatory for admission to AIIMS and AIIMS like institutions and ZIPMER. Hitherto, AIIMS and AIIMS like institutions and other institutions like ZIPMER were conducting their own separate entrance test. The total number of seats available for the academic year 2020-2021 for MBBS are 91,367, BDS are 26,949 and AYUSH are 52,720 making it a total of 1,71,036 seats. Whereas, the NEET qualified candidates are 7,71,500. The ratio of seats available vis-à-vis eligible students is 1 : 4.5 and not 7. The basis for the decision to not reduce minimum marks that there are sufficient eligible candidates is without considering the above vital facts. The decision which materially suffers from the blemish of overlooking or ignoring, wilfully or

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- A otherwise, vital facts bearing on the decision is bad in law⁴. The decision of the first respondent was propelled by extraneous considerations like sufficient number of Dentists being available in the country and the reasons for which students were not inclined to get admitted to BDS course which remits in the decision being unreasonable. Consideration of factors other than availability of eligible students would be the result of being influenced by irrelevant or extraneous matters. There is an implicit obligation on the decision maker to apply his mind to pertinent and proximate matters only, eschewing their relevant and the remote”
9. The proviso to Regulation 9(3) of the Post-Graduate Medical Education Regulations 2000 stipulates that the Central Government has the power to lower the minimum marks for admission to PG courses in consultation with the National Medical Commission when a sufficient number of candidates fail to secure minimum marks. On 12 March 2020, the Central Government in exercise of this power reduced the minimum marks in consultation with the National Medical Commission. After the stray rounds were conducted on the reduction in the percentile, only 282 seats are left vacant. The Union of India has taken a considered decision to not reduce the minimum marks further. As submitted by the respondent, the vacancy in the seats does not arise from non-fulfillment of minimum marks but also from course preferences and college preferences of the students. This Court would not be inclined to interfere unless there is a manifest arbitrariness in the decision making process or in the decision. There is no arbitrariness here. Responding to the vacancies, the Union Government took a decision after due consideration, of reducing the percentile by 15. This Court would not be justified in the exercise of the power of judicial review to direct a further reduction of 5 percentile since that would be trenching upon the academic/policy domain. The need for filling up vacant seats, which undoubtedly is a matter of public interest has to be balanced with other considerations such as ensuring that the batch of admitted students commences the course, the standards of medical education are not diluted and uncertainty is not created by ad-hoc reductions in the norms of eligibility. Hence, we find no merit in the Miscellaneous Application. The Miscellaneous Application is dismissed.
10. In view of the disposal of the Miscellaneous Application, no orders are required to be passed on the application for impleadment which is accordingly disposed of.