



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 5426/2020

Dr. Nilay Gupta S/o Dr. G R Gupta, Aged About 25 Years,  
Resident Of Manglam Diagnostics Centre Jindal Hospital Road,  
Model Town, Hissar 125001

----Petitioner

Versus

Chairman Neet Pg Medical And Dental Admission/  
Counselling Board-2020, And Principal, Govt. Dental  
College, Jaipur To Be Additionally Served Through Email  
Medical Council Of India Through Its Secretary General,  
Mci Building Pocket-14, Sector- 8, Dwarka Phase -1, New  
Delhi - 110077 And To Be Served Additionally Through  
Email Id

Registrar, Mahatma Gandhi Medical College And Hospital,  
Riico Industrial Area, Sitapura, Jaipur To Be Additionally  
Served Through Email Id

----Respondents

Connected With

S.B. Civil Writ Petition No. 5463/2020

Dr. (Miss) Surmil Sharma D/o Sh. Kamal Sharma, Aged About 24  
Years, R/o 255, Mahaveer Nagar 2Nd, Maharani Farm,  
Durgapura, Jaipur (Rajasthan)

----Petitioner

Versus

1. Office Of The Chairman, Neet Pg Medical And Dental Admission/ Counselling Board-2020 And Principal, Govt. Dental College, Subash Nagar, Behind T.b. Hospital, Jaipur (Rajasthan)
2. Medical Council Of India Through Its Secretary General, Mci Building Pocket 14, Sector 8, Dwarka Phase 1, New Delhi 110077
3. Mahatma Gandhi University Of Medical Sciences And Technology, Through Its Registrar, Riico Industrial Area, Sitapura, Jaipur 302022

----Respondents



For Petitioner(s) : Dr. Abhinav Sharma, Adv.  
Mr. Sandeep Singh Shekhawat, Adv.

For Respondent(s) : Mr. Harshal Tholia, Adv.  
For Dr. V. B. Sharma, AAG  
Mr. Saransh Saini, Adv.  
Mr. Angad Mirdha, Adv.

**HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA**

**Judgment / Order**

**Reserved on 07/07/2020**

**Pronounced on 10/07/2020**



1. Both the petitioners have preferred these writ petitions assailing action of the State NEET PG Counselling Board in not considering their candidature for admission to NRI quota seats which were admittedly available with the Medical Colleges operating in private field and included in the first counselling conducted by the Chairman, NEET PG Counselling Board, 2020.

2. Brief facts which are required to be noted are that the petitioners appeared in the National Eligibility-cum-Entrance Test (Post Graduate) (hereinafter referred as NEET PG Exam-2020) organized by the National Board of Examinations wherein they qualified. The petitioners had opted for NRI (Non Resident Indian) quota also and applied for the seats which were available in Mahatma Gandhi Medical College, Sitapura, Jaipur under NRI/Management Quota in the subject of Radiodiagnosis and Obstetrics & Gynaecology respectively.

3. Mahatma Gandhi Medical College, Sitapura, Jaipur had issued a notification/advertisement mentioning their seat matrix of total 144 seats informing that there were 22 NRI/Management quota seats i.e. 15% of the total seats and 122 seats were to be filled from other than NRI/Management quota. Of these, 50% seats



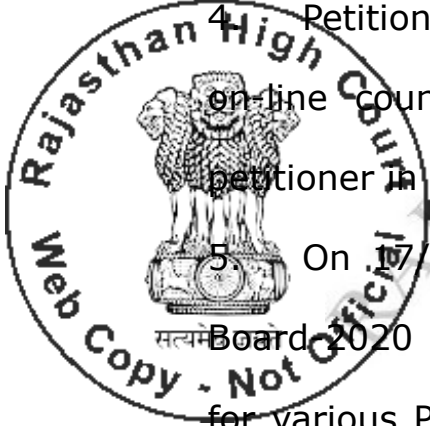
were to be filled from the State quota and 35% were to be filled from All India quota seats. The details were also published and in a column of 'NRI/Management Quota Seat', in the subject of 'MD Radiodiagnosis', 2 seats were mentioned while in the subject of 'MS Obstetrics & Gynaecology', 2 seats were mentioned in the column 'NRI/Management Quota'.

4. Petitioner received a notice on 10/04/2020 to be ready for on-line counselling wherein he opted for NRI seat. Similarly, petitioner in second writ petition also received notice.

5. On 17/03/2020, the Chairman, State NEET PG Counselling Board-2020 issued a notice laying down the allotment procedure for various PG Medical Degree, Diploma and Dental Courses. The schedule of allotment process mentions in Column 4 'Verification of status of NRI applicants' as '30th March, 2020'. Later on, the date of 17th March was changed to 10th April, 2020 detailing the dates of counselling and the verification of status of NRI applicants was shifted to 14th April, 2020.

6. It is stated by the petitioners that they were asked along with other NRI candidates to get the documents e-verified with regard to NRI quota and accordingly, the documents were submitted but the petitioners have raised grievance as on 13/04/2020, the State NEET PG Counselling Board-2020 published seat matrix and the NRI quota was shown as Nil. The petitioners, therefore, claimed that they ought to be considered against the admitted NRI quota seats which were available with the respondent no.3-Mahatma Gandhi University of Medical Sciences and Technology.

7. Learned counsel for the respondent-Medical Council of India as well as the State NEET PG Counselling Board constituted by the

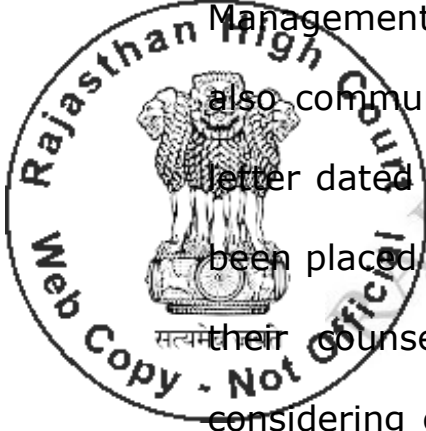




State Government; and the Mahatma Gandhi Medical College, which is part of Mahatma Gandhi University of Medical Sciences and Technology have put in appearance and submitted their contentions.

8. So far as the Mahatma Gandhi Medical College is concerned, it is submitted on their behalf that they had published (NRI/Management) Quota seats in their seat matrix and the same was also communicated to the State NEET PG Board-2020 vide their letter dated 17/03/2020. A hard copy of the seat matrix has also been placed alongwith additional affidavit. In these circumstances, their counsel submitted that there was no occasion for not considering candidature of the petitioners for NRI seats and they are ready to offer admission to the candidates under NRI quota for the seats for which the petitioners have applied namely; Radio Diagnosis and Obstetrics & Gynaecology.

9. Per-contra, learned counsel appearing for the NEET PG Counselling Board, 2020 and its Chairman submitted that non-filling of the NRI seats is only on account of the fact that Mahatma Gandhi Medical College had sent a seat matrix mentioning therein the seats under the management quota as well for NRI quota and no seat was shown to be vacant. This resulted in the Counselling Board to deny allotment of seats to NRI candidates. It is submitted that the seats have been allotted to be filled from management quota. Learned counsel further submitted that as per their information booklet published for all candidates, the seats were to be treated as State Quota Seats, Management Quota Seats and NRI Quota Seats and as the seat matrix did not provide for NRI seats, as given by the various Medical Colleges, no candidate from NRI Quota has been allotted to any Medical

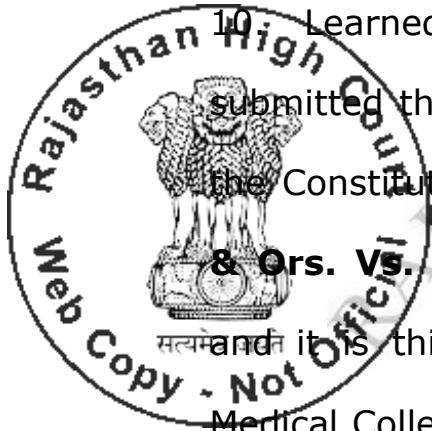




College and the seats have been treated only of Management Quota. Learned counsel further submitted that the Chairman, NEET PG Counselling Board follows the seat matrix procedure alone and as the seat matrix provided by the private Medical Colleges was for Management Quota, there was no occasion to allow admission to NRI Quota candidates.

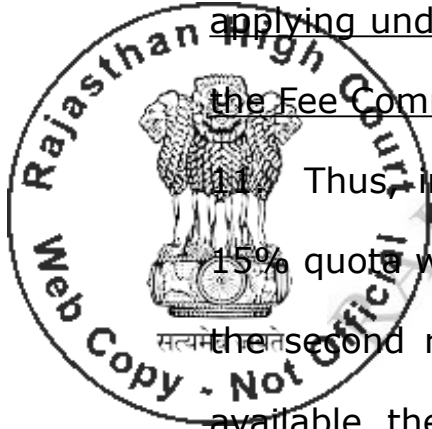
10. Learned counsel for the respondent-Medical Council of India submitted that the concept of NRI Quota has been carved out by the Constitutional Bench of the Supreme Court in **P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors.: (2005) 6 SCC 537**

and it is this 15% quota which is available for the concerned Medical College which has to admit NRI students. Learned counsel further submitted that after the judgment in P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra) and coming into force of the PG Regulations, the admissions to all Medical Colleges are to be conducted through NEET PG Examination to be organized by the National Board of Examinations and the State Quota seats are to be filled through a single window method through counselling by the NEET PG Counselling Board appointed by the State Government. So far as the candidates who are interested for admission under the NRI quota are concerned, they too have to appear and qualify NEET PG Examination and as per the prospectus issued by the National Board of Examinations, their eligibility has to be seen as per Clause B and C which lays down the criteria for foreign medical graduates and foreign nationals respectively. It is submitted that after filling up the seats through NRI candidates, if any seat remains under 15% NRI quota, the same can be filled as Management seat. However, with regard to them also, the merit is required to be looked into. Learned counsel





has also pointed out that the same procedure was required to be adopted by the State PG Counselling Board. Learned counsel has taken this court to the minutes of meeting held on 17/03/2020 wherein as per decision no.5 "for seats remaining vacant, if any, due to non-availability of NRI candidates in second round of counselling, will be filled up as per merit and choice of candidates applying under 15% quota of the College and fee as prescribed by the Fee Committee of the College."



11. Thus, in the first round of counselling, the seats under the 15% quota were required to be filled from NRI Quota first and if in the second round of counselling also, there is no NRI candidate available, then the seats could have been made available for being filled from those candidates applying under 15% quota of the College. In view thereof, it is stated that the admissions to PG Course of NRI students was required to be done and the seats have to be treated as NRI/Management Seats and not separately as NRI Seats and Management Seats.

12. Learned counsel has relied on the judgment of Gujarat High Court in **Prati Shailesh Patel Vs. State of Gujarat (Special Civil Application No.9915/2016)** to submit that NRI Quota included the Management Seats and the same cannot be deleted to give room to Management Seats alone. Learned counsel for MCI further submitted that the provisions of NRI Quota is an enabling provision which is meant for the particular College to follow for collecting funds from foreign nationals and the MCI would not interfere or fix any total intake of NRI Seats.

13. This Court has considered the submissions made by learned counsel for the parties.



14. In **P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. (supra)**, the Seven Judges Bench of the Supreme Court re-examined the issues which fell for consideration from the judgment passed by Twelve Judges Bench in **T.M.A. Pai Foundation Vs. State of Karnataka: (2002)8 SCC 481** and in **Islamic Academy of Education Vs. State of Karnataka: (2003)6 SCC 697** and observed as under:-



"137 Here itself we are inclined to deal with the question as to seats allocated for Non-Resident Indians ('NRI', for short) or NRI seats. It is common knowledge that some of the institutions grant admissions to certain number of students under such quota by charging a higher amount of fee. In fact, the term 'NRI' in relation to admissions is a misnomer. By and large, we have noticed in cases after cases coming to this Court, neither the students who get admissions under this category nor their parents are NRIs. In effect and reality, under this category, less meritorious students, but who can afford to bring more money, get admission. During the course of hearing, it was pointed out that a limited number of such seats should be made available as the money brought by such students admitted against NRI quota enables the educational institutions to strengthen its level of education and also to enlarge its educational activities. It was also pointed out that people of Indian origin, who have migrated to other countries, have a desire to bring back their children to their own country as they not only get education but also get reunited with Indian cultural ethos by virtue of being here. They also wish the money which they would be spending elsewhere on education of their children should rather reach their own motherland. A limited reservation of such seats, not exceeding 15%, in our



*opinion, may be made available to NRIs depending on the discretion of the management subject to two conditions. First, such seats should be utilized bona fide by the NRIs only and for their children or wards. Secondly, within this quota, the merit should not be given a complete go-by. The amount of money, in whatever form collected from such NRIs, should be utilized for benefiting students such as from economically weaker sections of the society, whom, on well defined criteria, the educational institution may admit on subsidized payment of their fee. To prevent misutilisation of such quota or any malpractice referable to NRI quota seats, suitable legislation or regulation needs to be framed. So long as the State does not do it, it will be for the Committees constituted pursuant to the direction in Islamic Academy to regulate."*



15. The question regarding NRI Quota arose again before the Supreme Court in **Modern Dental College and Research Center & Ors. Vs. State of Madhya Pradesh & Ors.:(2009) 7 SCC 751** wherein it was specified that NRI seats to the extent of 15% of the total number of seats shall be first reduced from the total and balance 85% to be shared between College and the State.

16. In **R.D. Gardi Medical College & Anr. Vs. State of Madhya Pradesh & Ors.:(2010) 10 SCC 225**, the Supreme Court, after taking into consideration the rules as prevalent in the State of Madhya Pradesh, came to the conclusion that 15% seats shall be filled by Management of respective Institution by NRI candidates only if they are available, however, if sufficient number of NRI candidates are not available, the remaining vacant seats





shall be merged into general pool and would be filled on the basis of merit of State Level Common Entrance Test.

16.1 The aforesaid direction in **R.D. Gardi Medical College & Anr. Vs. State of Madhya Pradesh & Ors.** (supra) was overruled by the Larger Bench of Supreme Court in the case of **Modern Dental College and Research Center & Ors. Vs.**

**State of Madhya Pradesh & Ors. :AIR 2012(SC)1266** followed the judgment passed in **T.M.A. Pai Foundation Vs. State of Karnataka; 1994(4)SCC 728** wherein it was held as under:

"So far as NRI quota is concerned, we fixed the same as 15% last year. We fixed NRI quota in respect of minorities' institutions as 5%. Although the NRI quota should not, normally, be more than 5% but keeping in view the reduction in the fee structure, we fix the same as 10% (of the total seats) for this year. We discretion."

16.2 Again in **T.M.A. Pai Foundation Vs. State of Karnataka; 1995(5) SCC 220,** same view has endorsed as under:-

"(1) So far as NRI quota is concerned, it is fixed at fifteen per cent for the current academic year. It shall be open to the management to admit NRI students and foreign students within this quota and in case they are not able to get the NRI or foreign students upto the aforesaid specified percentage, it shall be open to them to admit students on their own, in the order of merit, within the said quota. This direction shall be a general direction and shall operate in the case of all the States where admissions have not been finalized. It is, however, made clear that by virtue of this direction, no student who has already been admitted shall be disturbed or removed."



17. Keeping in view above, it was held as under:

*"12. We are of the considered view that the above principles laid down by a larger Benches of this Court, in the matter of filling up of NRI seats were not correctly understood or applied by this Court in R.D. Gardi Medical College while interpreting Rule 8 of the M.P. Admission Rules, 2008. The finding recorded in R.D. Gardi Medical College that the unfilled seats in NRI quota in unaided professional colleges should be treated as a part of the general pool and be shared equally by the State and the unaided professional colleges goes contrary to the principles laid down by the eleven-Judges Bench in Pai Foundation, Inamdar as well as the Judgments rendered by the three Judges Bench in Pai Foundation referred to earlier. The wrong interpretation given by in R.D. Gardi Medical College is seen incorporated in Rule 5 of the Madhya Pradesh Private Medical and Dental Under Graduate Course Entrance Examination Rules 2011 as well, which in our view cannot be legally sustained.*

*13. We are, therefore, inclined to allow both the applications and over rule the direction given by the two learned Judges of this Court in R.D. Gardi Medical College and hold that it is open to the unaided professional educational institutions to fill up unfilled NRI seats for the year 2012-13 and for the succeeding years through the entrance test conducted by them till the disposal of the appeal subject to the conditions laid down in Inamdar strictly on the basis of merits."*

18. In **Manipal University & Anr. Vs. Union of India & Anr.:** **(2017)15 SCC 664**, the Apex Court again examined the issue with regard to 15% quota fixed for NRI and also the issue whether the Medical Council of India could have restrained the concerned





Medical College from filling up NRI Quota for the Session 2005 to 2008 on the ground that they had made admissions to NRI Quota beyond 15% and held as under:-

"9. There is no doubt that the Appellant was granted the status of a Deemed University in the year 1993. There is also no controversy about the directions issued by this Court regarding pegging of the NRI quota in medical colleges at 15 per cent. Admittedly, the Appellant has made admissions to NRI quota beyond 15 per cent. Both sides agree that the Medical Council of India does not have the power to fix the quotas to sub categories within the total intake. The principal question that arises for our consideration is regarding the correctness of the directions issued by the second Respondent to the Appellant not to fill up 103 seats in the category of NRI/foreign students during the years 2005 to 2008.

10. Determination of a quota for NRI seats is beyond the domain of the second Respondent. The direction given by the second Respondent by its letter dated 08.02.2005 directing the Appellant not to make admissions in the NRI quota to the extent of 103 seats during the years 2005 to 2008 amounts to interfering with the quota. We do not agree with the submission made by Mr. Vikas Singh that the second Respondent has power to issue such directions in the interest of merit based selection as provided by Regulation 5 of the 1997 Regulations. It is no doubt true that the second Respondent has a duty to ensure merit based selections. However, no direction can be issued by the second Respondent interfering with the Regulation or supervision of sub categories. The direction issued by the second Respondent by its letter dated 08.02.2005 is ultra vires and is liable to





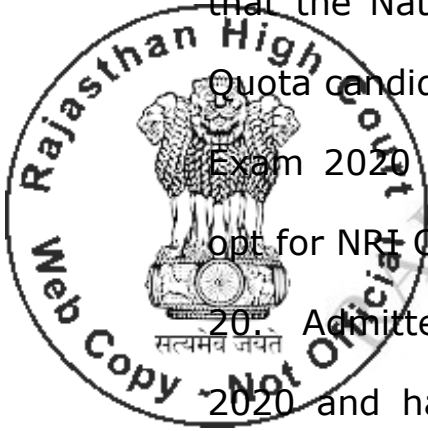
*be declared illegal. Exercise of power by an authority has to be within the contours conferred by the statute and for the purpose of promoting the objectives of the statute. There is no express power conferred on the second Respondent in the Medical Council of India Act to interfere in allocation of quotas for sub categories."*

19. In the aforesaid backdrop, if we examine the matter, we find that the National Board of Examinations has recognized the NRI Quota candidates and they are required to appear for the NEET PG Exam 2020 whereafter on being successful, they are entitled to opt for NRI Quota for admission in PG Courses of their choice.

20. Admittedly, both the petitioners appeared in NEET PG Exam 2020 and have cleared the same and have also opted for NRI seats.

21. Admittedly, the NRI seats were available in Mahatma Gandhi Medical College as per their own seat matrix which was published inviting the applicants to apply for NRI seats to the State PG Counselling Board. However, the stand of the State PG Counselling Board is that Mahatma Gandhi Medical College had not submitted the seat matrix showing NRI seats. As per them, the seat matrix, which was sent by Mahatma Gandhi Medical College, mentions availability of seats under the Management Quota Column while in NRI Quota, all seats have been shown as Nil. Learned counsel appearing for the Mahatma Gandhi Medical College, however, refutes the said statement and submitted that Mahatma Gandhi Medical College did not distinguish between Management seats and NRI seats.

22. This Court finds that the documents, which have been placed on record alongwith reply by the NEET PG Admission/Counselling Board shows that they have prepared separate column for NRI



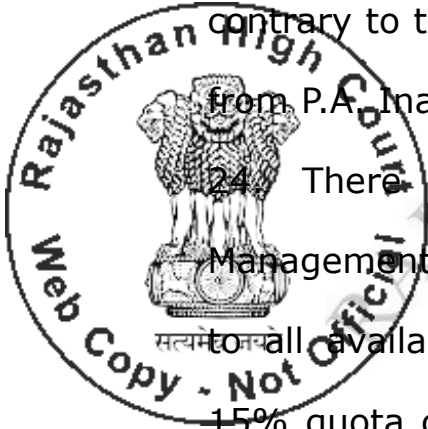


nature and the Management seats and kept all the seats which were for NRI/Management as if in Management seats alone. This practice has been adopted for all the private Medical Colleges including Mahatma Gandhi Medical College.

23. Thus, apparently, the Counselling Board has interpreted the seats to be different for NRI and that of Management which goes contrary to the law laid down by the Apex Court, as noticed above from P.A. Inamdar's case onwards.

24. There can be no distinction between NRI seats and Management seats. In fact, it is only after exhausting admissions to all available NRI candidates that the remaining seats under 15% quota can be treated to be Management seats. Thus, there has been a complete non-application of mind by the Counselling Board while preparing seat matrix for the private Medical Colleges resulting in denial of admission to NRI candidates in the first counselling.

25. This Court also finds that there was no such Management quota concept and even in the meeting of Counselling Board held on 17/03/2020, as per decision No.5 of the said minutes stated that the "seats remaining vacant, if any, due to non-availability of NRI candidates in second round of counselling, will be filled up as per merit and choice of candidates applying under 15% quota of the College and the fee as prescribed by the Fee Committee of the College." The 15% quota, as noticed above, is meant for NRI candidates. As noticed in Modern Dental College and Research Center (supra), the quota of seats which could not be filled through NRI, would fall back to Management. Thus, it is a subsequent event and it is only after having filled NRI quota that





the Management seats' concept emerges. Thus, the Board has not followed its own decision dated 17.3.2020.

26. In view thereof, the NEET PG Counselling Board has erred in preparing two different columns in the seat matrix separately as Management seats and NRI nature seats. In fact, all the seats have to be treated as NRI seats available for being filled by

candidates who are NRI's or in the nature of NRI. It is only after non-availability of NRI candidates that the seats would be allowed to be filled after second round of counselling too from the Management.



In **Prati Shailesh Patel Vs. State of Gujarat (supra)**, the Gujarat High Court while observing that the NRI quota includes Management seats, held as under:-

*"10.15 Keeping in mind the aforesaid decisions rendered by the Hon'ble Supreme Court, this Court as well as various High Courts on the aforesaid point, we are of the opinion that the concept of NRI quota has been introduced by way of declaration made by the Hon'ble Supreme Court in the case of P.A. Inamdar (supra), more particularly in para 131 of the said decision. The Hon'ble Supreme Court as well as this Court and various High Courts have observed that the observations made in para 131 is declaration of law. The observations and directions permitting the unaided educational institutions seats not exceeding 15% to allot to the NRIs is a declaration of law traceable to power under Article 142 of the Constitution of India. By way of the said declaration, the Hon'ble Supreme Court permitted limited reservation to such seats not exceeding 15% to NRI depending on the discretion of the management subject to two conditions; (1) such seat should be*



*utilized by bona fide NRIs only for their children and wards and (2) within this quota, merit should not be given a complete go bye. The observations and directions made in the said judgment are taken as a basis for enactment of the Act of 2007 by the respondent -State."*

28. In view of above and considering the law laid down by the Supreme Court in **P.A. Inamdar's case (supra)** and in case of **Modern Dental College and Research Center (supra)**, it is held that the action of the Counselling Board in not considering candidature of NRI candidates and treating the seats vacant as Management seats is wholly illegal and unjustified. It is ordered that the NRI seats shall be filled by conducting counselling treating seat matrix as (NRI/Management seats) and it is only after giving opportunity to all NRI students the seats which are left shall be treated as Management seats and filled in accordance with rules from the candidates as per their merit and choice.

29. Both the writ petitions are accordingly allowed and the respondent-NEET PG Admission/Counselling Board-2020 is directed to allot petitioners the seats in the subject of their choice namely; Radio-diagnosis and Obstetrics & Gynaecology respectively in Mahatma Gandhi Medical College, Sitapura, Jaipur under NRI Quota treating the seats to be under NRI/Management Quota. No costs.

(SANJEEV PRAKASH SHARMA),J

Raghu/