



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

S.B. Civil Writ Petition No.7504/2020

Dr. Sakshi Khyalia D/o Shri Satyapal Khyalia, Aged About 25
Years, Resident Of Plot No. 118, Lane No. 4, Guru Jambeshwar
Nagar-A, Gandhi Path, Jaipur (Raj.)

-----Petitioner

Versus



1. State Of Rajasthan, Through Its Principal Secretary,
Department Of Medical Education, Government
Secretariat, Jaipur.

2. Chairman, NEET-PG Medical & Dental Admission/
Counseling Board, 2020 And Principal, Govt. Dental
College, Subhash Nagar, Behind T.B. Hospital, Jaipur,
Rajasthan.

3. Medical Council Of India Through Its Secretary, Pocket 14,
Sector 8, Dwarka, New Delhi.

4. Ravindra Nath Tagore Medical College, Court Chowk,
City's Prime Health Care Area, Udaipur, Rajasthan 313001

-----Respondents

For Petitioner(s) : Mr. Ajay Choudhary, Adv.

For Respondent(s) : Mr. Harshal Tholia, Adv. on behalf of
Dr. Vibhuti Bhushan Sharma, AAG for
respondent Nos.1, 2 & 4.

Mr. Angad Mirdha, Adv. (through
Video Conferencing) for respondent
No.3.

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

21/07/2020

Learned counsel for the petitioner Mr. Ajay Choudhary has
supplied copy of the writ petition in advance to Mr. Harshal Tholia,
Adv. who appears on behalf of respondent Nos.1, 2 and 4 and

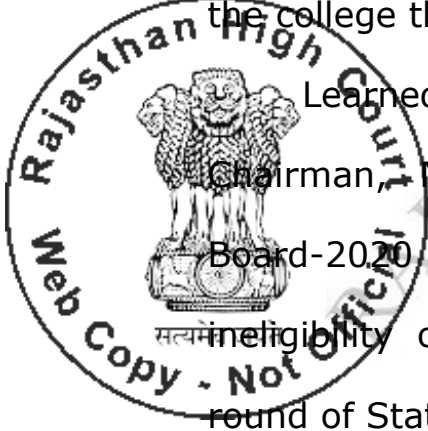


copy of petition has also been supplied to Mr. Angad Mirdha, Adv. who appears for the respondent No.3.

Mr. Ajay Choudhary, learned counsel appearing for the petitioner submitted that the respondents have declared the petitioner ineligible to participate in State Counseling Round-2 on the ground that the petitioner has been allotted seat and joined the college through All India Post Graduate Counselling.

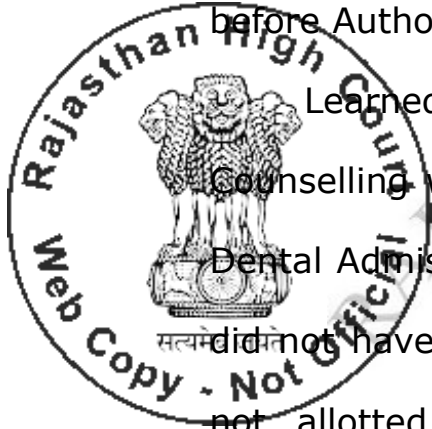
Learned counsel submitted that notification issued by Chairman, NEET PG Medical & Dental Admission/Counselling Board-2020 dated 18.7.2020 has declared eligibility as well as ineligibility of different candidates to participate in the second round of State counselling.

Learned counsel for the petitioner submitted that All India Rank of the petitioner for admission in PG Course was 8092, while in State she was at No.433. Learned counsel for the petitioner submitted that the petitioner participated in first round of All India Counselling and she was allotted RNT Medical College, Udaipur and she got admission in ENT subject-Degree Otorhinolaryngology. Learned counsel submitted that the petitioner after allotment of seat in Round-1, in All India Counselling had an option to resign from the said post and Government of India, Directorate General of Health Services, Medical Counselling Committee, issued notice dated 21.4.2020, where candidates were informed that if they joined their allotted college of Round-1, they could resign from their joined seats upto 4.5.2020 and said period was extended upto 12.5.2020 by notice dated 6.5.2020 and further extended by notice dated 12.5.2020 upto 18.5.2020 and last notice was issued dated 22.5.2020 extending the date upto 1.6.2020.





Learned counsel submitted that the petitioner was selected in All India Quota had reported online on 17.4.2020, however, she submitted her joining on 29.6.2020 as the last date of joining was 30.6.2020. Learned counsel submitted that the petitioner had no choice except to join and to secure her admission and accordingly she also executed the relevant bond alongwith other certificates before Authorities at Udaipur.



Learned counsel submitted that the first round of State Counselling was undertaken by the Chairman NEET PG Medical & Dental Admission/Counselling Board-2020 and since the petitioner did not have the requisite merit and choice and as such she was not allotted any seat in the State Quota. Learned counsel submitted that the dispute with regard to increase of seats for Economically Weaker Section (EWS) was subject matter of challenge before this Court and as such Single Bench of this Court decided such petitions (S.B. Civil Writ Petition Nos.5468/2020, 5482/2020, 5495/2020) vide order dated 15.6.2020 and State Government was asked to treat the admissions given in the first round of counselling, to be cancelled and First round of counselling was to take place again as per directions given in the judgment dated 15.6.2020 and fresh counselling was to be conducted as per directions of Single Bench of this Court.

Learned counsel for the petitioner submitted that the order of the Single Bench dated 15.6.2020, was assailed before the Division Bench and the Division Bench vide order dated 17.7.2020 had set aside the order of the Single Bench and as such the action of the State of conducting first round of counselling has been upheld and State has to proceed to conduct second round of counselling for making admissions. Learned counsel submitted



that since the second round of counselling was stayed, the same was not done before the last date of joining of the petitioner in All India Quota, she has been declared ineligible and deprived to participate in the second round of State counselling.

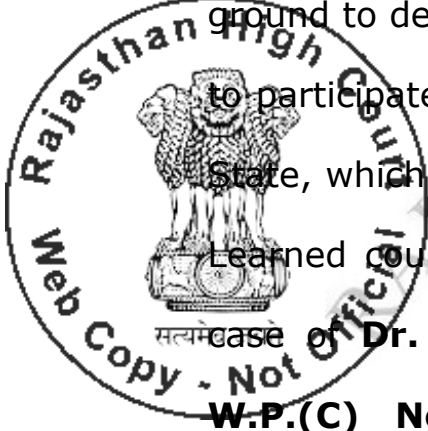
Learned Counsel submitted that if the dispute was pending in the Court or any interim order was passed, the same cannot be a ground to deny the justified and meritorious claim of the petitioner to participate in the second round of counselling conducted by the State, which will continue only upto 2:00 PM today i.e. 21.7.2020.

Learned counsel also submitted that the Delhi High Court in the case of **Dr. Sneha Prakash vs. Union of India and Ors.** in **W.P.(C) No.5397/2018** vide order dated 18.5.2018, has permitted the candidate to resign from the Central seat and permitted her to participate in the counselling conducted by AIIMS.

Learned counsel further submitted that if the list of candidates who were registered for State Counselling and had joined other colleges through All India Counselling (MCC Round-2), declared ineligible by the State, the same cannot result into depriving the petitioner, only on account of inclusion of her name, in such list of 355 ineligible candidates.

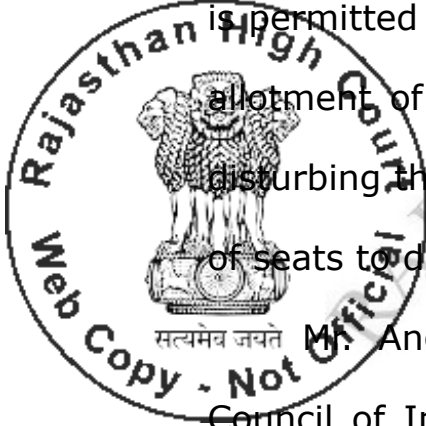
Mr. Harshal Tholia, learned counsel appearing for the State submits that the State has taken a conscious decision to permit only those candidates to participate in State Round-2 Counselling who have not joined other colleges and if petitioner had joined and blocked one seat at Udaipur, no right is created in favour of the petitioner to participate in the second round of counselling.

Mr. Harshal Tholia, learned counsel for the State has also submitted that the Apex Court in the **Writ Petition (Civil) No.**





267/2017 Dar-Us-Slam Educational Trust And Ors. vs. Medical Council of India and Ors., has passed certain directions on 9.5.2017 and as per direction 4, if the candidate has taken admission in All India Quota seats after second round of counselling, such students should not be allowed/permitted to vacate the seats. Learned counsel submitted that if the petitioner is permitted to participate in the counselling, the entire process of allotment of seats will affect the seat matrix and will result into disturbing the entire schedule of the State as well as the allotment of seats to different eligible candidates.



Mr. Angad Mirdha, learned counsel appearing for Medical Council of India submitted that the Medical Council of India has issued a notification dated 5.4.2018 and their complete procedure has been prescribed and further matrix has been prepared with regard to the permissibility of the students to exercise the fresh choice during counselling.

Learned counsel for the MCI submitted that as per the said chart, there is a free exit in All India Counselling Round-1 as well as in State Quota I and if a candidate has not joined in All India Quota second round counselling, such candidate can exit with forfeiture of seats, however, if the same candidate has joined, than one is ineligible for further counselling.

Learned counsel submitted that same is the position in the State Quota second round counselling, the candidate if has not joined, he/she can exit with forfeiture of fees and if joined, becomes ineligible for further counselling.

I have heard the submissions made by learned counsel for the parties and perused the material available on record.



This Court prima facie finds that the candidates who participated in the All India Counselling in First Round and allotted seats and they had option to resign even after joining the seats upto 1.6.2020.

This Court further finds that the first round of counselling of the State was over and second round of counselling was to start before the last cut-off date, however, same got delayed due to pendency of writ petitions before this Court and as such after decision by the Division Bench, the State has again started the second round counselling process.

This Court finds that due to joining of candidates after All India second round counselling, the State is now undertaking the exercise and since seats have been blocked by the candidates, the State is not permitting such candidates to appear in the second round of counselling.

This Court prima facie finds that there has been overlapping as well as time schedule being disturbed for considering the eligible candidates for allotment of seats in second round of counselling in the State Quota as the candidates who had to give joining before the last date, could not have taken chance to wait for second round of counselling to be conducted by the State.

This Court, however, finds that the large number of candidates have been rendered ineligible due to such a situation and as many as 355 candidates are declared ineligible for allotment of seats in State Round-2 Counselling. The matter requires consideration by this Court and as such reply may be filed by the respective parties within five days, as the matter pertains to admission in Post Graduate Courses and time schedule is also important in these matters.



This Court as an interim measure directs that the admission which will be made in the second round of counselling will be subject to outcome of this writ petition and such candidates will be informed accordingly by the Authorities.

List this case on 27.7.2020.

(ASHOK KUMAR GAUR),J



Ramesh Vaisnav/1/Parul Sharma



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