



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

D.B. Civil Special Appeal (Writ) No. 499/2020

in

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

Chairman NEET PG Medical And Dental Admission/ Counselling Board-2020, And Principal, Govt. Dental College, Jaipur To Be Additionally Served Through Email.

----Appellant

Versus

1. 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.

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

3. Medical Council Of India, Through Its Secretary General, MCI Building Pocket-14, Sector-8, Dwarka Phase -1, New Delhi - 110077 And To Be Additionally Served Through Email Id.

4. Anjaneya Singh Kathait Son Of Dr. Sanjay Singh Kathait, Aged About 29 Years, Resident Of D-5, Lrs Institute Of TB And Respiratory Diseases, Sri Aurobindo Marg, New Delhi.

----Respondents

Connected With

D.B. Special Appeal Writ No. 500/2020

in

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

Office Of The Chairman, Neet PG Medical And Dental Admission/ Counselling Board-2020 And Principal, Govt. Dental College, Subhash Nagar, Behind T.B. Hospital, Jaipur (Rajasthan)

----Appellant

Versus

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

2. Mahatma Gandhi University Of Medical Sciences And



Technology, Through Its Registrar, Riico Industrial Area, Sitapura, Jaipur-302022.

3. Medical Council Of India, Through Its Secretary General, Mci Building Pocket-14, Sector-8, Dwarka Phase -1, New Delhi - 110077.

-----Respondents

D.B. Special Appeal Writ No. 501/2020

in

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



Dr. Aditya Poonia Son Of Shri Mohan Singh Poonia, Aged About 30 Years, Resident Of C-8, University Campus, University Of Rajasthan, Jaipur Rajasthan

-----Appellant

Versus

Chairman NEET PG Medical And Dental Admission/ Counseling Board -2020, and Principal, Govt. Dental College, Jaipur

2. Medical Council Of India, through Its Secretary General, MCI Building Pocket-14, Sector 8, Dwarka, Phase-1, New Delhi-110077
3. Registrar, Mahatma Gandhi Medical College and Hospital, RIICO Industrial Area, Sitapura, Jaipur
4. 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

-----Respondents

D.B. Civil Writ Petition No. 8442/2020

Dr. Anjaneya Singh Kathait Son Of Dr. Sanjay Singh Kathait, Aged About 29 Years, Resident Of D-5, Lrs Institute Of TB And Respiratory Diseases, Sri Aurobindo Marg, New Delhi.

-----Appellant

Versus

1. The Chairman, NEET PG Medical And Dental Admission/counseling Board-2020, and Principal, Govt. Dental College, Jaipur.
2. The Medical Council Of India Through Secretary General, MCI Building Pocket-14, Sector-8, Dwarka Phase-1, New Delhi-110077.



3. The Registrar, Mahatma Gandhi Medical College and Hospital, RIICO Industrial Area, Sitapura, Jaipur.
4. The State Of Rajasthan, Through Its Principal Secretary Department Of Medical Education, Govt. Secretariat, Jaipur.
5. Dr. Nilay Gupta Son Of Dr. G.R. Gupta, Aged About 25 Years, Resident Of Manglam Diagnostics Centre Jindal Hospital Road, Model Town, Hisar-125001.
6. Anjali Aggarwal D/o Shri Vinod Kumar Aggarwal, Resident Of 133-G-Block, Sri Ganganagar, Rajasthan, Having NEET Id No. 2066066864, Through Chairman, NEET PG Medical And Dental Admission/counseling Board-2020, and Principal, Govt. Dental College, Jaipur.
7. Aditya Poonia Son Of Shri Mohan Singh Poonia, Resident Of C-8, University Campus, University Of Rajasthan, Jaipur, having NEET Id No. 2066069495, through Chairman, NEET PG Medical and Dental Admission/counseling Board-2020, and Principal, Govt. Dental College, Jaipur.



-----Respondents

For Appellant(s)	:	Mr. Harshal Tholia on behalf of Dr. Vibhuti Bhushan Sharma, AAG Mr. Ajay Choudhary Mr. S.K. Gupta with Mr. Namonarayan Sharma & Ms. Surabhi Agrawal
For Respondent(s)	:	Mr. Lokesh Kumar Sharma through VC Mr. Saransh Saini for Mahatma Gandhi Medical College through VC Mr. Angad Mirdha for MCI Mr. SS Shekhawat for respondent No.1. Mr. S.K. Gupta with Mr. Namonarayan Sharma & Ms. Surabhi Agrawal for respondent No.4 Mr. Ajay Choudhary for respondent No.6 & 7

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PANKAJ BHANDARI

Judgment Reserved on :: 14/08/2020

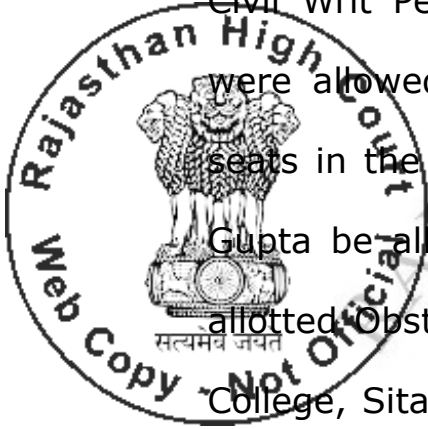
Judgment Pronounced on :: 25/08/2020

**By the Court(Per Hon'ble Mr. Pankaj Bhandari, J.)**

1. Appellant has preferred D.B. Special Appeal Writ No.499/2020 and D.B. Special Appeal Writ No.500/2020 aggrieved by Order dated 10.07.2020 passed by learned Single Judge, whereby S.B. Civil Writ Petition No.5426/2020 filed by Dr. Nilay Gupta and S.B. Civil Writ Petition No.5463/2020 filed by Dr. Ms. Surmil Sharma were allowed and appellant was directed to allot petitioners the seats in the subject of their choice. It was directed that Dr. Nilay Gupta be allotted Radio-diagnosis and Dr. Ms. Surmil Sharma be allotted Obstetrics & Gynaecology in the Mahatma Gandhi Medical College, Sitapura, Jaipur under NRI Quota treating the seats to be under NRI/Management Quota.

2. D.B. Civil Special Appeal (Writ) No.501/2020 has been filed by Dr. Aditya Poonia and D.B. Civil Writ Petition No.8442/2020 has been filed by Dr. Anjaneya Singh Kathait aggrieved by the allotment of seats under NRI Quota on the basis of domicile.

3. Succinctly stated the facts of the case are that Dr. Nilay Gupta and Dr. Ms. Surmil Sharma filed Civil Writ Petitions assailing the action of appellant in not considering the candidature of the petitioners for admission under the NRI Quota seats. Both the petitioners in D.B. Civil Special Appeal (Writ) No.501/2020 and D.B. Civil Writ Petition No.8442/2020 appeared in the National Eligibility-cum-Entrance Test (Post Graduate) (hereinafter referred as NEET PG Exam-2020) organized by the National Board of Examinations. Petitioners applied in the category of General and in the form submitted by them mentioned their willingness to opt for NRI seats.





4. Appellant submitted reply stating therein that the appellant on 13.04.2020 published seat matrix showing NRI Quota as *Nil* and that the seat matrix was published, as per the seat matrix submitted by the various Institutions. In reply, it was also submitted that the Institution-Mahatma Gandhi Medical College, Sitapura, Jaipur submitted *Nil* seats under the NRI Quota and accordingly, the appellant did not allot any seats under the NRI Quota.

5. Learned Single Judge placed reliance on ***P.A. Inamdar & Ors. Vs. State of Maharashtra & Ors. [(2005)6 SCC 537]; Modern Dental College and Research Center & Ors. Vs. State of Madhya Pradesh & Ors. [(2009) 7 SCC 751]*** and ***R.D. Gardi Medical College & Anr. Vs. State of Madhya Pradesh & Ors.: (2010) 10 SCC 225***, wherein it was held that 15% Quota is meant for NRI candidates and it is only after non-availability of NRI candidates, that the seats would be allotted, to be filled in the Management Quota.

6. The learned Single Judge held that the action of the appellant in not considering the candidature of NRI candidates and treating the seats vacant as management seats is illegal and unjustified. The learned Single Judge further ordered that the NRI seats should be filled by conducting of counseling, treating the seat matrix as NRI seats and only after giving an opportunity to all the NRI students. The seats which are left shall be treated as Management seats and to be filled in accordance with the Rules for the candidates as per their merit. The learned Single Judge directed the appellant to allot the subject of Radio-diagnosis to Dr. Nilay Gupta and subject of Obstetrics & Gynaecology to Dr. Ms. Surmil



Sharma in Mahatma Gandhi Medical College, Sitapura, Jaipur, aggrieved by which the present Special Appeals have been filed.

7. It is not in dispute that the fees structure of NRI candidates and Management Quota is the same in Mahatma Gandhi Medical College, Sitapura, Jaipur.

8. It is contended by counsel for the appellant that it is for the Institution to submit the seat matrix. In the seat matrix submitted

by Mahatma Gandhi Medical College, Sitapura, Jaipur, on 21.03.2020, Nil seats were submitted under NRI Quota. On

11.04.2020, an E-mail was sent by Mahatma Gandhi Medical College, Sitapura, Jaipur confirming the seat matrix. A zoom call

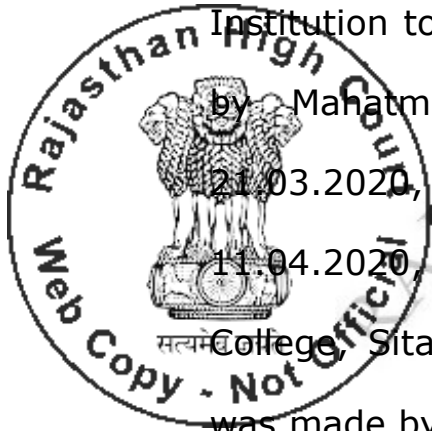
was made by the appellant Counselling Board with every college on

14.04.2020 and the seat matrix was confirmed. None of the colleges objected to the said seat matrix submitted by them.

Accordingly, no seats were allotted under the NRI Quota.

9. It is contended by counsel for the appellant that in the Judgment referred to by counsel for the petitioners before the learned Single Judge, 15% Quota for NRI candidates was kept with the sole object of providing additional resources to the private Institutions, but since the fees structure for NRI candidates and Management Quota is same, the Judgments referred to by counsel for the petitioners do not apply to the facts and circumstances of this case.

10. It is contended that the seat allotment was done solely on the basis of merit and as per the seat matrix submitted by Mahatma Gandhi Medical College, Sitapura, Jaipur and that the candidates do not have any right to claim the seat under the NRI Quota as it is the sole discretion of the Institution to allot seats under NRI Quota and more particularly, when fees structure is same, there was no





justification in allotting the seats to a less meritorious candidate when the Institution did not opt for any seats under NRI Quota in the seat matrix submitted by the Institution.

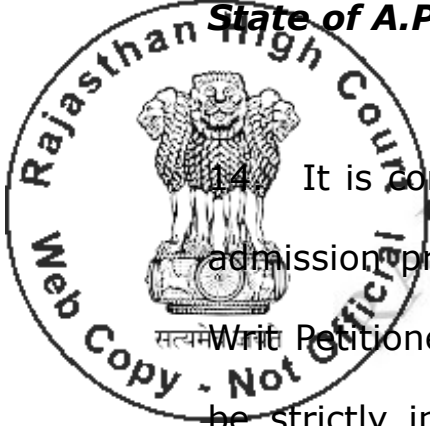
11. It is also contended that learned Single Judge usurped the functions of the Board by not allotting the seats under the subject of Radio-diagnosis to Dr. Nilay Gupta and under the subject of Obstetrics & Gynaecology to Dr. Ms. Surmil Sharma in Mahatma Gandhi Medical College, Sitapura, Jaipur.

12. Learned counsel appearing for the respondent/petitioner-Dr. Nilay Gupta and petitioner-Dr. Ms. Surmil Sharma contends that the order passed by learned Single Judge is in accordance with the Judgment of the Apex Court. Writ Petitioners have applied under the NRI Quota and as per the Judgment of the Apex Court, 15% total seats of the Management Quota were required to be filled from the NRI candidates and only if the NRI candidates were not available, the said seats would go to the Management Quota. It is contended that the petitioners in accordance with the Judgment of the learned Single Judge have been allotted the respective subjects. It is also contended that the State cannot arbitrarily reduce the 15% Quota reserved for NRI candidates, as the Law propounded by the Apex Court becomes the 'Law of land' under Article 142 of Constitution of India.

13. Counsel for the respondent has placed reliance on ***P.A. Inamdar Vs. State of Maharashtra (Supra), Prati Shailesh Patel Vs. State of Gujarat [2016 SCC Online Guj 1909], Shri Guru Ram Das Charitable Hospital Trust & Ors. Vs. State of Punjab & Anr. [2003 SCC Online P&H 1268], Consoritum of Deemed Universities of Karnataka (Codeunik) & Anr. Vs. Union of India & Ors., [W.P. (Civil) No.689/2017], Anshul***



Tomar Vs. State of M.P. & Ors. [(2008) 2 MPLJ 450], Ankit Baidya Vs. Union of India & Ors. [2019 SCC Online Del 6840], Somashekhar Ashok Gurannavar (Dr.) Vs. Directorate General of Health Sciences, Mumbai & Ors. [2009 SCC Online 596], Zoya Gill & Anr. Vs. University of Delhi & Ors. [2017 SCC Online Del 9160], K. Manjushree Vs. State of A.P., [(2008) 3 SCC 512].



14. It is contended by counsel for the Writ Petitioners that in the admission prospectus, NRI seats were specifically shown and the Writ Petitioners opted for the NRI seats and the admission should be strictly in accordance with the terms and conditions and the brochure issued by the Institution. Reliance in this regard has been placed on **Somashekhar Ashok Gurannavar (Dr.) Vs. Directorate General of Health Sciences, Mumbai & Ors. (Supra)**. Reliance is also placed on **Zoya Gill & Anr. Vs. University of Delhi & Ors. (Supra)**, whereby Delhi High Court held that once the admission process has started, it is not within the domain of the University to make changes in the eligibility criteria. Reliance in this regard is also placed on the judgment of the Apex Court in **K. Manjushree Vs. State of Andhra Pradesh (Supra)**.

15. It is contended by counsel for Dr. Aditya Poonia that a Provisional State Merit list of eligible NRI candidates was issued, wherein name of Dr. Aditya Poonia was at Serial No.4 and name of Dr. Nilay Gupta was at Serial No.9. Dr. Nilay Gupta could not have been allotted the subject of Radio-diagnosis by by-passing the merit of Dr. Aditya Poonia vis-a-vis Dr. Nilay Gupta.



16. It is contended by counsel for Dr. Aditya Poonia that the Writ Petitions filed by petitioners-Dr. Nilay Gupta deserves to be dismissed or in the alternative, Dr. Aditya Poonia should be allotted Radio-diagnosis in Mahatma Gandhi Medical College, Sitapura, Jaipur, instead of Dr. Nilay Gupta.

17. It is contended by counsel for Dr. Anjaneya Singh Kathait

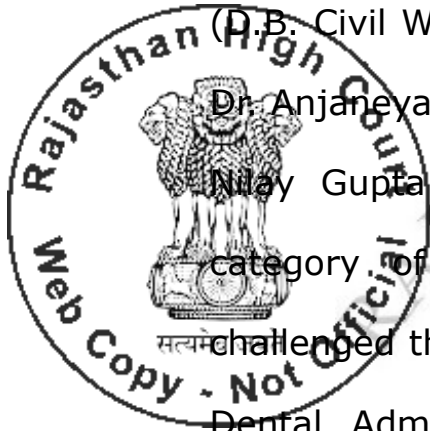
(D.B. Civil Writ Petition No.8442/2020) that the marks obtained by Dr. Anjaneya Singh Kathait are 495, whereas marks obtained by Dr. Nilay Gupta are 396 and that petitioner belongs in the same category of NRI as that of Dr. Nilay Gupta. Petitioner has

challenged the booklet issued by the Chairman, NEET PG Medical & Dental Admission/Counseling Board, wherein allotment of NRI

seats is based on residence/domicile of Rajasthan. It is contended that regulation 9(4) of the MCI PG Medical Education Regulations, 2020 should be declared unconstitutional and *ultra vires* of Article 14 and 15(1) of the Constitution of India. Petitioner has also claimed the seat of Radio-diagnosis on the basis of his merit-cum-choice in Mahatma Gandhi Medical College, Sitapura, Jaipur.

18. It is contended by counsel for the petitioner that if the seats are allotted strictly in accordance with merits of the candidates and the Writ Petitions filed by Dr. Nilay Gupta and Dr. Ms. Surmil Sharma are dismissed, petitioner will not press his writ petition.

19. It is contended by counsel for Mahatma Gandhi Medical College, Sitapura, Jaipur that in compliance of the Judgment passed by learned Single Judge, they have already allotted subjects of Radio-diagnosis to Dr. Nilay Gupta and subject of Obstetrics & Gynaecology to Dr. Ms. Surmil Sharma. It is also contended that a modified seat matrix was uploaded by Mahatma





Gandhi Medical College, Sitapura, Jaipur, wherein seats were shown under NRI Quota.

20. The fact of uploading the NRI seats is vehemently opposed by counsel for the appellant Counseling Board. It is contended that if Mahatma Gandhi Medical College, Sitapura, Jaipur has uploaded the seat matrix on its website, the same cannot be considered as the same was not sent to Counseling Board, which conducted the counseling based on the seat matrix provided by Mahatma Gandhi Medical College, Sitapura, Jaipur.

21. We have considered the contentions of the parties and have perused the judgments cited by counsel for the parties.

22. Emphasis has been laid on ***P.A. Inamdar Vs. State of Maharashtra (Supra)***. Apex Court while dealing with ***P.A. Inamdar Vs. State of Maharashtra (Supra)*** observed that the Institutions gave admission to a certain number of students under the NRI category by charging a higher amount of fee. It was argued before the Apex Court that a limited number of seats should be made available under the NRI Quota, enabling the educational institutions to strengthen their level of education and also to enlarge their educational activities. The Apex Court limited the reservation of such seats, not exceeding 15% for NRIs depending on the discretion of the Management, subject to two conditions. *Firstly*, seats should be utilized bona-fide by NRIs only and for their children and wards. *Secondly*, within this quota, 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 the students from economically weaker sections of the society.



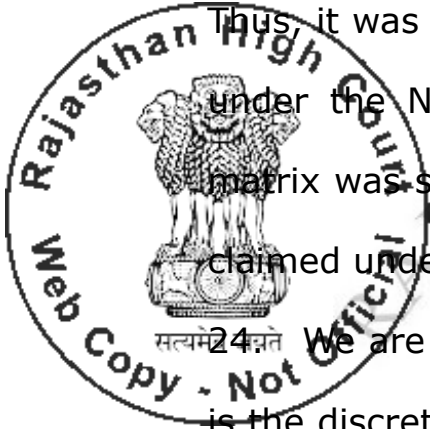


23. We are of the considered view that the main purpose for allotting NRI seats was to provide extra finances to the institutions, so as to strengthen their level of education and to enlarge their educational activities and also to provide benefits to students coming from economically weaker sections of the society. It is not in dispute that there is no separate fees structure for NRI students.

Thus, it was not mandatory for the Institution to ask for 15% seats under the NRI Quota. It is further not in dispute that the seat matrix was submitted by the Institution itself, wherein no seat was claimed under NRI Quota.

We are also of the considered view that claiming of NRI seats is the discretion of the Institution and a candidate cannot claim the same as of right by placing reliance on the judgment of the Apex Court. Since there was no difference in fees structure and Mahatma Gandhi Medical College, Sitapura, Jaipur did not opt for any NRI seats, Counselling Board did not commit any illegality in conducting the counselling and allotting seats solely on the basis of merit.

25. Judgments referred to by counsel for the petitioners pertains to the non-allocation of seats in the NRI Quota by the respective State Governments. The Hon'ble Courts in those cases have held that States cannot deny 15% Quota for NRI seats to the private institutions, as the Judgment of the Apex Court is 'Law of land' under Article 142 of the Constitution of India. We are of the considered view that the said judgments have no applicability to the present case as here the State has not denied 15% seats for NRIs, rather the institutions have not demanded any NRI seats. The right to opt for NRI seats vests with the institutions and candidates cannot claim it as of right.





26. The judgment of the Apex Court would not apply to the facts and circumstances of the case as the Institution had not claimed any seats under NRI Quota and the Institution was not charging any additional fees from the NRI students. The allotment of seats was thus required to be made strictly in accordance with merit of the candidates. Learned Single Judge has erred in usurping the powers of the Counselling Board and directing the appellant to allot the subject of Radio-diagnosis to Dr. Nilay Gupta and Obstetrics & Gynaecology to Dr. Ms. Surmil Sharma.

27. D.B. Civil Special Appeal (Writ) preferred by Counselling Board, therefore, deserves to be and is accordingly allowed. Judgment dated 10-07-2017 passed by learned Single Judge is set aside.

28. As we have held that there was no claim from the Institution for NRI seats and no additional fees was to be charged by the Institutions from NRI candidates, the Counselling Board shall now hold the counselling strictly in accordance with merit.

29. As far as D.B. Civil Writ Petition No. 8442/2020 filed by Dr. Anjaneya Singh Kathait is concerned, the grievance was confined to the giving of preference on the basis of domicile while making allotment of seats under the NRI category to Dr. Nilay Gupta who was less meritorious to Dr. Anjaneya Singh Kathait but since we have dismissed the writ petitions filed by Dr. Nilay Gupta and Dr. Ms. Surmila Sharma, the present D.B. Civil Writ Petition does not survive and hereby dismissed. The appellant Counselling Board is directed to hold the counselling strictly in accordance with merit.

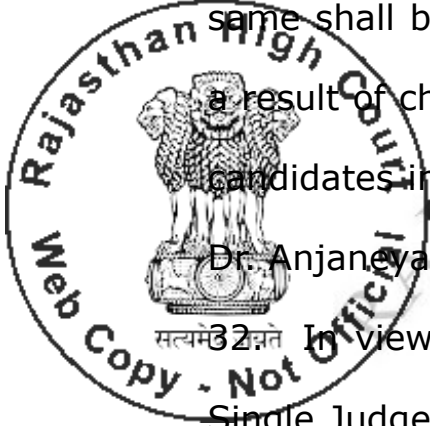
30. D.B. Special Appeal Writ No. 501/2020 filed by Dr. Aditya Poonia is party allowed. So far as it pertains to the quashing of the impugned order is concerned, the same is allowed. Prayer made therein that



the allotment of seats under the NRI category be not made in accordance with domicile needs no adjudication in the present matter as no allotment is being made under the NRI Quota.

31. It is further made clear that if Mahatma Gandhi Medical College, Sitapura, Jaipur has received any fees in pursuance of the directions of learned Single Judge vide order dated 10.07.2020, the

same shall be refunded to the petitioners and any fees charged as a result of change in counselling shall be returned to the respective candidates including the appellant Dr. Aditya Poonia and petitioner-Dr. Anjaneya Singh Kathait.



32. In view of the fact that the judgment passed by the learned Single Judge is set aside, any seat allotment done in consequence of the impugned order as well as any seat allotment done in compliance of the interim order passed by Division Bench shall stand nullified and the seat allotment must be done strictly in accordance with the seat matrix and merit of the candidates. Any fees paid by the candidates in pursuance of the order passed by the learned Single Judge and the interim order passed by the Division Bench shall be refunded or adjusted, if the candidates are allotted seat in the Institution.

33. All pending applications stand disposed.

34. A copy of this order be placed in connected files.

(PANKAJ BHANDARI),J

(INDRAJIT MAHANTY),CJ

CHANDAN /