A.F.R.

Court No. - 40

Reserved on: 11.04.2022

Delivered on:13.05.2022

IN THE HIGH COURT OF ALLAHABAD

CIVIL MISC. WRIT (C) PETITION No. - 23323 of 2019

Jigyasa Tiwari (Minor) Vs. State of U.P. And 2 Others

Counsel for Petitioner **:-** Amrendra Pratap Singh,Swapnil Kumar

Counsel for Respondent **:-** C.S.C.,Mahendra Pratap

JUDGMENT

Hon'ble Vikas Budhwar,J.

Contents

Hon'ble Vivek Kumar Birla,J.
Hon'ble Vikas Budhwar,J.

1. Heard Sri Swapnil Kumar and Sri Amrendra Pratap Singh, learned counsels for the petitioner, Sri Mahendra Pratrap, learned counsel for the respondent no. 2 as well as Sri Sharad Srivastava, learned Standing Counsel.

PRELUDE

2. Beseeching bizarre persecution a medical intern has petitioned before this Court seeking judicial avowal of the eligibility deficiency opportune to admission in M.B.B.S. course and perpetuation of the same on makeshift arrangement.

3. Factual matrix as worded in the writ petition is that on 17.06.2019 a Government Order bearing no. 985/71-4-2019-07-2018 was issued by respondent no. 1 addressed to respondent no. 2 setting out the criteria pertaining to admission in M.B.B.S./B.D.S. courses for the academic session 2019-2020.

4. Thereafter, in continuation of the same, the respondent no. 2 issued National Eligibility Cum Entrance Test (NEET) U.G. Counseling-2019 (Brochure) clearly providing the criteria for the purposes of taking of admission referable to the M.B.B.S. and B.D.S. courses. The relevant extract of the conditions pertaining to eligibility and qualifications as set out in the Government Order and the Brochure is being quoted hereinunder :-

"(1). Eligibility to appear in NEET (UG)- 2019

Eligibility to appear in **NEET (UG)** is as stipulated in **Indian Medical Council Act-1956 and the Dentists Act- 1948 as amended in 2018.**

i. He/she has completed age of 17 years at the time to admission or will complete the age on or before 31st December of the year of his/her admission to the 1st year MBBS/BDS Courses.

ii. The upper age limit for **NEET (UG)** is 25 years as on the date of examination with relaxation of 5 years for the candidates belonging to SC/ST/OBC category and persons entitled for reservation under the **Rights of Persons with Disabilities Act, 2016**.

The Age criteria for appearing in NEET (UG)- 2019 is as follows:

For Candidates of Unreserved Category (UR)	**born on or between 05.05.1994 and 31.12.2002**
For Candidates of SC/ST/PwD	**born on or between 05.05.1989**

Category	and 31.12.2002

Qualifications and Qualifying Examination Codes

CODE : 01	A candidate who is appearing in the qualifying examination, i.e., 12th Standard in 2019, whose result is awaited, may apply and take up the said test but he/she shall not be eligible for admission to the MBBS or BDS, if, he /she does not pass the qualifying examination with the request pass percentage of marks at the time of first round or Counselling.
OR	
CODE : 2	The Higher/Senior Secondary Examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher/Senior Secondary Examination after a period of 12 years study, the last two years of such study comprising of Physics, Chemistry, Biology/Bio-technology (which shall include practical tests in these subjects) and Mathematics or any other elective subject with English at a level not less that the core course for English as prescribed by the National Council of Education Research and Training after introduction of the 10+2+3 educational structure as recommended by the National Committee on Education. *Candidates who ha passed 10+2 from Open School or as private candidates shall not be eligible to appear for 'National Eligibility Cum Entrance Test'. Furthermore, study of Biology Biotechnology as an Additional Subject at 10+2 level also shall not be permissible.* The proviso in italics has been subject matter of challenge before the Hon'ble High Court of Delhi, Hon'ble High Court of Allahabad. Lucknow Bench and Hon'ble High Court of Madhya Pradesh at Jabalpur. The provisions of the regulations disqualifying recognised Open School Board candidates and the candidates who have studied Biology/Biotechnology as an additional Subject has been struck down. "*The Medical Council of India has preferred Special Leave Petitions before the Hon'ble Supreme Court and Appeals in the Hon'ble High Courts. Therefore, the candidatures of candidates of the NEET (UG)-2019 who have passed the qualifying examinations i.e. 10+2 from National Institute of Open Schooling or State Boards; or with Biology Biotechnology as additional subject shall be allowed but subject to the outcome of Special Leave Petitions Appeals filed by the Medical Council of India".*

OR	
CODE : 03	The Intermediate/Pre-degree Examination in Science of an Indian University/Board of other recognized examining body with Physics, Chemistry, Biology/Bio-technology (which shall include practical test in these subjects) and also English as a compulsory subject.
OR	
CODE : 04	The Pre-professional/Pre-medical Examination with Physics, Chemistry Biology/Bio-technology & English after passing either the Higher Secondary Examination or the Pre-University or an equivalent examination. The Pre-professional/Pre-medical examination shall include practical tests in these subjects and also English as a compulsory subject.
OR	
CODE : 05	The first year of the three years' degree course of a recognized University with Physics, Chemistry and Biology/Bio-technology including practical tests in these subjects provided the examination is a University Examination and candidate has passed the earlier qualifying examination with Physics, Chemistry, Biology/ Bio-technology with English at a level not less than a core course.
OR	
CODE : 06	B.Sc Examination of an Indian University provided that he/she has passed the B.Sc. Examination with not less than two of the subjects Physics, Chemistry, Biology (Botany, Zoology)/Bio-technology and further that he/she has passed the earlier qualifying examination with Physics, Chemistry, Biology and English.
OR	
CODE : 07	Any other examination which in scope and standard (Last 02 years of 10+2 Study comprising of Physics, Chemistry and Biology/Bio-technology; which shall include practical test in these subjects) is found to be equivalent to the Intermediate Science Examination of an Indian University/Board, taking Physics, Chemistry and Biology/Bio-technology including practical tests in each of these subjects and English.

Details of Fee and various timelines

EVENTS	DATES	
On-line submission of Application Form (Upto 11:50 p.m.) (including uploading of photograph and signatures)	01.11.2018 to 30.11.2018	
Date of successful final transaction of fee	01.11.2018 to 01.12.2018	
Through Credit/Debit Card/Net-Banking upto 11:50 p.m. and Through e-challan upto bank hours	01.12.2018	
Fee Payable by candidates	Unreserved	Rs. 1400/-
	Other Backward Classes (OBC)	
	SC/ST/PwD/ Transgender	Rs. 750/-
	Service/Proceedings charges & GST are to be paid by the candidate, as applicable	
Correction in particulars of Application Form on website only (No correction shall be allowed under any circumstances after this date)	**14.01.2019 to 31.01.2019**	
Printing of Admit Cards from NTA website	**15.04.2019**	
Date of Examination	**05.05.2019**	
Timing of Examination	**02:00 p.m. to 05:00 p.m.**	
Examination Centre	**As indicated on Admit Card**	
Display of recorded responses and Answer Keys for inviting challenges on **NTA** website:www.nta.ac.in,www.ntaneet.nic.in	**Date shall be displayed on the NTA website**	
Declaration of Result on **NTA** website	**By 05.06.2019**	

क्षैतिज आरक्षण (Horizontal Reservation)

1.	स्वतन्त्रता संग्राम सेनानियों के आश्रितों के लिए	02 प्रतिशत
2.	भूतपूर्व सैनिक (युद्ध मे अपंग/ सेवानिवृत्त/ शहीद) के पुत्र/पुत्री के लिए	02 प्रतिशत
3.	बी ग्रेडिंग सहित "सी" सर्टिफिकेट एन.सी.सी. कैडेट	01 प्रतिशत
4.	महिला अभ्यर्थियों के लिए	20 प्रतिशत
5.	दिव्यांग अभ्यर्थियों के लिए	05 प्रतिशत

5. As per the pleadings set forth in the writ petition the petitioner has come up with case that she had passed the Intermediate Examination in the year 2019 conducted by Board of High School and Intermediate Education, Prayagraj and also obtained ‘B’ Certificate of NCC and was awarded ‘BEE’ Grading from the Commandant Officer of NCC on 18.06.2019. Record reveals that the petitioner applied under National Eligibility Cum Entrance Test (NEET) U.G. Counseling-2019 Examination on 05.04.2019 and thereafter, an admit card was an issued in her favour allowing her to participate in the examination so sought to be conducted on 05.05.2019. Perusal of the admit card which is appended at page no. 40 of the writ petition reveals that petitioner applied under unreserved category. In paragraph no. 5 of the writ petition, it has been averred that in the National Eligibility Cum Entrance Test (NEET) U.G. -2019 so conducted on 05.05.2019 the petitioner secured 548 marks out of 720 marks and has been assigned over all rank of 24557 (unreserved category) and the category rank whereof is 14324. The score card of the petitioner in NEET Examinatin-2019 is at page no. 41 of the writ petition wherein the category so assigned to the petitioner is unreserved. The petitioner has further averred in paragraph no. 11 of the writ petition that she got herself registered for counseling in U.P. NEET (U.G.) counseling-2019 and the verification was done and in the Registration Slip of counseling -2019 the category so assigned was unreserved and in the column pertaining to sub category ‘NCC’ was mentioned. At page no. 44 of the petition the document verification card- 2019 has been appended wherein the category assigned to the petitioner is unreserved and SUB

CATEGORY / PH TYPE it has been mentioned as NA/NA. The petitioner in paragraph no. 4 of the writ petition coupled with the receipt which is at page no. 24 of the writ petition has further come up with stand that the petitioner got admitted in M.B.B.S. course in the Moti Lal Nehru Medical Collage, Prayagraj on 08.07.2019 in NCC category. However, this Court finds that an e-mail communication was issued from the office of the respondent no. 2 marked to the petitioner on 12.07.2019 requiring the petitioner to furnish the 'BEE' Grading certificate along with 'C' Certificate of NCC Cadet otherwise the admission of the petitioner will be deemed to be cancelled.

6. Being Aggrieved against the aforesaid communication, the petitioner thereafter, instituted the present petition seeking following reliefs:-

> *"i. Issue a writ order or direction in the nature of mandamus commanding the respondent no. 3 not to cancel the admission of the petitioner in MBBS Course, 2019 in MLN Medical College, Prayagraj on the ground that the she does not possess 'C' certificate in NCC Examination.*
>
> *i(a). To issue writ, order or direction the nature of mandamus directing the respondent to include NCC Cadets having "B" certificate with "B" grade in 1 % horizontal reservation as provided in brochure of NEET (UG) Counseling 2019 issued by Respondent No. 2 (Annexure No. 9 to the writ petition).*
>
> *ii. Issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the present case.*
>
> *iii. Award costs of the writ petition to the petitioner."*

7. This Court entertained the present writ petition and on 19.07.2019 proceeded to pass the following order:-

“Petitioner, who is minor has approached this Court through his father seeking following relief :-

"(i) issue a writ order or direction in the nature of mandamus commanding the respondent no.3 to cancel the admission of the petitioner in MBBS Course, 2019 in MLN Medical College, Prayagraj on the ground that she does not possess 'C' certificate in NCC Examination."

Heard learned counsel for the parties and perused the record.

Shri Amrendra Pratap Singh, learned counsel appearing on behalf of the petitioner submits that the petitioner has been granted admission in MBBS course in the Moti Lal Nehru Medical College, Prayagraj on 8.7.2019 under the horizontal reservation of 1% under the category of "B" grading along with the 'C' certificate of NCC as mentioned in the Brochure of National Eligibility cum Entrance Test (NEET) UG Counselling - 2019. Learned counsel further submits that petitioner has approached this Court earlier by way of filing a Civil Misc. Writ Petition No.21919 of 2019, Jigyasa Tiwari (Minor) vs. State of U.P., which was dismissed by a co-ordinate Bench of this Court on 9.7.2019 on the ground that writ petition was rendered infructuous.

The petitioner is now aggrieved by an E-mail dated 12.7.2019 whereby Director General Medical Education and Training, U.P. has communicated to the College that as the petitioner has not been able to submit 'C' certificate of NCC within the prescribed period, therefore, the admission shall be deemed cancelled in case such certificate is not submitted

before 19.7.2019. The said communication is impugned in the present writ petition.

It is further submitted that the petitioner is under graduate student and has passed 'B' certificate of NCC Examination - 2019 with "B" grading. He further submits that the petitioner has repeatedly communicated to the authorities that the eligibility for appearing in "C" certificate of NCC is graduation, and as for, the petitioner has passed only Intermediate Examination and got admission in the MBBS course, she is not eligible for the said "C" certificate of NCC. Therefore, by way of said representation, she has requested to reconsider the issue and permit her to continue the studies of MBBS course in the College.

Learned counsel has also relied upon communication dated 9.5.2013 of the Director General of NCC on the issue of implementation of new TRG Syllabus and NCC an elective subject in order to substantiate his submission that eligibility for 'C' certificate of NCC is graduation.

Matter requires consideration.

Let notice be issued to the respondents.

Steps be taken within a three days.

List this matter on 21.8.2019.

Meanwhile, counter and rejoinder affidavits may be exchanged.

The communication dated 9.5.2013 shall be kept in abeyance till further orders and respondents are directed to allow the petitioner to continue her studies in the MBBS course."

8. The respondents herein being aggrieved against the order dated 19.07.2019 passed in the present writ petition preferred SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 39400/19 before the Hon'ble Apex Court wherein the following order were passed:-

> **"Order Date :** 25.11.2019
>
> *"Delay condoned.*
>
> *Since the order is interim, we find no ground to interefer with the impugnd order passed by the High court.*
>
> *However, considering the naturw of the disputes, we request the High Court to decide the matter at an early date, as far as possible within six weeks.*
>
> *The Special Leave Petition is, accordingly, disposed of.*
>
> *Pending interlocutory application(s), if any, is/are disposed of."*

9. An amendment application has been filed on 09.02.2020 seeking amendment in the prayer clause which came to be allowed on 07.04.2022 wherein the following prayer was added:-

> *"To issue writ, order or direction the nature of mandamus directing the respondent to include NCC Cadets having "B" certificate with "B" grade in 1 % horizontal reservation as provided in brochure of NEET (UG) Counseling 2019 issued by Respondent No. 2 (Annexure No. 9 to the writ petition)."*

10. Counter affidavit has been filed by the respo]

ndent no. 2 to which a rejoinder affidavit has been filed by the petitioner. A compilation of judgments and also of a Government Order and Brochure has been filed by respondent no. 2.

Argument of the Petitioner

11. Sri Swapnil Kumar assisted by Sri Amrendra Pratap Singh, learned counsel for the petitioner has made manifold submissions namely:-

(a). The requirement of ‘C’ certificate of NCC along with ‘BEE’ Grading in order to enjoy the desired eligibility for being considered under 1% Horizontal Reservation and not including the ‘BEE’ certificate with ‘B’ Grade is illegal besides being in violation of Article 14 of the Constitution of India.

(b). The petitioner herein had applied in National Eligibility Cum Entrance Test (U.G.) 2019 after qualifying Intermediate Examination and in view of the certificate issued by Lieutenant Colonel Officer Commanding 96 U.P. Bn CC, Jaunpur dated 20.06.2019 addressed to respondent no. 2 as per latest policy for certificate exams in NCC a candidate who is Intermediate pass can only hold a ‘B’ Certificate of NCC and ‘C’ Certificate exams are only awarded in the third year of his/her training implying that cadet should be in Degree collage.

(c). There is no logic in not including ‘B’ certificate with ‘BEE’ Grade of NCC while making it admissible for 1% Horizontal reservation.

(d). Once the petitioner has not played fraud then the respondents are estopped from cancelling the candidature of the petitioner as a student in M.B.B.S. course.

(e). Even otherwise once the petitioner has been accorded interim protection by this Court and she is pursuing M.B.B.S. since year 2019 then she should be allowed to continue as a M.B.B.S. student and awarded degree in that regard.

Argument of Respondents

12. Sri Mahendra Pratap, learned counsel who appears for respondent no. 2 has argued that the petitioner is not entitled for grant of any relief particularly in view of the fact that she was thoroughly ineligible to be granted admission as she had played fraud as she while applying in the National Eligibility Cum Entrance Test had shown her category to be unreserved and even in the admit card and score card she was again shown to be under unreserved category and thereafter, in the Registration Slip for counseling the petitioner portrayed herself to be unreserved having sub category of NCC and when she appeared at

Nodal Centre, Prayagraj on 26.06.2019 for document verification and produced NCC ‘B’ provisional certificate issued on 18.06.2019. It has further been argued by the counsel for the respondent no. 2 that at the time of the verification it was found that the petitioner did not possess NCC ‘C’ Certificate consequently, the petitioner had made an application on 26.06.2019 that she may be considered in general category instead of sub category NCC. It has further been argued that after submission of the application by the petitioner for changing her category, her category was changed, document verification card was issued which was signed by the petitioner in the presence of Dr. Anoop Jaiswal, who had verified the same and in the said verification card category of the petitioner was mentioned as unreserved and sub category NA/NA (Not Available). Sri Mahendra Yadav who appears for respondent no. 2, has further made a submission that due to technical fault in the NIC the sub category of the petitioner could not be deleted from the system and subsequently, petitioner came for admission on 08.07.2019 along with the Notary Affidavit dated 06.07.2019 that 10 days time be granted for submitting NCC ‘C’ certificate and then the said discrepancy came to the knowledge of the respondents then on 11.07.2019 the respondent no. 3 informed the respondent no. 2 and thereafter, a decision was taken, providing time till 19.07.2019 for submitting NCC ‘C’ Certificate with ‘BEE’ Grading. In nutshell, the argument of Sri Mahendra Yadav, who appears for respondent no. 2 is that the petitioner has herself committed fraud and concealed material facts and once she was not possessing NCC ‘C’ Certificate with ‘BEE’ Grading then she is not entitled to be considered under the reservation quota pertaining to 1% for NCC Cadet. It has further been emphasised that the communication made by the respondent requiring the petitioner to submit NCC ‘C’ Certificate with ‘BEE’ Grading does not suffer from any illegality and the petitioner does not deserve any sympathy and the writ petition is liable to be dismissed.

13. Sri Sharad Srivastava, learned Standing Counsel who appears for respondent no- 1 has adopted the argument of learned counsel for

respondent no. 2, while adding that petitioner is not entitled to reliefs as she is thoroughly ineligible and mere continuance on the basis of interim order will not create any right upon her.

Replication on behalf of petitioner

14. Learned counsel for the petitioner have reiterated the argument which he had made at the first instance while arguing the writ petition, however, the same is not being recited as it is nothing but repetition of the argument made at the time of arguing of the writ petition.

Questions of Determination

(1) Whether the petitioner is eligible and enjoys desirable qualification for being considered under 1% quota earmarked for NCC candidates by mode of Horizontal Reservation?

(2) Whether the High Court in the garb of judicial review can adorn the chair of the rule enacting authority to decide the educational qualifications?

(3) Whether the petitioner is entitled to benefit of the interim order so granted by this Court permitting her to pursue the M.B.B.S. course till its terminal destination?

(4) Issue with regard to the conduct of petitioner.

SYMPOSIUM

15. We have heard the submission of the parties and perused the record.

16. Admittedly, the present controversy relates to admission in M.B.B.S. course referable to National Eligibility Cum Entrance Test (NEET) U.G. Counseling-2019 which is governed by a Government Order dated 17.06.2019 issued by the respondent no. 1 addressed to respondent no. 2 setting out the conditions, criteria and the parameters for counseling/admission in M.B.B.S. and B.D.S. courses. It is not in dispute that not only vertical but horizontal reservation has been provided for admission in M.B.B.S. and B.D.S. courses. So far as,

Horizontal Reservation is concerned, the present controversy revolves around 1% reservation pertaining to NCC ‘C’ Certificate with ‘BEE’ Grading which qualifies and makes the petitioner entitled for 1% reservation for NCC Cadets. Here in the present case it is also not in dispute that the petitioner happens to be a literate person who as per the Intermediate certificate so attached with the writ petition reveals that she has sufficient knowledge of not only Hindi vernacular but English also.

17. Apart from the same, the examination was to be conducted on 05.05.2019 and the petitioner herein applied on 05.04.2019 and obtained admit card wherein the category shown was unreserved and the said admit card not only contained the photograph of the petitioner but also her signature. Even in the score card so issued after the declaration of the result, reveals that the petitioner was shown under the unreserved category. At the time of the counseling, the petitioner got the Registration Slip for counseling prepared wherein she had shown herself to be in the category admissible to unreserved and in the sub category, NCC was mentioned. Thereafter, when the petitioner appeared at Nodal Centre, Prayagraj on 26.06.2019 then she produced NCC ‘B’ provisional certificate issued on 18.06.2019 and when the same was shown to be insufficient to make her entitled for reservation in question then she wrote a letter dated 26.06.2019 which is at page no. 16 of the counter affidavit filed by the respondent no. 2 requesting that her admission may be considered in general category instead of sub category of NCC. In paragraph no. 11 of the counter affidavit it has been alleged that the petitioner’s category was changed, document verification card was issued and the petitioner signed on the said card in the presence of Dr. Anoop Jaiswal which was verified, however, due to technical fault in NIC system, the sub category of the petitioner could not be deleted from the system and thereafter, when the petitioner came for admission on 08.07.2019 along with the notary certificate dated 06.07.2019 then the respondent decided to provide her time till 19.07.2019 for submitting NCC ‘C’ Certificate with ‘BEE’ Grading, as

the petitioner obviously did not possess the same, thus, she filed the present petition.

18. Now, a question arises as to whether this Court can hold on the insistence of the petitioner that she is eligible to be granted reservation despite the fact that the petitioner does not have NCC ‘C’ Certificate with ‘BEE’ Grading but instead of the same, she is having ‘B’ Certificate with ‘BEE’ grade.

19. The jurisdiction of the Court to either include a qualification which already does not finds place in the statute or to make it equivalent by judicial fiat is a matter which is being discussed later. Nevertheless, the petitioner is not eligible to be considered under NCC category referable to 1% reservation under Horizontal stream as it is not a case wherein the petitioner was not aware about the desirable qualification/eligibility for being considered under 1% reservation for NCC Cadet and further, it is also not a case that the petitioner was not a literate person, however, rather to the contrary the petitioner with her open eyes had filled up the form and thus, any type of excuse is thoroughly unwarranted and the same cannot grant any aid or benefit for the petitioner.

20. Sri Swapnil Kumar, learned counsel for the petitioner has argued that may be the petitioner did not possess NCC ‘C’ Certificate with ‘BEE’ Grading, however, in view of the amendments so sought in the writ petition a mandamus can obviously be issued to the respondents to include the NCC Cadet having ‘B’ Certificate with ‘BEE’ grading for 1% Horizontal Reservation. Elaborating the said submission, learned counsel for the petitioner has drawn the attention of the Court towards the communication dated 20.06.2019 issued under the signature of Lieutenant Colonel Officer Commanding U.P. NCC, Jaunpur to the respondent no. 2 at page no. 38 of the writ petition so as to contend that a student who had passed Intermediate can only get ‘B’ Certificate of NCC and ‘C’ Certificate of NCC is admissible and is only issued to a student who is pursuing studies in Degree college.

21. We have analysed the argument of the learned counsel for the petitioner, however, we find our inability to subscribe to the same for the simple reason that prescription of a qualification it is essentially and primarily a role reserved for the employer and it is not for the Court while exercising its jurisdiction under Article 226 of the Constitution of India to arrogate to itself that function.

22. Additionally, we may also taken note of the fact that the Government Order dated 17.06.2019 as well as in the Brochure in question the eligibility to appear in National Eligibility Cum Entrance Test (NEET) U.G. Counseling-2019 extends to a larger magnitude wherein the zone of consideration encompasses candidates who not only appear in qualifying standard examination i.e. 12th standard 2019 results are awaited but also to those applicants who have completed their graduation courses from a Degree Collages.

23. Thus, the argument of the petitioner is that mere possession of 'B' Certificate of NCC Cadets is sufficient to make her eligible for being granted reservation under NCC quota is patently misconceived as well as misplaced and out of context. Moreover, once a qualification and eligibility is prescribed then until and unless it is said to be arbitrary of violative of any of the provisions contained under the Constitution of India, the same cannot be said to be either ultra-vires or illegal and set aside or made equivalent as sought to be insisted by the petitioner.

24. The Hon'ble Apex Court in the case of ***J. Rangaswamy vs. Government of Andhra Pradesh*** reported in **(1990) 1 SCC 288**, has observed as under:

> *"6. So far as the second plea is concerned, admittedly, the petitioner does not have, while the respondent has, a doctorate in nuclear physics. The plea of the petitioner is that, for efficient discharge of the duties of the post in question, the diploma in radiological physics (as applied in Medicine) from the Bhabha Atomic Research center (BARC) held by him is more relevant than a doctorate in nuclear physics. It is submitted that in all corresponding posts elsewhere, a diploma in radiological physics is insisted upon and that, even in the State of Andhra Pradesh, all other physicists working in the line, except the respondent, have the diploma of the BARC. It is not for the Court to consider the relevance of qualifications prescribed for various posts. The post in question is that of a Professor and the*

prescription of a doctorate as a necessary qualification therefor is nothing unusual. Petitioner also stated before us that, to the best of his knowledge, there is no doctorate course anywhere in India in radiological physics. That is perhaps why a doctorate in nuclear physics has been prescribed. There is nothing prima facie preposterous about this requirement. It is not for us to assess the comparative merits of such a doctorate and the BARC diploma held by the petitioner and decide or direct what should be the qualifications to be prescribed for the post in question. It will be open to the petitioner, if so advised, to move the college, university, Government, Indian Medical Council or other appropriate authorities for a review of the prescribed qualifications and we hope that, if a doctorate in nuclear physics is so absolutely irrelevant for the post in question as is sought to be made out by the petitioner, the authorities concerned will take expeditious steps to revise the necessary qualifications needed for the post appropriately. But, on the qualifications as they stand today, the petitioner is not eligible to the post and cannot legitimately complain against his non-selection."

25. The Hon'ble Apex Court in the case of ***Delhi Pradesh Registered Medical Practitioners vs. Director of Health, Delhi Admn. Services and others,*** reported in **(1997) 11 SCC 687**, has observed as under:

> "*5. … It is not necessary for this Court to consider such submissions because the same remains in the realm of policy decision of other constitutional functionaries. We may also indicate here that what constitutes proper education and requisite expertise for a practitioner in Indian Medicine, must be left to the proper authority having requisite knowledge in the subject. As the decision of the Delhi High Court is justified on the face of legal position flowing from the said Central Act of 1970, we do not think that any interference by this Court is called for. These appals therefore are dismissed without any order as to costs.*"

26. The Hon'ble Apex Court in the case of ***State of Rajasthan and others vs. Lata Arun***, reported in **(2002) 6 SCC 252**, has observed as under:

> "*13. From the ration of the decisions noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. it is not for courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.*"

27. The Hon'ble Apex Court in the case of ***P.U. Joshi and others vs. Union of India and others***, reported in **(2003) 2 SCC 632**, has observed as under:

> "*10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and*

jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/ substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service."

28. The Hon'ble Apex Court in the case of ***Sanjay Kumar Manjul vs. Chairman, UPSC and others***, reported in **(2006) 8 SCC 42**, has observed as under:

"*25. The statutory authority is entitled to frame statutory rules laying down terms and conditions of service as also the qualifications essential for holding a particular post. It is only the authority concerned who can take ultimate decision therefor.*

27. It is well-settled that the superior courts while exercising their jurisdiction under Articles 226 or 32 of the Constitution of India ordinarily do not direct an employer to prescribe a qualification for holding a particular post."

29. The Hon'ble Apex Court in the case of ***Maharashtra Public Service Commission vs. Sandeep Shriram Warade and others***, reported in **(2019) 6 SCC 362**, has observed as under:

"*9. The essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work. The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can*

the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same."

30. The Hon'ble Apex Court in the case of ***Punjab National Bank Vs. Anit Kumar Das,*** **2020 SCC Online SC 897** has observed as under:

> "21. *Thus, as held by this Court in the aforesaid decisions, it is for the employer to determine and decide the relevancy and suitability of the qualifications for any post and it is not for the Courts to consider and assess. A greater latitude is permitted by the Courts for the employer to prescribe qualifications for any post. There is a rationale behind it. Qualifications are prescribed keeping in view the need and interest of an Institution or an Industry or an establishment as the case may be. The Courts are not fit instruments to assess expediency or advisability or utility of such prescription of qualifications……*"
>
> (Emphasis supplied by us) "

31. Even the Hon'ble Apex Court has gone to the extent that equivalence of qualification is also not the subject matter or scope of judicial interference. In the case of ***Zahoor Ahmad Rather and others vs. Sheikh Imtiyaz Ahmad and others***, reported in **(2019)2 SCC 404**, the Hon'ble Apex Court has observed as under:

> "*26. … The prescription of qualifications for a post is a matter of recruitment policy. The state as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the state, as the recruiting authority, to determine. The decision in Jyoti KK turned on a specific statutory rule under which the holding of a higher qualification could pre- suppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the 10 id at page 177 conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.*
>
> *27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The state is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision making. The state as a*

public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti KK must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti KK turned."

32. Yet in one of the recent decisions, the Supreme Court in ***Kaloji Narayana Rao University of Health Sciences v. Srikeerti Reddi Pingle and others,*** **AIR 2021 SC 1031** has held as under:

"*14. A careful reading of the said provision discloses that the MCI emphasized that the candidate should have undergone study at the 10+2 stage, (or in the intermediate course) in the specified subjects of Physics, Chemistry and Biology/Bio-technology. In this case, the certificate relied upon by the student7 merely clarifies that she undertook a course whilst in the 10th grade. That, by no means, is sufficient to fall within the description of "equivalent" qualification under Regulation 4(2)(f). Nor, in the opinion of this court, can it be deemed adequate having regard to the letter of the Assistant Principal of Conrad High School8 that the AP course in Biological Sciences is of college standard.*

15. *In the opinion of this court, there is a rationale and compelling logic on the part of the University to say that the candidate should have studied biology or biological sciences (apart from the other two science subjects, along with the further requirement of having studied English) in all the relevant years during the intermediate or at 10+2 level. Further, the reference to having studied in the first year in a degree course, at the college level with the said subject, carries with it, the implication that the student would have necessarily undergone academic study and training in the said three subjects at the 10+2 or intermediate level (without which, admission in a degree course is inconceivable in India). The further emphasis onhaving attended or undertaken practical lessons, (again at that level, in each of the concerned years) clearly signifies that a candidate should have undergone study in those subjects for the last two years at school or intermediate college level. The regulation is further clear that the examination score (marks) in Mathematics shall not be taken into consideration for the purpose of admission to a medical course, in reckoning merit or performance in the qualifying examination.*

19. *It is apparent that the High Court followed its previous judgment, and did not closely scrutinize the equivalence certificate or the subject stipulations. It also appears to have been largely influenced by the fact that the candidate was in fact admitted by the University. In the opinion of this court, the construction placed on Regulation 4(2), i.e., that each of the sub clauses (a) to (f) prescribes independent qualifications which should be deemed essential, is rather simplistic. That interpretation ignores the fact that each of the sub-clauses insists that certain subjects should have been studied, and practical examinations attempted at the 10+2 or equiv- alent level. Secondly, the college or intermediate examination [or equivalent qualifi- cations under Regulation 4(2)(f)] cannot be read in isolation, having regard to the cir- cumstances. The provision must*

be read in the context of the requirements for eligi- bility under Regulations 4(2)(a) to (e). The equivalence in qualification is not merely at the level of a 10+2 requirement, i.e., that the candidate should have passed an ex- amination equivalent to the intermediate science examination at an Indian Uni- versity/ Board. Additional to this requirement, Regulation 4(2)(f) requires equiva- lence in 'standard and scope' in an examination where the candidate is tested in Phys- ics, Chemistry and Biology including practical testing in these subjects, along with English. These subject matter requirements are consistent across Regulations 4(2)(a) to (e) and (f).

22. For these reasons, this court is of the opinion that the interpretation placed up- on the regulations in both the cited cases, by the Madras High Court, do not reflect the correct position. To be eligible, the candidate should produce clear and categorical material to show that she underwent the necessary years of study in all the stipulated subjects. This court is of the opinion that such stipulations are to be regarded as essential, given that the course in question, i.e., MBBS primarily if not predominantly, involves prior knowledge - both theoretical and practical, of senior secondary level in biology or biological sciences."

33. In **Special Appeal (D) No. 122 of 2015, Amit Tiwari vs. State of U.P** decided on **11.02.2015**, this Court has observed as under:

"We are unable to accept the submission. The ICAR has indicated in a broad sense the undergraduate degrees in Agriculture. Among them are also included degrees in Forestry, Home Science, Horticulture, Fisheries Science, Food Science, Veterinary Science and Dairy Technology. If the submission of the appellants were to be accepted, all those degrees also would have to be regarded as equivalent to a Bachelor's Degree in Agriculture. That apart, the view expressed by the Govind Ballabh Pant, University of Agriculture and Technology on 5 November 2014 is what it purports to be namely an opinion. A matter of equivalence cannot be concluded on the basis of such an opinion. The essential issue is whether the Commission, after evaluating the syllabus was justified in holding that the degree of B.Tech in Agricultural Engineering is not equivalent to a Bachelor's Degree in Agriculture. We see no reason to fault that decision, particularly having regard to the fact that the matter was already governed by the earlier judgment of the Division Bench rendered on 1 February 2012 as noted above."

34. A Full Bench decision in ***Deepak Singh and others vs. State of U.P. and others*, (2020) AllLJ 596**, this Court has held as under:

"*19. The State Government, while prescribing the essential qualifications or desirable qualifications are best suited to decide the requirements for selecting a candidate for nature of work required by the State Government and the courts are precluded from laying down the conditions of eligibility. If the language in the Rules is clear*

judicial review cannot be used to decide what is best suited for the employer."

35. Recently, in the case of **Anand Bihari vs. State of U.P. being Writ-A No. 15873 of 2021**, decided on 9.11.2021, this Court has held as under:

> "*13. In the case of* ***P.V. Joshi And Others Vs. Accountant General, Ahemdabad And Others 2003 (2) SCC 632*** *the Hon'ble Supreme Court has held as under:-*
>
> *"10.We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/ abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service." (Emphasis supplied by us)*"

36. In view of the proposition of law, so culled out by the Hon'ble Apex Court and this Court in the decisions so referred to above, this Court finds its inability to subscribe to the arguments of the counsel for the petitioner, as this Court cannot usurp the functions of either the rule enacting authority or the employer while substituting its own view

while including a qualification, which does not find its presence either in the statute or the rule.

37. Another issue, which need to be addressed and taken note of is the fact that the petitioner is continuing to pursue her MBBS course on the strength of the interim order passed in the present writ petition on 19.7.2019 allowing her to continue her study in MBBS course.

38. According to learned counsel for the petitioner, the petitioner herein has completed approximately three years of her MBBS course and the course itself is of 4 and ½ years and approximately, 1 and ½ years are left and thereafter, the petitioner has to undergo internship for a period of one year, thus she is entitled to be bestowed with the judicial blessings in the shape of equity.

39. Elaborating the said submission, Sri Swapnil Kumar, learned counsel for the petitioner has made submissions that petitioner is a young and a bright student, who is pursuing her MBBS course and in case, onslaught of dismissal is passed on to her, then the same will ruin her academic career and she will be in precarious situation.

40. Sri Mahendra Yadav, as well as the learned Standing Counsel have vehemently opposed the submissions and have argued that in the matter of admission, sympathy is not to be resorted to, as the same partakes to a character being misplaced sympathy and according to learned counsel for the respondents, present writ petition is liable to be dismissed and merely because, the petitioner is pursuing her MBBS course on the basis of interim order, the same will be of no avail to her.

41. The Hon'ble Apex Court in the case of ***Guru Nanak Dev University Vs. Parminder Kumar Bansal***, reported in **(1993) 4 SCC 401** had an occasion to consider the issue relating to admission to internship course by virtue of interim orders passed by Courts of law and in paragraph 5, 6 and 7, the Hon'ble Apex Court has observed as under: -

> *"5. Sri Gambhir, learned Counsel for the University says that the very implication of the idea of regularisation contained within it the*

promise that the initial admission itself was irregular. He submitted that the University was confronted with a fait-accompli by virtue of interlocutory orders. The final order in the writ petition did no more than validate and perpetuate the interlocutory error without any pronouncement on or adjudication of the basic issues of eligibility. Sri Gambhir aired a serious grievance that this type of orders would introduce an element of indiscipline in academic life and expose the system to ridicule and render any meaningful control of academic work impossible. He relied upon certain pronouncements of this Court to support his contention that in academic matters courts should be vary in directing the admissions to colleges by means of interim directions which would create complications later and expose even the beneficiaries of such orders to, difficulties when the final adjudication goes against them.

6. Learned Counsel for the respondents, however, sought to maintain that the two candidates had now completed the 12 months of their internship and it would be hard on them if their internship is reckoned from the date of the passing the M.B.B.S. examination.

7. Sri Gambhir is right in his submission. We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice exposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions on matters relevant to be taken into account at the interlocutory stage cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such orders cannot be allowed to stand. The Courts should not embarrass academic authorities by itself taking over their functions."

42. Nonetheless, the Hon'ble Apex Court in the case of ***State of Bihar vs. Upendra Narayan Singh*, (2009) 5 SCC 65**, in paragraph-51 has observed as under: -

"Notwithstanding the critical observations made in Delhi Development Horticulture Employees Union v. Delhi Administration, Delhi and Ors. (supra) and State of U.P. and Ors. v. U.P. State Law Officers Association and Ors. (supra), illegal employment market continued to grow in the country and those entrusted with the power of making appointment and those who could pull strings in the corridors of power manipulated the system to ensure that their favourites get employment in complete and contemptuous disregard of the equality clause enshrined in Article 16 of the Constitution and Section 4 of the 1959 Act. However, the Courts gradually realized that unwarranted sympathy shown to the progenies of spoil system has eaten into the vitals of service structure of the State and public bodies and this is the reason why relief of reinstatement and/or regularization of service has been denied to illegal appointees/backdoor entrants in large number of cases — ***Director, Institute of Management Development, U.P. v. Pushpa Srivastava, (1993)ILLJ190SC ; Dr. M.A. Haque and Ors. v.***

Union of India and Ors, (1993)ILLJ1139SC ; J & K Public Service Commission and Ors. v. Dr. Narinder Mohan and Ors. (1994)ILLJ780SC ; Dr. Arundhati Ajit Pargaonkar v. State of Maharashtra and Ors. (1995)ILLJ927SC ; Union of India and Ors. v. : Kishan Gopal Vyas (1996)7SCC134 ; Union of India v. Moti Lal, [1996]2SCR727 ; Hindustan Shipyard Ltd. and Ors. v. Dr. P. Sambasiva Rao and Ors. (1996)IILLJ807SC ; State of H.P. v. Suresh Kumar Verma and Anr. [1996]1SCR972 ; Dr. Surinder Singh Jamwal and Anr. v. State of J&K and Ors. (1996)IILLJ795SC ; E. Ramakrishnan and Ors. v. State of Kerala and Ors, (1997)ILLJ1215SC ; Union of India and Ors. v. Bishambar Dutt, (1997)IILLJ381SC ; Union of India and Ors. v. Mahender Singh and Ors, (1997)IILLJ795SC ; P. Ravindran and Ors. v. Union Territory of Pondicherry and Ors. (1997)1SCC350 ; Ashwani Kumar and Ors. v. State of Bihar and Ors. (1997)IILLJ856SC ; Santosh Kumar Verma and Ors. v. State of Bihar and Ors., (1997)IILLJ78SC ; State of U.P. and Ors. v. Ajay Kumar, (1997)ILLJ1204SC ; Patna University and Anr. v. Dr. Amita Tiwari, AIR1997SC3456 and Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra and Ors. (1994)IILLJ977SC.”

43. The Hon’ble Apex Court in the case of ***Priya Gupta Vs. State of Chhattisgarh and others,*** **(2012) 7 SCC 433** has held as under:

> *“67. The admission of the appellants was cancelled by the State Government which, even under the Rules, is the final competent authority for such purposes. In the present case, the mischief played by the concerned persons came to the notice of the Central Government which directed cancellation of the seats and required the State Government to act in accordance with law.*
>
> *69. It was also argued with some emphasis that the appellants are not at fault. They had taken the entrance examination and were given seats by the concerned authorities. Even if the authorities have committed some irregularity, the appellants should not be made to suffer at the very end of their professional course. To substantiate this premise, they relied upon the judgments of this Court in the cases of A. Sudha v. University of Mysore & Anr. (1987) 4 SCC 537,* Amandeep Jaswal v. State of Punjab *(2006) 9 SCC 597, R. Vishwanatha Pillai v. State of Kerala & Ors. (2004) 2 SCC 105 and Chowdhary Navin Hemabhai & Ors. v. The State of Gujarat & Ors. (2011) 3 SCC 617.*
>
> *70. We have perused the judgments of this Court relied upon by the petitioners. Firstly, they were delivered on their own facts and the Court has not stated any absolute principle of law, which would operate as a valid and binding precedent. Secondly, in all these cases, the Court had returned the finding that other authorities or rule-making bodies concerned were at fault and not the students. In the case of Chowdhary Navin Hemabhai (supra), the Court had noticed that the fault was of the rule making authority in not formulating the State Rules, 2008 in conformity with the Medical Council of India Regulations, while in the case of A. Sudha (supra), the Court found that the Principal of the institute was at fault and he had made incorrect statements in writing, which were acted upon by the students bona fide.*
>
> *71. In the present case, we have no doubt in our mind that the fault is attributed to all the stakeholders involved in the process of admission, i.e., the concerned Ministry of the Union of India, Directorate of Medical Education in the State of Chhattisgarh, the Dean of the Jagdalpur College and all the three Members of the Committee which*

granted admission to both the appellants on 30th September, 2006. But the students are also not innocent. They have certainly taken advantage of being persons of influence. The father of the Appellant No. 2, Akansha Adile was the Director of Medical Education, State of Chhattisgarh at the relevant time and as noticed above, the entire process of admission was handled through the Directorate. The students well knew that the admissions can only be given on the basis of merit in the entrance test and they had not ranked so high that they were entitled to the admission on that basis alone. In fact, they were also aware of the fact that no other candidate had been informed and that no one was present due to non-intimation. Out of favouritism and arbitrariness, they had been given admission by completing the entire admission process within a few hours on 30th September, 2006.

72. Balancing of equities by the Court itself is inequitable. Some party or the other would suffer a set back or adverse consequence from the order of the Court. On the one hand, if admissions are cancelled, the students who have practically completed their MBBS course would lose their professional education as well as nearly five years of their life spent in such education. If their admissions are protected, then the standard of education, the merit of the candidates and the desirability of the persons of higher merit becoming doctors is negated. The best solution to such problems is strict adherence to the time schedule, procedure for selection/admission and strict observance of the Medical Council of India Regulations, by all concerned. Once these factors are adhered to, not only would such situation not arise, but also it will prevent avoidable litigation before the Courts. The persons who violate the time schedule to grant admissions in an arbitrary manner and by colourable exercise of power, who are not adhering to Medical Council of India Regulations and the judgments of this Court, should be dealt with strictly by punishment in accordance with law, to prevent such mischief from repeating. In the present case, we are informed that the students have already sat for their final examination and are about to complete their courses. Even if we have to protect their admissions on the ground of equity, they cannot be granted such relief except on appropriate terms. By their admissions, firstly, other candidates of higher merit have been denied admission in the MBBS course. Secondly, they have taken advantage of a very low professional college fee, as in private or colleges other than the government colleges, the fee payable would be Rs.1,95,000/- per year for general admission and for management quota, the fee payable would be Rs.4,00,000/- per year, but in government colleges, it is Rs.4,000/- per year. So, they have taken a double advantage. As per their merit, they obviously would not have got admission into the Jagdalpur College and would have been given admission in private colleges. The ranks that they obtained in the competitive examination clearly depict this possibility, because there were only 50 seats in the Jagdalpur College and there are hundreds of candidates above the appellants in the order of merit. They have also, arbitrarily and unfairly, benefitted from lower fees charged in the Jagdalpur College.

73. On the peculiar facts and circumstances of the case, though we find no legal or other infirmity in the judgment under appeal, but to do complete justice between the parties within the ambit of Article 142 of the Constitution of India, we would permit the appellants to complete their professional courses, subject to the condition that each one of them pay a sum of Rs.5 lakhs to the Jagdalpur College, which amount shall be utilized for developing the infrastructure in the Jagdalpur College.

74. We have not and should not be even understood to have stated any precedent for the cases like grant of admission and leave to complete the course like the appellants in the present case.

75. We are imposing heavy costs upon these appellants to ensure that such admissions are neither accepted nor granted leave to complete their medical courses in future.

78.4 With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. We may refer the dictum of this Court in the case of ***Medical Council of India v. Rajiv Gandhi University of Health Sciences (2004) 6 SCC 76, para 14*** *in this regard.*

78.5. We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of judgments of this Court and the regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the authorities/colleges concerned."

44. Yet in the case of ***Asha vs. Pt. B.D. Sharma University of Health Sciences and others***, reported in **(2012) 7 SCC 389**, the Hon'ble Court has held as under:

"*39. With all humility, we reiterate the request that we have made to all the High Courts in Priya Gupta's case (supra) that the courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction.*"

45. Recently in the case of ***S Krishna Shradha vs State of Andhra Pradesh and others*****, (2020) 17 SCC 465**, this Court has observed as under: -

"*13.1. That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.*

13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of

rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30 th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30 th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

13.4. Grant of the compensation could be an additional remedy but not a substitute for restitutional remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to lose one full academic year and who could not be granted any relief of admission in the same academic year.

13.5. It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course."

46. Noticing the above mentioned judgment, this Court finds that it is a consistent law right from the very inception that Courts in the rarest of rare case can grant interim protection in the admission matters, when they are convinced that no injustice would be meted to the other party and the petitioner, who has approached the Court for grant of interim protection in admission matter has an cast iron case. In other words, the

Hon’ble Apex Court has observed that in the admission matters misplaced sympathy is totally unwarranted.

47. Now another question arises as to whether this Court can issue a direction, which runs contrary to a statute implying that the respondents are to disobey the statute. The Hon’ble Apex Court in para 10 in the case of ***A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and another*** **(1986) 2 SCC 667** has observed as under :-

> **“***We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.***”**

48. Further the Hon’ble Apex court in the case of ***V.K. Sood Vs. Secretary, Civil Aviation and others,*** **AIR 1993 SC 2285**, this Court in paragraph-6 and 7 held as under:

> “6. *Thus it would be clear that, in the exercise of the rule making power, the president or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of' the power under proviso to Art. 309 of the Constitution, being Statutory, cannot he impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.*
>
> *7. It is next contended that several persons whose names have been copiously mentioned in the appeal were not qualified to hold the post of examiner and they were not capable even to set the test papers to the examiners nor capable to evaluate the papers. We are not called upon to decide the legality of their appointments nor their credentials in this appeal as that question does not arise nor are they before the court. It is next contended by Mr. Yogeshwar Prasad, the learned Senior counsel that on account of inefficiency in the pilots' operational Capability repeatedly air accidents have been occurring endangering the lives of innocent travellers and this Court should regulate the prescription of higher qualifications and strict standard to the navigators or to the pilots be instead on. We are afraid that we cannot enter into nor undertake the responsibility in that behalf'. It is for the expert body and this Court does not have the assistance of experts. Moreover it is for the rule making authority or for the legislature to regulate the method of recruitment, prescribe qualifications etc. It is open to the President or the authorized person to undertake such*

exercise and that necessary tests should be conducted by U.P.S.C. before giving, the certificates to them. This is not the province of this Court to trench into and prescribe qualifications in particular when the matters are of the technical nature. It is stated in the counter affidavit that due to advancement of technology of the flight aviations the navigators are no longer required and therefore they are not coming in large number. Despite the repeated advertisements no suitable candidate is coming forward, We do not go into fault aspect also and it is not necessary for the purpose of this case. Suffice to state that pursuant to another advertisement made in July 1992, the appellant is stated to have admittedly applied for and appeared before the U.P.S.C. for selection and that he is awaiting the result thereof. Under these circumstances. we do not find any substance in this appeal. The appeal is accordingly dismissed. No costs."

49. Bearing in mind, the law laid down by the Hon'ble Apex Court in the catena of decisions as extracted hereinabove irresistible conclusion is liable to be drawn that the Court cannot travel beyond the jurisdiction so conferred upon it, while granting a relief to an applicant, merely because certain inconvenience is sought to be meted to him/her. As obviously academic qualifications and eligibility cannot be always tailored to suit a particular candidate.

50. As a matter of fact, mere continuance on the basis of interim order does not create any right in favour of the petitioner, particularly, when admittedly she did not possess the necessary required eligibility for being included in the zone of consideration for grant of horizontal reservation being 1% of NCC Cadets. So far as, the issue relating to grant of relief to the petitioner is concerned, an additional fact need to be noticed that the petitioner was very well aware about the required eligibility and qualification for being considered under Un-Reserved category and reserved category being by virtue of horizontal reservation under NCC Cadets. Further record reveals that the petitioner had blown hot and cold and approbated and reprobated at the same time, as when she got stuck and confronted with the situation that she did not have NCC 'C' Certificate having "BEE" Grade that she preferred an application before the respondents and tendered an affidavit on 26.6.2019 for change of her category. The petitioner on one pretext or the other wanted to get herself included in the counselling despite the fact that she was thoroughly ineligible to be conferred the benefit of the reservation as noticed hereinabove.

51. The Hon'ble Apex Court in the case of ***R.N. Gosain vs. Yashpal Dhir*** reported in **(1992) 4 SCC 683** has observed as under:-

> "*10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid any thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1921) 2 R.B. 608, at p.612, Scrutton, L.J]. According to Halsbury's Laws of England, 4th Edn.,Vol. 16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508).*"

52. The Hon'ble Apex Court in the case of ***Shyam Telelink Limited vs. Union of India***, reported in **(2010) 10 SCC 165** has observed as under:

> "23. *The maxim qui approbat non reprobat (one who approbates cannot reprobate) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument*."

53. The Hon'ble Apex Court in the case of ***Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Limited***, reported in **(2011) 10 SCC 420** has held as under:

> *"34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide: Nagubai Ammal & Ors. v. B. Shama Rao & Ors., AIR 1956 SC 593; C.I.T. Vs. MR. P. Firm Maur, AIR 1965 SC 1216; Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati & Ors., AIR 1969 SC 329; P.R.*
>
> *Deshpande v. Maruti Balaram Haibatti, AIR 1998 SC 2979; Babu Ram v. Indrapal Singh, AIR 1998 SC 3021; Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors, AIR 2004 SC 1330; Ramesh Chandra Sankla & Ors. v. Vikram Cement & Ors., AIR 2009 SC 713; and Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr., (2011) 5 SCC 270).*
>
> *35. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or*

silence when it is his duty to speak, from asserting a right which he otherwise would have had."

54. The Hon'ble Apex Court in the case of ***Sri Gangai Vinayagar Temple and another vs. Meenakshi Ammal and others***, reported in **(2015) 3 SCC 624** has observed as under:

> "*16.2. Secondly, on a proper perusal of the plaint, it ought to have been palpably evident that the Plaintiff/Tenant in O.S.5/78 feared dispossession from the demised premises because of what they considered to be an illegal transfer; but since all the Defendants had averred in their Written Statement that they had no intention of doing so, the suit ought not to have been dismissed but ought to have been decreed without more ado solely so far as the prayer of injunction was concerned. But, in the Trial Court the title to the leased land had become the fulcrum of the fight, owing to the pleadings of the Tenant in which it had repeatedly and steadfastly challenged the title of the Trust as well as the Transferees. The Tenant should not be permitted to approbate and reprobate, as per its whim or convenience, by disowning or abandoning a controversy it has sought to have adjudicated.*"

55. Analyzing the case from every point of angle, this Court finds that the petitioner had been maintaining inconsistent stand right from very inception as at one time, she claims to have applied under unreserved category and also under NCC category, which is under horizontal reservation category. Apart from the same, as already discussed, this Court cannot include any qualification by a judicial fiat, as the same is task, which is to be conducted by the rule making authorities and not by the courts of law. As already observed, mere continuance of any interim order does not create any right or benefit, particularly, in the matter of admission in the present sets of facts, wherein the issue relates to the MBBS Course, whereat merit is of the paramount consideration.

56. The Hon'ble Apex Court in the case of ***Chandigarh Administration and another vs. Jasmine Kaur and others*****, (2014) 10 SCC 521** has observed as under: -

> "*33.1. The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.*
>
> *33.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault*

only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

33.3. If a candidate is not selected during a particular academic year due to the fault of the Institutions/Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

33.4. When a candidate does not exercise or pursue his/her rights or legal remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

33.5. If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non-selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

33.6. If it is found that the candidate acquiesces or waives his/her right to claim relief before the Court promptly, then in such cases, the legal maxim vigilantibus non dormientibus aequitas subvenit, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

33.7. No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

33.8. There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply next academic year.

33.9. There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

33.10. Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical.

43. As time and again such instances of claiming admission into such professional courses are brought before the Court, and on every such occasion, reliance is placed upon the various decisions of this Court for issuing necessary directions for accommodating the students to various courses claiming parity, we feel it appropriate to state that unless such claims of exceptional nature are brought before the Court within the time schedule fixed by this Court, Court or Board should not pass orders for granting admission into any particular course out of

time. In this context, it will have to be stated that in whatever earlier decisions of this Court such out of time admissions were granted, the same cannot be quoted as a precedent in any other case, as such directions were issued after due consideration of the peculiar facts involved in those cases. No two cases can be held to be similar in all respects. Therefore, in such of those cases where the Court or Board is not in a position to grant the relief within the time schedule due to the fault attributable to the candidate concerned, like the case on hand, there should be no hesitation to deny the relief as was done by the learned Single Judge. If for any reason, such grant of relief is not possible within the time schedule, due to reasons attributable to other parties, and such reasons are found to be deliberate or mala fide the Court should only consider any other relief other than direction for admission, such as compensation, etc. In such situations, the Court should ensure that those who were at fault are appropriately proceeded against and punished in order to ensure that such deliberate or malicious acts do not recur."

SUMMATION

57. In summation of the discussion made herein above, we hold: -

A. Petitioner having not possessed with NCC 'C' Certificate with 'BEE' Grade is neither eligible nor has desired qualification for being considered under 1% quota of NCC category as earmarked in the Government Order dated 17.6.2019 and the National Eligibility cum Entrance Test (NEET) U.G. Counseling – 2019 (Brochure).

B. Prescription of qualification if essentially and primarily a role reserved for the employer and rule enacting authority and it is not for this Court while exercising its jurisdiction under Article 226 of the Constitution to arrogate the said function.

C. Mere continuance on the basis of interim order while pursuing the MBBS Course does not create an equity or sympathy in favour of the petitioner.

D. Even otherwise petitioner is not entitled to any relief in view of the fact that the petitioner blew hot and cold and approbated and reprobated at the same time.

CONCLUSION

58. In view of the above discussion the writ petition is devoid of merit and thus liable to be dismissed.

59. Accordingly, dismissed.

60. Interim order, if any, stands vacated.

61. No order as to cost.

Order Date :- 13.05.2022

Nisha