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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION 419 OF 2021**

<b>Annu Pyarelal Sinsinwar</b>	<b>}</b>	
<b>Age: 19 years, Occ. Student,</b>	<b>}</b>	
<b>Residing at C/o Mr.Pyarelal M.</b>	<b>}</b>	
<b>Sinsinwar, House No. 2365,</b>	<b>}</b>	
<b>School Falia Tokarkhada,</b>	<b>}</b>	
<b>Silvassa 396 230 Union Territory</b>	<b>}</b>	
<b>of Dadra and Nagar Haveli and</b>	<b>}</b>	
<b>Daman and Diu</b>	<b>}</b>	<b>Petitioner</b>

**Versus**

<b>1. Union Territory of Dadra and</b>	<b>}</b>
<b>Nagar Haveli and Daman and Diu</b>	<b>}</b>
<b>Thorough the Department of</b>	<b>}</b>
<b>Administration, Silvassa</b>	<b>}</b>

<b>2. The Secretary, Education</b>	<b>}</b>
<b>Union Territory of Dadra and</b>	<b>}</b>
<b>Nagar Haveli and Daman and</b>	<b>}</b>
<b>Diu, Silvassa</b>	<b>}</b>

<b>3. The Director of Health Medical</b>	<b>}</b>
<b>and Health Services</b>	<b>}</b>
<b>Union Territory of Dadra and</b>	<b>}</b>
<b>Nagar Haveli and Daman and</b>	<b>}</b>
<b>Diu, Silvassa</b>	<b>}</b>

<b>4. The Dean</b>	<b>}</b>
<b>NAMO Medical Education &amp;</b>	<b>}</b>
<b>Research Institute, Silvassa,</b>	<b>}</b>
<b>Union Territory of Dadra &amp;</b>	<b>}</b>
<b>Nagar Haveli and Daman and Diu</b>	<b>}</b>

<b>5. Shivani Mishra</b>	<b>}</b>
<b>An Indian Inhabitant</b>	<b>}</b>
<b>C/o The Dean, Namu Medical</b>	<b>}</b>
<b>Education &amp; Research Institute,</b>	<b>}</b>
<b>Silvassa, Union Territory of</b>	<b>}</b>
<b>Dadra &amp; Nagar Haveli and</b>	<b>}</b>
<b>Daman and Diu</b>	<b>}</b>

<b>6. Sakshi Suresh Dandhare</b>	}	
<b>An Indian Inhabitant</b>	}	
<b>C/o The Dean, Namo Medical</b>	}	
<b>Education &amp; Research Institute,</b>	}	
<b>Silvassa, Union Territory of</b>	}	
<b>Dadra &amp; Nagar Haveli and</b>	}	
<b>Daman and Diu</b>	}	
<b>7. Shruti Jaiswal</b>	}	
<b>An Indian Inhabitant</b>	}	
<b>C/o The Dean, Namo Medical</b>	}	
<b>Education &amp; Research Institute,</b>	}	
<b>Silvassa, Union Territory of</b>	}	
<b>Dadra &amp; Nagar Haveli and</b>	}	
<b>Daman and Diu</b>	}	
<b>8. Jayshree Das</b>	}	
<b>An Indian Inhabitant</b>	}	
<b>C/o The Dean, Namo Medical</b>	}	
<b>Education &amp; Research Institute,</b>	}	
<b>Silvassa, Union Territory of</b>	}	
<b>Dadra &amp; Nagar Haveli and</b>	}	
<b>Daman and Diu</b>	}	
<b>9. Dipu Singh</b>	}	
<b>An Indian Inhabitant</b>	}	
<b>C/o The Dean, Namo Medical</b>	}	
<b>Education &amp; Research Institute,</b>	}	
<b>Silvassa, Union Territory of</b>	}	
<b>Dadra &amp; Nagar Haveli and</b>	}	
<b>Daman and Diu</b>	}	<b>Respondents</b>

Mr. Anil Anturkar-Senior Advocate with Mr.Anuj Tiwari, Ms.Varsha Palav and Mr.Ajinkya Palav i/b. Laureate for the petitioner.

Mr. Hiten Venegaonkar with Mr. Siddhant Rai for respondent nos.1 to 4.

Mr. Sunny Punamia and Mr.Sunny Bhimra for respondent nos.5 to 9.

**CORAM :- DIPANKAR DATTA, CJ &  
G. S. KULKARNI, J.**

**Reserved on:- February 26, 2021**  
**Pronounced on:- February 27, 2021**

JUDGMENT:- (Per G.S.Kulkarni, J.)

1. This is a case of a highly meritorious student, an aspirant for admission to the first year undergraduate medical course (MBBS) who has secured 559 marks in NEET-2020 examination. If her claim for admission in the circumstances before us is not considered, merit would be the causality.

2. Petitioner is a domicile of Dadra & Nagar Haveli. She appeared for the NEET-2020 examination securing a high score of 559 marks with a NEET percentile at 96.8418581.

3. In 2019, respondent no. 4- NAMO Medical Education and Research Institute, Silvassa, the only medical college for the Union Territories of Dadra & Nagar Haveli, Silvassa & Daman & Diu, came to be established to cater to the needs of medical education in such Union Territories. The present academic year 2020-2021 is the second academic year since the establishment of such medical college.

4. To undertake admissions to the MBBS course on the basis of NEET score, an admission brochure was issued by the Union Territories Administration of Dadra & Nagar Haveli & Daman & Diu titled as "**Admission Prospectus 2020-2021**".

5. Although the petitioner is a domicile of the Union Territory of Dadra and Nagar Haveli and who has been issued a certificate to that effect, the petitioner, despite her high score in the NEET examination, was to lose admission on account of Clause 4 of the admission brochure, which provided for different priorities. The "**First Priority**", inter alia, being for candidates whose parents/ guardians are domicile of the Union Territory of Dadra and Nagar Haveli and Daman and Diu as the case may be who have studied continuously from Class 8<sup>th</sup> to 12<sup>th</sup> in any of the recognised schools of that Union Territory. The "**Second Priority**" being, if the seats remain vacant after allotment of seats to candidates belonging to the first priority, they will be offered to candidates whose parents/ guardians are domicile of Union Territory of Dadra and Nagar Haveli and Daman and Diu, who have studied in any recognised educational institution anywhere in the country or abroad. The "**Third Priority**" being, if the seats remain vacant after allotment of seats to candidates falling in first and second priority, to be offered to candidates whose parents/ guardian are employees (regular/ on deputation/ on transfer) of the Union Territory Administration/ Central Government/ UT PSUs/ Central PSUs and are posted in Dadra and Nagar Haveli and Daman and Diu as the case may be continuously for the past 5 years as on last date of application for admission and the applicants have studied in a recognised school of Dadra and Nagar Haveli and Daman and Diu, as the case may be continuously from 10<sup>th</sup> to

12<sup>th</sup> standard. The “**Fourth Priority**” being, if the seats remain vacant after allotment of seats to candidates falling in the First, Second and Third priority, they will be offered to other eligible candidates from any State/UT.

6. It is the petitioner’s case that she satisfied the eligibility criteria except Clause 4(a) providing for the First Priority stipulating that the student should have studied from Standard VIII to Standard XII in a school within the Territory of Dadra and Nagar Haveli inasmuch as although the petitioner studied from Standard I to X in Kendriya Vidyalaya, Silvassa, Dadra and Nagar Haveli, she undertook XI and XII standard course from Gurukul International School, Banthod in the State of Rajasthan, which was affiliated to Central Board of Secondary Education. The petitioner contends that although she had a very high score in NEET by securing 559 marks, she would not fall in the First Priority and was to be considered in the Second Priority provided seats are available after the First Priority candidates are exhausted as per Clause 4(a).

7. The petitioner participated in the admission process undertaken by respondent no.4. On 12<sup>th</sup> October 2020, provisional merit list for Dadra and Nagar Haveli in the Priority I (common merit list) and a provisional merit list for Dadra and Nagar Haveli in Priority II (common merit list) came to be published. The petitioner stood at Sr. No. 1 in the provisional merit list of Dadra and Nagar Haveli in Priority II

(common merit list). The petitioner belongs to OBC; however, the respondent no.4 failed to provide category merit to the petitioner though she belongs to OBC category.

8. As the petitioner felt that prescribing of categories as provided in Clause 4 would deprive her of admission despite having a high merit, hence, her father made a representation dated 1<sup>st</sup> January 2021 to the Secretary, Education of the Union Territory of Dadra and Nagar Haveli contending that the petitioner was a domicile of Dadra and Nagar Haveli and looking at her credentials and merit, she ought to have been granted an admission and such unreasonable criteria ought not to come in the way of recognising her merit.

9. The petitioner has pointed out that out of the total quota of 177 seats available to be filled up by respondent no.4, 15% seats (22 in number) were to be filled up from the All India Quota. Out of such 15% seats, 4 seats remained vacant and came to be repatriated to be filled up by respondent no.4 on 9<sup>th</sup> December 2020.

10. It is the case of the petitioner that there are no specific rules, as to in what manner these 4 seats so available from the All India Quota, on their repatriation would be filled up by respondent no.4. According to her, for filling up such seats, criteria of merit should be the only criteria and the rule of priorities, as contained in Clause 4 would not be applicable

as the same was to be applied for admission to the 85% quota, on the basis of which admissions were already made. She has contended that even the reservation criteria would not be applicable to such additional seats.

11. In the above circumstances, the petitioner is before this court, inter alia, praying for a direction to the respondents that the mop-up provisional allocation of seats to Dadra and Nagar Haveli dated 4<sup>th</sup> January 2021, under which the Priority criteria in Clause 4(a) applied for the said 4 seats, as reverted from the All India Quota, be held to be illegal and be quashed. There are further prayers that the respondent no. 4 be directed to grant admission to the petitioner considering her high merit. The following are the substantive prayers as made in the petition:-

"A. Rule be issued.

B. By a appropriate Writ, Order or direction of this Hon'ble Court, the Mop-up Provisional Allocation of Seats- Dadra and Nagar Haveli (DNH)-General dated 4<sup>th</sup> January, 2021 annexed at Exhibit "N" and "O" be quashed and set aside;

BB. That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ or direction and order under Article 226 of the Constitution of India 1950 quashing and setting aside the provision of Priority admission on Page-85, Paragraph 4 of the Guidelines for the Admission to MBBS Course Academic year 2020-21 as inconsistent with the provisions of the Medical Council of India Regulations of the Graduate Medical Education 1997, framed under Section 33, amended upto 2018, under Medical Council Act as illegal and bad in law;

C. By an appropriate Writ, Order or direction of this Hon'ble Court the Respondent Nos. 1 to 4 be directed to admit the Petitioner to the First Year MBBS Course for the academic year 2020-21 in NAMO Medical Education & Research, Silvassa, i.e., the Respondent No.4 by considering her in the "Priority-I" as provided under Rule 4(a) in the prospectus at Exhibit "J";

D. In the alternate by an appropriate Writ, Order or direction of this Hon'ble Court the Respondent Nos. 1 to 4 be directed to admit the Petitioner to the First Year MBBS Course for the academic year 2020-2021 in NAMO Medical Education & "Research, Silvassa, i.e., the Respondent No.4 against the four vacant seats available under "ALL INDIA QUOTA".

12. There is an additional affidavit filed by the petitioner, inter alia, pointing out the allocation of the total seats. It would be relevant to set out the said allocation, which would be as under:-

Table 1: Allocation of Seats: 177

Category	No. of Seats
Seats for "All India Quota" (15%)	22
Seats for candidates nominated by Government of Gujarat	08
Seats for wards of Indian Coast Guard personnel posted at Daman	03
Seats for wards of Ex-serviceman/ Defence personnel	01
Seats for candidates of Dadra & Nagar Haveli	73
Seats for candidates of Daman and Diu	70

13. Petitioner contends that the "Regulations on Graduate Medical Education, 1997" of the Medical Council of



India in Regulation 5(5) provides for selection of students to Medical Colleges based on merit, and the criteria to be adopted for determination of such merit. She has contended that there is no indication in the rules that the seats which remain vacant from the All India quota which reverted to the State, are to be treated as deemed State quota seats, so that the said vacant seats can be filled up not on merits based on the performance in the NEET, but by selecting remaining non meritorious candidates falling under the "First Priority" in Clause 4(a).

14. Petitioner contends that since the year 1984 i.e. for last more than 35 years, the position in law is well settled right from the decision of the Supreme Court in **Pradeep Jain vs. Union of India reported in (1984) 3 SCC 654**, that selection of students for admission to the medical colleges has to be only on merit and when more meritorious students are available, simply because there are students who are permanent residents or residents for a certain number of years in the State, there ought not to be exclusion of more meritorious students. The petitioner accordingly contends that only because of the first priority criteria, as contained in Clause 4(a), she could not secure admission and was merely on paper required to stand at the first position in the merit list notified in priority II.

15. Mr. Anturkar, learned senior counsel for the petitioner, has drawn our attention to the merit list in priority-I to contend that if the petitioner was to fall in priority-I she

would have been the fifth candidate to secure admission being placed at her high merit position. Mr. Anturkar submits that the petitioner, however, is now concerned not with the admissions which have taken place, and concluded for the 85% seats in which the petitioner otherwise would have certainly secured an admission, except for the prescription of the "First Priority", but would now be concerned, with the four seats which stand reverted, as they were filled from the All India candidates. He has contended that respondent nos. 5 to 8 are candidates who are far too less meritorious than the petitioner and who have been admitted by respondent no.4 on such reverted seats, by applying the rules applicable to 85% admissions when only rule of merit ought to have been applied for making admissions to such four seats.

16. Mr. Anturkar has submitted that the rule of priorities as contained in clause 4, prescribing the first to fourth priorities is illegally applied and adopted for these four seats reverted from the All India quota, when such prescription is not contained in the rules even remotely. He submits that the seats do not have character of seats under the State quota but these are seats under the 15% All India quota and which are required to be strictly filled in on the basis of merit and merit alone.

17. A reply affidavit is filed on behalf of respondent No.4 by Dr.Deepak S. Howale, Dean of respondent No.4, to contend that the policy of priority, as prescribed in clause 4 of

the admission brochure, is legal and valid and has also been recognised by this court in its decision in the case of Ms. Vinita Umesh Singh vs. The Administrator, Dadra & Nagar Haveli, Damand & Diu Secretariat (Writ Petition Stamp No. 96105 of 2020). The affidavit states that the Mop Up provisional allocation of seats was completed on 31<sup>st</sup> December 2020 and the seats have been allocated to the candidates who were found eligible as per admission process of respondent no.4. It is contended that the seats which are reverted from the All India quota are considered as State quota seats, to be filled as per the rules as applicable to the State quota seats. The case of the respondent no.4 in paras 7 and 8 of the reply affidavit needs to be quoted, which reads thus:-

"7. It is submitted that NAMO Medical Education Research Institute, Silvassa has a total of 177 seats i.e. 150+27 (for EWS Category). Out of these, 15% seats are allocated for All India quota i.e., 22 seats. By notice dated 09.12.2020, 4 seats were reverted back to NAMO Medical Education Research Institute, Silvassa under Stat Quota. All these four seats were from Unreserved category and therefore, in order to maintain balance, 2 seats were allotted to DNH district and one seat each to Daman and Diu under Unreserved category. Once the reverted seat are reverted back to the State quota, then its allocation has to be done only on the basis of the Admission Policy and Admission

Criteria adopted by the State. In the present case, as the reverted seat has gone to the Unreserved category, the allocation of the same will have to be done by following the priorities mentioned in the Admission policy. Thus, the reverted seats are first offered to priority number one and then to priority number two if the seat remains vacant. (Hereto marked and annexed as **Annexure.B** is the copy of notice dated 09.12.2020)

8. In the aforesaid facts and circumstances, I say that the reverted seats have been allocated in the Stat quota for Unreserved category. Those two seats were offered to the candidates as per the waiting merit list and accordingly, the students satisfying the criteria of priority number 1 have already availed and have taken admission for the course. The Petitioner, therefore, cannot be offered these reverted back seats from All India Quota as she does not satisfy the terms and conditions mentioned in Rule 4(a) of first priority.”

(emphasis supplied)

18. Reply affidavits have been filed by respondent Nos.5 to 8 who have been admitted on the seats reverted from the All India quota. There is also a reply affidavit filed on behalf of respondent No.9 by his father Surendra Nath Singh. The affidavits filed by these respondent nos.5 to 8 are almost identical, who contend that they qualified and fulfilled the criteria in clause 3 and 4 of the admission prospectus falling in the first priority. It is contended that their names appeared in

the Mop Up provisional allocation of seats as notified on 31<sup>st</sup> December 2020 and were allotted provisional admission letter for admission to MBBS course for the academic year 2020-2021 as also they have submitted original documents and have paid fees of Rs.35,100/-. It is contended that they have been rightly offered admission to the said course as per rules and cancellation of their admissions would cause hardship and irreparable loss as they also belong to the low income strata.

19. By our order dated 11<sup>th</sup> February 2021 we had granted liberty to the petitioner to amend the petition to add additional prayer and averments on the issue as to the applicability of rules to the All India reverted quota. Affidavit-in-reply dated 25<sup>th</sup> February 2021 to the amended petition is filed on behalf of the respondent no.4 of Dr. Deepak Howale, Dean of respondent no.4. In responding to the case of the petitioner that the admission brochure issued by respondent no.4 does not disclose any provision in regard to the reverted seats, Respondent No.4 has contended that once the seats are forwarded for the All India Quota, the said seats do not remain under the control of respondent no.4 or under the control of Administration of Union Territory. The seats allotted are then regulated and utilized as per the All India Quota. It is contended that at the stage of issuing admission brochure or initiating admission process, one cannot apprehend whether the seats that had been allotted to All India Quota would remain vacant or unfilled and it is for this reason that the admission brochure does not contain any provision as to

how the vacant seats from All India Quota which will be reverted can be dealt. In paragraph 4 of the said affidavit, it is contended that once the seats that have remained vacant after last day of joining from All India Quota are being reverted back to their respective States, the same would be deemed to be converted into State Quota. Hence, whatever number of seats reverted back would get added to the State quota in the respective categories.

20. Affidavit of respondent no.4 further states that in the present case four seats came to be reverted back, out of which two seats were allotted for Dadra & Nagar Haveli and two seats were allotted to the Daman & Diu respectively. It is stated that once the said seats get added up, then the policy of admission adopted, framed and published by the Union Territory in the admission brochure applies and the seats get allotted accordingly, to the candidates who satisfy the admission criteria. It is stated that the petitioner is availing admission in the All India quota, that she belongs to OBC category, however, in para 20 (Q) of the petition she has stated that she does not belong to such reserved category. At this juncture we must observe that the petitioner has annexed her admission documents to the petition (Exhibit-I) which show that she belongs to the OBC category, and that she does not belong to the OBC as stated in the amendment apparently appears to be draftsman's mistake. In the original memo of the petition she has categorically averred in paragraph 12 that she belongs to the OBC.

21. It is further stated in the additional reply affidavit that 85% State seats were filled and 15% seats were allocated for All India quota (22 seats) out of which by notice dated 9<sup>th</sup> December 2020 four seats were reverted back to respondent no.4 by the Central Government which were then treated as State quota. All these four seats were from unreserved category and therefore in order to maintain the balance, two seats were allotted to Dadra and Nagar Haveli and two seats were allotted to Daman and Diu under reserved category. It is stated that once the seats were reverted back, its allocation was to be done only on the basis of admission policy and criteria adopted by respondent no.4 as contained in the brochure. It is stated that the reverted seats have gone to the unreserved category and the allocation has been done following the policy of priority mentioned in the admission brochure. That the reverted seats were first offered to priority-I and only if seats continued to remain vacant, then to priority-II. It is contended that the reverted seats were deemed to be considered as State quota as per the Counseling Scheme issued by the Medical Counseling Committee.

22. We have heard Mr. Anturkar, learned senior counsel for the petitioner, Mr. Venegaonkar, learned counsel for respondent nos.1 to 4 and Mr. Punamia, learned counsel for respondent nos.5 to 9. We have also perused the record with the assistance of the learned counsel. Mr. Venegaonkar

has made submissions supporting the plea of respondent nos.1 to 4 in the reply affidavit. He would not dispute that a peculiar situation is created of admissions being required to be made by respondent no.4 on the four seats reverted from the All India quota. Mr. Punamia would urge that his clients' interest also needs to be protected as contended by them in the reply affidavits.

23. On the above conspectus the issue which falls for our consideration is as to whether the regular criteria for making admissions to the State quota, namely, to the 85% seats, could at all be applied, in the present circumstances, to fill up the 4 seats reverted from the All India Quota and not the criteria of pure merit of the candidates, who would be available for admission.

24. The admitted facts are that the admission process for the academic year in question commenced sometime in October 2020. Respondent no. 4 has a quota of total 177 seats, out of which, 85% seats were to be filled up from the State quota for Dadra Nagar and Haveli in the proportion of 73 and 70 respectively. 8 seats were to be filled up from candidates nominated by Government of Gujarat; 22 seats were to be filled from All India Quota being 15% of the total intake and 3 seats were to be filled up from wards of Indian Coast Guard Personnel. Admittedly, on 10<sup>th</sup> December 2020, the admissions to the 85% State quota as per the rules prescribed in the admission brochure from the candidates



eligible under Clauses 3 and 4 were duly completed. Clauses 3 and 4 of the admission rules providing for such "Eligibility" and the "Priorities" are required to be noted, which reads thus:-

### **"3. ELIGIBILITY CRITERIA**

A candidate who desires admission shall –

- 1) A citizen of India.
- 2) A Domicile of UT of Dadra & Nagar Haveli and Daman and Diu in case candidate intends to take benefit of reservation for SC/ST/OBC/PWD/EWS/Wards of Ex. Serviceman/Defence personnel.
- 3) Have completed 17 years of age on 31<sup>st</sup> December of the Academic year for which the admissions are being conducted.
- 4) Have passed the 10<sup>th</sup> and 12<sup>th</sup> qualifying examination from
  - i. The Gujarat Board; or
  - ii. The Central Board of Secondary Education
  - iii. The Central Board of Indian School Certificate Examinations Board, New Delhi;
  - iv. The International School Board (International Baccalaureate and Cambridge)
  - v. The National Institute of Open Schooling.
  - vi. Studied under Jawahar Navodaya Vidyalaya.
  - vii. The boards of respective States.
- 5) Have qualified in NEET conducted in current academic year.
- 6) Possesses minimum prescribed qualifying standard in HSC examination and NEET of the current academic year, as decided by the respective Council/the Central Government and also fulfills the eligibility criteria under this policy.

**Minimum qualifying standard prescribed for HSC or equivalent examination are as under:**

<b>Exam</b>	<b>General Category/EWS</b>	<b>Gen-PH category</b>	<b>Reserved (SC,ST, SEBC including Physically disabled) categories</b>
HSC or Equivalent examination passed with Physics, Chemistry and Biology Theory and Practical , in percentage	50%	45%	40%

- 7) The candidate should not have been convicted of any criminal offence and shall declare pending criminal cases, if any, at the time of admission.
- 8) The candidate appearing for NEET, for admission should have cleared the criteria for admission as decided by the National Medical Commission/Ministry of Health & Family Welfare, New Delhi, Government of India.
- 9) The candidate seeking admission against a particular category seats must meet the additional eligibility criteria of respective category."

**"4. PRIORITY IN ADMISSION**

For the seats earmarked for candidates of Dadra & Nagar Haveli and Daman and Diu, the candidates will be considered for admission in the following order of priority;

**a) First priority:**

Applicants whose parents/guardians (in case Father and Mother are not alive) are Domicile of the UT of Dadra & Nagar Haveli and Daman and Diu as the case may be and the applicant has studied continuously from Class 8<sup>th</sup> to 12<sup>th</sup> in any of the recognized schools of that UT.

**“Students from the different districts in U.T. of Dadra & Nagar Haveli and Daman & Diu who have studied from class 1 to 10<sup>th</sup> in the respective district in U.T of Dadra & Nagar Haveli and Daman & Diu and due to non-availability of 11<sup>th</sup> & 12<sup>th</sup> classes in the concerned board/stream in the respective district in U.T of Dadra & Nagar Haveli and Daman & Diu, will only be given relaxation in the above criteria.**

**The students will have to produce a certificate for non-availability of Class XI and XII from the Assistant Director of Education of the respective district in U.T of Dadra & Nagar Haveli and Daman & Diu”.**

**b) Second priority:**

If the seats remain vacant after allotment of seats to candidates belonging to the first priority, they will be offered to candidates whose parents/guardian (in case Father and Mother are not alive) are Domicile of UTs of Dadra & Nagar Haveli and Daman and Diu as the case may be and candidate has studied in any recognized educational institution anywhere in the country or abroad.

**c) Third priority:**

If seats remain vacant after allotment of seats to candidates falling in first and second priority, they will be offered to candidates whose parents/guardian (in case Father and Mother are not alive) are employees (regular/on deputation/on transfer) of the UT Administration/Central Government/UT PSUs/Central PSUs and are posted in Dadra & Nagar Haveli and Daman & Diu as the case may be continuously for the past 5 years as on last date of application for admission and the applicants have studied in a recognized school of Dadra & Nagar Haveli and Daman and Diu, as the case may be continuously from 10<sup>th</sup> to 12<sup>th</sup> standard.

**d) Fourth priority:**

If the seats remain vacant after allotment of seats to candidates falling in the First, Second and Third priority, they will be offered to other eligible candidates from any State/UT."

(emphasis Supplied)

25. A provisional merit list in Priority I and Priority II which was notified on 10<sup>th</sup> December 2020 was admittedly operated and admissions were made as per the said merit list, although the said merit list is referred to as a provisional one. In the said merit list, the position of respondents stood at merit position 31 to 34 with the following marks: -

**Provisional Merit-List – Dadra and Nagar Haveli (DN) – Priority-I (Common Merit List)**

Shivani Mishra (Res.No.5)	422
Sakshi Suresh Dandhare (Res.No.6)	420
Shruti Jaiswal (Res.No.7)	416
Jayshree Das (Res.No.8)	414
Dipu Singh (Res.No.9)	219
<b>Note:-</b> shown in separate list from the coast guard reservation)	

26. The petitioner's position in the provisional merit list in Priority II was at the first position as under :-

**Provisional Merit-List – Dadra and Nagar Haveli (DN) – Priority-II (Common Merit List)**

Annu Pyarelal Sinsinwar (Petitioner) - 559 marks
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27. It so happened and as noted above, the 15% All India Quota was not fully exhausted and the Central

Government reverted 4 seats to respondent no.4 on 9<sup>th</sup> December 2020.

28. Respondent nos. 5 to 9 were categorised in Priority I, namely, those students who have completed their 8<sup>th</sup> to 10<sup>th</sup> standards from Dadra & Nagar Haveli, who did not secure admissions in the process undertaken for filling up the 85% State quota. They had infact lost all hopes for admission in the State quota. On the other hand, as noted above, if the petitioner was to be considered from priority I, she would have been at a very high position in the merit namely at Sr. No. 5, that is below the candidate who obtained 569 marks and above the candidate who obtained 556 marks. The petitioner, however despite such high and outstanding NEET score of 559 marks, to her misfortune, although placed at Serial No 1(in the first position) in the merit list in Priority II, merely for the reason that she has completed 11<sup>th</sup> and 12<sup>th</sup> Standard from out side Dadra and Nagar Haveli could not secure admission in the 85% State Quota. However, getting advantage of the fortuitous circumstance that four All India seats had remained unfilled and were reverted to be filled by Respondent No. 4, Respondent nos. 5 to 8 came to be granted admission on 4<sup>th</sup> January 2021 on such seats again merely for the reason that they fell in Priority I. Respondent no.9 also appears to have been admitted on 4<sup>th</sup> January 2021 also in the category of Priority I although the score of respondent no.9 is extremely low as compared to the petitioner. Respondent no 9 secured only 219 marks at the NEET 2020 and is stated to have been granted admission from

the Coast Guard Personnel reservation. As to who are the other candidates who were originally admitted on the 3 seats reserved for such quota has not been pointed out by Respondent no. 4.

29. From a perusal of the reply affidavits filed on behalf of respondent no. 4, it appears to be quite clear that there are no specific rules provided in the admission brochure to deal with such an unforeseen and/or fortuitous circumstance of the seats having reverted from All India Quota. Respondent no. 4 has categorically stated that in these circumstances, Respondent No. 4 has applied admission rules as applicable to the 85% State quota to the 4 reverted seats to grant admission to respondent nos. 5 to 8, on a presumption that such seats on their reversion form part of the State quota, so as to apply the admission rules applicable to fill up the 85% State seats. Respondent no. 4 thus applied Clause 4 /Priority I to grant admission to Respondent Nos. 5 to 8 on the 4 reverted seats, merely for the reason that they have completed education from Class 8 to Class 12 from the Union Territory and excluded merit of the petitioner on the specious ground that she fell in Priority II, having completed her 11<sup>th</sup> and 12<sup>th</sup> Standard from Rajasthan, although she is domicile of the Union Territory having undertaken education from 1<sup>st</sup> to 10<sup>th</sup> standard from Dadra and Nagar Haveli.

30. Mr.Venegaonkar, learned counsel for the Union Territory Administration, as also representing the institution has fairly conceded in his oral submissions that there are no specific

rules contained in the admission brochure, as set out in the reply affidavit to deal with such situation of admission to the seats reverted from the All India Quota. He submits that the respondent no. 4 thus proceeded on a consideration and presumption that such seats form part of the State quota and accordingly admitted respondent nos. 5 to 8 on such consideration, as they fell in Priority I.

31. In our opinion, such approach of respondent no.4 to adopt Clause 4, namely, the 'Priorities criteria' to the seats reverted from All India Quota, would not satisfy the test of law and would amount to an arbitrary action on the part of the official respondents for more than one reason. In adopting such approach, respondent no. 4 has failed to take into consideration that the reverted 4 seats fell outside the 85% State quota, as in respect of such State quota all permissible norms of reservation, including the applicability of priority in Clause 4 were made applicable. The admission to the 85% seats of the State quota having been completed applying the priority criteria in Clause 4 of the admission brochure, there could not have been any grievance, whatsoever of the candidates, who fell in the provisional merit list notified for the 85% State quota. The candidates, who participated in the admission process under 85% State quota, at a given point of time when the merit list was notified on 10<sup>th</sup> December 2020, could not have anticipated availability of seats beyond the 85% seats in the State quota. The admission process qua 85% seats thus stood concluded.

32. The fact, however, remains that the four All India seats having remained unfilled were reverted to Respondent no. 4 after the 85% State admissions were completed. This was a peculiar and an unforeseen fortuitous circumstance. In the absence of specific rules to cater to such fortuitous exigency, in our opinion the only well established criteria which respondent no. 4 was required to adopt to fill up the 4 All India seats, as reverted, was to make admissions only and only on the merit of the candidates who were otherwise eligible without the application of the priorities clause namely clause 4. In such situation, it was certainly not permissible for respondent no. 4 to overlook the high merit of the eligible candidates by applying any criteria it would choose. In these peculiar circumstances, there was no scope for any arbitrary discretion to deviate from the rule that merit of the eligible candidate should be the only criteria. This position is well recognised in law to which we immediately advert.

33. The Medical Council of India notified "**Regulations on Graduate Medical Education, 1997**" as amended up to May, 2018. Regulation 5 of such Regulations provide that selection of students to medical college shall be based solely on merit of the candidate. Sub Clause (v) of Regulation 5(5) provides that recognised merit should be the criteria. Sub-clause (v) of Clause 5(5) reads as under:-

**"(V). All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test."**



34. Thus in the absence of any rules being framed by respondent no.4 for making admissions to the seats reverted from the 15% All India seats, in our opinion, to grant admissions sacrificing such highly meritorious candidate like the petitioner, would amount to a wholesome arbitrariness. The criteria for admission to the 4 reverted seats, in these circumstances, could not have been at the *ipse-dixit* of respondent no.4 so that it adopts any criteria not notified and unknown to the students by completely overlooking the availability of meritorious candidates. It is a travesty that by such method, the petitioner, who performed so well and worked so hard to secure such high marks (559) in the NEET which is a score more than 145 marks above the last candidate (respondent no.8), has been denied admission by operating the normal rule of admission to such 4 seats, which, in our considered opinion, certainly could not have been applied for the four reverted seats.

35. Respondent no. 4 in adopting such approach was completely oblivious to the fact that such 4 seats becoming available was a fortuitous and unforeseen circumstance not expected by respondent no.4. It also overlooked that the character of these 4 seats was not the same as that of the seats in the State quota. Undoubtedly, such seats did not possess the character and complexion of the State seats in the State quota (85%). Even otherwise, if they were to be filled up from the All India seats, they would have been filled up only by all India merit and certainly not applying the

Priority clause which was applicable only to fill up the State seats. If this is to be the case, then only merit would be a casualty. Thus, in our opinion these 4 All India seats when reverted were required to be filled up only from the eligible meritorious candidates.

36. In this context, Mr.Anturkar is justified in relying on the decision of the Division Bench of this court in the case of **Shreyash s/o. Dr.Sanjay Khemuka vs. State of Maharashtra and Ors.** reported in **2011(6) Mh. L.J. 888.** A similar situation had arisen before the Court on account of the relevant rules not prescribing the manner in which the seats surrendered from the All India Quota should be filled up. In these circumstances, Mr. Justice S.A.Bobde (as His Lordship then was), speaking for the Bench, observed thus:-

6. ....**According to the DMER, the surrendered seats were never with the State Government for being filled up according to the State Merit List or the Regional Quota. They are seats which belong to All India Quota for which students from the whole country qualify by appearing for and passing All India PMT. Though these seats are subject to constitutional reservation, their original character is openness and devoid of any provincial or regional reservation. Therefore, the surrendered seats have not been subjected to regional reservation because the introduction of such regional reservation would be contrary to the original character in which there is no regional reservation.**

7. After considering the scheme of the rules, it seems that the difficulty has arisen because Rule 2.3.2 does not prescribe the manner in which the seats surrendered from the All India Quota back to the State shall be filled. The

only guiding words are that the seats surrendered back to the State shall retain their original character.....

.....In these circumstances, it appears that the decision of the DMER to fill up seats surrendered from All India Quota purely on the basis of merit as determined by the State Competitive Examination cannot be faulted. Though it is correct to say as contended on behalf of the petitioners that the DMER is not free to act arbitrarily and whimsically in the matter of filling up seats, in the present case no arbitrariness can be attributed to the action of the DMER in filling up these seats in accordance with the principle of merit. The DMER cannot be said to have acted illegally or arbitrarily in taking the view that if the seats surrendered from the All India Quota are to be filled up according to their original character, then they should not be subjected to the break-up by introducing the regional reservation as contended by the petitioners, but only on the principle of merit. We are, therefore, of the view that for filling up seats under Rule 2.3.2, i.e. seats surrendered from the All India Quota, there is no requirement in any of the Rules to fill up the said quota from the State Merit List as well as the Regional Quota in the ratio of 30 : 70. This method of filling up State seats from the State Merit List and the Regional Quota is meant for seats meant to be filled up by the State after excluding the All India Seats in the first instance. This method prescribed does not govern the filling up of surrendered seats which may be filled up in accordance with the position of the candidates in the State Merit List as has been done in the present case. The Rules do not require that the seats remaining unfilled from the All India Quota should be filled up as if they are seats from the State Quota."

(emphasis supplied)

37. In **Shilpa Suresh Shinde and Ors. vs. State of Maharashtra, reported in 2000(3) Mh. L.J. 529**, in a similar situation the principle of merit, in relation to postgraduate admissions qua the All India Quota came to be recognized by a Division Bench of this Court. In this case, about 140 odd seats had become available from the All India Quota and the State intended to apply its reservation policy. In such context, Mr. Justice S.Radhakrishnan (as His Lordship then was) speaking for the Bench observed thus:-

**9. ....The State Government however, claims that, in this year 140 and odd seats which have become available would become part of the Stat Quota and that the admission would be determined by the State in accordance with its reservation policy. It is not possible to accept the contention of the learned Counsel for the State of Maharashtra that what was originally intended to be the All India Quota would acquire the character of State Quota, because the availability of these additional seats. In our view, the only just and reasonable manner in which this fortuitous block of seats can filled is by going strictly in accordance with merits.....**

**.....The quota of 140 and odd seats which have become available originally belonged to All India Quota and they do not change their character merely because of the unforeseen circumstance which has arisen in the current academic year”**

(emphasis supplied)

38. In a very recent decision of the Supreme Court delivered three days back, (24<sup>th</sup> February 2021) in

**Saraswati Educational Charitable Trust and Anr. vs. Union of India and Ors., (Writ Petition (C) No. 40 of 2018)**, referring to Rule 5 of the Medical Council Regulations on Graduate Medical Education, 1997, in the context of merit of the student, the Court made the following observations:-

“9. Regulation 5 A of the Regulations provides for counselling for admission to MBBS course in all medical educational institutions on the basis of merit list of NEET. According to the said Regulations, no admission can be made by the Petitioner-College on its own. (See: **Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors. And State of Maharashtra and Others v. D.Y. Patil Vidyapeeth and Others**).....”

39. It is thus clear that merit of the petitioner could not have been overlooked by respondent no.4 in considering candidates who were far below in merit than the petitioner, as upon these 4 seats reverting to respondent no.4, the same did not change their character of being seats available under the All India Quota, which were to be filled up as per merit. We are thus of the clear opinion that by the approach as adopted by the respondent no.4, the claim of a meritorious candidate like the petitioner is arbitrarily overlooked by admitting less meritorious candidates. In the absence of rules, the merit of the petitioner could not have been sacrificed.

40. The petitioner approached this court on 6<sup>th</sup> January 2021 immediately after the mop-up round, within two days of the admissions being announced to respondent nos. 5 to 8 on

the 4 reverted seats. It is not in dispute that as per admission programme, as contained in the brochure, declaration of the list of selected candidates for mop up round was 4<sup>th</sup> January 2021 and last date of joining to the college was 31<sup>st</sup> January 2021. The petitioner having immediately approached this court, there was no delay whatsoever for the petitioner to assert her rights by the present petition. In our opinion, the petition is thus well in time as per the test laid down in a recent decision of the Supreme Court in the case of **S. Krishna Sardha vs. The State of Andhra Pradesh, (Civil Appeal No. 1081 of 2017, decided on 13<sup>th</sup> December 2019)** wherein, the Supreme Court observed that in a case where candidate/ student has approached the court at the earliest and without any delay, such meritorious candidate should not suffer for no fault of his/ her.

41. A sequel to our discussion is that the principles of fairness, non-discrimination and non-arbitrariness and above all merit of the petitioner in the admission process needs to be recognized and given due weightage. The petitioner on application of such constitutional principles certainly becomes entitled for admission amongst the 4 reverted seats. In the present circumstances this becomes possible only by cancelling the admission of the candidate who is in the last position of merit, being admitted on such 4 seats, namely Respondent No. 8 who has secured 414 marks in the NEET 2020 which is about 145 marks less than the petitioner. However to overcome this peculiar situation we are guided by the principles as laid down by the Supreme Court

**S.Krishna Sardha vs. The State of Andhra Pradesh** (supra), when the Court in exercise of judicial review recognises the rightful claim of a meritorious candidate for admission to the medical course. The Supreme Court permits creation of an additional seat so that the hardship to the students is avoided, however, as an exceptional and a very rare exercise. In our opinion this is certainly a case wherein such salutary principle as laid down by the Supreme Court is required to be applied to prevent academic loss of these students more particularly when the petitioner has approached the Court well in time before the commencement of the academic session. The Supreme Court in the said decision has held thus:-

**"9. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the court in time and so as to see that such a meritorious candidate may not have to suffer for no fault of his/her, we answer the reference as under:**

**(i) .....**

**(ii ) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and 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 an 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 time schedule prescribed – 30th September is over, to complete justice, the Court under exceptional circumstances and in the rarest of rare cases directly 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., cut-off date and under no circumstances, the court shall order any admission in the same year we on 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in 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 have got the admission, if the court deems it fit and proper, however, after giving an opportunity of hearing to the student was admission is sought to be cancelled."

42. We may observe that, the case in hand stands quite a peculiarly and in such situation interest of justice would imminently require that the petitioner be accommodated without disturbing the admissions of



respondents 5 to 8. The Court, in such situation, would also take into consideration such equitable circumstances so as not to disturb the educational interest of the students like respondents 5 to 8 who have been admitted although overlooking the merit criteria, as adopted by respondent no. 4, for which they cannot be faulted. In the above circumstances, we allow the petition by the following order:-

**ORDER**

(i) Respondent no.1 to 4 are directed to forthwith admit the petitioner to the First Year MBBS Course for the academic year 2020-2021, on one of the 4 reverted seats from the 15% All India Quota.

(ii) Respondent No 1 to 4 are directed to take immediate steps to create one additional seat so that the admission of respondent no.8, who has secured the lowest marks in the NEET-2020 (414 marks) and being the lowest in merit stands protected in the light of the principles as laid down by the Supreme Court in **S.Krishna Sardha vs. The State of Andhra Pradesh**(supra).

(iii) Admission of the respondent No.8 shall be treated as provisional till such time the additional seat is created.

(iv) The writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

**(G. S. KULKARNI, J.)**

**Per the CHIEF JUSTICE:**

43. Brother Justice Kulkarni has prepared the main judgment racing against time and by burning the midnight oil to meet the deadline set by the Supreme Court in Civil Appeal No. 1081 of 2017 [S. Krishna Sradha vs. The State of Andhra Pradesh] for admission in the MBBS course on time. Having perused the same, I find that His Lordship has marshalled the relevant facts and determined the question arising for decision with admirable dexterity. While I heartily concur with the same, the circumstances of the present case and the importance of the problem arising therefrom invoke a call to my conscience to pen a few words.

44. It is rather painful when a candidate scoring as low as 219 marks in the NEET, 2020 obtains an admission in the MBBS course because of a quota for the Coast Guards (with which I have no qualm) whereas a candidate like the petitioner, scoring as high as 559 marks in the same qualifying examination, is left high and dry and suffers for no fault on her part compelling her to seek judicial intervention.

45. Our resolve in the Preamble to the Constitution is to secure "social justice" to all. The Directive Principles of State Policy are declared in Article 37 to be "fundamental in the governance of the country" and the immediately next article commands the State to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order, in which justice ~ social, economic and political ~ shall inform all the institutions of the national life

and endeavor to eliminate inequalities in status, facilities and opportunities.

46. In the class-ridden society that we live in, "social justice" should mean justice to the weaker and poorer section of the society particularly when we have also resolved in the Preamble to secure "equality of status and opportunity"; and securing justice to the weaker and the poorer section could make them equal with the rest of the society.

47. In a given case such as the present, where it is neither black nor white but a grey area, to rise to the challenge for "social justice" whenever the weaker or poorer section faces a combat against the stronger or richer section, the Courts ought to lean in favour of the former so that "social justice", i.e., justice to the weaker or poorer section of the society is ensured. The admission brochure, it has been conceded, did not contain any guideline as to how the seats that revert from the All-India quota would be filled up. The decision to fill up the same following the same procedure for filling up State quota seats was taken in the midstream of the admission process. The petitioner obviously could not have approached the Court earlier unless by any administrative decision her rights were affected. Admission process of students scoring marks lower than the petitioner was completed on January 4, 2021, whereafter she approached the Court within a couple of days. Why merit was not given precedence in filling up the reverted seats has neither been explained nor has any law been placed requiring filling up of

the reverted seats otherwise than on merit. Although the Courts do not sit in appeal over decisions of academic bodies, it is not the law that such decisions are immune from judicial review. The acknowledged parameters of judicial review permit examination of the decision-making process if the resultant decision is against the Constitutional mandate or unreasonable or arbitrary or perverse. The drowsy default of the executive to acknowledge merit and give it due recognition has to be frowned upon, on facts and in the circumstances. The admission process, in my view, suffers from a serious taint and if such tainted admission process is saved, the rule of merit would be compromised which, in turn, would frustrate the labour of meritorious students like the petitioner, apart from development in them of a sense of aversion to the concept of qualifying examinations. COVID-19, in the past year, has taken away from the society a number of reputed doctors. The pool of doctors, thus, has to be replenished fast. If meritorious students desirous of becoming doctors are not encouraged in such challenging times, it would amount to a grave disservice to the society. Our resolve to render social justice would be a distant dream, if interference in this case were declined. Dislodging a candidate to accommodate the petitioner was one of the options open but considering that the respondents 5 to 8 are not at fault, it was decided not to dislodge any of them but to make a direction of the nature permitted in *S. Krishna Sradha (supra)*. This is indeed a rare and exceptional case where commencement of classes notwithstanding, the petitioner is still entitled to claim

admission in the MBBS course in one of the reverted seats through the window of 'a month' kept open by the Supreme Court in its decision in S. Krishna Sradha (supra), upon creation of an additional seat in the relevant college for the respondent no.8.

48. I too would, therefore, allow the writ petition on terms suggested by His Lordship.

**(CHIEF JUSTICE)**