



**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

**ON THE 2<sup>nd</sup> DAY OF AUGUST, 2022**

**BEFORE**

**HON'BLE MS. JUSTICE SABINA**

**&**

**HON'BLE MR. JUSTICE SATYEN VAIDYA**

**CIVIL WRIT PETITION No. 1861 OF 2022.**

**Between:-**

**AKRITI SHARMA D/O SH. RAMAKANT SHARMA,  
R/O CEDAR APARTMENT, 2<sup>nd</sup> FLOOR, CHAKKAR,  
SHIMLA-05 AGED 20 YEARS PRESENTLY STUDENT  
OF BDS FIRST YEAR IN GOVT. DENTAL COLLEGE  
(IGMC) SHIMLA.**

**....PETITIONER.**

**(BY MR. BHUVNESH SHARMA, ADVOCATE)**

**AND**

- 1. MAHARISHI MARKANDESHWAR UNIVERSITY  
SOLAN, DISTRICT SOLAN, H.P. THROUGH ITS  
REGISTRAR.**
- 2. PRINCIPAL MAHARISHI MARKANDESHWAR  
COLLEGE & HOSPITAL, KUMARHATTI, SOLAN,  
H.P.**
- 3. ATAL MEDICAL & RESEARCH UNIVERSITY,  
H.P., AT NER CHOWK, TEHSIL SUNDERNAGAR,  
DISTRICT MANDI, H.P. THROUGH ITS  
REGISTRAR.**

...2...

4. STATE OF H.P. THROUGH ITS PRINCIPAL SECRETARY (HEALTH) TO THE GOVERNMENT OF HIMACHAL PRADESH, SHIMLA-171002.
5. DIRECTOR MEDICAL EDUCATION & RESEARCH, H.O. SHIMLA-171009.
6. MS. ARUNDHATI SHARMA D/O NOT KNOWN.
7. MS. SHALINI MANKOTIA D/O NOT KNOWN.
8. MRIGANK SOOD, S/O NOT KNOWN.

ALL STUDENTS OF MBBS FIRST YEAR, MAHARISHI MARKANDESHWAR COLLEGE & HOSPITAL, KUMARHATTI, SOLAN, DISTRICT SOLAN, H.P. C/O PRINCIPAL MAHARISHI MARKANDESHWAR COLLEGE & HOSPITAL, KUMARHATTI, SOLAN, DISTRICT SOLAN, H.P.

9. NATIONAL MEDICAL COMMISSION, POCKET-14, SECTOR-8, PHASE-I, DWARKA, NEW DELHI-110 077 THROUGH ITS SECRETARY.

...RESPONDENTS.

(MR. K.D. SHREEDHAR, SENIOR ADVOCATE WITH MS. SNEH BHIMTA, ADVOCATE, FOR RESPONDENTS NO. 1 AND 2.  
MR. DINESH K. THAKUR, ADVOCATE, FOR RESPONDENT NO.3.  
MR. AJAY VAIDYA SENION ADDITIONAL ADVOCATE GENERAL FOR RESPONDENTS NO.4 AND 5.

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MR. RAJNEESH MANIKTALA, SENIOR  
ADVOCATE WITH MS. KIRAN DHIMAN,  
ADVOCATE, FOR RESPONDENTS NO.6 TO 8.  
MR. B.C. NEGI, SENIOR ADVOCATE WITH MR.  
PARVESH NEGI, ADVOCATE, FOR RESPONDENT  
NO.9.)

RESERVED ON: 27<sup>th</sup> JULY, 2022.

DECIDED ON : 2<sup>nd</sup> AUGUST, 2022.

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*This petition coming on for hearing this day, **Hon'ble**  
**Mr. Justice Satyen Vaidya**, passed the following:-*

**ORDER**

This petition has been filed by an aspirant of becoming medical professional, who appeared in NEET (UG)-2021-2022 for getting admission in MBBS Course. After securing 456 marks out of 720 marks, petitioner secured all India rank 1,26,537. In first round of counselling, petitioner got admission for BDS course in Bhojia Dental College, Nalagarh, under State quota. She joined said college on 02.02.2022. In second round of counselling, petitioner was allotted H.P. Dental College,

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Shimla, under State quota. Petitioner joined said college on 10.03.2022.

2. On 25.03.2022, Maharishi Markandeshwar Medical College, Solan (for short, "MMMC") held mop up round for admission to the vacant seats under different categories. Three State quota seats in MBBS course were also available for general category candidates.

3. Petitioner applied to MMMC for State quota seat under general category on the basis of her merit in NEET(UG). Instead of admitting petitioner, MMMC admitted respondents No.6 to 8 against the three general category State quota seats by upgrading them from management quota of the same college. Respondents No.6, 7 and 8 were lower in merit with 440, 441 and 442 marks respectively in NEET (UG).

4. Petitioner promptly represented to respondents No.1 and 2 as also respondent No.3 under whose aegis the centralized counselling for admission to MBBS and BDS courses was being conducted in the state of Himachal Pradesh. Respondent No.3 advised respondents No.1 and 2 to rectify the

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mistake committed by them but to no avail. In such circumstances, petitioner was forced to approach this court by way of instant petition on 29.03.2022.

5. We have heard learned counsel appearing for the parties and have also gone through the entire record carefully.

6. Petitioner has challenged the action of respondents No.1 and 2 as illegal and arbitrary on the ground that the same is in utter violation of the provisions of Common/Centralized Counselling Prospectus for admission to MBBS & BDS Courses based on merit of NEET-UG-2021, issued by respondent No.3, on behalf of the Government of Himachal Pradesh Department of Medical Education and Research (for short, "Prospectus"). The precise contention of petitioner is that the State quota seats in general category available with the MMMC, as per the prospectus, were to be filled on the basis of merit obtained in NEET-UG-2021, in the first instance and other options as per prospectus could be availed thereafter. Petitioner has pressed into service Clause-3 of the prospectus which reads as under: -

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*"3. After completion of 1<sup>st</sup> & 2<sup>nd</sup> round of counselling, the schedule for Mop-up round of counselling shall be issued by the University and the online counselling form shall be made available on the University website [www.amruhp.ac.in](http://www.amruhp.ac.in). Candidates who are eligible for participating in the mop-up round on online counseling are required to fill up fresh choices/preferences of course, college and quota in the online application form within stipulated period for provisional allocation against vacant seats along with requisite amount as prescribed for token amount of fee, as applicable. If candidate is satisfied with his/her seat allocated during the previous rounds of online counselling, he/she is not required to participate in the subsequent round of online counselling. No inter-se-shifting from one Government Medical College to another Medical college shall be allowed during the mop up Round of Counselling as per MCI/NMC guidelines. **However, shifting for up-gradation of course and quota from private Dental Colleges to Govt. Dental College and Govt./private dental colleges to MMMC Solan and Government dental college/MMMC Solan to Govt. Medical Colleges in order of merit-cum-choices/preferences of the course, college and quota shall be allowed."***

7. On the contrary, respondents No.1 and 2 have contested the claim of petitioner and have tried to justify their action on the basis of Clause-4 of the Prospectus, which reads as under: -

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*"4. The Himachali bonafide candidates admitted under management quota in the private Medical/Dental colleges will also be converted automatically from management quota to state quota in the colleges concerned against vacant/drop-out seats, if any, in order of merit, as the case, may be, subject to fulfillment of the eligibility criteria as prescribed for State Quota seats."*

It is submitted on behalf of respondents No. 1 and 2 that respondents No.6 to 8 were bonafide Himachali students and had been admitted to management quota seats of MMMC in first instance. The provisions of Clause-4 of the prospectus provided them the right to be upgraded to State quota seats and hence no illegality or arbitrariness can be alleged in the action of respondents No.1 and 2. Respondents No.6 to 8 have also raised similar defence and justified their admissions in MMMC against State quota seats.

8. Respondent No.3 in its short reply has supported the case of the petitioner. It has been submitted that respondent No.3 vide communication dated 24.03.2022, Annexure R-3/2 had provided to the Principal, MMMC a list of eligible students for State quota seats, who had been admitted under management

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quota in first and second round of counselling in MMMC with an advice that those students were to be upgraded to H.P. quota seats rank wise if no student with more marks in NEET applied in mop up round. It has further been contended that after mop up round, respondent No.3 had received representation on behalf of petitioner and taking cognizance thereof, an advisory was again sent to the Principal, MMMC, on 28.03.2022 by respondent No.3 vide Annexure R-3/3. It was clarified to review the allocation of State quota seats in general category keeping in view the directions earlier issued by it vide communication, Annexure R-3/2.

9. Clause-3 of the prospectus allowed shifting for upgradation of course and quota from private Dental Colleges to Government Dental College and Govt./Private Dental Colleges to MMMC, Solan and Govt. Dental College/MMC, Solan to Govt. Medical Colleges in order of merit-cum choices/preferences of the course, college and quota. Petitioner, who was admitted to H.P. Government Dental College, Shimla, in view of aforesaid provision, became entitled to upgradation of course on



availability of State quota seats in general category in MMMC, Solan. Petitioner having higher marks than respondents No. 6 to 8, had the first right of admission. However, the same was denied to her.

10. No doubt, Clause-4 of the prospectus provides an opportunity to Himachali bonafide candidates admitted under management quota in private medical/Dental Colleges to be automatically converted from management quota to State quota against vacant/drop out seats, if any, in order of merit, as the case may be, subject to fulfillment of eligibility criteria as prescribed for state quota seats. However, the question arises as to what has to be the sequence of priority. Whether clause-4 will have preference over clause-3 or *vice versa*?

11. The seats in Medical Colleges are highly coveted and, therefore, every endeavour has to be made to fill up these seats solely on the basis of the merit. In ***Priya Gupta vs. State of Chattisgarh and ors. (2012) 7 SCC 433***, the Hon'ble Supreme Court has held as under:

*“37. What is of greater significance is that this Court has not so far considered or stated as a principle, what consequences should follow where the Central Government, or the State Government or Medical Council of India or the College itself, with impunity, violate the time schedule, regulations and order of merit to give admission to students in an arbitrary and nepotistic manner. Also, we must consider what preventive steps can be taken to avoid such repetitive and intentional defaults, as well as undue exploitation of the class of students. Admissions based on favoritism necessarily breach the rule of merit on the one hand, while on the other, they create frustration in the minds of the students who have attained higher rank in the competitive entrance examinations, but have not been admitted.*

*38. We propose to specifically address this concern in this judgment. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.”*

12. In Modern **Dental College and Research Centre and others vs. State of Madhya Pradesh and ors.** (2016)

7 SCC 353, the Hon'ble Supreme Court has observed as under: -

*“166. It is well known that study of medicine is much sought after by students in India. Due to the high demand for admission in Medical Colleges and*

*limited number of seats, selection and/or screening methods have evolved to select the crème de la crème. Given the surfeit of academically well-qualified applicants, the selection method ought to become highly competitive by placing exceptionally high academic thresholds. It is in this context that 'merit' comes into play in determining the parameters for admissions in institutions of higher education.*

*167. Merit is the cumulative assessment of worth of any individual based on different screening methods. Ideally, there should be one common entrance test conducted by the State both for government colleges and for private unaided educational institutions to ensure efficacy, fairness and public confidence. As rightly contended by Mr. Purushendra Kaurav, Addl. Advocate General for the State of Madhya Pradesh appearing for AFRC, a common entrance test conducted by the State is more advantageous viz.:-*

*(i) having adhered to the time schedule as laid down in Mridul Dhar case (2005) 2 SCC 65;*

*(ii) multiple centres of examination and counselling throughout the State and a single window system for admission;*

*(iii) standard question papers, preservation of question papers and answer books, prevention of leakage of question papers and fair evaluation and*

*(iv) minimal litigation.*

*That apart, procedure for preparation of merit list, counselling and allotments to various colleges is subject to Right to [Information Act](#) and thus ensures fairness and transparency in the entire process.*

*168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the Legislature in its wisdom has taken the view that merit based admissions can be ensured only through a common entrance test followed by centralized counselling either by the State or by an agency authorized by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of Common Entrance Test (CET) to secure merit based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admissions in such educational institutions. Common Entrance Test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects:-*

*(i) fairness and transparency and*

*(ii) merit apart from preventing mal-administration.*

*Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb mal-practices, it would be permissible for the State to regulate admissions by providing a centralized and single window procedure. Holding such CET followed by centralized counselling or single window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a 'right of occupation' in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community.*

13. From the above noted exposition of law, there is no doubt that merit has to prevail. The fact of matter is that to secure meritorious candidates is one of the main objectives of centralized competitive examination at all India level like NEET. Further the adoption of process of common/centralized counselling is another step to avoid sacrifice of meritorious

candidates at the altar of arbitrariness, favoritism, nepotism and alike vices.

14. Having reference to Clauses 3 & 4 of the prospectus in the context of the objective of merit, it cannot be said that Clause-4 will have preference over Clause-3. On the contrary, it is *vice versa* for the reasons, firstly that the arrangement of the seriatim of clauses is indicative of the preference commanded by Clause-3 having merit of the candidates as criteria and secondly, clause-3 deals with a situation where admissions are available as a result of mop up round which is continuation of admission process, whereas, the benefit of clause-4 is available only in respect of vacant/drop out seats and that means when the entire process of counselling including the mop up round is finished, Clause-4 will become applicable in respect of only vacant/drop out seats. Thus, the contention of respondents No.1 and 2 regarding preferential right of students under clause-4 of the prospectus needs to be rejected outrightly. Additionally, respondent No.3 under whose aegis the admission process has been taken is also categorical about preference of admission

...15...

under clause-3 to that under clause-4 of the prospectus. Its correspondence dated 24.03.2022 is unambiguous. MMMC was requested to consider students admitted under management quota for upgradation to the State quota, if no student with more marks in NEET applied in mop up round. Respondents No.1 and 2 have clearly ignored the advice rendered to it by respondent No.3, which raises a question mark on their *bona fide*.

15. Learned counsel for respondents No.1 & 2 and 6 to 8 have lastly contended that there is clear dictum of law that admissions to MBBS courses are prohibited after the date fixed for closure of admissions. It is contended that since the last date of admission has crossed, during the pendency of the petition, this Court does not have jurisdiction to direct any admission, at this stage.

16. We have given our considered thought to contention so raised and we are unable to subscribe to the argument raised by the aforesaid respondents. The above analysis drawn by us prove beyond any shadow of doubt that the petitioner has been

denied admission to MBBS course by such actions of respondents No.1 and 2 which are clearly arbitrary. The Rules of admission as prescribed by prospectus issued by respondent No.3 have been violated with impunity. Had the wrong not been done by respondents No.1 and 2, petitioner would have got admission in MBBS course in MMMC by virtue of her merit and as a matter of right.

17. This Court will fail in its constitutional obligation, if it finds itself unable to help a victim salvage her right merely because the last date for admission has crossed. We say so, especially keeping in view the facts that the petitioner cannot be faulted for the delay. Petitioner had challenged the wrong committed to her on 25.03.2022 by instantly approaching this court on 29.3.2022. In such circumstances, the promptitude of petitioner in approaching this Court cannot be questioned. Respondents No.1 and 2 submitted their reply on 26.04.2022. Respondents No. 6 to 8 submitted their reply on 01.07.2022 as they were impleaded as party respondents vide order dated 11.05.2022.



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18. The petitioner had also been swift to make a representation through email on 25.03.2022 at about 11.36 A.M., as is evident from a copy of e-mail annexed with the petition as Annexure P-10. On 28.03.2022, another representation was made on behalf of the petitioner to respondent No.3. In the peculiar circumstances of instant case, we are of the considered view that the petitioner cannot be non-suited only because some time has been taken in final adjudication of grievance raised by the petitioner. Once this Court has found the violation of rights of petitioner, it needs to be remedied by grant of suitable relief, failing which it will be the travesty and failure of justice.

19. Learned counsel for respondents No.1, 2 and 6 to 8 have relied upon judgments in Medical Council of India vs. Madhu Singh & Others 2002(7) SCC 258 and Mridul Dhar (minor) and another vs. Union of India & Others, 2005(2) SCC 65. With due deference to the dictum of law expounded therein, the said judgments were passed in facts which were quite distinct to the facts involved in the present case. There the question was with

...18...

respect to fixation of time schedule and strict adherence thereto in admission to UG and PG medical courses thus, prohibiting primarily admissions made to left over seats after due date. No instance has been brought to our notice which lays absolute dictum that the admission to MBBS courses cannot be allowed after due date even after writ Court finds blatant abuse of process of law by the authorities.

20. Petitioner is undergoing her first-year course in BDS in H.P. Government Dental College, Shimla. We have been informed during course of hearing that the educational curriculum of first year BDS and first year MBBS overlap to some extent, therefore, petitioner will not be facing much difficulty in coping up with the already covered syllabus. We have further been informed that though the classes for first year MBBS course in MMMC had started w.e.f. 14.02.2022, but the last admission in the college was entertained on 08.04.2022. Even otherwise, the last date for admission process was 28<sup>th</sup> April, 2022. In view of such fact situation, the petitioner was well within time to approach this Court for redressal of her

grievance. Despite the beginning of classes on 14.02.2022, the admission process was to continue till 28<sup>th</sup> April, 2022 which again means that the admission process continues even during the continuation of educational curriculum. In this view of the matter also, the petitioner cannot be denied the relief merely on the ground that the last date for admission process has already elapsed.

21. In view of the above discussion, the instant petition is allowed. Admission of respondents 6 to 8 in state quota general category seats in MMMC on their upgradation from management quota by ignoring the merit of other applicants including the petitioner in mop-up round is held to be bad in law being against the express conditions of prospectus. Consequently, respondents No.1 to 3 are directed to redraw the merit list of admission to MBBS course in MMMC in respect of the mop up round counselling held on 25.03.2022 against general category seats of State quota and after such redrawal of merit list, admit the petitioner to MBBS course in MMMC,

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Kumarhatti, District Solan, H.P., commencing academic year 2021-2022 forthwith, in case she finds place in merit so redrawn.

22. The petition is accordingly disposed of, so also, the pending applications, if any.

**(Sabina)  
Judge**

**(Satyen Vaidya)  
Judge**

**2<sup>nd</sup> August, 2022  
(Jai)**

High Court of H.P.