

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 21st OF FEBRUARY 2022

WRIT PETITION No. 3619 of 2022

Between: -

SOHAN CHOUHAN S/O SHRI PREMSINGH
CHOUHAN, AGED ABOUT 21 YEARS,
OCCUPATION: STUDENT BANJARI
PATELPURA, POST-KUWAD TEHSIL
MANAWAR (MADHYA PRADESH)

.....PETITIONER

AND

- THE STATE OF MADHYA PRADESH
1. PRINCIPAL SECRETARY VALLABH
BHAWAN BHOPAL (MADHYA PRADESH)
DIRECTOR MEDICAL EDUCATION
 2. DEPARTMENT SATPURA BHAVAN, BHOPAL
(MADHYA PRADESH)
PRINCIPAL MAHATMA GANDHI MEDICAL
COLLEGE ROYAL MARKET, MEDICAL
 3. COLLEGE CAMPUS KOHEFIZA BHOPAL
(MADHYA PRADESH)

.....RESPONDENTS

Shri Vivek Saran learned counsel for the petitioner.

Shri Pushyamitra Bhargav learned Addl. A.G. for the
respondent/State.

Vivek Rusia J. passed the following order: -

ORDER

The petitioner has filed the present petition against the action of respondent No.3 whereby he has been denied admission in M.B.B.S. Course for want of necessary educational qualification.

(2) After passing the Higher Secondary School from M.P. Board of

Secondary Education, the petitioner appeared in the National Eligibility Cum Entrance Test (UG) 2021 i.e. NEET 2021. Admit card was issued to the petitioner and he appeared in the examination and scored 400 marks out of 720. The petitioner being a student of the SC category, participated in the first round of counselling for admission in the Government Medical college. The petitioner has been allotted Gandhi Medical College, Bhopal to pursue the undergraduate Course of M.B.B.S. He was called with original documents for its verification. According to the petitioner, since he did not opt for Biology as one of the subjects in the 11th Standard examination, respondent No.3 has been denied admission. Hence this writ petition

(3) According to the petitioner, he has passed Higher Secondary School Certificate Examination which is a qualifying examination in Physics, Chemistry and Biology as the main subjects, hence he has wrongly been denied admission despite securing rank in NEET examination. Shri Saran learned counsel for the petitioner submits that for admission in MBBS and BDS Courses the qualification which is prescribed under Code No.2 Chapter VI of Eligibility and Qualification for MBBS is Higher Secondary School Certificate Examination in Biology, Physics, Chemistry and English as main subjects which the petitioner possesses, therefore, the action of the respondent No.3 is contrary to the Code No.1 clause 4.4 as provided in Information Bulletin for admission Undergraduate Medical Course.

(4) Shri Saran learned counsel for the petitioner further submits that the respondents are wrongly applying code No.2 in the case of the petitioner whereas his case falls under Code No.1 and according to which candidates who have appeared or are appearing at the qualifying examination with English, Physics, Chemistry and Biology as the main subject and expect to pass the examination with the required percentage of marks are also eligible to apply and appear in the Competitive Entrance Examination. For the petitioner the qualification examination is class 12th therefore, under code No.1 is entitled to get admission.

(5) Shri P.M.Bhargav, learned Addl.A.G. submits that the petitioner has passed the High School Examination i.e. 11th class without the Biology subject. He opted for the Biology subject only in class 12th and appeared Higher Secondary School Certificate examination 2020 conducted by the Board of Secondary M.P. The case of the petitioner falls under code No.2 of the qualification and qualifying examination code which says that 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 of study, the last two years of such study comprising of Physics, Chemistry, Biology/Bio-technology. The petitioner has not filed a complete copy of the qualification and qualifying examination code in which at page No.17 of **Information Bulletin for admission Undergraduate Medical Course** the note is appended and according to which any interpretation regarding the requirement of Biology / Biological Sciences as one of the subjects of the Qualifying Examination for NEET (UG) will be subjected to Regulation No. 4 (1) of the Graduate Medical Education Regulations (1997) as amended up to 2018 and the Judgement dated 16th February 2021 of Hon'ble Supreme Court of India in Civil Appeal No. 390 of 2021.

(6) Learned Additional Advocate General has produced *the Medical Council of India Regulation on Graduate Medical Education, 1997* in which clause 4 of Chapter 2 deals with the eligibility criteria for admission in the medical course. According to which also, the Higher Secondary Examination or Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics are necessary. He has placed the reliance over the judgment passed by Apex Court in case of *Kaloji Narayana Rao University of Health Sciences Vs. Srikeerti Reddi Pingle & Ors (Civil Appeal No.390/2021)* in which the Apex Court has held that 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. Therefore, in view of the above, the petitioner is not entitled to get admission due to non fulfilling the qualifying examination criteria.

Apprisiation and conclusion....

(7) It is not in dispute that the petitioner has passed the class 11th examination in the subject Hindi, English, Physic, Chemistry and Higher Mathematics, thereafter, he opted Biology as the main subject in place of mathematics in Class 12th and appeared in the Higher Secondary School Certificate Examination 10+2 and passed in first Division. He appeared in the NEET UG-2021 and scored 3405 in ST category. He appeared in the M.P. State Combined U.G. Counseling 2021 and he was allotted the Gandhi Medical College Bhopal to pursue the M.B.B.S. Course. At the time of documents verification, it has found that he did not pass the class 11th examination with Biology Subject hence admission has been denied.

(8) According to the petitioner under code: 1 of Clause 4.4. i.e. the qualification and qualifying examination code, provided in Information Bulletin for admission Undergraduate Medical Course the candidates who have appeared or are appearing at the qualifying examination with English, Physics, Chemistry and Biology as the main subject will be considered only if provide documentary evidence of having passed the qualifying examination with the required subjects and percentage of marks. The petitioner has passed the qualifying examination 12 standards in English, Physic, Chemistry and Biology as the main subject hence he is entitled to admission in the college of respondent No.3. Code No.01 and Code No.2 of Clause 4.4. of Information Bulletin for admission Undergraduate Medical Course is reproduced below:

Code:1 A candidate who is appearing in the qualifying examination, i.e., 12 Standard in 2021, whose result is awaited, may apply and appear in the test but he/she shall not be eligible for admission to the Undergraduate Medical Courses if he/she

does not pass the qualifying examination with the required pass percentage at the time of first round of Counselling.

Candidates who have appeared or are appearing at the qualifying Examination with English, Physics, Chemistry and Biology as the main subject and expect to pass the Examination with the required percentage of marks are also eligible to apply and appear in the Competitive Entrance Examination. However, their candidature will be considered only if they provide documentary evidence of having passed the qualifying Examination with the required subjects and percentage of marks.

Or

Code: 02 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 than the core course for English as prescribed by the National Council of Educational Research and Training after the introduction of the 10+2+3 educational structure as recommended by the National Committee on Education.

Candidates who have passed 10+2 from Open School or as private candidates shall not be eligible to appear for the 'National Eligibility Cum Entrance Test'. Furthermore, a study of Biology/Biotechnology as an Additional Subject at 10+2 level also shall not be permissible.*

*The candidates who have passed 10+2 level with Biology as an additional subject will also be eligible for MBBS Entrance Examination (as per Hon'ble High Court Order No. 2341/-W/DHC/WRIT/D-1/2019 dated 24/09/2019 in the Writ Petition (C) No. 6773/2019.

If the institute has to consider an examination of an Indian University or of a foreign/university to be equivalent to the 12 Class under 10+2 scheme/intermediate science examination, the candidates shall have to produce a certificate from the concerned Indian University/Association of Indian Universities to the effect that the examination passed by him/her is considered to be equivalent to the 12 class under 10+2 scheme/intermediate science examination.

*(NOTE: The proviso in italics has been a 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 candidature of candidates in the NEET (UG)-2021 who have passed the qualifying examinations i.e. 10+2 from National Institute of Open Schooling or State Open Schools or as private candidates from recognised State Boards; or with Biology/Biotechnology as an additional subject shall be allowed but subject to the outcome of Special Leave Petitions/Appeals filed by the Medical Council of India)

(9) The respondents are rightly relying upon Code 02 which says that 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 of study, the last two years of such study comprising of Physics, Chemistry, Biology. Clause 4 of Chapter 2 of Medical Council of India Regulations on Graduate Medical Education, 1997 also provides that no candidate shall be allowed to be admitted to the Medical Curriculum proper of the first Bachelor of Medicine and Bachelor of Surgery Course until he/she has qualified the National Eligibility Entrance Test and he has possessed qualifying examination and as per Clause 4 (2) (a) The Higher Secondary Examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of Physics, Chemistry, Biology and Mathematics and Proviso has also been added and according to which two years of regular and continuous study of Physics, Chemistry, Biology/Biotechnology taken together shall be required at 10+2 level for all the candidates. Clause 4 of Chapter II is reproduced below:

4. Admission to the Medical Course - Eligibility Criteria : No Candidate shall be allowed to be admitted to the Medical Curriculum proper of first Bachelor of Medicine and Bachelor of Surgery Course until he/she has qualified the National Eligibility Entrance Test, and he/she shall not be allowed to appear for the National Eligibility-Cum- Entrance Test until:

(1) She/she shall complete the age of 17 years on or before 31st December of the year of admission to the MBBS.

(1A) He/She has obtained a minimum of mark in National Eligibility-cum Entrance Test as prescribed in Clause 5 of Chapter

II.

(1B) Provided further that in order to be eligible, the upper age limit for candidates appearing for National Eligibility Entrance Test and seeking admission to MBBS programme shall be 25 years as on the date of examination with a relaxation of 5 years for candidates belonging to SC/ST/OBC category and persons entitled for reservation under the Rights of Persons with Disabilities Act, 2016.

The above have been substituted in terms of notification published on 23.01.2018 in Gazette of India

(2) He/she has passed qualifying examination as under:

The following shall be added before words “He/She has passed qualifying examination as under” in terms of Notification dated 21.12.2010.

“ In order to be eligible to take National Eligibility-cum-Entrance Test,”

(a) The higher secondary examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher Secondary Examination after a period of 12 years study, the last two years of study comprising of physics, Chemistry, Biology and Mathematics or any other elective subjects with English at a level not less than the core course for English as prescribed by the National Council for Educational Research and Training after the introduction of the 10+2+3 years educational structure as recommended by the National Committee on education.

The following proviso shall be added:

Provided that two years of regular and continuous study of Physics, Chemistry, Biology/Biotechnology taken together shall be required at 10+2 level for all the candidates. Candidates who have passed 10+2 from Open Schools 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.

(10) In the Information Bulletin for admission Undergraduate Medical Course, a specific note has been appended that any interpretation regarding the requirement of Biology / Biological

Sciences as one of the subjects of the Qualifying Examination for NEET (UG) will be subjected to Regulation No. 4 (1) of the Graduate Medical Education Regulations (1997) as amended upto 2018.

(11) Shri Saran, learned counsel for the petitioner submits as per clause 4.4 of Information Bulletin for admission to undergraduate Medical Courses the candidate to be eligible for NEET (UG), 2021 needs to refer to the following table for qualifying the examination criteria i.e. Code:1 or Code:2 or Code:3 etc. The candidate must fulfill either code:1 or any other code:2 to code:5. The petitioner is fulfilling the criteria provided in Code:1, therefore he is entitled to admission.

(12) Code:1 only permit the candidate to apply and appear in the Test who is appearing in the qualifying examination i.e. 12 standards, 2021, and whose result is awaited. It further provides the candidates who have appeared or are appearing at the qualifying examination with English, Physics, Chemistry and Biology as the main subject and expect to pass the examination with the required percentage or marks are also eligible to apply and appear in the competitive entrance examination. Code:1 applies to those candidates who either appeared or appeared in the examination but the result has not been declared. For those candidates in qualifying examination subject should be English, Physic, Chemistry and Biology as the main subject. The passing with the requisite percentage in qualifying examination is mandatory for taking admission in the UG Course but as per the Code:2 and Clause 4 of Chapter II, there should be two years and continuous study of Physics, Chemistry and Biology/ Bio-technology at 10+2 level for all the candidates. The aforesaid provision has been upheld by the Apex Court in case of *Kaloji (Supra)*. The relevant paras No. 14, 15 and 20 of judgment are reproduced below:

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 on Issued by the West Hartford Science Department Supervisor.

20. The approach and construction placed by the High Court, in this court's opinion, undermines the intent behind the MCI's insistence that a certain kind of education should be undergone, which is that each candidate for the MBBS course should have undergone study in Physics, Chemistry and Biology, in each of the levels (i.e. the two years of 10+2 board examination, or the concerned intermediate examination) with practical exams, in each of those years; that he or she should also have had English as a subject, and that the score in Mathematics would be ignored and not taken into consideration⁹. It would be, in this context, necessary to clarify that the equivalence relied on by the Telangana Intermediate Board in this case, merely alluded to the general equivalence in terms of education at the intermediate level, without stipulating whether the qualifications were equivalent in terms of the subjects in which she undertook courses for the relevant years.

(13) In view of the above, no case for interference is made out. The petitioner has rightly been declared ineligible to get in admission in MBBS Course for want of necessary qualification. Accordingly, the writ petition is dismissed.

No order as to cost.

(VIVEK RUSIA)

JUDGE

(AMAR NATH (KESHARWANI)

JUDGE

praveen/-