

**HIGH COURT OF MADHYA PRADESH AT JABALPUR**  
**WRIT PETITION NO.12562/2017**

PETITIONER : KAPIL RAJ PRINZE

Vs.

RESPONDENTS : STATE OF M.P.  
AND OTHERS.

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**Present : Hon'ble Shri Justice R.S. Jha,**  
**Hon'ble Justice Smt. Nandita Dubey.**

For the petitioner : Shri Aditya Sanghi, Advocate.

For the State : Shri Deepak Awasthi, Dy. Advocate  
General.

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**ORDER**  
(21/08/2017)

**Per R. S. Jha, J.**

The petitioner, who had participated in the National Eligibility-cum-Entrance Test, 2017 (NEET) for MBBS and BDS courses as a Scheduled Caste category candidate and who has obtained 115 marks out of a total of 720 marks and has also obtained 43.74 percentile, has filed this petition praying for a direction to the respondents to register him and thereafter to permit him to participate in the second round of counselling that is scheduled from 18.08.2017 to 19.08.2017 as well as the final round of counselling scheduled from 26.08.2017.

**2.** The brief facts, on the basis of which the present petition has been filed by the petitioner, are that the

petitioner belongs to the SC category and has appeared and qualified in the NEET examination under that category as has obtained 43.74 percentile, which is more than the cut off 40 percentile prescribed by the regulations framed by the Medical Council of India as well as the CBSE Rules and guidelines issued for conducting the NEET examination. It is submitted that as per Regulation (4) of the Graduate Medical Education Regulations, 1997, the minimum eligibility qualification for participating and seeking admission in the NEET Examination and for participating in the counselling conducted thereafter is that the candidate concerned must have passed the 12<sup>th</sup> standard examination (10+2) in 2017.

**3.** The learned counsel for the petitioner submits that the petitioner had participated in the 12<sup>th</sup> Class CBSE examination conducted by the Central Board of Secondary Education but had obtained supplementary/compartement in the subject of Biology. It is submitted that the petitioner has thereafter appeared in the supplementary examination and has also cleared the subject of Biology in the compartment/supplementary

examination, result of which was declared on 09.08.2017 vide Annexure P/7.

**4.** The learned counsel for the petitioner submits that as per the procedure for counseling notified by the respondents, prior to the first round of counselling, the candidate has to get himself registered online and it is only thereafter that a candidate, who has got himself registered for that purpose, is eligible to participate in the counseling process and that in case a candidate does not get himself registered by the date prescribed and notified by the respondents, he is not permitted to participate in the counseling process.

**5.** The learned counsel for the petitioner submits that in the instant case the last date for obtaining online registration was 28.07.2017. However, when the petitioner tried to obtain registration he was denied the same as he could not give the details of his 12<sup>th</sup> Class examination on account of the fact that by that date the result of the supplementary/compartement examination had not been declared. It is submitted that as the petitioner could not furnish the aforesaid information, he was denied online registration and, therefore, could not participate in the counseling process that commenced

from 22.07.2017. It is stated that when the petitioner's result of the supplementary/ compartment examination was declared by the respondents on 09.08.2017 the petitioner approached the respondents for permitting him to get himself registered online and thereafter to permit him to participate in the counseling, but the respondents have not permitted him to do so, hence, this petition.

**6.** The learned counsel for the petitioner submits that as on date the petitioner has passed the 12<sup>th</sup> Class examination with the requisite percentile and has also qualified in the NEET examination and in such circumstances the respondents be directed to open the portal for the petitioner for permitting him to get himself registered and thereafter to participate in the second and final round of counseling for the purposes of obtaining admission in the MBBS/BDS Course, moreso, as candidates, who have obtained much less marks than the petitioner have been granted admission in the MBBS/BDS course under the Scheduled Caste category. The petitioner has stated that candidates obtaining as less as 107 marks have been granted admission while the petitioner has obtained 115 marks and, therefore, denying admission to the petitioner, who is a much more

meritorious and deserving candidate, would be in violation of the rules regarding supremacy of merit.

**7.** The learned counsel for the petitioner submits that as per the process of registration that has been notified by the respondents, it is only the 10<sup>th</sup> Class mark-sheet which is necessary to be uploaded for the purposes of obtaining registration and in such circumstances denying registration to the petitioner only on the ground that he did not possess the 12<sup>th</sup> pass mark-sheet which was not necessary or required for the purposes of online registration amounts to denying the petitioner his statutory right to registration as well as participation in the selection process.

**8.** The learned counsel for the petitioner further submits that the date for registration is not fixed and final inasmuch as the respondents authorities by their own order (Annexure P/11) have cancelled the registration of as many as 14 candidates who were ineligible but had been wrongly granted registration and have thereafter directed for redrawing of the merit list and, therefore, the respondents authorities, can very well have undertaken the same exercise and process for

the petitioner also. The learned counsel for the petitioner submits that denying the petitioner the right to participate in the counselling, inspite of the fact that he is a meritorious candidate and fulfills all the necessary eligibility qualification, amounts to violation of his fundamental rights, as the action of the respondents results in discrimination and denial of the equality of opportunity.

**9.** Looking to the urgency of the matter, the parties were directed to produce the necessary rules relating to eligibility for participating in the counseling as well as for admission to the MBBS course.

**10.** The learned Deputy Advocate General appearing for the State has placed before this Court Regulation (4) of the Graduate Medical Education, Regulation, 1997 framed by the Medical Council of India, wherein the minimum eligibility qualification for participating in the NEET examination has been prescribed as passing of the Higher Secondary School Certificate Examination or the Indian School Certificate Examination with a minimum of 50% marks together in Physics, Chemistry, Biology/ Biotechnology for unreserved candidates and 40% for

Scheduled Caste candidates. The learned Deputy Advocate General has also placed before this Court the information bulletin published by the CBSE governing the National Eligibility-cum-Entrance Test (UG), 2017-18. It is pointed out that as per Clause (4) of the eligibility and qualifications prescribed in Chapter (III) of the bulletin, a candidate, who is appearing in the qualifying examination i.e., the 12<sup>th</sup> standard in 2017 and whose result is awaited is entitled to apply and take up the test but would not be eligible for admission in MBBS/BDS course in case the candidate does not pass the qualifying examination with the required percentage of marks at the time of first round of counseling.

**11.** It is pointed out by the learned Deputy Advocate General appearing for the State that in the instant case the petitioner was not in possession of the necessary eligibility qualifications as on the date of registration i.e., between 22.07.2017 to 28.07.2017 and, therefore, was rightly denied registration by the respondent authorities on account of the fact that by that date he had not passed the 12<sup>th</sup> standard examination in the subject of Biology having obtained compartment/supplementary in Biology. It is also pointed out by the

learned Deputy Advocate General for the State that as per the petitioner's own document, the result of the supplementary/compartments examination was declared on 09.08.2017 i.e., much after the last date for obtaining online registration as well as much after the date of the first round of counseling.

**12.** It is submitted that in such circumstances, as the petitioner had not passed the 12<sup>th</sup> standard examination by the date of the first round of counseling, he is ineligible for participating in the counseling process in view of the rules regarding counseling notified by the State as well as the information bulletin published by the CBSE and the MCI regulations providing and prescribing the eligibility qualification and, therefore, no fault can be found with the act of the respondents in denying the petitioner registration and participation in the counseling process. It is submitted that in the facts of the present case, the prayer made by the petitioner is contrary to the rules and regulations and, therefore, deserves to be rejected.

**13.** Having heard the learned counsel for the parties, it is observed that it is an undisputed fact that the necessary eligibility qualification for participating in the



NEET examination is passing or appearing in the 12<sup>th</sup> standard examination and that the candidate is eligible to participate in the counseling held thereafter only in case he has passed and obtained a minimum of 50% or 40% marks, as the case be, in the 12<sup>th</sup> standard examination before the first round of counseling is held by the authorities. It is also an admitted and undisputed fact that the petitioner had not passed the 12<sup>th</sup> class examination prior to filling up of the form on account of the fact that he had obtained supplementary/ compartment in the subject of Biology and that having appeared in the supplementary examination in the subject of Biology, his result thereof was awaited at the time when the online registration process for holding counseling commenced on 22.07.2017. It is also an admitted and undisputed fact that the petitioner had not passed the 12<sup>th</sup> standard examination by 22.07.2017 to 28.07.2017, which was the period during which online registration was permitted and possible under the guidelines/rules notified by the State Government in this regard, a copy of which has been filed by the petitioner as Annexure P/8. It is also an undisputed and admitted fact that the first round of counseling was already over

by the date the petitioner's supplementary / compartment examination result was declared i.e. on 09.08.2017.

**14.** In view of the aforesaid admitted and undisputed position of law and facts, it is clear and apparent that the petitioner is not eligible and did not possess the necessary eligibility qualification for participating in the counseling process as stipulated in the Indian Medical Council Act, 1956 and the Graduate Medical Education Regulations, 1997, and that the petitioner did not possess the aforesaid necessary eligibility qualification by the cut off date prescribed under the information bulletin published by the CBSE. It is also an admitted and undisputed fact that the petitioner did not possess the necessary eligibility qualifications for the purposes of obtaining online registration by the last cut off date of 28.07.2017 as notified by the respondents/State and was therefore, rightly denied online registration by the respondent authorities.

**15.** From a perusal of the process of counseling notified by the respondents/State, specifically Clause (2) thereof, it is apparent that only those candidates are permitted to

participate in the counseling who have obtained registration prior to the commencement of the counseling and that this opportunity of registration is available only prior to the commencement of counseling and not thereafter. The procedure prescribed also makes it clear that if a candidate fails to obtain registration within the period prescribed, he shall not be permitted to obtain registration subsequently or to participate in any of the rounds of counseling.

**16.** In the instant case, as held earlier, the petitioner did not possess the necessary eligibility qualifications by the last cut off date and was therefore, denied registration and that the last date for registration as well as the last date for possessing the eligibility qualifications have both expired.

**17.** In such circumstances, we are of the considered opinion that the counseling process cannot be upset at this stage by issuing a direction to the respondent authorities to permit the petitioner to obtain online registration after the second round of counseling is over and to thereafter permit him to participate in the final round of counseling scheduled from 26.08.2017, moreso,

as the petitioner was not eligible for participating in the counseling in view of Clause (4) of the guidelines notified by the CBSE in the information bulletin on account of the fact that he had not passed the 12<sup>th</sup> standard examination by the time of the first round of counseling.

**18.** In view of the aforesaid factual aspects as enumerated above and as it is an undisputed and admitted fact that the petitioner was not possessing the necessary eligibility qualifications by the cut-off date and was ineligible to participate in the counseling, the other issues raised by the petitioner which have not been dealt with by us are not required to be gone into in the facts of the present case.

**19.** In view of the aforesaid facts and circumstances, we do not find any merit in the petition, which is accordingly dismissed.

**(R.S. Jha)**  
**Judge**

**(Nandita Dubey)**  
**Judge**

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