

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR

**BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE DWARKA DHISH BANSAL**

ON THE 29th MARCH, 2022

WRIT PETITION No.6695 of 2022

BETWEEN :-

Dr. Pooja Sahu D/o-Shri
Rajesh Sahu, Aged about 24
years Occupation-Student,
R/o-747, Marhatal,
Jabalpur(M.P.)

.....Petitioner

(By Mr. Samdarshi Tiwari, Advocate.)

AND

1. State of Madhya Pradesh
Through the Principal
Secretary, Medical Education
Department, Mantralaya,
Vallabh Bhavan, Bhopal,
(M.P.).
2. The Director of Medical
Education, Government of
Madhya Pradesh, 6th Floor,
Satpura Bhavan, Bhopal,
(M.P.)
3. The Counselling Committee
for the PG Admissions,

through the Chairman, 6th
Floor, Satpura Bhavan,
Bhopal (M.P.)

.....**Respondents**

(By Mrs. Janhavi Pandit, Deputy Advocate General)

| Whether approved for reporting | YES |
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| <p>Law Laid down :-</p> | <p>1. Admission Rules 2018 :- ‘Registration’:- The definition is amended in the year 2019. As per amended definition, r/w Rule 17 (3), the petitioner an OBC candidate is entitled to register herself afresh in UR-NRI quota in view of notice of the Central Government dated 14.3.2022.</p> <p>2. Rule 17 (3) of Admission Rules and Registration of Candidate:- Ordinarily, Registration once made cannot be altered, modified etc. However, Rule 17 (3) gives statutory recognition to the orders of various authorities including Central Government. The Central Government pursuant to lowering down of percentile of certain categories in NEET 2021 examination, decided to permit the candidates to register themselves afresh by changing the choice of nationality.</p> <p>3. Central Government notice dated 12.3.2022 and 14.9.2022 There is nothing on record to suggest that said notices are applicable only to All India Seats and not to the State quota seats.</p> |

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| | <p>Thus, directions were issued to permit the petitioner to register herself afresh in the changed circumstance.</p> <p>4. Statutory Rules and Administrative Instructions :- Law is well settled that the statutory rules prevails over the administrative instructions. However, in the Admission Rules of 2018, the statutory recognition is given to the various orders/instructions passed by authorities. Thus, said principle is of no assistance to the Government.</p> <p>5. Law of Precedent :- A singular different fact may change precedential value of the judgment. The Indore Bench in two matters applied unamended Rule 6 in the factual matrix of those cases. In those cases, the important fact of lowering down of percentile in NEET 2021 Examination and consequential directions/notices of the Central Government were not there. Hence, the said judgments of Indore Bench cannot be pressed into service.</p> |
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O R D E R (Oral)

Sujoy Paul, J.:-

The interesting conundrum in this case is whether the petitioner who registered herself as Other Backward Class (OBC) candidate on 9.3.2022 can get the benefit of fresh registration as Non Resident Indian

(NRI) in view of lowering down the percentage in different categories pursuant to the notices of Government of India dated 12.3.2022 and 14.3.2022 (Annexure P/6) ?

2. Draped in brevity, the admitted facts between the parties are that NEET Examination is conducted at All India Level. The petitioner did not register herself in the first and second round of counselling. She got herself registered thereafter on 9.3.2022 in OBC category and she secured 281 marks.

3. The pivotal document which has given rise to hope to the petitioner and resulted into this litigation is the notice issued by Central Government dated 14th March, 2022 (Annexure P/6). It is mentioned in the notice that in view of candidates who have become eligible after reduction of percentile and want to get their nationality converted from Indian to NRI for Mop-Up round of P.G. Counselling may remain in touch with MCC Website for further course of action.

4. Shri Samdarshi Tiwari, learned counsel for the petitioner submits that when petitioner registered herself on 9.3.2022 as OBC candidates, the cut-off marks for NRI was more than 300 (which fact remained undisputed in view of specific instructions received by learned Deputy Advocate General). Shri Samdarshi Tiwari, learned counsel for the

petitioner urged that notice dated 12th March, 2022 issued by Government shows that it is applicable to ‘all applicants/candidates’ for NEET- PG 2021. This includes the candidates of State Quota. Another document of same date (Annexure P/5) is relied upon wherein it is mentioned that Mop-Up round of PG Counselling 2021 was postponed in order to facilitate ‘freshly eligible candidates’ who became eligible *after lowering of percentile* to do fresh registration and exercise of choice filling. The prescribed form appended to notice dated 14.3.2022 (Annexure P/6) is referred which includes a declaration that if category is converted from Indian to NRI, the candidate will not be able to avail the benefit available to other quotas including religious minority quotas. In furtherance of decision dated 14.3.2022 (Annexure P/6), the conversion list from Indian to NRI is drawn by the Central Government (Annexure P/7) which includes the name of petitioner at item No.316. The notice dated 14.3.2022 is pressed into service to bolster the submission that the documents earlier sent have to be treated as ‘null and void’. Thus, fresh registration was ordered by Director Medical Education (hereinafter referred to as ‘DME’) M.P. on 16.3.2022 but the notice of Central Government dated 14.3.2022 is not mentioned therein. Shri Samdarshi Tiwari, learned counsel for the petitioner further submits that petitioner by communication dated 17th March, 2022 (Annexure P/10) expressed her

desire to change her category from OBC to UR-NRI category. Since respondents have not permitted her to change the category, the present petition is filed. The request was made by the petitioner to open the portal so that petitioner can change her category.

5. Ms. Jahnvi Pandit, learned Deputy Advocate General resisted the prayer of the petitioner by contending that a minute reading of notice dated 14-03-2022 (Annexure P/6) shows that it is applicable to All India Quota because candidates were advised to remain in touch with the MCC Website i.e. Website of the Central Government. Thus, notice dated 14-03-2022 is confined to All India seats and cannot be extended in favour of petitioner relating to State Quota seats. The notice dated 18-12-2021(Annexure R/1) is relied upon to contend that it is applicable to All India Counselling.

6. The next submission of the learned Deputy Advocate General for the State is that as per Rule 6 of **Admission Rules** of 2018 (Admission Rules), which are statutory in nature, once registration is made, it cannot be altered, modified or changed. The petitioner after having registered herself in OBC category on 09.3.2022, cannot seek alteration or permission to register herself afresh.

7. The definition of 'रिक्तियों' (vacancies) and 'counselling' is referred to. It is submitted that 'counselling' is different than the 'registration'. The process of registration is spelt out in Rule 6. Rule 6 completely prohibits the petitioner to travel from OBC to NRI category.

8. Learned Deputy Advocate General placed reliance on the orders of this Court passed in WP No. 18699/2020 (**Arushi Mahant and others Vs. State of M.P.**) decided on 15-12-2020. Learned Deputy Advocate General submits that this Court after considering Rule 6 of Admission Rules, made it clear that change is impermissible. For the same purpose, recent order of Indore Bench passed in WP No. 2309/2022 (**Purva Balke Vs. State of M.P. and another**) (Annexure R/4) is relied upon.

9. In nutshell, learned Deputy Advocate General submits that the basic notice dated 14-03-2022 is applicable to All India Quota seats and the petitioner after registering herself on 09-03-2022, cannot take advantage of fresh registration.

10. The stand of respondents is that constitutionality of Admission Rules is not in question in this petition. If rules are read as such, petitioner cannot be permitted to get fresh registration. If such a relief is accepted, it will have an effect of giving weightage to petitioner at the cost of more meritorious candidate. It will be a bad precedent for future.

11. Parties confined their arguments to the extent indicated above.
12. We have bestowed our anxious consideration on rival contentions and perused the record.
13. During the course of arguments, learned counsel for the parties fairly submitted that Admission Rules of 2018 were amended on 19.06.2019 and a new rule relating to registration, namely Rule 6 became part of the statute book. It is apposite the quote the said rule.

“6 पंजीयन – चयन परीक्षा में उत्तीर्ण अभ्यर्थी को पोर्टल पर आवश्यक जानकारी देते हुये काउंसिलिंग के प्रथम चरण से पूर्व विनिर्दिष्ट, समय- सीमा के भीतर पंजीयन कराना होगा, अभ्यर्थी को पंजीयन के लिए आवश्यक समस्त जानकारी पोर्टल पर पंजीयन के प्रपत्र में उपलब्ध कराना होगा, जानकारी अपूर्ण होने की दशा में पंजीयन नहीं हो सकेगा, पंजीयन पश्चात पंजीयन में दी गई जानकारी में परिवर्तन, संशोधन अथवा अतिरिक्त जानकारी प्रदाय अथवा स्वीकार नहीं की जाएगी, द्वितीय चरण के पश्चात् एवं काउंसिलिंग के अंतिम चरण (मापें अप चरण) से पूर्व पंजीयन पुनः खोला जायेगा जिसमें पूर्व में पंजीयन कराये गये अभ्यर्थियों को छोड़कर अन्य अभ्यर्थी भी पंजीयन कर सकेंगे।”

(Emphasis Supplied)

14. After Rule 17(2), sub-rule 3 was added, which reads as under:-

“11. नियम 17 के उप नियम(2) के पश्चात् निम्नलिखित उपनियम स्थापित किया जाए, अर्थात् :-

(3) काउंसिलिंग प्रक्रिया माननीय सर्वोच्च न्यायालय, उच्च न्यायालय, भारतीय आयुर्विज्ञान परिषद (एम.सी.आई.) के अधिकमण में शासी बोर्ड, भारतीय दंत परिषद (डी.सी.आई.) एवं भारत सरकार द्वारा समय – समय पर जारी आदेशों के अधीन होगी।”

15. Before dealing with the impact of the Rules, it is apt to consider various notices on which reliance is placed by learned counsel for the parties. The notice dated 12.03.2022, in no uncertain terms, makes it clear that it relates to **‘Revised Cut-off Scores’** for NEET-PG 2021. Thus, it is crystal clear that the notice was for the entire NEET examination irrespective of State or All India Quota seats. The attention in the notice was particularly drawn to “all applicant/candidates” for NEET-PG 2021. Alongwith this notice, yet another notice dated 12.03.2022 was issued by Central Government whereby it was made clear that previous Mop-Up round of PG counselling, 2021 was postponed *in order to facilitate freshly eligible candidates, who became eligible after lowering of percentile to do fresh registration and exercise of choice filling.*

16. Indisputably, the petitioner received less marks (281) than the initial cut-off marks fixed for UR-NRI candidate i.e. 302 marks. The cut-off marks for UR-NRI candidates were reduced upto 247. Since petitioner was not earlier eligible to register herself as NRI candidate on 09.03.2022 and became eligible only when the notice dated 12.03.2022 was issued, she requested for opening the portal for fresh registration.

17. The Central Government by notice dated 14.03.2022 stated as under:-

“NOTICE**Kind Attention: Candidates who have become eligible after reduction of percentile and want to get their nationality converted from Indian to NRI for Mop Up Round of PG Counselling 2021.**

It is for the information to those candidates **who have become eligible to participate in PG counselling after reduction of percentile** and who are claiming to be NRI as per the directions/orders of Hon'ble Supreme Court of India in the case (W.P. (C) No.689/2017- Consortium of Deemed universities in Karnataka (CODEUNIK) & Anr. Vs. Union of India & Ors.) dated 22.08.2017 (Copy enclosed), such candidates should send their relevant documents as mentioned below, in support of their claim to change nationality from Indian to NRI through e-mail nri.adgmemcc1@gmail.com from **01:00 PM of 14th March, 2022 (Monday) till 06:00 PM of 15th March, 2022 (Tuesday)**. All such candidates are advised to be in touch with the MCC website (www.mcc.nic.in) for further course of action. **Mails received before/ after the stipulated time will not be considered. Candidates are advised to send all documents enclosed in single mail only, within stipulated time.**”

18. Another notice of same date Annexure P-8 is noteworthy which facilitates freshly eligible candidates for conversion of nationality from Indian to NRI. It is made clear that previously sent documents will be treated as ‘Null & Void’. The State Government although issued directions dated 16.03.2022 (Annexure P-9), the said direction does not contain any reference about the Central Government’s notice dated 14.03.2022. It is relevant to reproduce the same :-

**“NOTICE REGARDING FRESH REGISTRATION
AND CHOICE FILLING/LOCKING FOR MOP UP
ROUND**

**MP STATE COMBINED NEET PG
COUNSELLING 2021**

In view of lowered qualifying marks as per the Government of India, DGHS and office of the MCC letter F.No.U-12021/21/2022-MEC dated 12.03.2022 and NBE candidates shall commence from 17.03.2022 to 22.03.2022 and choice filling 24.03.2022 to 27.03.2022. For details view DME website and MP Online portal.

Director Medical Education
Madhya Pradesh”

19. On the forehead of this document, it is clearly mentioned about the facility of ‘fresh registration’. However, no reference is made to the relevant notice of Central Government dated 14.03.2022. The reference is made only to the previous notice of Central Government dated 12.03.2022. A plain reading of notice dated 12.03.2022 makes it clear that cut-off score as per qualifying criteria is lowered down. This notice was followed by other notices including the notices dated 14.03.2022 (Annexure P/6 and P/8). Thus, notice dated 14.03.2022 cannot be read in isolation or divorced from the context of lowering down of the percentage. In our opinion, the notice dated 12.03.2022 and the notice dated 14.03.2022 need to be read together in order to examine the entitlement of candidate about conversion of nationality for freshly eligible candidates from Indian to NRI in the Mop-Up round of PG

counselling. Thus, we are unable to hold that notice dated 14.03.2022 is only confined to the All India Seats and does not cover the State Quota Seats.

20. So far definition of 'registration' is concerned, if it is examined in juxtaposition to the previous unamended definition of 'registration', it will be clear that last three lines in the amended definition are added subsequently. A microscopic reading of this provision makes it clear that after second round of counselling and before Mop-Up round of counselling, the registration will be reopened and except previously registered candidates, other candidates can get themselves registered. Heavy reliance is placed on this provision by learned Deputy Advocate General. The argument, on the first blush appears to be attractive but lost much of its shine when it is read alongwith amended sub-rule 3 of Rule 17. Said sub-rule makes it clear like noon day that during the process of counselling, the orders passed by the Supreme Court, High Court, MCI, DCI and Central Government issued from time to time should be taken care of or in other words, the counselling process should be *under the orders passed by the said authorities*. In this backdrop, notices of the Central Government dated 12.03.2022 and 14.03.2022 cannot vanish in thin air to the disadvantage of the petitioner. In-fact, the Government of

Madhya Pradesh itself issued document dated 16.03.2022 (Annexure P/9) and provided facility of fresh registration and choice filling to the candidates as per Central Government's letter dated 12.03.2022. Since, admittedly petitioner was not eligible to get herself registered as NRI candidate on 09.03.2022, benefit of subsequent lowering down of percentage of NRI-UR must be extended in favour of the petitioner. A conjoint reading of definition of 'Registration' and sub-rule 3 of Rule 17 makes it clear that this course is indeed permissible. Moreso, when earlier documentation done by the candidate is held to be 'null and void' as per notice dated 14.3.2022 (Annexure P/8). Thus, the argument that the rule prohibits the petitioner from fresh Registration is devoid of substance. The another argument that executive instructions issued by Central Government cannot prevail over the rules, cannot cut any ice in view of statutory recognition given to those administrative orders in sub-rule 3 of Rule 17.

21. So far argument of Mrs. Pandit, Deputy Advocate General about undeserving benefit to petitioner at the cost of merit of other candidates is concerned, suffice it to say that the petitioner pursuant to fresh registration as NRI-UR candidate will compete with the candidates of that category only. Such competition will be on merits i.e. based on the mark secured.

This, by no stretch of imagination will result into depriving or defeating a more meritorious candidate. Thus, there is no rationality in the action of respondents in not permitting the petitioner to convert her nationality from Indian to NRI.

22. In this view of the matter, the orders passed by Indore Bench in **Aarushi Mahant and Purva Balke (supra)** cannot be pressed into service. In the said cases, there was no such event of lowering down of percentage of any category and consequential decision of the Government to permit the eligible candidates for fresh registration pursuant to such lowering down of the percentage. This is trite that a different singular fact of subsequent case can change the precedential value of a previous judgment. [See:- **Bhavnagar University Vs. Palitana Sugar Mills (P)Ltd. and others 2003 (2) SCC 111**]

23. In view of foregoing analysis, we are unable to persuade ourselves with the line of argument advanced by the respondents. The petitioner, in our considered opinion, is entitled to get herself registered afresh under UR-NRI quota as per the decision of the Central Government. Since pursuant to the interim order passed by this court on 22.03.2022, the petitioner has already been provisionally permitted to register herself as

UR-NRI quota, the said registration shall now be treated as final and the respondents shall proceed from that stage in accordance with law.

24. Petition is **allowed**. No cost.

(SUJOY PAUL)
JUDGE

(DWARKA DHISH BANSAL)
JUDGE

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