

ITEM NO.16

COURT NO.4

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.290/2022

KUNAL & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

Date : 29-04-2022 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE HIMA KOHLI

For Petitioner(s) Mr. P.S. Patwalia, Sr. Adv.
Mr. Krishna Dev Jagarlamudi, AOR
Mr. Manav Vohra, Adv.
Ms. Saba Iqbal Siddiqui, Adv.
Mr. N. Sai Kaushal, Adv.
Ms. Inderdeep Kaur, Adv.
Mr. Koshy John, Adv.
Ms. Harshika Verma, Adv.

For Respondent(s) Ms. Aishwarya Bhati, ASG
Ms. Ruchi Kohli, Adv.
Mr. G.S. Makker, Adv.

UPON hearing the counsel the Court made the following
O R D E R

- 1 The petitioners are aspiring dentists who appeared in NEET (UG) 2021 for admission to BDS courses. The entrance test was held on 12 September

2021. Based on the eligibility criteria, the petitioners did not qualify with minimum marks and did not secure admission.

- 2 On 1 April 2022, the Ministry of Health and Family Welfare of the Union government responded to requests received from dental colleges to reduce the qualifying criteria in view of a large number of vacant seats. It sought the opinion of the Executive Committee of the Dental Council of India (DCI) on lowering the minimum marks required to be obtained to qualify for admission to BDS courses.
- 3 On 6 April 2022, the Executive Committee of the DCI submitted the following recommendation to the Union government:

“Keeping in view of the above factual aspects, the Executive Committee of the DCI, by circulation, on 06.04.2022. in exercise of its power under proviso to regulation 6(ii) of DCI Revised BDS Course Regulation 2007 amended by its 5th Amendment on 31.05.2012, after due consideration, discussion and deliberations decided as follows:-

The Executive Committee observed that information in respect of vacant seats was received only from 04 States and total number of admissions uploaded on DCI Portal is 9228 out of 27598 seats. The Executive Committee also observed that due to COVID the session is running late and the next NEET exam is expected to take place soon and therefore there is high probability that many seats will remain vacant leading to national wastage.

The Executive Committee accordingly recommends to the Central Government to lower down the qualifying cut-off percentile for NEET (UG) - 2021 by maximum 10 percentile for each category (General, SC/ST/OBC, EWS and persons with locomotory disability of lower limbs), required for admission to BDS Course for the academic session 2021-2022.”

- 4 The jurisdiction of this Court under Article 32 of the Constitution has been invoked on the ground that the Union government has not taken any decision

on the subject in exercise of its powers under the proviso to sub-Regulation (ii) of Regulation II(v) of the Regulations framed by DCI for BDS courses.

- 5 Mr P S Patwalia, senior counsel appearing on behalf of the petitioners submits that 9,881 out of a total 27,698 seats are still vacant for BDS courses. Moreover, senior counsel relied upon the decision of this Court in ***Harshit Agarwal and Others vs Union of India***¹. By a judgment dated 8 February 2021, it was observed as follows:

“For the aforementioned reasons, we set aside the decision of the first Respondent dated 30.12.2020 to not reduce the minimum marks for admission to BDS course as it suffers from the vices of illegality and irrationality. We direct that the vacant seats in first year BDS course for the year 2020-2021 shall be filled up from the candidates who have participated in the NEET (UG) courses for the year 2020-2021 after lowering the percentile mark by percentile. The candidates belonging to the general category who have secured 40 percentile shall be eligible to be considered for admission in the first year BDS course for the year 2020-2021. Likewise, students belonging to the SC/ST/OBC categories shall be qualified if they have secured 30 percentile. In so far as General candidates with bench mark disabilities specified under the Rights of Persons with Disabilities Act, 2016, they would be eligible if they have secured 35 percentile. The admissions shall be made strictly in accordance with merit and the admission process shall be completed by 18.02.2021. Any other student who has qualified in NEET (UG) - 2020 even without lowering the minimum marks and is willing to participate in the admission process shall also be considered for admission to BDS course.”

- 6 During the course of the hearing, Ms Aishwarya Bhati, Additional Solicitor General appearing on behalf of the Union of India has submitted that a decision was taken on 8 April 2022 not to reduce the percentile fixed for eligibility.

¹ Writ Petition (Civil) No 54 of 2021

- 7 On 28 April 2022, the Ministry of Health and Family Welfare addressed a communication to DCI indicating that the last date for admission to BDS courses is extended to 15 May 2022 for academic session 2021 from the earlier cut off which was 11 April 2022.
- 8 Since the last date for admission has been extended to 15 May 2022, having regard both to (i) the extent of the vacant seats; and (ii) the decision of this Court in *Harshit Agarwal*, it would be appropriate if the issue pertaining to the re-fixation of the percentile is reconsidered by the Central Government afresh following the submission of its opinion by DCI by its letter dated 6 April 2022.
- 9 The Union Ministry of Health and Family Welfare shall take a fresh decision in terms of the proviso to Regulation II(v)(ii), preferably within a week from the date of this order.
- 10 The Petition is accordingly disposed of.
- 11 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Court Master