



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 9052/2020

Nitender Kumar Meena S/o Shri Ram Avtar Meena, Aged About  
21 Years, R/o Village Nagla Hetram, Post Bhootuli, Tehsil Weir,  
District Bharatpur (Rajasthan)

-----Petitioner

Versus

1. Rajasthan University Of Health Sciences, Through Its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Jaipur 302033
2. Comptroller Of Examinations, Rajasthan University Of Health Sciences, Sector-18 Kumbha Marg, Pratap Nagar, Jaipur-302033
3. Chairman, National Eligibility Cum Entrance Test (NEET) (UG), Medical And Dental Admission, Counseling Board - 2019 And Principal And Controller, SMS Medical College And Attached Hospitals, Jaipur-302004
4. Principal, Darshan Dental Medical College And Hospital, Ranakpur Road, Village-Loyara, Udaipur 313011
5. State Of Rajasthan, Through Secretary Medical Education Department, Government Of Rajasthan, Secretariat, Jaipur-302005
6. Central Board Of Secondary Education, Through Its Chairman, Regional Office, Ps 1-2, Patparganj, I.p. Extension, Institutional Area, New Delhi - 110092.

-----Respondents

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For Petitioner(s) : Mr.Chandrabhan Sharma  
For Respondent(s) : Dr.Vibhuti Bhushan Sharma, AAG –  
for respondent State  
Mr.Jai Raj Tantia  
Mr.MS Raghav – for respondent CBSE  
Mr.Ravi Chirania - for respondent  
University

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**HON'BLE MR. JUSTICE ASHOK KUMAR GAUR**

**Order**

**14/09/2021**

**REPORTABLE :**

The petitioner, who is a student of BDS First Year in Darshan Dental Medical College And Hospital, Udaipur, seeks a mandamus from this Court to allow him to pursue his BDS course by permitting him to have enrollment with the Rajasthan University of Health Sciences, Jaipur (for short "the University") and further to grant him permission to appear in the examination, conducted from time to time, along with the following prayer :

"i) By an appropriate writ, order or direction, the non-petitioner/respondent No.1 & 2 be directed to allow enrollment to the petitioner in Rajasthan University of Health Sciences, Jaipur, taking into consideration that petitioner studying in first year B.D.S. in Darshan Dental College & Hospital Udaipur and petitioner be allowed to continue the course and also to appear in examinations to be conducted time to time, by quashing letters dated 16.07.2020 and 25.07.2020 (Annexure-5 & 6) with all consequential benefits.

ii) That any provision which deprived the petitioner from enrollment be quashed and set aside or non-petitioners/respondents be directed to relax the same in the case of petitioner as per facts & circumstances in the interest of justice."

The facts of the case are that the petitioner after passing Senior Secondary Examination (10+2) from Central Board of Secondary Education (for short "CBSE") in the year 2017, participated in National Eligibility cum Entrance Test (for short "NEET") (UG Examination) on 5<sup>th</sup> May, 2019 and got NEET All India Rank 416816 with the category rank for ST at 13012.

The petitioner after going through the counselling process, conducted by NEET Counselling Board, was issued provisional allotment letter dated 8<sup>th</sup> July, 2019 and was allotted Darshan



Dental Medical College and Hospital – respondent No.4 (for short “the College”).

The petitioner after allotment of college, submitted all the required documents and the requisite fee of Rs.2,00,000/- was deposited by the petitioner for one year along with hostel fee of Rs.60,000/- and the petitioner started undergoing the said course in the college.

The petitioner has pleaded that first year examination of BDS was to be conducted in the month of August, 2020/September, 2020 and as such, the petitioner, during the course of study, applied for enrollment in the University and the University issued a letter dated 16<sup>th</sup> July, 2020 informing that enrollment of the petitioner cannot be allowed, as he failed in the subject of Chemistry in Senior Secondary Examination (10+2).

The petitioner has pleaded that the respondents were pursued by him as well as by his father stating that the petitioner was not at fault at any point of time and he had submitted all the required documents and after spending almost one year, the respondents were acting arbitrarily in denying enrollment to the petitioner.

The petitioner, in his writ petition, has pleaded that his mark sheet of Senior Secondary Examination (10+2), issued in the year 2017, had showed him with result as “pass” and only in the subject of Chemistry, remark “FT” i.e. “Fail in Theory” was given, whereas minimum passing marks are 33 and the petitioner obtained 10 marks in theory and 29 marks in practical, which is more than 33% marks.

The petitioner has pleaded that the respondent No.3 i.e. National Eligibility Cum Entrance Test (NEET) (UG), Medical and



Dental Admission Counseling Board (for short "the NEET Counselling Board"), which conducted examination and counselling process, had issued information booklet, in which, eligibility criteria was prescribed, wherein it was provided that a candidate must have the qualification of Senior Secondary Examination of the Indian School Certificate examination, which is equivalent to 10+2 after a period of 12 years of study and the last two years of study must be comprised of Chemistry, Physics, Biology with English as compulsory subject.

The petitioner, in his writ petition, has further pleaded that the basis of not enrolling the petitioner was only on the ground that he failed in theory subject (Chemistry) and as such, there was no requirement, as prescribed in information booklet, that the candidate shall be required to pass theory as well as practical papers in the subject and if the candidate has passed the subject and his result has been declared pass, no illegality was committed by any of the authorities while admitting the petitioner and as such, the University could not have questioned the admission granted to the petitioner.

Learned counsel for the petitioner Mr.Chandrabhan Sharma has made following submissions :-

1. The petitioner has got minimum passing marks i.e. 33% after adding the marks in theory as well as practical subject of Chemistry and he has been declared fail only in theory and as such, on the said basis, the petitioner cannot be treated ineligible to pursue BDS Course.





2. In the result of the petitioner, he has been declared "pass" and as such, since result of Senior School Certificate Examination, 2017 does not show the petitioner as a "fail" candidate or having any compartment, the Authorities could not have treated the petitioner as ineligible.

3. The eligibility conditions, which were prescribed in the information booklet, had nowhere mentioned that the candidate is required to have minimum marks in theory as well as in practical and the only requirement was to have 40% aggregate marks in all the subjects and the candidate should have passed individually in all the subjects.

4. The denial of enrollment to the petitioner, after pursuing study for more than one year, is not legally justified and sustainable, as there has been no fault on the part of the petitioner to mislead the Authorities about his eligibility.

Learned counsel for the petitioner has further referred to the stand taken by the respondents in their reply and has made following submissions in respect of reply, filed by each of the respondents :-

1. Learned counsel submitted that reply filed by the respondent Nos.1 & 2 i.e. the Rajasthan University of Health Sciences; and the Comptroller of Examinations, Rajasthan University of Health Sciences respectively has specifically mentioned that some human error was committed by the CBSE in issuing mark sheet showing the petitioner as "pass" and as such, due to issuance of wrong



mark sheet, declaring the petitioner pass, the eligibility of the petitioner has been questioned.

2. Learned counsel for the petitioner has referred to reply filed by the respondent No. 3 - National Eligibility Cum Entrance Test (NEET) (UG), Medical And Dental Admission, Counseling Board - 2019, wherein responsibility of judging the eligibility and verifying the original documents has been shifted to the college concerned and as such, the Counselling Board has not owned any responsibility to judge the eligibility of the petitioner.

3. Learned counsel for the petitioner has referred to reply, filed by the respondent No.4 - the College, whereby the College has shifted responsibility on NEET Board and the entire exercise of giving admission to check the original papers of the petitioner, has been shifted on the Board.

Learned counsel for the petitioner has also placed reliance on the judgments passed by the Apex Court as well as by the other High Courts to buttress his submissions that in case, a candidate is not at fault or he has not misled the Authorities, the admission granted to such candidate cannot be treated as illegal or irregular and as such, the student/candidate is required to continue in the course. Reliance has been placed on the following judgments :

- (i) ILR 1994 KAR 571 (Jolly Daniel Vs. Bangalore University)
- (ii) (1976) 1 SCC 311 (Shri Krishnan Vs. The Kurukshetra University, Kurukshetra)



(iii) AIR 1989 SCC 823 (Ashok Chand Singhvi Vs. University of Jodhpur & Ors.)

(iv) 1990 SCC (L&S) 423 (Sanatan Gauda Vs. Berhampur University & Ors.)

(v) AIR 1991 Madras 45 (M.Hussain and etc. Vs. Bharathiyar University, Coimbatore & Ors.)

(vi) AIR 1986 SCC 1448 (Rajendra Prasad Mathur Vs. Karnataka University & Anr.)

(vii) (2010) 10 SCC 233 (Monika Ranka & Ors. Vs. Medical Council of India & Ors.)

(viii) (2012) 3 SCC 430 (Deepa Thomas & Ors. Vs. Medical Council of India & Ors.)

(xi) WP (C) 10612/2017 (Nikhil Sharma Vs. Guru Gobind Singh Indraprastha University & Anr.)

This Court deems it proper to take into account the reply filed by the respondents and in what manner, the procedure has been adopted by different Authorities, while granting admission to the petitioner.

This Court, after going through reply filed by the respondents Nos.1 & 2 i.e. the University, finds that the petitioner is alleged to have got mark sheet showing him as "pass", however, perusal of the mark sheet shows that the petitioner was declared "fail" in theory subject, as he scored only 10 marks and against the subject of Chemistry, the petitioner was shown to be "fail in theory".

This Court finds that the University has taken a stand that the student has to clear theory as well as practical subject independently and only if, in the mark sheet, the petitioner has



been declared pass, the same will not cloth him with the eligibility to appear in the NEET examination.

The respondent University has also pleaded before this Court that eligibility of the petitioner remained unchecked at the level of the Authority of NEET Examination and during counselling also, no effort was made to verify eligibility of the petitioner.

The University has asserted that when the respondent No.4 - the College sent all the documents for the purpose of enrollment, the University Authorities found serious mistake of CBSE and NEET Counselling Board and as such enrollment of the petitioner could not be done.

The allegation of ineligibility of the petitioner has been highlighted by the University and further, only on the basis of declaration of overall result of the petitioner as "pass", the petitioner cannot be treated as eligible candidate for pursuing the course.

The respondent Nos.1 & 2 – the University has also referred to the bye-laws of CBSE, wherein under Clause 40.1 (ii), it is clearly provided that in order to be declared as having passed the examination, a candidate shall obtain a grade higher than 'E' i.e. at least 33% marks in all the five subjects of external examination in the main or at the compartmental examinations. The passing marks in each subject of external examination shall be 33% and in case, the subject involving practical work, a candidate must obtain 33% marks in theory and 33% marks in practical separately, in addition to 33% marks in aggregate, in order to qualify in that subject.





Mr. M.S. Raghav, learned counsel appearing for respondent No.6 – CBSE, has drawn attention of this Court towards reply and stand taken by the CBSE.

Learned counsel Mr.MS Raghav submitted that perusal of the mark sheet of the petitioner shows that the petitioner had appeared in six papers, as the petitioner has taken one additional subject apart from five subjects.

Learned counsel submitted that the petitioner had appeared in the subject English Core and Hindi Core both, being compulsory subject, and then the petitioner also opted for four optional subjects i.e. Physics, Physical Education, Biology and Chemistry.

Learned counsel submitted that perusal of the mark sheet shows that in the subject of Chemistry, though the petitioner has been declared 'fail in theory' but he has been given positional grade 'E'.

Learned counsel submitted that overall result of the petitioner has been declared as pass, on the basis of five subjects, which a candidate is required to pass and thus, being declared pass in the final mark sheet.

Learned counsel submitted that the petitioner had taken additional subject and if he has failed in the same, the same will not result into conferring eligibility of the petitioner in the NEET Examination.

Learned counsel has also referred to Clause 40.1(ii) of Bye-laws relating to 'Pass Criteria" for Senior School Certificate Examination.

Learned counsel submitted that in order to declare as having passed the examination, a candidate has to obtain a grade higher than 'E' i.e. at least 33% in all the five subjects of external



examination in the main or at the compartmental examinations. The pass marks in each subject of external examination shall be 33% and in case, a subject involving practical work, a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% in aggregate in order to qualify in that subject.

Learned counsel submitted that in the present facts of the case, since the petitioner had total six subjects i.e. one additional to five subjects and as such, the case of the petitioner is required to be governed by Clause 43 of the Bye-laws, which provides about passing additional subject by a candidate.

Learned counsel submitted that as per Clause 43 of the Bye-laws, a candidate, who has passed the Secondary/Senior School Certificate Examination may offer an additional subject as a private candidate provided the additional subject is provided in the Scheme of Studies and is offered within six years of passing the examination of the Board.

Learned counsel submitted that since the petitioner, in the present facts of the case, had secured 33% marks in five subjects, out of six and as such, as per the criteria provided in the Bye-laws, the petitioner was declared as pass in his overall result and specifically in the subject of Chemistry, he was shown as fail in theory, as he did not secure minimum 33% marks in the aforesaid subject.

Learned counsel submitted that in the subject of Chemistry, theory paper was of 70 marks and the petitioner got only 10 marks, which is less than 33% and only in practical, the petitioner got 29 marks out of 30 and as such, even after securing 39



marks, the petitioner still failed in theory paper and as such, he was given grade 'E' i.e. "Fail".

Learned counsel submitted that if the petitioner was to pursue medical course – BDS course, the requirement under the eligibility criteria was to have passed each subject of Physics, Biology and Chemistry and since the petitioner was shown as fail in theory in subject of Chemistry, his very participation in the process of examination was on wrong presumption/assumption of his eligibility.

Learned counsel Mr.MS Raghav, appearing for the respondent CBSE, submitted that the CBSE has not committed any error or even human error while issuing mark sheet to the petitioner, as has been alleged by other respondents i.e. the respondent Nos.1 & 2 - the University.

The respondent No.3 – the NEET Counselling Board has filed reply to the writ petition.

The respondent No.3 has pleaded in the reply that the Chairman, National Eligibility Cum Entrance Test (NEET) (UG), Medical and Dental Admission Counseling Board - 2019 conducted the allotment process in Undergraduate Medical and Dental Courses in various government/private Medical and Dental Colleges of the State of Rajasthan for NEET UG qualified candidates and in the first round of allotment process, carried out online, the NEET UG qualified candidates were allotted seat in the Medical/Dental College on Merit-cum-Choice basis and the allotment letters were generated online and the candidates were asked to complete all the formalities regarding admission with the allotted college, including deposition of fee and original documents.



The said reply further makes a very specific mention that it is the responsibility of allotted/admitting college to check the original documents and the documents pertaining to the eligibility of the candidate, inclusive of the mark sheet of 12<sup>th</sup> standard of the candidate and then report to the Counselling Board about the details of admission of the candidate via online reporting module.

The respondent No.3 has also taken a specific stand in reply that, in the present facts of the case, it was the responsibility of admitting college i.e. the respondent No.4 to check the 12<sup>th</sup> standard mark sheet of a candidate and confirm whether he passed in Chemistry, Physics, Biology and English subjects individually and had secured 40% marks, taken together in the aforesaid subjects. The onus of verifying the eligibility criteria, including 12<sup>th</sup> standard marks, was of the admitting college before finalizing admission and reporting to the counselling Board.

Learned Additional Advocate General Dr.Vibhuti Bhushan Sharma submitted before this Court that bare perusal of the information booklet (filed as Annexure – 8 to the writ petition) shows that in the eligibility criteria, it is specifically provided that a candidate must have passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually and must have obtained minimum 40% marks, taken together in Physics, Chemistry, Biology/Biotechnology, at the qualifying examination and in addition, must have obtained minimum of 50<sup>th</sup> percentile and come in the merit list, as a result of such competitive entrance examination (NEET 2019).

Learned counsel submitted that since the petitioner belongs to Scheduled Tribe category, he was required to have passed subjects of Physics, Chemistry, Biology/Biotechnology and English





individually and must have obtained minimum 40% marks taken together in Physics, Chemistry, Biology/Biotechnology at the qualifying examination and must have obtained minimum of 40<sup>th</sup> percentile and come in the merit list as a result of such competitive entrance examination (NEET 2019).

Learned counsel has further drawn attention of this Court towards the online filling application procedure, which is prescribed in the information booklet and submitted that it was specifically mentioned in the booklet that before filling the online application form, the candidates were required to read information booklet and instructions for filling online application form very carefully and if any lapse was detected in the filled-up online applications during scrutiny, candidature of the candidate was to be rejected, even if the candidate had come through the final stage of the process or at a later stage.

Learned counsel further submitted that the conditions, which applied on the application form and the documents, required at the time of joining/reporting, were also specifically mentioned.

Learned counsel submitted that the instructions with regard to reporting to the college after counselling/joining time were specifically mentioned in the booklet and it was informed to all the candidates that each candidate was to be given time, as mentioned in the allotment letter, issued online to join the allotted college and course and while reporting for admission, the selected candidates were asked, at the time of reporting to the Counselling Board in Round 1, Round 2 and Mop-up round, to carry all the requisite certificates and documents in original and to submit an undertaking that submitted documents and certificates are in original along with self-attested copies of the documents, along



with demand draft of the fees of the allotted college, failing which, admission stands cancelled.

Learned counsel submitted that the information booklet clearly provides that documents were to be kept with the institution till completion of the course.

Learned counsel further referred to the Clause contained in the booklet that the college was to be provided with the list of allotted candidates and the college was required to check the credentials of reporting candidates, as per the list and check the documents and other required certificates with originals.

Learned counsel submitted that in the present facts of the case, the petitioner was issued allotment letter, wherein he was asked to report in the private college, allotted to him and in pursuance of the allotment letter, issued on 8<sup>th</sup> July, 2019, he was asked to appear before the Board and thereafter, he was to report to the college concerned.

Learned counsel submitted that since the petitioner was lacking basic educational qualification of passing the subject of Chemistry in theory and in his mark sheet, it was specifically written that he failed in theory, the very participation of the petitioner was in order to mislead the Authorities to get the eligibility and if the petitioner has got the admission in spite of knowing the fact about his non-eligibility, no relief may be granted by this Court.

The respondent No.4 i.e. the College, which has granted admission to the petitioner after allotment, has also filed reply to the writ petition.

In the reply, it is specifically stated by the respondent – College that counselling for allotment of seat for MBBS and BDS



Course was done by the respondent No.3 – NEET Counselling Board and after considering documents of the petitioner and finding the petitioner eligible, the provisional allotment letter dated 8<sup>th</sup> July, 2019 was issued and the respondent – College was allotted to the petitioner for admission.

The respondent No.4 – the College has averred that the petitioner had produced provisional allotment letter, issued to him and on the basis of said allotment letter, the petitioner filled the admission form, wherein he had given details of his educational qualification and Senior Secondary Examination. The petitioner also mentioned that in the subject of Physics, Chemistry, Biology and English, the percentage of his marks were 60%, 39%, 51% and 61% respectively.

The respondent College has further taken a specific stand in the reply that the petitioner was allotted seat after he reported to NEET Counseling Board and deposited the original documents and Demand Draft of fee in SMS Medical College on 11<sup>th</sup> July, 2019 and the respondent College was informed by the Principal and Controller, SMS Medical College, Jaipur that the petitioner has been allotted seat in the college and he reported and deposited his original documents and Demand Draft of fee in SMS Medical College on 11<sup>th</sup> July, 2019 and as such, medical check-up of the petitioner was to be done at the college level. The E-mail received by the College on 12<sup>th</sup> July, 2019 has been placed on record as Annexure – R4/2 along with reply, filed by the respondent No.4 – the College.

The stand of the respondent – College is that the petitioner, after getting admission, started attending classes and when his papers were sent to the respondent No.1 – the University for



enrollment, the University, in turn, wrote a letter dated 16<sup>th</sup> July, 2020 and refused to enroll the petitioner, as he failed in the subject of Chemistry in 12<sup>th</sup> standard and the college, on receipt of the said letter, issued letter dated 25<sup>th</sup> July, 2020, which has already been filed by the petitioner as Annexure – 6 in the writ petition.

The respondent – College has further taken a stand that since the NEET Counselling Board had sent the petitioner after allotting college, they honoured the decision of the Board and as such, the College has not committed any illegality in granting admission to the petitioner.

Learned counsel Mr.JR Tantia, appearing for the respondent – College, has filed an additional affidavit, after receipt of reply of the respondent No.3 – NEET Counselling Board.

Learned counsel Mr.JR Tantia submitted that in the additional affidavit, the complete sequence of admission procedure undertaken by the Counselling Board, has been explained.

Learned counsel submitted that initially on 5<sup>th</sup> July, 2019, a letter was received from the respondent No.3, wherein it was informed that State NEET UG Online Counselling - 2019 was to be conducted amongst meritorious candidates and their original documents and requisite fee was to be received from 6<sup>th</sup> July, 2019 to 9<sup>th</sup> July, 2019 in New Academic Block of SMS Medical College. The said letter had asked the College to nominate a representative and maximum two employees for taking original documents of the candidates for the purpose of verification and for receipt of fee to be paid by the candidates for admission.

Learned counsel Mr. JR Tantia, appearing for the respondent College, has referred to letter dated 5<sup>th</sup> July, 2019, whereby two





persons were authorised to attend the meeting and counselling and to collect the original documents from the allotted candidates from NEET UG Medical & Dental Admission/Counselling Board-2019.

Learned counsel has referred to reporting and joining status of Round – 1, in the College, on the basis of list, provided by the Counselling Board.

Learned counsel submitted that as many as 84 candidates found their place in the said list and only 26 candidates reported for counselling with their documents and fee during process, which was conducted from 6<sup>th</sup> to 9<sup>th</sup> July, 2019.

Learned counsel submitted that name of the petitioner was at Serial No.47 in the said list and his column was left blank, as the petitioner did not appear during counselling period from 6<sup>th</sup> to 9<sup>th</sup> July, 2019.

Learned counsel for the respondent – College submitted that they were in receipt of E-mail dated 12<sup>th</sup> July, 2019, reference of which has already been made in the earlier para, whereby it was informed that the petitioner was allotted seat in their college and he reported & deposited Demand Draft of fee in SMS Medical College on 11<sup>th</sup> July, 2019 and the College was required to undertake medical check-up of the petitioner.

Learned counsel has filed the admission form, filled by the petitioner, wherein he mentioned percentage, which has already been mentioned in the earlier para of this order.

Learned counsel submitted that after granting admission to the petitioner, original documents were still lying with the NEET Counselling Board and Dental Council of India issued a Circular dated 26<sup>th</sup> August, 2019, whereby instructions were given for



uploading the details of all the students admitted in BDS Course for Academic Session 2019-20 on DCI Website.

Learned counsel submitted that in pursuance of the said letter, the meeting of State NEET UG Medical/Dental Admission and Counselling Board – 2019 was held in SMS Medical College on 28<sup>th</sup> August, 2019 and in decision No.6 of Minutes of Meeting, it was directed that as per the letter/Circular of the Medical Council of India, all the Dental Colleges were to fill details of joined candidates of their college on DCI Portal by 31<sup>st</sup> August, 2019 and in order to comply with the direction given in the Circular, original documents of the candidates, whose final status was as “reported and joined”, were to be handed over to the Dental Colleges, keeping the documents of not joined/resigned candidates with the Board.

Learned counsel submitted that after decision of NEET Counselling Board, the College received original documents of the petitioner on or around 31<sup>st</sup> August, 2019.

Learned counsel submitted that shifting of burden by the NEET Counselling Board on the College to the effect that wrong admission was given to the petitioner is not correct and it was the sole responsibility of the NEET Counselling Board to check the eligibility of the petitioner and if he did not possess the requisite educational qualification and did not pass the subject of Chemistry, the admission itself or allotment of seat in the college was not warranted by the respondent No.3 – NEET Counselling Board.

Learned counsel Mr.JR Tantia has drawn attention of this Court towards the Information Booklet, issued by the respondent No.3 and submitted that the procedure, which was provided for



granting admission, makes it very clear that the selected candidates were to carry all the requisite certificates and document, in original, and the same were to be submitted at the time of reporting to the Counselling Board along with Demand Draft of fee of the allotted college.

Learned counsel Mr.JR Tantia submitted that important dates and schedule, which were given in the Information Booklet clearly provided that reporting of the candidate was at Academic Block, SMS Medical College, Jaipur against first round of counselling for deposition of original documents, Demand Draft of the prescribed fee and two copies of application form along with all the relevant documents (self attested) and the same was to take place from 6<sup>th</sup> July, 2019 to 9<sup>th</sup> July, 2019.

Learned counsel submitted that it was specific stipulation in the important dates and schedule that on reporting by the candidate for the purpose of allotment of seat and admission, it was the Counselling Board, which was to take everything in account regarding eligibility of the candidates, including the petitioner.

Learned counsel submitted that once the Information Booklet specifically provided that document verification was to be done by the Counselling Board and the same has been done, in the present case in respect of all the other candidates, shifting of burden on the College is wrong interpretation of the instructions, which have been issued.

Learned counsel further submitted that the documents, which have been filed by the respondent College, clearly demonstrate that at no point of time, the respondent College or their representatives were associated while issuing provisional



allotment letter to the petitioner or at the time of considering his documents by the Members of the Counselling Board.

Learned counsel further submitted that non-reporting of the petitioner during relevant time of counselling i.e. 6<sup>th</sup> to 9<sup>th</sup> July, 2019, raises a serious doubt about bona fides of the petitioner to get the admission.

Learned counsel submitted that the respondent - College had no choice after receipt of allotment of the College in favour of the petitioner and letter dated 12<sup>th</sup> July, 2019 and as such, action of the College is beyond any doubt and taken in bona fide.

I have considered the submissions made by learned counsel for the parties and scanned the matter carefully.

This Court, before proceeding further in the matter, deems it appropriate to quote the relevant clauses of the Information Booklet, which were meant to be followed by all the parties and candidates, who participated in the admission process.

Relevant clauses of the Information Booklet are quoted hereunder for ready reference :

**“Important Dates/Schedule**

Reporting by candidates at <b>Academic Block, SMS Medical College, Jaipur</b> against first round of counselling for <b>deposition of original documents, Demand Draft of the prescribed fee</b> and two copies of application form alongwith all relevant documents (Self Attested)	06.07.2019 to 09.07.2019 (9:00 AM to 4:00 PM)
Joining at the allotted College and appearance before the Medical Board of the allotted College.	10.07.2019 to 12.07.2019 (9:00 AM to 4:00 PM)





## **Eligibility Criteria**

### **Educational Qualification**

No candidate shall be allowed to be admitted to the MBBS or BDS Course until he or she has passed the qualifying examination as under:

#### **BDS**

The Senior Secondary Examination or the Indian Schools Certificate Examination, which is equivalent to 10+2 after a period of 12 years of study, the last 2 years of study must comprise of Physics, Chemistry, Biology with English as compulsory subject.

In respect of candidate belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and Most Backward Classes, a candidate must have passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually and must have obtained a minimum of 40% marks taken together in Physics, Chemistry, Biology/Biotechnology at the qualifying examination and in addition must have obtained minimum of 40<sup>th</sup> percentile and come in the merit list as a result of such competitive examination (NEET 2019).

### **APPLICATION PROCEDURE**

Before filing the on-line application form, read the information booklet and instructions for filing an on-line application form etc. very carefully.

You should be very careful in filling up the on-line application form. If any lapse is detected during the scrutiny, your candidature will be rejected even if you come through the final stage of admission process or even at a later stage.

### **ALLOTMENT OF SEATS THROUGH ON-LINE ALLOTMENT PROCESS**

Allotment of seats through on-line process of all NEET qualified and registered candidates through NEET 2019 result shall be conducted for all the candidates



who appeared in NEET 2019, strictly in accordance with the merit list prepared on the basis of All India Merit in NEET 2019, the order of choices/options filled in by the candidates in the on-line application form **(Candidates are advised to fill the choices very carefully after referring the Fee displayed at the time of choice filling and also College Information Sheet of the respective college).**

**Both 1<sup>st</sup> and 2<sup>nd</sup> Round of State NEET UG (Medical/Dental) Counselling 2019 (MBBS, BDS) shall be held on-line.**

The selected candidates should bring the requisite documents in original and also submit an undertaking in Proforma-10 that the submitted documents are in original along with self-attested copies of documents, at the time of admission to the allotted college, failing which their admission stand cancelled.

### **Selection of Students**

- (i) The selection of students to a medical/dental college shall be based solely on the All India Merit of the candidate through NEET 2019.
- (ii) To be eligible for MBBS and BDS Admissions 2019, the candidate must have fulfilled the eligibility criteria as mentioned in this booklet.

### **Reporting to College after counselling/joining time**

While reporting for admission, please carry all the relevant certificates/documents in original **and also submit an undertaking that the submitted documents are in original.** These original documents may be kept with the institution till completion of the course.

The selected candidates must also carry all requisite certificates/documents in original **and also submit an undertaking that the submitted documents are in original** along with self-attested copies of the same, **at the time of reporting to Counselling Board** in Round 1, Round 2, Mop Up Round along with demand draft of the fees of the allotted college, failing which their admission shall stand cancelled. These original documents shall be kept with the institution till completion of the course.



**The colleges shall be provided the list of candidates allotted. The colleges shall verify the credentials of reporting candidates as per this list and check the documents and other required certificates with originals.”**

Relevant Clauses of Bye-laws of CBSE are also quoted hereunder for ready reference :

### **38. Grading**

(i) Assessment of theory/practical papers in external subjects shall be in numerical scores. In addition to numerical scores, the Board shall indicate grades in the marks sheets issued to the candidates in case of subjects of external examination. In case of internal assessment

subjects, only grades shall be shown.

(ii) to (iii) xx xx xx

(iv) The qualifying marks in each subject of external examination shall be 33% at Secondary/Senior School Certificate Examinations. However at Senior School Certificate Examination, in a subject involving practical work, a candidate must obtain 33% marks in the theory and 33% in the practical separately in addition to 33% marks in aggregate, in order to qualify in that subject.

(v) xx xx xx

A-1 to D-2 xx xx xx

### **E Failed candidates.**

#### **40.1 Pass Criteria (Senior School Certificate Examination)**

(i) A candidate will be eligible to get the pass certificate of the Board, if he/she gets a grade higher than E in all subjects of internal assessment unless he/she is exempted. Failing this, result of the external examination will be withheld but not for a period of more than one year.

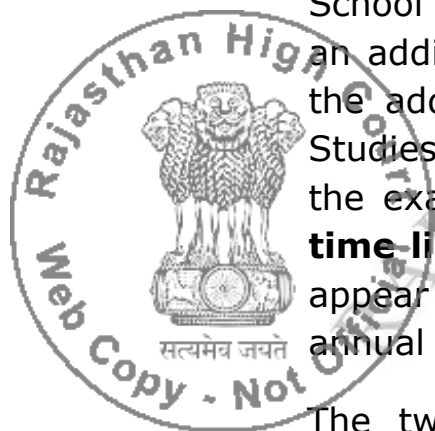
(ii) In order to be declared as having passed the examination, **a candidate shall obtain a grade higher than E (i.e. at least 33% marks) in all the five subjects of external examination in the**



**main or at the compartmental examinations. The pass marks in each subject of external examination shall be 33%. In case of a subject involving practical work a candidate must obtain 33% marks in theory and 33% marks in practical separately in addition to 33% marks in aggregate in order to qualify in that subject.**

#### **43. Additional Subject(s)**

A candidate who has passed the Secondary/Senior School Certificate Examination of the Board may offer an additional subject as a private candidate provided the additional subject is provided in the Scheme of Studies and is offered within SIX YEARS of passing the examination of the Board. **No exemption from time limit will be given after six years.** Facility to appear in additional subject will be available at the annual examination only."



The two important questions, which are required to be decided by this Court, are as under :

- (1) Whether the petitioner was eligible to appear in the examination for BDS Course and after granting admission, whether he was entitled to continue since he had undergone the course for one year?
- (2) Whether the candidate, who has been admitted in the BDS Course, due to omission and lapses without having eligibility, and his precious time is wasted by the different Authorities, then such candidate can be compensated by this Court or he can be granted admission to complete the course?

This Court finds that the Information Booklet, which was issued by the respondent No.3 – NEET Counselling Board, had clearly provided that the candidates were to read carefully the instructions before filling online application form, seat matrix, Notification and the college information regarding fee, bond,





conditions, etc. The eligibility criteria relating to educational qualification was provided and it was necessary for a candidate to know that he passed in the subjects of Physics, Chemistry, Biology/Biotechnology and English individually and obtained minimum 40% marks taken together in Physics, Chemistry and Biology/Biotechnology at the qualifying examination and he obtained minimum 40<sup>th</sup> percentile and come in merit, as a result of appearing in the competitive entrance examination NEET – 2019.

This Court finds that since the petitioner belongs to Scheduled Tribes category, he must have passed the subjects of Physics, Chemistry and Biology. The requirement of passing the subjects of Physics, Chemistry and Biology nowhere leaves any doubt that the person has to pass all these subjects.

The submission of learned counsel for the petitioner that since the mark sheet was issued showing the petitioner as “pass” in his overall result, thus making the petitioner eligible, this Court is afraid to accept the submission of learned counsel that merely by having overall result of the petitioner, declared as “pass”, he possessed the requisite educational qualification for writing and appearing in the NEET Examination.

This Court finds that a candidate, who appears in any of the examinations, has to ensure that he fulfills the minimum educational qualification and any other conditions, which are required before entering into fray for writing the examination. The specific requirement of educational qualification cannot be diluted by this Court, as the requirement of possessing and passing the subjects, is a pre-condition for making a candidate eligible.

The submission of learned counsel for the petitioner that since there was no requirement in the Booklet that the petitioner



was required to pass theory as well as practical paper and as such, the petitioner was led to believe that he possessed the requisite qualification, this Court does not find the same submission to be acceptable for the simple reason that passing of subject once is a pre-condition, and if the subject comprises of theory as well as practical, the candidate has to pass in both and the same was also reflected in the mark sheet, issued to the petitioner where he was given 'E' grade in the subject of Chemistry, which means fail and further, it was specifically mentioned against the subject of Chemistry that the petitioner failed in theory. The petitioner was well-aware that he has not passed the subject of Chemistry and even then he participated in the examination process and now claims right that the Authorities were absolutely within their domain to admit the petitioner, the same plea cannot be accepted by this Court.

The submission of learned counsel for the petitioner that the Counselling Board and the College have considered eligibility of the petitioner and they were fully aware about his eligibility and as such, once the petitioner was granted admission and further permitted to pursue his study, the University has no authority to say that the petitioner had failed in the Chemistry paper, this Court finds that minimum educational qualification was to be ensured by all the Authorities, including NEET Counselling Board as well as the College and only after verification of such fact that the petitioner possessed the requisite educational qualification, the admission process should have been undertaken by these Authorities.

The submission of learned counsel for the petitioner that the petitioner, at any point of time, had not misled the Authorities or



he was not at fault to get the admission and as such, he should not be made to suffer, this Court finds that if minimum educational qualification is not possessed by a candidate, then it cannot be allowed to be said that the candidate even after lacking the educational qualification, should be permitted to pursue the course.

This Court finds that the admissions, granted in medical or dental courses, require the candidates to possess minimum educational qualification and after acquiring the qualification itself, the candidates/Doctors deal with the human lives, which are of immense importance. This Court cannot put a seal of approval on the admissions, which are granted to the candidates, who do not possess the basic educational qualification. The question No.1 is answered by this Court by holding the petitioner to be ineligible to appear in NEET (UG) as he lacked minimum requisite educational qualification.

This Court will now deal with the role of each of the Authorities in subsequent paras as how they have committed fault and lapses in giving admission to the petitioner.

The submission of learned counsel for the petitioner that the Apex Court as well as different High Courts have taken a view that if a candidate has been granted admission and he/she does not misrepresent and no fault is committed by such candidate, then the Authority should not deny admission to such candidate and he/she should be allowed to complete the course, suffice it to say by this Court that if basic educational qualification is not fulfilled by any candidate, the same cannot result into granting any relief, as the matter pertains to conferring medical qualification on a candidate.



The first judgment, on which, reliance has been placed by learned counsel for the petitioner is the judgment rendered by Karnataka High Court in the case of **Jolly Daniel (supra)**. On the strength of said judgment, learned counsel submitted that the Karnataka High Court, while considering eligibility of a candidate with regard to securing 50% marks in first year of MBBS course, came to the conclusion that minimum marks, separately in theory and practical subject, were not required.

This Court finds that in the present facts of the case, there is a specific Bye-law, which has been framed by the CBSE, wherein it has been provided that a candidate, if has to appear in a subject, which comprises of theory as well as practical, he/she is required to secure minimum 33% marks individually in each component i.e. theory and practical and if a candidate does not acquire 33% marks in both components, he/she is declared fail.

Learned counsel for the petitioner has placed reliance on the judgment in the case of **Ashok Chand Singhvi (supra)** and submitted that since the petitioner was not at fault, as such, his admission cannot be treated as irregular or illegal and the Apex Court has permitted such student to continue with the course. This Court, after going through the said judgment, finds that the issue with regard to possessing minimum eligibility was not adjudicated by the Apex Court and in the present facts of the case, there is a requirement that a candidate must have passed all the subjects and since the petitioner does not have minimum educational qualification, as such, it cannot be said that the petitioner can be granted any relief on the strength of the said judgment.

This Court finds that the admission process, which was undertaken by the respondents, has permitted the petitioner to





undergo the course for one year and as such, at the time of enrollment, the petitioner has been informed that he cannot be continued in the course.

This Court, while considering eligibility of the petitioner, finds that the petitioner cannot be granted relief to continue with the course and as such, his prayer to that extent is rejected.

The next question is with regard to lapses, which have been committed by the respondents in granting admission to the petitioner.

This Court finds that the Information Booklet, which was issued had specifically provided that the candidate, who was to appear for allotment of seat in the counselling process, was required to appear before the NEET Counselling Board and also to carry original documents with him/her at the time of appearing before the NEET Counselling Board and then same were to be submitted by the candidates at the time of reporting to NEET Counselling Board either in Round - 1, Round - 2 or Mop-up Round along with Demand Draft of fee of the allotted college.

This Court finds that responsibility of NEET Counselling Board was clearly provided in the Information Booklet, as the candidate was to first report to the Board. This fact of reporting before NEET Counselling Board is also proved from the letter, which was written by NEET Counselling Board to the different private colleges, including the respondent No.4.

This Court finds that the letter, issued by the respondent No.3 - NEET Counselling Board, clearly mentions that eligibility of the candidates, after considering their original documents relating to their eligibility, was to be adjudged in the presence of the Members of the Board and College and as such, two



representatives/employees were called by NEET Counselling Board from different private colleges, including the respondent No.4.

This Court finds that the counselling process was undertaken in this case from 6<sup>th</sup> to 9<sup>th</sup> July, 2019 and during this period, the candidates, who were allotted different medical colleges/dental colleges, were to appear before NEET Counselling Board and were required to show their original documents.

This Court further finds that the information with regard to bringing original documents was also communicated to the candidates, as is evident from perusal of Annexure - 4 i.e. provisional allotment letter, whereby the petitioner was asked to report at Academic Block, SMS Medical College from 6<sup>th</sup> to 9<sup>th</sup> July, 2019 (9.00 AM to 4.00 PM) along with print copy of the application form (duly completed), fees, token amount and all the relevant original documents listed along with provisional allotment letter.

The bare perusal of the list of documents, to be deposited at the time of reporting, shows that as many as 21 documents were required, including mark sheet of 10+2 (senior school certificate examination) or its equivalent. The provisional allotment letter, issued to the petitioner on 5<sup>th</sup> July, 2019, leaves no room for doubt that the petitioner was to report and to appear before NEET Counselling Board and he was to show all the original documents.

This Court further finds that an E-mail has been sent to the respondent College on 12<sup>th</sup> July, 2019, wherein it was specifically mentioned that the petitioner had reported for allotment of seat and deposited all his documents and Demand Draft of fee in SMS Medical College on 11<sup>th</sup> July, 2019 and as such, only his medical check up was to be done by the college. The said E-mail also



makes it clear that verification of original documents was to be done by the Authorities of SMS Medical College.

This Court is not in a position to comment much upon the time and reporting of the petitioner on 11<sup>th</sup> July, 2019, as the date which has come on record for counselling of Round – 1 was from 6<sup>th</sup> to 9<sup>th</sup> July, 2019.

This Court finds that if NEET Counselling Board was entrusted with the job of adjudging the educational qualification of the candidates, after considering their original documents, it has failed to discharge its obligation in a proper manner.

This Court finds that callous approach of the respondent No.3 NEET Counselling Board to adjudge the eligibility of candidates has resulted into such a situation, where the petitioner was admitted in a course for one year and later on, he has been told that he was not eligible. The Authorities ought to have been vigilant at the first instance to check the eligibility of all the candidates, including the petitioner and it is the duty of NEET Counselling Board to see that candidates, who appeared before them, must possess the requisite eligibility and their original documents are also checked with due diligence & attention, so as to adjudge the eligibility of the candidates in a proper manner, as per the requirement, which is given in the Information Booklet or Notification, issued to the candidates.

This Court finds that in the present facts of the case, the shifting of burden by respondent No.3 to respondent No.4 is absolutely an afterthought and the same cannot be accepted by this Court.

This Court finds that the respondent – College has admitted the petitioner after receiving letter from the respondent No.3 –



NEET Counselling Board stating that the petitioner has been allotted their college and he has to be granted admission only after medical check-up. It was also a duty of the respondent - College to check original documents of the petitioner at the first instance relating to educational qualification.

This Court finds that as per decision of NEET Counselling Board, if all the papers were transferred to the respondent - College on or around 31<sup>st</sup> August, 2019, the respondent - College ought to have immediately checked the eligibility and if the petitioner did not have eligibility, the same should have been reported to the NEET Counselling Board or to Dental Council of India for taking appropriate action.

This Court finds that the respondent - College has also committed illegality in permitting the petitioner to undergo the course.

This Court finds that the respondent - College cannot absolve itself from the liability by simply saying that student was issued provisional allotment letter and was directed to be given admission and as such, the College has no option but to admit such student for pursuing the course. The College Authorities also owe their responsibility qua the students and admission regulating bodies.

This Court finds that in the present case, it is only when examination forms were to be filled and enrollment was to be done by the University, the College had sent original documents to the University and thereafter, the University came to know that the petitioner did not have minimum eligibility to pursue the course. The respondent - College has also committed lapses and the same cannot be condoned by this Court.





This Court finds that in the present case, the petitioner was admitted in the course in July/August, 2019 and it is after passing of one year that the petitioner was shown the door and told that he is not eligible and therefore, he should leave the course.

This Court finds that the candidates, who appear in Pre-medical Qualifying Test, are of young age and do not have full maturity or understanding. These students are misled by the Authorities, including statutory Authorities. The loss of one year for a student is a great loss for his/her entire career. The aspiring students in medical course prepare for these qualifying examinations after devoting their entire time for a considerable period. The selection itself is a herculean task after facing very tough competition.

This Court finds that the students, who are undergoing studies and preparing for the competitive examination, are further permitted by the Authorities (Pvt. Colleges etc.) to believe that they have become eligible, having requisite qualification and also tend to believe that requisite qualification has been acquired by them.

This Court finds that the Authorities, who issues these instructions, are required to be very specific about details, which the candidates are required to follow while undergoing the entire process of examination and undertake the process of admissions later on.

This Court finds that the Information Booklet, which has been issued, has overlapping provisions at some places and with certain requirements, which are there to be fulfilled by the candidates. The Authorities, who issued such instructions, have to



keep in mind that guidelines/instructions, which are required to be followed, are to be very specific and in an unambiguous language.

The perusal of Information Booklet goes to show that at some places, the candidate is required to show his/her papers before the College and at some places, he/she is asked to show his/her papers before the NEET Counselling Board. The Authorities can specifically provide that credentials/documents, relating to educational qualification and other eligibility, will be considered by the Expert Committee/NEET Counselling Board and if the same are found in order, allotment of college will be made. The Colleges, where these candidates are allotted admission, should also undertake similar exercise immediately on reporting of the students.

This Court finds that in the present facts of the case, the respondent – NEET Counselling Board as well as the respondent – College both are guilty of giving admission to the petitioner and they have wasted one precious year of the petitioner.

This Court finds that since the petitioner cannot be granted admission, at least, he is required to be compensated by both the respondents i.e. NEET Counselling Board and the College for the lapses committed by them.

This Court finds that the petitioner had undergone the BDS course for one year after paying fee to the college. The parents of the petitioner have incurred expenses and for paying fee of the petitioner, they must have mobilized their resources to ensure better future for their son.

This Court further finds that the petitioner has also devoted one year while pursuing his studies and he must have also thought of pursuing the entire course without any hindrance.



This Court finds that the respondents, by their overt act and conduct, not only benefited themselves but also caused loss of one year to the petitioner and further financial loss to the petitioner as well as to his parents.

This Court finds that the petitioner, in this case, is required to be compensated by NEET Counseling Board as well as by the College.

This Court finds that the Apex Court in the case of **Krina Ajay Shah & Ors. Vs. The Secretary, Association of Management of Unaided Private Medical & Dental Colleges & Ors. [(2016) 1 SCC 666]** has considered grant of

compensation to the candidates, if such candidates were not to be granted admission after lapse of time, the candidates were given damages under "public law damages" theory. Relevant para No.14 of the said judgment is quoted hereunder for ready reference :

"14. In the circumstances, though the relief such as the one sought by the Petitioners cannot be granted at this stage in view of the long lapse of time but we are of the opinion that the Petitioners are certainly entitled to public law damages. State of Maharashtra is directed to pay an amount of ` 20 lakhs to each one of these Petitioners towards public law damages and such payment should be made within a period of four weeks from today. We also deem it appropriate to direct the State of Maharashtra to identify the officers who are responsible for the inaction on the report of the Monitoring Committee dated 11th January, 2013 and take appropriate action against those officers including the recovery of the amount (to be paid pursuant to this order, by the State) from those officers. The special leave petitions stand disposed of accordingly."



This Court further finds that the Apex Court again in the case of **S. Nihal Ahamed Vs. The Dean, Velammal Medical College Hospital and Research Institute & Ors. [(2016) 1 SCC 662]** has granted compensation to the candidate. Relevant para No.7 of the said judgment is quoted hereunder for ready reference:

"7. Reliance was placed by the Appellants on the order of this Court dated 2.9.2014 in *Krina Ajay Shah and Ors. v. The Secretary, Association of Management of Unaided Private Medical and Dental Colleges, Maharashtra and Ors.* (SLP No. 31900 of 2013 etc). The said bunch of SLPs was filed in 2013 and the Petitioners therein were students who appeared for the entrance examination conducted by the Association of Private Medical Colleges and Dental Colleges, Maharashtra and the Petitioners were heard together and this Court held that inspite of the pendency of the SLPs for over a year, the State of Maharashtra never thought it fit to file any affidavit explaining its stand in the matter and the grievance of the Petitioners was fully justified but the Petitioners cannot be granted admission in view of the long lapse of time but they are entitled to public law damages and awarded a sum of Rs. 20 lakhs to each one of the Petitioners as public law damages. In the present case the learned Single Judge after elaborately considering the facts and circumstances held that the Appellants-writ Petitioners are entitled to a sum of Rs. 3 lakhs each as compensation payable by the Respondent-Medical College and directed to pay within a period of 8 weeks. The said direction has been erroneously reversed by the Division Bench. In our view the order of the learned Single Judge has to be restored."

This Court finds that, in the present facts of the case, for determining the proper compensation to be paid to the petitioner as damages, relevant factors would be :

- (i) loosing of one year by the petitioner in his entire career for future studies,
- (ii) payment of fees to the college by the parents,





(iii) incurring expenses by the petitioner while undergoing the said course,

(iv) blatant negligence of Authorities.

This Court, in the present facts of the case, deems it proper to issue direction to pay a compensation of Rs.10,00,000/- (Rs. Ten Lakhs only) to the petitioner by NEET Counselling Board and further the respondent - Darshan Dental Medical College And Hospital, Udaipur will also pay Rs.10,00,000/- (Rs.Ten Lakhs only) to the petitioner.

The payment of compensation to the petitioner will be made within a period of five weeks from the date of receipt of copy of this order.

With the aforesaid directions, the present writ petition stands disposed of.

**(ASHOK KUMAR GAUR),J**

Preeti Asopa/Aarzo Arora/1

