



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

S.B. Civil Writ Petition No. 5227/2020

Dr. Simple Gupta Wife Of Dr. Pradeep Kumar Goyal, Aged About 41 Years, Resident Of 23, Everest Vihar, Nirman Nagar, Kings Road, Jaipur (Rajasthan).

-----Petitioner

Versus

State Of Rajasthan, Through The Secretary, Medical Education Department, Government Of Rajasthan, Government Secretariat, Jaipur (Rajasthan).

2. NEET PG Medical And Dental Admission/Counseling Board-2020 And Principal, Government Dental College, Subhash Nagar, Behind T.B. Hospital, Jaipur (Rajasthan) Through its Chairman.

-----Respondents

For Petitioner(s) : Mr.Saransh Saini (through VC).
For Respondent(s) : Mr.Harshal Tholia on behalf of Dr.Vibhuti Bhushan Sharma, Addl.Advocate General (through VC)

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Judgment

Judgment Reserved on : 9th September, 2020

Date of Pronouncement : 10th September, 2020

By the Court:

The instant petition has been filed by the petitioner challenging the condition of eligibility of possessing Degree of MBBS from the Colleges situated in the State of Rajasthan for the purpose of admission in six month Ultrasound PG Diploma Course under the **Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994** (hereinafter referred to as '**the PCPNDT Act**') as such condition

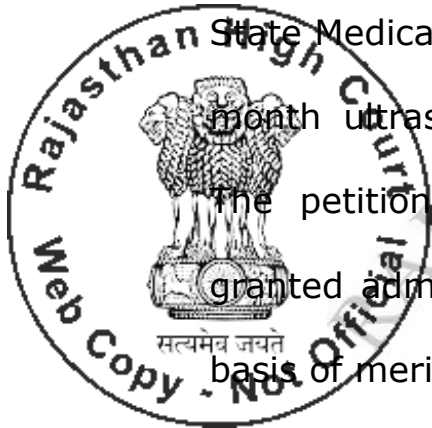


being arbitrary, unreasonable and violative of the provisions of Articles 14, 15, 16 and 21 of the Constitution of India.

2. The petitioner further challenges eligibility condition appearing in the instructions booklet issued by the office of Chairman, NEET-PG Medical and Dental Admission/Counseling Board, 2020 – Principal, Government Dental College, Jaipur for

State Medical and Dental PG Seats (MD/MS/MDS/Diploma) and six month ultrasound course under PCPNDT Act, Allotments, 2020.

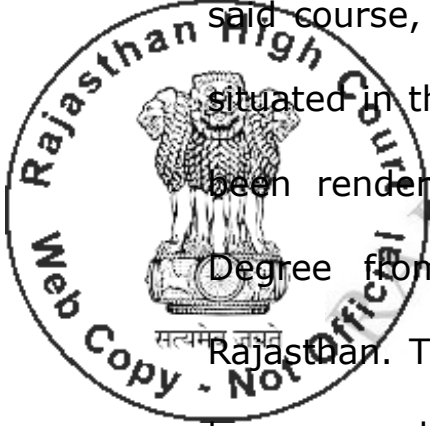
The petitioner also prays for a declaration that she may be granted admission to the said course treating her eligible on the basis of merit secured by her in NEET PG, 2020.



3. The petitioner has pleaded in her petition that she had done her schooling by passing 10th Class and 12th Class in the year 1994 and 1996 respectively from Kota. The petitioner was given admission in MBBS Course in the year 1999 under 15% central quota through All India PMT and she got admission in Madras Medical College, Chennai (Tamil Nadu). The petitioner is stated to have completed her MBBS in the year 2005 and internship in the year 2006 and she got registered with the Rajasthan Medical Council on 07.12.2007. The petitioner has further pleaded that she had appeared in the Rajasthan Pre-PG Examination, 2009 and got admission in PG Diploma in Public Health (DPH) and completed the same in the year 2011. The petitioner has pleaded that she had appeared in the NEET PG, 2020, conducted by the National Board of Examination for admission to MD/MS/PG Diploma Course including the course of six months Ultrasound PG Diploma in the PCPNDT Act. The petitioner has pleaded that the result of NEET



PG, 2020 was declared and she was having the rank at Merit No.38268 (All India Rank). The petitioner wants to get admission in six months Ultrasound PG Diploma in the PCPNDT Act which falls under the Rajasthan State Counseling Board. The petitioner has pleaded that while issuing the booklet, the respondents have provided condition that only those candidates are eligible for the said course, who possess the Degree of MBBS from the Colleges situated in the State of Rajasthan and as such, the petitioner has been rendered ineligible on account of not passing her MBBS Degree from any of the Colleges situated in the State of Rajasthan. The petitioner feeling aggrieved by the said condition, has approached this court.



4. Mr.Saransh Saini, learned counsel for the petitioner has submitted that for six months Ultrasound PG Diploma in the PCPNDT Act, reservation of 100% seat only for the candidates who possess Degree from the Colleges situated in the Rajasthan, is an arbitrary and illegal condition. Counsel submitted that by providing such eligibility, 100% reservation is made for the candidates who have passed their Degree of MBBS from the Colleges situated in the State of Rajasthan and as such, 100% institution-wise reservation is unsustainable in the eye of law.

5. Learned Counsel further submitted that the respondents while issuing the booklet relating to the eligibility conditions for admission in different courses, could not have reserved all the seats for the candidates passing their Degree of MBBS from the Colleges situated in the State of Rajasthan and the candidates like petitioner who belong to Rajasthan but have got their MBBS



Degree from outside the State of Rajasthan, have been rendered ineligible and the same is discriminatory.

6. Learned Counsel submitted that the petitioner is a resident of Rajasthan and if she has been allotted a seat/admission in MBBS Course in All India Quota and allotted a Medical College in Tamil Nadu, she cannot be deprived to undergo six months

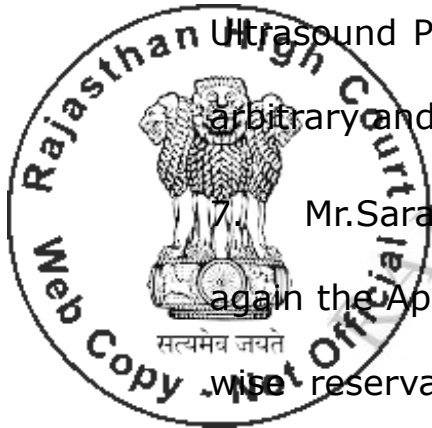
Ultrasound PG Diploma under the PCPNDT Act only on account of arbitrary and unreasonable condition, prescribed in the booklet.

7. Mr. Saransh Saini, learned Counsel submitted that time and again the Apex Court has laid down the law that 100% institution-

wise reservation is not permissible and the same amounts to violation of Article 14 of a person. Learned Counsel further submitted that the Apex Court has time and again laid down that the authorities should not provide more than 50% institution-wise reservation and exceeding the said limit will violate the rights of the candidates, who want to participate and get admission in the Medical Courses.

8. Learned Counsel for the petitioner submitted that there is no rationale or justification for providing 100% institution-wise reservation and merit of the candidate, as per the marks secured in the NEET PG, 2020, should be the basis for getting admission in such courses.

9. Learned Counsel for the petitioner Mr. Saransh Saini has placed reliance on the judgment rendered by the Apex Court in the case of **Saurabh Chaudri & Ors. Vs. UOI & Ors.** reported in **(2003) 11 SCC 146**. Counsel on the strength of the said





judgment submitted that reservation by way of institutional preference should be confined to 50% of the seats.

10. The respondents have filed reply to the writ petition and have submitted that as per Rule 8 of the Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules, 2014 (hereinafter referred to as "the Rules of 2014"), the candidates are to be selected for six months PG Training Course, as per merit list of the State. The Rules of 2014 are enacted by the Central Government and the Central Government has itself incorporated a clause that selection of the candidates should be on the basis of merit list of the State itself.



11. The respondents have pleaded that institutional preference is given to the candidates who have done MBBS from the Colleges situated in the State of Rajasthan, as these candidates are given institutional continuity in education. The respondents have referred to Rule 8 of the Rules of 2014. The respondents in their reply further justified that the State Government, having complete prerogative to lay down the conditions of admission in PCPNDT Act, has taken a conscious decision to give admission to the students who have passed their Degree from the Colleges situated in the State of Rajasthan, as services of these candidates can be taken by the State Government after they complete their Course.

12. Mr. Harshal Tholia, Counsel appearing for the respondent-State submitted that claim of the petitioner is wholly unjustified, as the respondents are within their power to provide 100% institution-wise reservation, as per the PCPNDT Act, 1994 and the Rules of 2014.



13. Mr.Tholia further submitted that different States all over the country have issued different guidelines and no parity can be claimed by the petitioner. Counsel further submitted that the States of Tripura, West Bengal, Maharashtra & Orissa have issued educational notification/guidelines for admission to six months Ultrasound PG Diploma under the PCPNDT Act and all these States have provided that the candidate must belong to a particular State and he/she is further required to obtain MBBS Degree from any University of the Country.



14. Counsel submitted that certain States have made domicile as a condition of eligibility for admission and as such, the State of Rajasthan has made the Institution as condition of eligibility and as such, no fault can be found with such decision of the State Government.

15. Learned counsel has further submitted that the present controversy is with regard to the admissions in six months Ultrasound PG Diploma Course under the PCPNDT Act and the law laid down by the Apex Court relates to the admission in Medical Post Graduate Diploma/Degree Courses/Superspeciality Courses. Counsel submitted that the criteria and eligibility will be different for admissions in such Courses and for the purpose of admission in six months Ultrasound PG Diploma under the PCPNDT Act, the State has to follow the procedure, as per the requirement of the Rajasthan State.

16. Counsel further submitted that Article 14 of the Constitution of India is not violated in the present case, as has been alleged. The State Government has made a reasonable classification by



creating a class of the candidates who have done their MBBS from the Colleges situated in the State of Rajasthan and as such there is no hostile discrimination which can offend Article 14 of the Constitution of India.

17. I have heard learned counsel for the parties and with their assistance perused the material available on record.

18. It would be appropriate to quote the relevant clause of the booklet which has been assailed by the petitioner, in the instant case and the same reads as follows:-

"For the seat of six month ultrasound course under PCPNDT Act, the NEET qualified candidates who possess the degree of MBBS from the colleges situated in the State of Rajasthan and all medical officers/medical teachers serving under Government of Rajasthan are eligible to participate."

19. This Court finds that six months training, as per Rules of 2014, is governed by a selection process, as provided under Rule 8 of the Rules of 2014. The unamended Rule 8 of the Rules of 2014 is quoted hereunder:-

"Rule 8. Selection of students.—

(1) The selection and intake of registered medical practitioners for admission to such trainings shall be on the basis of the following criteria:

- a) Intake for admission to such trainings shall be in 1:1 student to teacher ratio and training to be incurred in the Department of Radiology.
- b) Selection shall be as per the merit list of the State Post-graduate entrance exam.
- c) 20 % reservation for *in-service* candidates."

20. The said Rule has been amended by the Central Government by a notification dt.26.06.2020 and substituted Rule 8 is quoted hereunder :-

"In Rule 8, the following words shall be substituted, namely :-



(a) Intake for admission to such trainings shall be up to 1:4 teacher to students ratio.

(b) Selection shall be as per the merit list of the State Post Graduate Entrance Exam or any other appropriate merit recognized by the Central Government/State Governments.

(c) Preference upto 50 percent of the seats shall be given to the Government in service candidates.

(d) Seats as mutually decided by the States/Union Territories be provided to the candidates from other States or Union Territories where there are no accredited institutes for imparting Six Months Training in Ultrasonography. "



21. The bare perusal of the aforesaid amended Rule would show that selection has to be made of the candidate as per merit list of the said Post Graduate Entrance Examination or any other appropriate merit recognized by the Central Government/State Government. In the present case, admittedly, the merit list of the candidates, as per their performance in NEET PG Examination, 2020 is considered by the State Government for the purpose of preparing merit list of the candidates. The amended Rule 8 further shows that preference is required to be given to 50% of the seats to the Government in-service candidate and as such, 50% of the seats are reserved for in-service candidate by virtue of sub-rule (c) of Rule 8 of the amended Rules.

22. The sub-rule (d) of Rule 8 of the amended Rules further shows that seats should be mutually decided by the States to be provided to the candidates from other States or Union Territories if there are no accredited institutes for imparting six months training in Ultrasonography.

23. It would be appropriate to quote the seat matrix of six months Ultrasound Course under PCPNDT Act, as published by the NEET Board, as under:-



"Office of the Chairman, NEET PG Medical & Dental Admission/Counselling Board-2020 and Principal, Govt. Dental College, Subhash Nagar, Behind T.B. Hospital, Jaipur.

Provisional seat matrix for 6 months Ultra-Sound course under PCPNDT Act

08.09.2020

College	No. of seats
SMS MC, Jaipur	52
SPMC, Bikaner	8
SNMC, Jodhpur	28
RNT MC, Udaipur	8
JLN MC, Ajmer	16
GMC, Kota	12
Total	124



Note: Preference upto 50% of the seats shall be given to the Govt. in-service candidates."

24. The issue before this Court is with regard to admissions of the candidates of 50% of the total seats from the General candidates/non-service candidates.

25. This Court finds that the State of Rajasthan has decided to give admission to only those candidates who have done their MBBS course from any Medical College situated in the State of Rajasthan and as such, the same amounts to institution-wise reservation in favour of such candidates. The issue of providing institution-wise reservation is no more *res-integra* in view of the judgment passed by the Apex Court in the case of Saurabh Chaudri (supra).

26. This Court finds that the institution-wise reservation is required to meet reasonable classification. The Apex Court in the case of Saurabh Chaudri (supra) as held as under:-



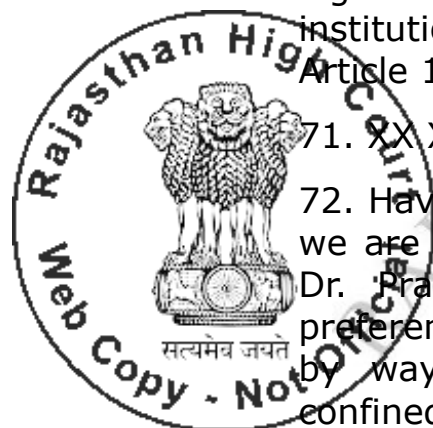
"64. The sole question, therefore, is as to whether reservation by way of institutional preference is ultra vires Article 14 of the Constitution of India. We think not. Article 14, it will bear repetition to state, forbids class legislation but does not forbid reasonable classification, which means - (1) must be based on reasonable and intelligible differentia; and (2) such differentia must be on rational basis.

65. to 69. XX XX XX XX

70. We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

71. XX XX XX XX

72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case (supra) should be reiterated in preference to Dr. Dinesh Kumar's case (supra). Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest."



27. The Apex Court in the case of **Yatinkumar Jasubhai Patel & Ors. Vs State of Gujarat & Ors.** reported in **(2019) 10 SCC 1** again considered the extent of institutional preference and extent of 50% of total number of seats has been held to be permissible. The relevant portion of the judgment is quoted hereunder :-

"9. The short question which is posed for consideration of this Court is, whether after the introduction of the NEET Scheme, still the "Institutional Preference" in the Post Graduate Medical Courses would be permissible?

9.1 At the outset, it is required to be noted that, as such, and it is not in dispute that such "Institutional Preference" in the Post Graduate Medical Courses is held to be permissible by this Court in catena of decisions, more particularly a three-Judge Bench decision of this Court in Pradeep Jain (1984) 3 SCC 654; a Constitution Bench decision of this Court in Saurabh Chaudri (2003) 11 SCC 146; and in Saurabh Dwivedi v. Union of India (2017) 7 SCC 626.

9.2 XX XX XX

9.3 Thereafter, a five-Judge Bench of this Court in the case of Saurabh Chaudri has reiterated the scheme of "Institutional Preference" as framed in Dr. Pradeep Jain



(supra) and has approved the "Institutional Preference" confined to 50% of the total number of open seats. In that decision, this Court also took note of the subsequent decision in the case of Dinesh Kumar (2) v. Motilal Nehru Medical College fixing the "Institutional Preference" to the extent of 25%. However, after taking note of the said decision, this Court has reiterated the scheme framed in Pradeep Jain providing "Institutional Preference" confined to 50% of the total number of open seats. In Saurabh Chaudhri, this Court has again approved the "Institutional Preference". Thus, right from 1971 onwards till 2017, consistently this Court has approved and/or permitted the "Institutional Preference" in the postgraduate medical courses.

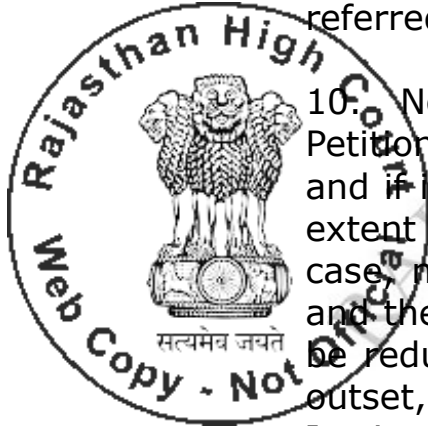


9.4 However, it is the case on behalf of the Petitioners that in view of the introduction of the NEET Scheme and in view of Section 10-D of the MCI Act, by which admissions are to be given on the basis of the merit in the NEET, such an "Institutional Preference" would not be permissible. It is required to be noted that introduction of the NEET has, as such, nothing to do with any preference/Institutional Preference, more particularly the "Institutional Preference" as approved by this Court time and again. The purpose and object of the introduction of the NEET was to conduct a uniform entrance examination for all medical educational institutions at the under-graduate level or postgraduate level and admissions at the under-graduate level and post-graduate level are to be given solely on the basis of the merits and/or marks obtained in the NEET examination only. It is required to be noted that earlier the respective universities including the Gujarat University used to hold examination for post-graduate admission to medical courses and now instead of such tests by the Gujarat University/concerned universities, merit is to be determined on the basis of the NEET examination results only and admissions are required to be given on the basis of such merits or marks obtained in NEET. The only obligation by virtue of introduction of NEET is that, once centralized admission test is conducted, the State, its agencies, universities and institutions cannot hold any separate test for the purpose of admission to Post-Graduate and PG and Diploma Courses and such seats are to be filled up by the State agencies, universities/institutions for preparing merit list as per the score obtained by the applicants in NEET examination and therefore by introduction of the NEET, Section 10-D of the MCI, Act has been amended, consequently amendment to the Post-Graduate Education Regulations, 2000, admission to Post Graduate Courses are made providing for solely on the basis of the score secured by the candidates seeking admission based on centralized examination, i.e., NEET.

9.5 Even while giving admissions in the State quota/institutional reservation quota, still the admissions are required to be given on the basis of the merits determined



on the basis of the NEET examination results. Under the circumstances, introduction of the NEET Scheme, as such, has nothing to do with the "Institutional Preference". Therefore, the change by introduction of the NEET Scheme shall not affect the Institutional Preference/Reservation as approved by this Court from time to time in catena of decisions, more particularly the decisions referred to hereinabove. Under the guise of introduction of the NEET Scheme, the Petitioners cannot be permitted to re-agitate and/or re-open the issue with respect to Institutional Preference which has been approved and settled by this Court in catena of decisions, more particularly the decisions referred to hereinabove.



10. Now so far as the submission on behalf of the Petitioners that if the 50% seats are reserved for State quota and if institutional preference/reservation is permitted to the extent of 50% of the total number of open seats, in that case, not a single seat in the State quota shall be available and therefore the percentage of Institutional Preference may be reduced to the extent of 25% or so is concerned, at the outset, it is required to be noted that as such the Institutional Preference to the extent of 50% of the total number of open seats has been approved by this Court in catena of decisions, more particularly the decisions referred to hereinabove. The decision of this Court in the case of Dinesh Kumar (2) permitting 25% Institutional Preference has been distinguished by a Constitution Bench of this Court in the case of Saurabh Chaudri. Therefore, once the Institutional Preference to the extent of 50% of the total number of open seats has held to be permissible, in that case, thereafter it will be for the appropriate authority/State to consider how much percentage seats are to be reserved for Institutional Preference/Reservation. It will be in the realm of a policy decision and this Court cannot substitute the same, unless it is held to be arbitrary and/or mala fide and/or not permissible. As observed hereinabove, a five Judge Bench of this Court in the case of Saurabh Chaudri has categorically allowed/permitted/approved the Institutional Preference/Reservation in the post graduate medical courses to the extent of 50% of the total number of open seats.

11. Therefore, for the reasons stated above and considering the decisions of this Court in the cases of Dr. Pradeep Jain; a Constitution Bench decision of this Court in the case of Saurabh Chaudri; and Saurabh Dwivedi, Institutional Preference to the extent of 50% is approved and it is observed and held that introduction of the NEET Scheme shall not affect such Institutional Preference/Reservation. Such a Regulation providing 50% Institutional Preference/Reservation shall not be in any way ultra vires to Section 10-D of the MCI Act. Even otherwise, as observed hereinabove, even in the case of Institutional Preference/Reservation, the admissions in the post graduate courses are



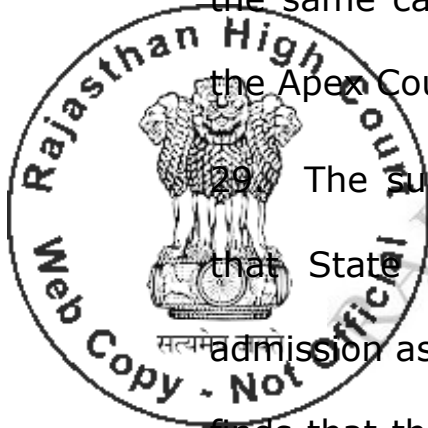
to be given on the basis of the merits and marks obtained in the NEET examination result only.”

28. This Court finds substance in the submission of learned counsel for the petitioner that by prescribing condition of passing MBBS Degree from the Colleges situated in State of Rajasthan, the respondents have provided 100% institution-wise reservation and the same cannot be termed as valid, as per the law declared by the Apex Court.

29. The submission of the learned counsel for the respondents that State has been given liberty to provide the source of admission as per the Act of 1994 and the Rules of 2014, this Court finds that the criteria which the State must follow, should confirm to reasonableness. The candidates belonging to Rajasthan but passing their MBBS Degree from the Colleges situated in other States and in particular granted admission in All India quota, cannot be rendered ineligible and deprived from undergoing the said course.

30. This Court further finds that the merit of the candidate is to be judged on the basis of marks secured in NEET Examination and if candidate has secured merit, the Authorities should take into account the overall merit of the candidate and accordingly, the admission should be made.

31. The submission of learned counsel for the respondents that the State has made a valid classification on the basis of MBBS Degree obtained from the Colleges situated in the State of Rajasthan, this Court finds that the Rules provide for 50% reservation for in-service candidates and if any Medical Officer





who has been serving in the State of Rajasthan and has passed his MBBS Degree from any other place outside the State of Rajasthan, can still be eligible to get admission as in-service candidate, it is not understandable as how on the same analogy an open market candidate can be deprived from admission to undergo the course.



32. The submission of the learned counsel for the respondents that the State of Rajasthan wants to give continuity of education to the students who have passed out MBBS Degree from the Colleges situated in the State of Rajasthan, this Court finds that six months course in Ultrasound makes the person eligible to perform certain procedures under the PCPNDT Act and if such course is completed by any candidate, same may be helpful to pursue the career either in Government service or in private sector. The acquisition of such training while undergoing the course enables a candidate to conform to the requirement of the PCPNDT Act and as such, the meritorious candidate who wants to pursue said course from the State of Rajasthan, should not be deprived only on account of not passing the MBBS Degree from the college situated in the State of Rajasthan.

33. This Court finds that the eligibility condition prescribed by the respondents runs contrary to law declared by the Apex Court and as such, such condition is declared ultra vires and violative of Article 14 of the Constitution of India.

34. This Court further holds that 50% of seats which are meant to be filled from non-service candidates cannot be filled on the basis of qualification acquired by the candidates only from the



State of Rajasthan and the respondent-State is required to consider the merit of such candidates who want to apply for the said course.

35. This Court further holds that the State is always free to prescribe any other reasonable condition like other States have prescribed condition of domicile/resident of a particular State,

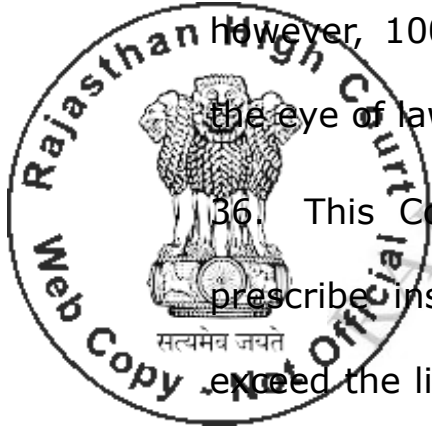
however, 100% institution-wise reservation is not permissible in the eye of law.

36. This Court further finds that the State is always free to prescribe institution-wise reservation but the same should not exceed the limit of 50% as has been approved by the Apex Court in the case of Saurabh Chaudri (supra).

37. Accordingly, the present writ petition filed by the petitioner is allowed. The eligibility condition of having passed MBBS Degree from the College situated in the State of Rajasthan is declared illegal and the same is set aside. The respondents are further permitted to make appropriate provision of providing institution-wise reservation to the extent of 50% and the remaining 50% seats, from the non-service category candidate, should be filled from the candidates who have applied for the same and who stand higher in merit, as per the criteria evolved by the State by taking into account the marks secured in NEET PG Examination, 2020.

38. This Court further holds that if the petitioner finds place in the order of merit, prepared by the respondents, the necessary orders may be passed to the same effect.

39. It has been informed to this Court that counseling for the purpose of granting admission in six months Ultrasound PG





Diploma course under PCPNDT Act is scheduled on 11.09.2020. It is directed that the same requires to be deferred by the respondents and necessary exercise, as per the directions of this Court, should be carried out within a period of fifteen days and counselling process should accordingly be conducted.

(ASHOK KUMAR GAUR),J



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