



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

(1) S.B. Civil Writ Petition No. 5468/2020

1. Karmendra Singh Kushwaha S/o Shri Subhash Rajpoot, Aged About 33 Years, R/o E-50, Ram Nagar Extension, Sodala, Jaipur.
2. Dipendra Singh Rathore S/o Shri Madho Singh Rathore, Aged About 33 Years, R/o 32, Bhomiya Nagar, Kalwar Road Jhotwara, Jaipur.
3. Himani Kaushik D/o Shri Pradeep Kaushik, Aged About 29 Years, R/o A-55 Vidhyut Nagar, Jaipur.
4. Atisha Lila D/o Shri Mahender Lila, Aged About 28 Years, R/o H.no. 757, Ward No. 14, Purani Abadi, Srigangangar.
5. Vikas Bhardwaj S/o Shri Satya Narayan Sharma, Aged About 35 Years, R/o Room No. 306 Pg Family Girls Hostel, Gangwal Park, Jaipur.
6. Kshamender Sharma S/o Shri Rajiv Kaushik, Aged About 31 Years, R/o 255, Devi Nagar Near Sanjeevani Hospital, Sodala, Jaipur.
7. Mo. Faisal S/o Mo. Israil, Aged About 24 Years, R/o Post Office Ramsar, Tehsil Naseerabad, District Ajmer.

----Petitioners

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Social Justice And Empowerment, Ambedkar Bhawan, G-3/1 Rajmahal, Residency Area, Jaipur, Rajasthan 302005.
2. Medical Council Of India, Through Its Secretary, Pocket-14, Sector-8, Dwarka Phase-I, New Delhi-110007.
3. Neet- Pg Medical And Dental Admission / Counseling Board, 2020, Through Is Chairman And Principal, Government Dental College, Jaipur.
4. Principal Secretary, Department Of Medical Education, Government Of Rajasthan, Secretariat, Jaipur.

----Respondents

Connected With

(2) S.B. Civil Writ Petition No. 5482/2020

1. Dr. Vishal Mittal S/o Shri Hariom Mittal, Aged About 23





Years, Resident Of C-78, Jawahar Nagar, Bharatpur-321001 (Rajasthan)

2. Dr. Anirudh Mishra S/o Shri Manoj Mishra, Aged About 23 Years, Resident Of Mishron Ka Mohalla, Ward No. 11, Nawacity, Nagaur-341509 (Rajasthan)
3. Dr. Prachi Mittal D/o Shri Hariom Mittal, Aged About 25 Years, Resident Of C-78, Jawahar Nagar, Bharatpur-321001 (Rajasthan)
4. Dr. Kritika Khanna D/o Dr. Sanjay Khanna, Aged About 23 Years, Resident Of 28, Fatehpur Road, Rbm Hospital, Sikar-3323001 (Rajasthan)
5. Dr. Supriya D/o Shri Narain Ram, Aged About 25 Years, Resident Of Plot No. 80, Karan Vihar, Pooniya Colony, Churu-331001(Rajasthan)



-----Petitioners

Versus

1. The State Of Rajasthan, Represented Through Principal Secretary, Medical Education Department, Government Of Rajasthan, Government Secretariat, Jaipur (Rajasthan)
2. Medical Council Of India, Represented Through Its Secretary, Pocket 14, Sector-8, New Delhi-110077.
3. The Chairman, Neet, Pg Medical And Dental Admission And Counselling Board-2020 And Principal, Government Dental College, Subhash Nagar, Behind Tb Hospital, Jaipur.

-----Respondents

(3) S.B. Civil Writ Petition No. 5495/2020

Dr. Yogesh Kumar Saini S/o Nanag Ram Saini, Aged About 31 Years, R/o 458, Amaraka Ki Dhani, Jaisinghpura Khor, Jaipur Rajasthan Presently Postedat Public Healthcare Center Hanutpura,block Shajhpura,jaipur First,rajasthan

-----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Medical Education Department, Government Of Rajasthan, Secretariat, Jaipur Rajasthan
2. The Director, Medical Education Department, Directorate Of Medical Education, Chikitsa Shiksha Bhawan, Govind Marg, Jaipur Rajasthan



3. The Chairman, Neet Pg Medical And Dental Admission/counseling Board 2020, and Principal Government Dental College, Subhash Nagar, Behind T.b. Hospital, Jaipur Rajasthan
4. Rajat Kumar S/o Hansraj Goyal, Stood At Serial No. 273 In Allotment List Dt. 26.04.2020 And Having A Combined Merit No. 497 In Neet Pg Counseling-2020

----Respondents



For Petitioner(s) : Mr. RN Mathur, Senior Advocate with
Mr. Prateek Mathur, Adv.
Mr. Shobhit Tiwari, Adv.
Mrs. Nupur Bhati, Adv.

For Respondent(s) : Mr. MS Singhvi, Advocate General
with Mr. Darsh Pareek, Adv.
Mr. Angad Mirdha, Adv.
Mr. RB Mathur, Adv.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment / Order

Reserved on 04/06/2020

Pronounced on 15/06/2020

REPORTABLE

1. Since common question of law has been raised in all these three writ petitions, the same therefore have been heard jointly.
2. In SB Civil Writ Petition No.5468/2020 filed on 24/04/2020, the petitioners have made following prayers:-

" (i) To pass any writ order or direction whereby in National Eligibility cum Entrance Test (PG) 2020, for admissions into MD/Ms and Post Graduate Diploma Courses, 2020, respondents be directed to provide 10% EWS reservation on increased seats only, with all consequential benefits in favour of Petitioners.

(ii) To pass any writ order or direction whereby in National Eligibility cum Entrance Test (PG) 2020, for admissions into MD/MS and Post Graduate Diploma Courses, 2020, respondents be directed to provide additional 92 seats, as reflected in MCI letter dated



27.2.2020, with all consequential benefits in favour of Petitioners.

(iii) To pass any writ order or direction, whereby the Seat Matrix dated 18.4.2020 be quashed and set aside and Respondents be directed to provide additional 92 seats and consequent thereto afresh counseling be undertaken, along with all consequences.

(iv) To pass any writ order or Direction, whereby respondents be directed to conduct/re-conduct their respective counseling for admission into MD/MS and Post Graduate Diploma Courses, 2020, in terms of other prayers, with all consequences.

(v) To pass any writ, order or Direction, whereby Petitioners be provided opportunity of counseling on increased seats, correspondingly generated for non-EWS members, due to additional seats being reserved for 10% EWS seats, after publication of revised cut-offs and with all consequential benefits.

(vi) To pass any writ order or direction, whereby if during pendency of the Writ Petition the respondents proceeds with the counseling and declaration of its result, than same be taken on record and accordingly be quashed and set aside.

(vii) Any other appropriate writ, order or direction which the Hon'ble High Court may consider just and proper in the facts and circumstances of the case, may also kindly be passed.

(viii) Cost of the writ petition may kindly be awarded to the petitioner."

3. In SB Civil Writ Petition No.5482/2020 filed on 02/05/2020, the petitioners have prayed following prayers:-

"i. The Respondents may be directed to produce entire record regarding seats or PG Medical Admission 2020-2021 in the state of Rajasthan against state quota.

ii. The Respondents may be directed to give admission in PG Medical Course 2020-2021 in the state of Rajasthan on the basis of increase seats permitted and found feasible by MCI.



iii. The Respondents may be directed to confine admission to 50% against reserved seats.

iv. The Respondents may be directed to immediately increase seats for admission in P.G. medical courses in the state of Rajasthan.

v. Any other appropriate writ, order or direction which this Hon'ble Court deems proper in the facts and circumstances and in the interest of justice of the case may kindly be granted."

4. In SB Civil Writ Petition No.5495/2020 filed on 04/05/2020,

following prayers have been made by the petitioners:-

"A. By an appropriate writ order or direction, the impugned Provisional Allotment List dated 26.4.2020 may kindly be quashed and set aside qua the private respondent.

B. By an appropriate writ, order or direction, the respondents may kindly be restrained from including the candidates belonging to EWS category in the subsequent counseling of the NEET PG 2020.

C. By an appropriate writ, order or direction, the respondents may kindly be restrained from giving admission to the candidates belonging to EWS category in pursuance to the Provisional Allotment List dated 26.04.2020.

D. By an appropriate writ, order or direction, the respondents may kindly be directed to make an increase in the NEET PG degree seats by 145 while, complying with the letter Dt. 13.03.2020 before conducting the second counseling and subsequent counseling if required for NEET PG 2020.

E. By an appropriate writ, order or direction, the respondents may kindly be directed to display the correct seat matrix before proceeding for second counseling and subsequent counseling if required for NEET PG 2020.

F. By an appropriate writ, order or direction, the respondents may kindly be directed to include 107 duly approved PG degree seats in the seat matrix before proceeding for second counseling and subsequent counseling if required for NET PG 2020.





G. By an appropriate writ, order or direction, the respondents may kindly be directed to revise the Provisional Allotment list dated 26.04.2020 after excluding all the lesser meritorious candidates than the petitioner belonging to EWS category.

H. By an appropriate writ, order or direction, the respondents may kindly be directed to conduct afresh the counseling while including the seats of PG Medical degree courses in government colleges, approved and increased vide letter dated 13.03.2020 & 18.03.2020 (**Annexure 6 & 7**) further, the respondents may kindly be directed to show these seats, "as available" for Choice filling in seats matrix for NEET PG counseling held for Academic Year 2020-21.

I. By an appropriate writ, order or direction, the respondents may kindly be directed to include the petitioner in revised Provisional Allotment list in accordance to his merit, and accordingly while taking into consideration the preference of Government Medical College made by the petitioner, allot and give admission to the petitioner in the PG medical government college in accordance with his merit and preference.

J. By an appropriate writ, order or direction, the respondent may kindly be directed to complete the counseling process strictly in accordance of the instructions and directions sent in MoHFW letter dated 13.03.2020 [**Annexure-6**]

K. By an appropriate writ, order or direction, the respondents may kindly be directed to include the petitioner in revised provisional allotment list in accordance to his merit, and preference he made, allot him the desired PG Medical course in government PG medical colleges of the Rajasthan.

L. Any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the facts and circumstances of the case may kindly be passed in favor of the petitioner.

M. Writ petition filed by the petitioner may kindly be allowed with costs.

5. In SB Civil Writ Petition No.5468/2020, while issuing notices and directing to serve copy on the counsels appearing for the





respective parties, this Court vide order dated 01/05/2020 held that the counselling conducting with regard to the EWS seats shall be subject to decision of this case, in other two writ petitions, counsels for the respondents were also asked to seek instructions with regard to EWS seats.

6. Before advertng to the issues involved in these writ petitions, it would be appropriate to note a brief background.

The admissions to the Post Graduate Course in Medical Education are governed by the Post Graduate Medical Education Regulations, 2000 (for short, 'Regulations') which have been framed by the Central Government. As per the said Regulations, admissions to Post Graduate Medical Courses in each academic year would be granted through National Eligibility-cum-Entrance Test (for short, 'NEET'). The NEET has to be conducted by the National Board of Examination. The Medical Council of India (for short, 'MCI') has been given responsibility for discharging the duty of maintenance of highest standard of Medical Education and keeping in view the Indian Medical Council Act, 1956, the Supreme Court in State of Kerala Vs. Kumari T.P. Roshna and anr.: 1979(1) SCC 572 observed as under:-

".....The Indian Medical Council Act, 1956 has constituted the Medical Council of India as an expert body to control the minimum standards of medical education and to regulate their observance. Obviously, this high-powered Council has power to prescribe the minimum standards of medical education. It has implicit power to supervise the qualifications or eligibility standards for admission into medical institutions. Thus, there is an overall invigilation by the Medical Council to prevent sub-



standard entrance qualifications for medical courses....."

8. In MCI Vs. State of Karnataka: 1998(6) SCC 131, it was observed by the Supreme Court as under:-

".....A medical student requires grueling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study....."



9. Again, in Dr. Preeti Shrivastava & Anr. Vs. State of MP & Ors.: 1999(7) SCC 120, the Constitution Bench of the Supreme Court held as under:-

"While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the



levels of higher university education, particularly when the training to be imparted is highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their post-graduate courses."

10. The aforesaid view has been reiterated by the Supreme Court time and again in several judgments.



After amendment made in Section 10-D of the MCI Act, 1956 on 04/08/2016, the Post Graduate Medical Courses from Academic Session 2017-18 would be on the basis of merit obtained in the uniform entrance test. Regulation 9 of the Post Graduate Medical Regulations, 2000 deals with the procedure for selection of candidates for Post Graduate courses and the relevant provision for the purpose of the present cases deserves to be quoted which provides as under:-

"9(4) The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Postgraduate Courses from the said merit lists only.

Provided that in determining the merit of candidates who are in service of government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/ Competent authority from time to time.



12. Certain amendments were made in Regulation 9A of the Post Graduation Medical Education Regulations, 2000 vide notification dated 11/03/2017 & 31/07/2017 and following provisions were added:

"9A. Common Counseling

(1) There shall be a common counselling for admission to all Postgraduate Courses (Diploma/MD/MS/DM/M.Ch.) in all Medical Educational Institutions on the basis of merit list of the National Eligibility-cum-Entrance Test.

(2) The Designated Authority for counselling for the 50% All India quota seats for the contributing States, as per the existing scheme for Diploma and M.D./M.S. courses shall be the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India. Further, the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India shall conduct counselling for all postgraduate courses [Diploma, M.D./M.S., D.M./M.Ch.] in Medical Educational Institutions of the Central Government, Universities established by an Act of Parliament and the Deemed Universities. Furthermore, the Directorate General of Health Services shall conduct the counselling for all Superspecialty courses (D.M./M.Ch.) in Medical Educational Institutions of the State Government, Deemed Universities, Universities established by an Act of Parliament, Universities established by an Act of State/Union Territory Legislature, Medical Educational Bodies, Trust, Society, Company or Minority Institutions.

(3) The counseling for admission to Diploma and M.D./M.S. in all medical Educational Institutions in a State/Union Territory, including, Medical Educational Institutions established by the State government, University established by an Act of State Union Territory Legislature, Municipal Bodies Trust, Society, Company or Minority Institutions shall be conducted by the State/Union Territory Government.

....."



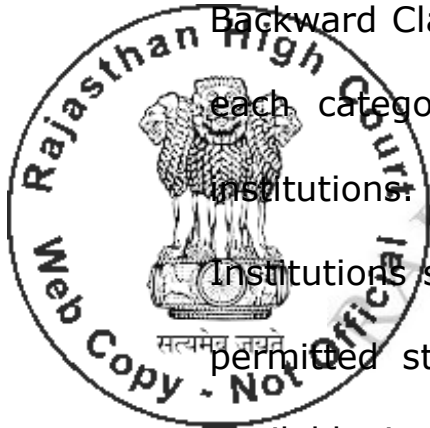
13. Thus, there is a counselling to be conducted at All India level and for State level by the respective State Governments. The Government of India issued an office memorandum on 17/01/2019 wherein it is instructed that reservation for Economically Weaker Sections, who are not covered under the existing scheme of reservation for SC, ST, Socially & Educationally Backward Classes subject to maximum of 10% of of total seats in each category, shall be provided in admission to educational institutions. It was further directed that all Central Educational Institutions shall increase the number of seats, above the annual permitted strength, in a manner so that the number of seats available in the various other categories are not reduced. This notification was issued in the wake of the 103rd Constitutional Amendment made in Article 15 of the Constitution of which adding clause 6 as under:-

"15(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,-

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5): and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation- For the purposes of this article and article 16,"economically weaker sections" shall be





such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage."

14. The Government of India issued another letter on 29/01/2019 to the Principal Secretaries of all the States and Union Territories (Medical Education) wherein it provided for increase of seats in the Central Educational Institutions and also provided as



"(e) All state Government/UTs have also been requested to give effect to the provisions of the said Constitution Amendment Act in respect of all higher education institutions funded/aided directly or indirectly by the State Government starting from the academic year 2019-20.

3. All State/UTs are requested to take appropriate action for implementing the provisions of the Amendment Act in the Medical/Dental/ Nursing/ Pharmacy Institutions/ Bodies etc under their control."

15. The Board of Governors in Supersession of Medical Council of India issued a letter on 27/02/2020 to the Central Government provided for additional seats to various Medical Institutions for the Academic Year 2020-21 in order to implement 10% EWS quota in PG Medical Courses. In States which had already more number of seats than the seats required for implementing 10% EWS quota, the seats enhanced were mentioned in Para 2 of the order which did not include the State of Rajasthan. However, for the State of Rajasthan and other States, it was mentioned as under:-

"3. However, in the States of Andhra Pradesh, Gujarat, Haryana, Odisha and Rajasthan the seats increased under 10/A and /or after conversion of diplomas to degree for the AY 2020-21 was less than the number of seats needed to be enhanced for implementing 10% EWS quota. In addition there were



no applications for increase under 10/A or for conversion of diplomas to degree from the Government medical colleges from the States of Himachal Pradesh, Punjab and the UT of Chandigarh. The status of increase in the above mentioned 8 States is provided in the table below. Further it may be noted that no applications were received for EWS seat enhancement from the States of Delhi, Karnataka, Tamil Nadu, Manipur and Meghalaya.

S. No.	State	Requirement of seats for implementation of EWS	Seats enhanced for AY 2020-21				Total enhanced Seats
			seats granted under 10 A	Diploma converted to degree seats	EWS granted PGMER, 2000	seats within PGMER, 2000	
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
8	Rajasthan	145	23	18	51	92	



4. The Governments of Andhra Pradesh, Chandigarh, Gujarat, Haryana, Himachal Pradesh, Odisha, Punjab and Rajasthan were requested to send their specific proposals for increase in seats under 10/A for AY 2020-21, but had the potential to increase seats in accordance with the PGMER 2000 regulations so as to enable them to meet the required seat enhancement for implementing 10% EWS quota. It may be appreciated that no seats can be granted without requisite faculty because a PG student requires guidance from faculty for completion of the thesis, therefore, availability of requisite faculty has been carefully considered while granting additional seats within PGMER. DME of these states are also fully aware of the capacity of their colleges for PG courses. Proposals were received from the States of Andhra Pradesh, Chandigarh, Gujarat, Himachal Pradesh, Punjab and Rajasthan. The Board of Governors, Medical Council of India, considered the proposals of the State Governments and approved the proposals that were in conformity with the PGMER regulations. No proposal was received from Government of Haryana and Odisha. A total of 145 seats were additionally approved in the 6 above mentioned states (Andhra Pradesh 6, Chandigarh 4, Gujarat 56, Himachal Pradesh 7, Punjab 17, Rajasthan 51). The details of State wise seats approved in various PG courses are Annexed.



The Teaching Institutions are advised to apply for recognition of the qualification at the time of first available examination as per the provision of Section 11(2) of the IMC Act, 1956 in respect of these enhanced seats made available to them for implementation of EWS quota."

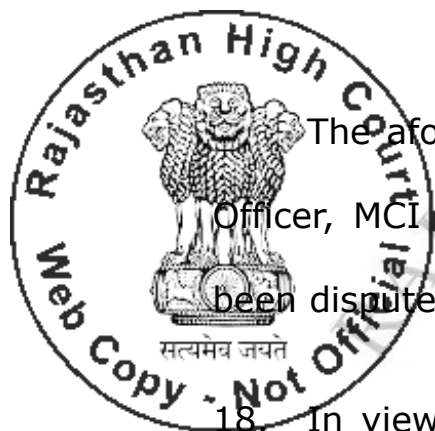
16. Alongwith the aforesaid letter, the list of additional PG seats to be granted to Government Medical Colleges in various States for implementing 10% EWS quota as per PGMER, 2000, was also mentioned.

17. In the State of Rajasthan, the MCI and the Central Government, as per their affidavit, has ultimately granted 89 seats which includes 23 seats under Section 10A and 15 seats by converting Diploma to Degree and 51 additional seats were sanctioned for implementation of EWS quota in earmarked Colleges. These seats which had been increased were as under:-

S. No.	State	Name of Medical College	Subject	No of seats granted under EWS
1	-	-	-	-
2	-	-	-	-
-	-	-	-	-
-	-	-	-	-
86	Rajasthan	Government Medical College, Kota	MD (Microbiology)	1
87	Rajasthan	Government Medical College, Kota	MD (Paediatrics)	1
88	Rajasthan	Government Medical College, Kota	MD (Respiratory Medicine)	1
89	Rajasthan	Government Medical College, Kota	MS (Ophthalmology)	1
90	Rajasthan	Government Medical College, Kota	MS (General Surgery)	1
91	Rajasthan	Government Medical College, Kota	MD (Anaesthesiology)	1
92	Rajasthan	Government Medical College, Kota	MS (Orthopaedics)	1
93	Rajasthan	Jhalawar Medical College, Jhalawar	MD (Anatomy)	1
94	Rajasthan	Jhalawar Medical College, Jhalawar	MD (Physiology)	1
95	Rajasthan	Jhalawar Medical College, Jhalawar	MD (Biochemistry)	1
96	Rajasthan	RNT Medical College, Udaipur	MD (Anaesthesiology)	2
97	Rajasthan	RNT Medical College, Udaipur	MD (Paediatrics)	2
98	Rajasthan	RNT Medical College, Udaipur	MD (Pathology)	1
99	Rajasthan	RNT Medical College, Udaipur	MS (Obstetric & Gynaecology)	1
100	Rajasthan	RNT Medical College, Udaipur	MS (Orthopaedics)	2
101	Rajasthan	SMS Medical College, Jaipur	MD ((Anatomy)	1
102	Rajasthan	SMS Medical College, Jaipur	MD (Physiology)	2
103	Rajasthan	SMS Medical College, Jaipur	MD (Biochemistry)	2
104	Rajasthan	SMS Medical College, Jaipur	MD (Community Medicine)	2
105	Rajasthan	SMS Medical College, Jaipur	MD (Pathology)	2
106	Rajasthan	SMS Medical College, Jaipur	MD (Microbiology)	2
107	Rajasthan	SMS Medical College, Jaipur	MD (Forensic Medicine)	2
108	Rajasthan	SMS Medical College, Jaipur	MD (General Science)	2
109	Rajasthan	SMS Medical College, Jaipur	MD (Respiratory Medicine)	1



110	Rajasthan	SMS Medical College, Jaipur	MD (Physical Rehabilitation) Medicine	1
111	Rajasthan	SMS Medical College, Jaipur	MD (Radio- Diagnosis)	2
112	Rajasthan	SMS Medical College, Jaipur	MD (Psychiatry)	1
113	Rajasthan	SMS Medical College, Jaipur	MD (Anaesthesiology)	2
114	Rajasthan	SN Medical College, Jodhpur	MD (Anaesthesiology)	2
115	Rajasthan	SN Medical College, Jodhpur	MD (Microbiology)	1
116	Rajasthan	SN Medical College, Jodhpur	Ms (Obstetric & Gynaecology)	1
117	Rajasthan	SN Medical College, Jodhpur	MD (Paediatrics)	1
118	Rajasthan	SN Medical College, Jodhpur	MD (Pathology)	1
119	Rajasthan	SN Medical College, Bikaner	MD (Dermatology, Venerology & Leprosy)	1
120	Rajasthan	SN Medical College, Bikaner	MD (Forensic Medicine)	1
121	Rajasthan	SN Medical College, Bikaner	MS (Ophthalmology)	1
122	Rajasthan	SN Medical College, Bikaner	MD (Pathology)	2



The aforesaid facts are part of the affidavit filed by the Law Officer, MCI in response to the writ petitions and they have not been disputed.

18. In view of the aforesaid provisions, an Information Bulletin for the Session 2020 for National Eligibility-cum-Entrance Test (Post Graduate) (hereinafter referred as NEET-PG) was published by National Board of Examinations in conformity with the PG Regulations, 2000. In Para 13.1 in relation to reservation, it was provided that "10% seats of the total intake capacity in the Medical College where additional seats have been allocated for implementation of EWS quota shall be reserved for candidates belonging to EWS category". Para 13.1 provides as under:-

"13.1 For counseling to be conducted By DGHS:

For information regarding reservation in institutions for which counseling shall be conducted by DGHS, please visit Medical Counseling Committee website www.mcc.nic.in There shall be a reservation of 15 per cent for the candidates of the Scheduled Castes, 7.5 per cent for the candidates of Scheduled Tribes. Further, 27% seats shall be reserved for non-creamy layer OBC candidates in Central Institutions in accordance with the provisions of Central Educational Institutions (Reservations in



Admission) Act, 2006. Reservation would be applicable to the castes mentioned in the Central list of OBC Candidates from creamy layer and those who do not come under Central List of OBC are advised to mention their category as Unreserved.

10% seats of the total intake capacity in a medical college where additional seats have been allocated for implementation of EWS quota shall be reserved for candidates belonging to EWS category.

5% seats of annual sanctioned intake capacity shall be filled up by persons with benchmark disabilities in accordance with the provisions of the Rights of Person with Disabilities Act, 2016, based on the merit list of National Eligibility-Cum-Entrance Test for admission to Postgraduate medical Courses and MCI guidelines.

List of Centres who will issue Disability Certificates as per 21 benchmark Disabilities given under RPWD Act-2016 is placed at **Annexure-III**"

19. As per Para 13.2 of the Information Bulletin, "for States/ Union Territories, the reservation policy, guidelines applicable to different States/Union Territories will be followed for respective States/Union Territories quota seats. Para 13.2 of the Information Bulletin provides as under:-

"13.2 For States/Union Territories - 50% State quota seats and Private Medical Colleges/ Institutes/ Universities/ Deemed Universities

a) Reservation policy and guidelines applicable in different States/Union Territories of India will be followed for the respective State /Union territory quota seats.

b) NBE shall be providing only the data of candidates and the marks scored by them in NEET-PG to the State Governments / Counseling Authority without applying the reservation prevalent in the concerned States/Private Medical Colleges/ Institutes/ Universities. The merit list and category wise merit list for the concerned State shall be generated by the State themselves as per applicable Regulations,





qualifying criteria, applicable guidelines and reservation policies."

20. The petitioners in the present writ petitions have challenged action of the State Government in not including the aforesaid additional seats which were provided by the MCI for implementation of 10% EWS quota and submitted that on account of not including the said seats in the first round of counselling, serious prejudice has been caused to the candidates of general category who were meritorious and would have been provided the Colleges and faculties of their choice and would have been placed accordingly but instead, in the first round of counselling, the candidates, who were lesser in merit and belonging to EWS quota, have been allotted seats more than the number of seats which were available for them.



21. Another argument which has been raised is with regard to extent of reservation to EWS category and it is submitted by Mr. RN Mathur, learned Senior Advocate for the petitioners that EWS reservation can be provided only against increased seats and the existing general quota seats cannot be reduced to give reservation to EWS. He submitted that as the MCI had allocated the particular Colleges the additional seats for the purpose of implementation of EWS reservation, the said increased seats in the concerned Colleges alone could have been allotted to EWS candidates and a general roster as applied could not have been applicable. He further submitted that for Medical College, Ajmer, no seat was provided by the MCI vide its letter dated 27/02/2020 and, therefore, the admissions of EWS category could not have been made. He further submitted that similarly in SMS Medical College,



Jaipur, the seats, which were earmarked vide letter dated 27/02/2020, could have only been available for EWS candidates whereas the respondents have allotted seats by applying a general roster.

22. Learned Sr. Advocate Mr. RN Mathur further submitted that the reservation to EWS provided to 10% of admission capacity is

in addition to the existing reservation, however, the addition does not mean that cap of 50% of reservation could be breached. He

relies on the judgments rendered by the Apex Court in *Indira Sawhney Vs. UOI*: 1992 (suppl.) (3) SCC 217 and *Nagraj Vs. UOI*

2006(8) SCC 212 to submit that ceiling limit of 50% continues to

apply. It is submitted that if EWS reservation is allowed to be a

vertical reservations, 64% of the total seats would stand reserved

and the said reservation would be in violation of Articles 14, 15

and 16 of the Constitution of India as by an enabling provision,

50% cap cannot be breached by the State Authorities. He further

submitted that there were only 51 seats which were available as

additional seats which were created for the purpose of

implementation of EWS quota while in the first round of

counselling 55 seats have been allotted to EWS. He further

submitted that the State of Rajasthan required 145 seats for

implementation of 10% quota for EWS but due to the lethargy of

the State machinery, the MCI did not grant them the total number

of seats on account of non-availability of infrastructure.

23. Learned Senior Counsel Mr. RN Mathur further submitted that

even otherwise as the State Medical Colleges did not send the seat

matrix for EWS in the first counselling, the State PG Counselling



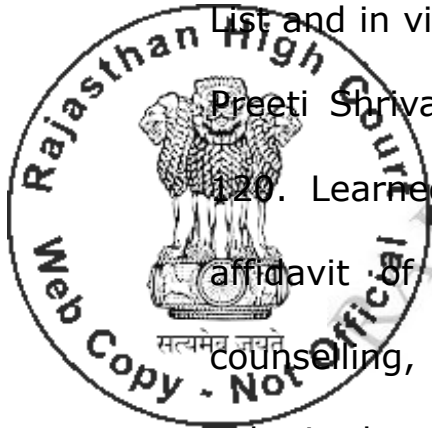
Board has wrongly included EWS in the first round of counselling as it goes against the provision of Clause 13.1 which provides for admissions to EWS only on availability of increased seats. The State Government was entitled to have its reservation policy but it could not have deviated from the guidelines laid down by the MCI in view of the medical education falling in Entry 66 of the Union

List and in view of the judgment rendered by the Apex Court in Dr. Preeti Shrivastava & Anr. Vs. State of MP & Ors.: 1999(7) SCC 120. Learned Senior Counsel has also taken this Court to the

affidavit of the State to submit that in the first round of counselling, which this Court would deal in subsequent paras, to

submit that the State Government could not have included the EWS reservation in the first round of counselling. It is further submitted that in the State of Haryana, the allotment of EWS quota was only made with reference to the specific course/College allotted by the MCI for EWS. Noting the same, the High Court of Punjab & Haryana has approved the said method in Dr. Vikram Pal Vs. State of Haryana, decided by the Division Bench on 06/05/2020. Learned Sr. Counsel further submitted that for PG Medical admissions, it is the Branch and College which is decided by merit meaning thereby the Branch and College have their importance for the students and counselling has to be applied accordingly.

24. Mr. Shobhit Tiwari, learned counsel for the petitioners in CWP-5468/2020, submitted that the reservation for EWS candidates has been provided in terms of Article 15(6) of the Constitution of India in the Medical Institutes and the MCI for the





purpose of implementation it had issued a letter on 27/02/2020 which starts with the words "for the purpose of implementation" and thus, the implementation of EWS quota for PG seats would be governed solely by the letter dated 27/02/2020. The State Government cannot be allowed to depart from the instructions issued by the MCI and it was required to fill up all 89 seats in the State quota and for 50% seats allotted to the All India Quota was not warranted. He further submitted that as 89 seats were available before the first round of counselling, there is no reason for not having included the said seats. The excuse taken by the Counselling Board of having not been provided with the seat matrix by the respective Medical Colleges cannot be accepted as the letter dated 27/02/2020 itself provided the additional seats which were available in the respective Medical Colleges. It is further submitted that when two of the Medical Colleges namely; Jhalawar and Jodhpur had already provided increased seats, there was no reason for not including the other remaining seats. It is submitted that before the counselling itself, if there was any intention of the State Government to implement EWS quota in the first round of counselling, it should have called for all the seats from the respective Medical Colleges before conducting the counselling. It is, however, submitted that from the documents, which have come on record, the State Government itself provided for implementation of EWS quota subsequently vide its letter dated 05/05/2020 as has been placed alongwith additional affidavit and in pursuance thereof, the respective Medical Colleges, through their Principals, have sent the seats. Hence, before the seats were available, the same could not have been included in





the first round of counselling. He further submitted that on account of inaction, several students have been denied their original claim for admission to the College of their choice and to the seats which were available for admission therein.

25. Dr. Nupur Bhati, learned counsel appearing for the petitioners in CWP-5495/2020 submitted that in the second round

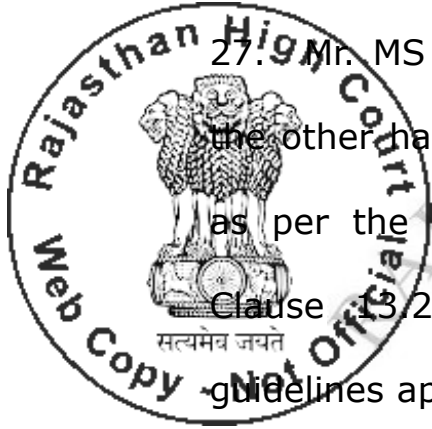
of counselling, the students from general category would be put to loss as the EWS students, who have been allotted seats in the first round of counselling, will freeze the seats and would not leave them open for the candidates and the open general category candidates will have to satisfy themselves that the additional seats

in the other Colleges which may not be of their choice in second round. Learned counsel further submitted that till the seats were not available with the State Government, the EWS reservation could not have been applied as the basic principle of application of EWS category was that the existing status of the open category candidates should not be disturbed meaning thereby, 50% reservation which was available was not required to be disturbed and submitted that the candidates who have been admitted should be ousted and a fresh counselling be conducted.

26. Mr. Angad Mirdha, learned counsel for the respondent-MCI submitted that once the seats have been allocated to the State Government for implementation of EWS quota, it was incumbent upon the State Government to have included the State seats in the first round of counselling and the State cannot absolve itself from its responsibility of providing EWS reservation only after including the additional seats. It is stated by him on instructions



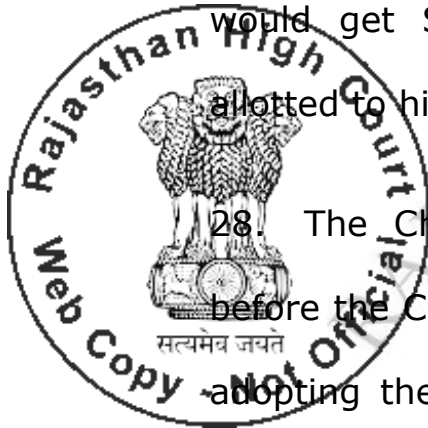
that the increased seats are not specifically earmarked to EWS quota and the purpose of increasing the seats is mainly to enhance the total number of seats so that 10% EWS reservation could be meted out. However, he disputes the contention of Mr. RN Mathur, Sr. Adv. that the Colleges where the seats have been earmarked should alone be allotted to EWS category.



27. Mr. MS Singhvi, learned Advocate General for the State, on the other hand, submitted that the reservation was to be applied as per the National Board of Examination Information Bulletin Clause 13.2 which provided that the reservation policy and guidelines applicable to the State will be followed for the respective States. He further submitted that the State Government had issued an instruction booklet wherein it was provided that reservation to EWS shall be provided as per their merit and shall be applicable on all educational institutions in view of letter dated 17/03/2020 and UO Note dated 22/02/2019. He further submitted that there is no challenge to the provisions laid down in the instruction booklet and therefore, all the students had full knowledge that EWS reservation would be applied. He fairly stated that so far as the additional seats as provided by the MCI are concerned, they ought to be included in the first round of counselling, however, he submitted that merely because not including them in the first round of counselling, there is no apparent loss to the candidates as the open category candidates would have a right of exit meaning thereby a candidate, who has already been admitted in the first round of counselling, shall be entitled to exit and again opt for a seat which may be available in



the second round of counseling. He has taken this Court to the affidavit and additional affidavit filed by the State to submit that non-inclusion of additional seats in the first round of counselling will not alter the situation materially. He further submitted that amongst the petitioners, 9 candidates did not get any seat as per their choice and it is only 1 petitioner i.e. Dr. Vikas Bhardwaj who would get SN Medical College instead of SP Medical College allotted to him and as per the choice given by them.



28. The Chairman, NEET PG Admission Board also appeared before the Court and submitted that he has applied EWS roster by adopting the State Government roster dated 24/02/2020, which was for the purpose of direct recruitment in the State and has kept the seats at no.11, 22, 30, 41, 51, 60, 79 and so on and so forth for implementation of 10% EWS reservation and the Colleges have been allotted accordingly.

29. Mr. RB Mathur, learned counsel appearing for the newly impleaded respondents who are the students from EWS category and have been admitted in the first round of counselling, submitted that their admission ought not be cancelled as they were entitled to be given admission in terms of the Constitutional mandate under Article 15(6) of the Constitution of India which was followed by the State Government and once the State Government has made provisions for admission in educational institutions to 10% EWS quota, merely because the additional seats have not been included in the first round, such EWS candidates who have already been admitted need not be ousted.



30. This Court has carefully considered the submissions made by learned counsel for the parties and perused the record.

31. From the affidavit and additional affidavit filed by the State Government, one factual aspect is noticed that the State Government has written a letter to the respective Medical Colleges on 05/05/2020 with reference to the MCI letter dated 27/02/2020.

The letter dated 05/05/2020 reads as under:-



"GOVERNMENT OF RAJASTHAN

DIRECTORATE OF MEDICAL EDUCATION

Chikitsa Shiksha Bhawan, Near Pink Square
Mall, Govind Marg, Jaipur

Tele:-0141-2601726, Email Id:- adddir. dme.
rj@gov. in

F-7(111)PG-19/EWS/DME/Acad/2019/pt1/1935 Date:- 5/5/2020

Principal & Controller

Medical College

Jaipur/Kota/Bikaner/Jodhpur/

Udaipur/Jhalawar

Sub:- Regarding implementation of 10% EWS quota
in PG courses in Government Medical Colleges for the
academic year 2020-21.

Ref:- 1- A letter No. 3(1)(EWS)/2019/MED/195914
dated 27-2-2020 from Secretary General Board of
Governors in suppression Medical Council of India,
NewDelhi.

2- A letter no. 12012 /350/2019 ME-1/ FTS -
8013875 dated 13-3-2020 from Secretary, Ministry of
Health and Family welfare, Nirman Bhawan, New
Delhi



In the subject and reference cited above, Please find attached herewith the reference letters copy for compliance to implement the reservation roster, including EWS quota as per State policy after including the seats enhanced during the AY 2020-21 since they had been granted adequate increase in seats for the same and may be informed to send the 50% All India Quota Seats to Govt. of India and advised to apply for recognition of the qualification at the time of first available examination as per the provisions of Section 11(2) of the IMC Act, 1956 in respect of these enhanced seats made available for implementation of EWS quota.

It is for kind information and necessary action.

Sd/-

Addl. Director (Admn.)

& Ex-office Joint Secretary

F.7(111)PG-19/EWS/DME/Acad/2019/pt1/

Date:-

Copy for information and necessary action to:

1. The Secretary to the Govt. of India Ministry of Health and Family Welfare Govt. of India, New Delhi
2. Shri B. Srinivas, Assistant Director General (M.E), DGHS, Govt. of India, Nirman Bhawan, New Delhi.
3. Under Secretary to the Government, Directorate General of Health Services, Ministry of Health & Family Welfare (Medical Education-I) Govt. Of India, Nirman Bhawan, New Delhi.
4. Secretary General Board of Governors in Suppression Medical Council of India, New Delhi.
5. P.S to Principal Secretary, Medical Education Dept. Govt. of Rajasthan.
6. PS to Commissioner, DME, Jaipur.



Sd/-

Addl. Director(Admn.)

& Ex-office Joint Secretary"

32. Thus, it is apparent that the Medical Education Department of the State has not given any instruction to the Chairman, NEET PG Admission Board for implementation of EWS quota with reference to the MCI letter dated 27/02/2020. It appears that because the Information Booklet mentions about the EWS reservation, without waiting for the additional seats, which had already been provided by the MCI, the first round of counselling was conducted by applying 10% EWS quota to the existing number of seats and also applying roster of the State Government.

33. A look at the roster laid down by the State Government dated 24/02/2020, which was handed over during arguments and is taken on record, shows that the roster of direct recruitment would have no application to the admission process as apart from vertical, there are several horizontal reservations which are required to be considered for direct recruitment. Resultantly, a seat at No.10, which mathematically goes to an EWS category candidate on vertical reservation, has shifted to No.11 as there is a reservation within reservation i.e. while there is a reservation for SC quota at No.7, there are two horizontal reservations for women. Thus, applying the roster of direct recruitment to the admission process, was wholly illegal. It is also seen that there was no such instruction issued by the State Government to the Convener, NEET PG Admission Board-2020 to apply direct



recruitment roster to the admission process. Thus, this Court finds that the first round of counselling conducted was wrongly conducted by applying the direct recruitment roster without any authority.

34. From the facts as noticed above, it is an admitted position that the state Government had full knowledge of additional seats having been allotted to it by the MCI vide its letter dated 27/02/2020. From the affidavit filed by the State of the Chairman, NEET PG Medical and Dental Admissions, this Court is not satisfied about the reasons advanced. It is apparent that the economically weaker section reservation of 10% in educational institutions could be provided only when the additional seats are made available. It is for this reason that in 2019-20, the EWS reservation was not implemented since the MCI had not provided additional seats. Clauses 13.1 and 13.2 of the Information Bulletin issued by the National Board of Examinations for NEET-PG-2020 have to be read together and not in isolation of one another. From reading of both the Clauses, it is apparent that reservation for EWS could be applied only after the additional seats have been made available by the MCI for allocating them to the EWS category candidates. However, without their inclusion in the seat matrix, providing EWS reservation has resulted in depriving the meritorious open category candidates of their rightful claim to admission to a particular faculty and to a particular College. This Court does not agree with the submission of learned Advocate General that the present writ petitions having been filed by only 15 candidates in all and limits to them alone. It is not expected





from all the candidates appearing for academic examination to approach the Court. Even if a single student prefers a writ petition informing about the anomalies of admission process, this Court would entertain the same if it finds that illegalities are being committed. The State Government is not expected to take umbrage by taking a specious plea that all the students have not approached the Court. In the opinion of this Court, the present writ petitions which have been filed are in representative capacity and represent the grievances of all the students who have participated in the process.

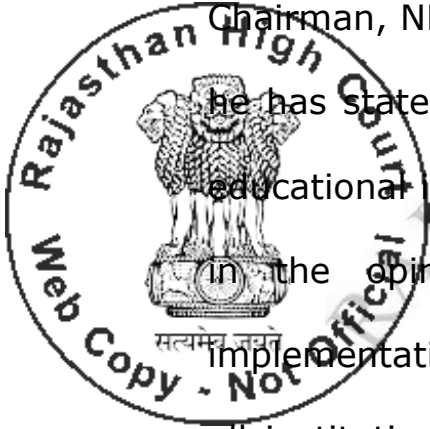


35. Having said so, this Court finds that in the first round of counselling, as many as 3093 candidates were included as per the list which has been placed alongwith additional affidavit and allotments have been made in different Colleges. As has been pointed out by learned counsel for the petitioners, 55 students from EWS category have been allotted and given admission in various Colleges in different faculties.

36. As regards the contention of learned Sr. Adv. Mr. RN Mathur, as noticed above, of the seats being earmarked for EWS category candidates alone and not to be included in the general roster applicable for SC, ST, OBC and open category, this Court finds that while the Haryana Government has accepted the said contention and allotted EWS quota seats only which have been allocated by the MCI for the purpose of implementation of EWS reservation and the Central Government, in its communication has also directed that the seats, which have been allocated for economically weaker section shall be filled; the State Government of Rajasthan has not



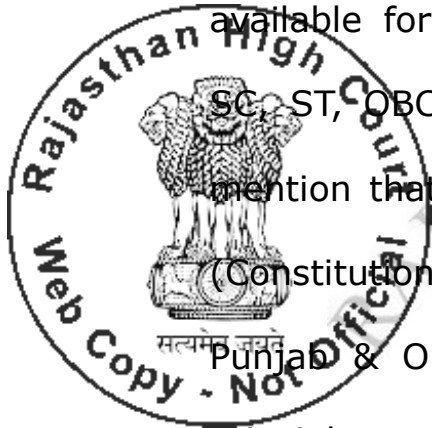
adopted such procedure nor there is any such direction issued by the State Government. The State Government's instructions in this regard are also not available on record. From the perusal of the UO Note dated 20/02/2020, placed on record with the reply of EWS category candidates, it does not come out that the EWS reservation shall be carried out in all PG institutions. However, the Chairman, NEET-PG Admission Board has issued a booklet wherein he has stated that the EWS reservation shall be applicable on all educational institutions which is not challenged by anyone. Hence, in the opinion of this Court, after adding the seats for implementation of 10% EWS quota, the reservation will apply to all institutions and not to particular seats. The contention of Mr. RN Mathur, learned Sr. Adv. is accordingly rejected.



37. Article 15(6) of the Constitution of India was introduced vide 103rd Constitutional Amendment as noticed above. Interestingly, this Court finds that the words used in the Article are with regard to application of EWS reservation in each category. The words 'each category' mentioned in the Constitutional Amendment, would relate to various categories of reservations and cannot be ignored. With the purpose to maintain 50% reservation, the logical interpretation would mean that in each category, a separate class of EWS would be reserved upto 10% meaning thereby the candidates from SC category, who are from economically weaker section upto 10% of their category, would get the benefit. Similarly, 10% of the ST category seats will be reserved for economically weaker section ST candidates and the same would be for the OBCs who are economically weaker.



However, this Court finds that the Central Government as well as the State Government have understood Article 15(6) as well as Article 16(6) to mean economically weaker section from general category other than SC, ST and OBC. In the opinion of this Court, there is no general category defined in the Constitution or in any other provision of law. Actually, it is open category which is available for all meritorious candidates whether they may from SC, ST, OBC or others. In this regard, it would be apposite to mention that the law has been laid down by the Supreme Court (Constitutional Bench) in R.K. Sabharwal & Ors. Vs. State of Punjab & Ors.: (1995)2 SCC 745 which laid down the above principle.



38. However, as the EWS certificate is given only to non-SC, non-ST and non-OBC candidates, this Court need not delve further on the aforesaid issue as in the present admissions, the candidates, who possess EWS certificate alone can be allotted the seats for EWS under their 10% quota of reservation. This Court, however, observes that if the aforesaid interpretation of 10% EWS reservation in each category would have been followed, 50% cap would not have been disturbed and there would have been no need to conduct the exercise of increasing the additional seats for filling 10% EWS quota.

39. Be that as it may, in the present case, the total number of seats to implement 10% quota were recognized to be 145 as per MCI for State of Rajasthan. However, on account of the infrastructure not being available, only 89 seats were increased. Thus, in the opinion of this Court, the total number of EWS



category candidates, who get admitted, could not be more than 89.

40. As 50% quota has been allocated to All India quota of the State as per their agreement with the Central Government, which is not under challenge in the present writ petitions, the seats which were available for State counselling were only 44 in number

45 being sent to the All India Quota. However, from the seats, which have been allotted under the first round of counselling, this Court finds that 55 seats have been allotted to EWS which could not have been done as it affects the already existing quota.



41. Hence, there is an illegality committed by allotting additional seats to the EWS quota.

42. It is submitted by the students, who have been from EWS category, that a right has been created in their favour. However, this Court finds that one of the writ petition was filed before the counselling was conducted by the petitioner-Karmendra Singh and others and a representation was also made to the authorities and therefore, it cannot be said that any indefeasible right has been created in favour of the students who have been admitted under the first round of counselling under the EWS quota. In the opinion of this Court, therefore, the first round of counselling was conducted wrongfully and illegality cannot be perpetuated and the same is liable to be set aside.

43. This Court further finds that the NEET-PG Counselling Board was formed by order of the State Government wherein the constitution of the Board consisted of members of the Medical



Colleges also apart from the Chairman who is the member of the Dental College. Thus, it cannot be said that the principals had no knowledge about the increase of the seats by the MCI vide their letter dated 27/02/2020 and as they have participated in the counselling itself as members of the Board, they cannot absolve themselves of the responsibility of not providing the seat matrix for the increased seats before the first counselling was started. On account of fault of Members of the Board, future life of the students and their career cannot be jeopardized.



44. It cannot be ignored that if a meritorious candidate is ousted and in his place a lesser meritorious candidate from EWS category is provided a particular seat in a particular faculty in a particular College, it has a cascading effect meaning thereby the said meritorious candidate will then get another seat in another College which would have, in normal course, gone to another meritorious candidate who had also opted for that seat and loss on account of comparative merit. Thus, the submission of the learned Advocate General and the Chairman, NEET-PG Counselling Board and Mr. RB Mathur that it can at best be considered as an irregularity and not an illegality is found to be without basis. This Court is satisfied that an illegality has been committed which goes to the root of the entire admission process and therefore, the admissions made in the first counselling cannot be saved. The cascading effect has already been considered, though in different facts, by the Supreme Court in case of UOI Vs. Annie Nagraja (Civil Appeal No.2182-87/2020).



45. The Supreme Court has observed time and again that the admissions in PG Courses is a very sensitive matter and the authorities must be very careful in following the guidelines laid down by the MCI and the Supreme Court from time to time. In the present case, on account of not adding the seats in the first round of counselling, the future of the meritorious students has been put to a loss which cannot be compensated by the method of open exit in second round of counselling.

46. Accordingly, in view of the aforesaid findings, the first round of counselling conducted for State Quota PG Seats and the allotment of seats made therein are quashed and cancelled and the respondents are further directed as under:-

(a) The State Government shall conduct a fresh round of counselling for admission to PG seats by including the additional seats allotted for implementation of EWS quota as per the MCI letter dated 27/02/2020.

(b) As it is noticed that during pendency of the writ petitions, the first round of All India Counselling and second round of All India Counselling has already commenced, therefore, in the counselling, which is to be done now by the State, all the seats, which have come back to the State Government after the All India Counselling, shall also be included keeping in view the peculiar circumstances which have arisen and with the view that there is no delay in giving admissions.

(c) The State Government shall be free to fill EWS 10% quota by applying plain roster of 10%. The roster of direct recruitment shall not be applicable for





the said purpose. The EWS reservation shall apply as per roster to the only seats which are made available by MCI for implementation of EWS quota vide letter dated 27/02/2020.

(d) The admissions given in the first round of counselling would be treated as cancelled. However, if in the second round of counselling, the students are allotted the same College, their admission shall be accordingly made. In other cases, where a student has not been able to get a particular seat, his fees already deposited, shall be returned. The exercise shall be immediately conducted on completion of the All-India Counselling.



(e) It is directed that henceforth, the admission process for PG Courses, which is to be conducted, shall be transparent and information shall be provided to all students beforehand about roster which is being applied and the Colleges where the vacant seats are there etc. in order to avoid further litigation in future.

(f) The observations made by this Court with regard to the EWS reservation in each category as per the provisions of the Constitution shall be considered for future admissions.

46. These writ petitions are accordingly allowed. All pending application also stand disposed of. No costs.

SANJEEV PRAKASH SHARMA),J

Raghu/