

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (C) No.54 of 2021

Harshit Agarwal & Ors.

.... Petitioners (s)

Versus

Union of India & Ors.

.... Respondent (s)

With

Writ Petition (C) No.95 of 2021

J U D G M E N T

L. NAGESWARA RAO, J.

1. The Petitioners in Writ Petition No. 54 of 2021 are students who appeared in the National Eligibility-cum-Entrance Test (NEET) examination 2020 for admission to the first year of Bachelor of Dental Surgery (BDS) conducted on 13-09-2020. They did not obtain the minimum marks prescribed by Sub-Regulation (ii) of Regulation II of the Dental Council of India, Revised BDS Course Regulations, 2007 (hereinafter, 'the Regulations'). Therefore, they were not eligible for admission to BDS course. The second

Respondent Dental Council of India, recommended the lowering of qualifying cut off percentile for admission to BDS course for the academic year 2020-2021.

2. The Petitioners submitted a representation to Respondent No.1 seeking to lower the qualifying cut off percentile on the recommendation of the Executive Committee of Respondent No.2. The recommendation of the Executive Committee was not accepted by the first Respondent. Having no other alternative, the Petitioners have filed these Writ Petitions under Article 32 of the Constitution of India.

3. The Petitioners in Writ Petition No. 95 of 2021 are Dental Colleges from the State of Andhra Pradesh seeking a similar direction to lower the minimum marks for NEET examination, 2020 for admission to BDS course by 20 percentile in each category based on the recommendation of Respondent No.2.

4. We have heard Mr. Maninder Singh, learned Senior Counsel for the Petitioners in Writ Petition No.95 of 2021 and Mr. Krishna Dev Jagarlamudi, learned counsel appearing for the Petitioners in Writ Petition No. 54 of 2021. Mr. Maninder Singh, learned Senior Counsel submitted that the proviso to Regulation II (5) (ii) of the Regulations empowers the Central

Government to lower the minimum marks required for admission to BDS course in consultation with the Dental Council of India. In spite of the recommendation made by the Dental Council of India for lowering the qualifying cut off percentile, the first Respondent has arbitrarily and unreasonably not acted upon the recommendation. He stated that the first respondent accepted the proposal of the second Respondent and lowered the cut off percentile for the year 2019-2020. He also relied upon the proceedings relating to the lowering of the minimum marks for the Super speciality courses for the year 2019-2020 and for admission in Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH) - UG courses for the year 2020-2021. He contended that percentile is different from percentage and by lowering the percentile there would be no compromise of standards. He argued that 7,000 seats in the first year BDS course are vacant and the available infrastructure would be wasted. Mr. Krishna Dev, learned counsel argued that there is no basis for the assumption that lowering of the percentile would affect standards of education. There is no basis for the allegation that the private colleges have been charging exorbitant fees for which

reason seats in the BDS first year are not being filled up, according to him.

5. Ms. Aishwarya Bhati, learned Additional Solicitor General submitted that the first Respondent has taken an informed decision on 30.12.2020 not to lower the minimum marks for admission to dental surgery course for the year 2020-2021 as sufficient number of candidates are available. She submitted that 7.71 lakhs candidates were found to be eligible for filling up 82,000 MBBS and 28,000 BDS course seats. For each vacant seat seven candidates are available. She further highlighted the point that there are 2.77 lakh Dentists registered with the Dental Council of India. Taking into consideration the availability of 80% of Dentists, there is one Dentist for every 6080 persons which is better than the WHO norms of 1 : 7500. It was further contended by her that the seats in BDS course falling vacant is due to the candidates giving preference to other streams or their disability to pay exorbitant fee charged by the private colleges. Responding to the submissions made by the learned Additional Solicitor General, Mr. Singh, learned Senior Counsel for the Petitioners brought to the notice of this Court that admissions to AYUSH courses are also made from students who qualify in the NEET examination 2021. The

addition of 52780 seats in AYUSH would reduce the ratio of eligible candidates to the seats available in BDS to 1 : 4.5.

6. Sub-Regulation (ii) of Regulation II of the Regulations is as follows:

“In order to be eligible for admission to BDS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks of 50th percentile in ‘National Eligibility cum-Entrance Test to BDS course’ held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with locomotory disability of lower amendments, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in “National Eligibility-cum-Entrance Test for admission to BDS course.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to BDS Course, the Central Government in consultation with Dental Council of India may at its discretion lower the minimum marks required for admission to BDS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only”.

7. It is clear from the proviso that the Central Government has the discretion to lower the minimum marks required for admission to BDS course in consultation with the Dental

Council of India when sufficient number of candidates in the respective categories fail to secure minimum marks in the NEET entrance test.

8. There is no dispute that on 06-09-2019 the first Respondent lowered the qualifying cut off percentile for NEET (UG) 2019 for admission to BDS course by 10.00 percentile for each category i.e. General, SC/ST/OBC and persons with locomotor disability of lower limbs. The Dental Council of India by a letter dated 28.12.2020 proposed that the percentile for admission to BDS course in Dental colleges should be lowered by 20 percentile for each category. It was stated in the said letter that only 7,71,500 students qualified for admission to MBBS/BDS, (UG) AYUSH and other UG medical courses for the year 2020-2021. It was made clear by the second Respondent that the students qualified are not commensurate with the sanctioned admission capacity in different courses like MBBS, BDS, (UG) AYUSH and other UG medical courses. The second Respondent informed the first Respondent that there is shortage of the students for admission to BDS course and underlined the fact that vacant seats in professional courses would amount to national waste. However, the first Respondent decided not to lower the minimum marks required for admission to BDS course. In

this background, the correctness of the decision of the first Respondent not to reduce the minimum marks for first year BDS course has to be examined.

9. Judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred¹. There is no unfettered discretion in public law². Discretion conferred on an authority has to be necessarily exercised only for the purpose provided in a Statute. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. If the authority pursues unauthorized purposes his decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law. It is useful to refer to **R. vs.**

St. Pancras Vestry³ in which it was held: -

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the exercise of their discretion, then in the eye of law they have not exercised their discretion".

1 De Smith's Judicial Review (Sixth Edition pg. 225)

2 Food Corporation of India v. M/S Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71

3 (1890) 24 QBD 37/ at p. 375

10. The question that arises for our consideration is whether the exercise of the discretion by the first Respondent is for the purpose specified in the Regulations and whether irrelevant considerations have been taken into account making the decision irrational. The proviso to Sub-Regulation (ii) of Regulation II is clear in its terms empowering the Central Government to exercise its discretion to lower minimum marks only when sufficient number of candidates fail to secure minimum marks. The Central Government cannot pursue any purpose other than the one specified in the proviso to Regulation II (5) (ii). There are three reasons given for the decision not to lower minimum marks. The first is that the ratio of available seats vis-à-vis eligible candidates is 1:7 and therefore there is no dearth of eligible candidates. The other factor which propelled the Central Government to decide that there is no need to reduce the minimum mark is that there are sufficient number of Dentists in India. Lack of keenness of students to join BDS, especially in private colleges which charge exorbitant fee, as they are interested in MBBS course is yet another ground which impelled the decision of the first Respondent.

11. The stand of the Central Government is that there are seven candidates available for each seat and, therefore, there is no need to lower the minimum marks. This calculation of the first Respondent is without taking into account the fact that NEET (UG) 2020 is conducted for admission into different courses like MBBS, BDS, UG AYUSH and other medical courses. Admissions for UG AYUSH and other UG medical courses are included in the NEET for the first time from this year. That apart, it is clear from the letter of the Dental Council of India that NEET has been made mandatory for admission to AIIMS and AIIMS like institutions and ZIPMER. Hitherto, AIIMS and AIIMS like institutions and other institutions like ZIPMER were conducting their own separate entrance test. The total number of seats available for the academic year 2020-2021 for MBBS are 91,367, BDS are 26,949 and AYUSH are 52,720 making it a total of 1,71,036 seats. Whereas, the NEET qualified candidates are 7,71,500. The ratio of seats available vis-à-vis eligible students is 1 : 4.5 and not 7. The basis for the decision to not reduce minimum marks that there are sufficient eligible candidates is without considering the above vital facts. The decision which materially suffers from the blemish of overlooking or ignoring, wilfully or otherwise, vital facts

bearing on the decision is bad in law⁴. The decision of the first respondent was propelled by extraneous considerations like sufficient number of Dentists being available in the country and the reasons for which students were not inclined to get admitted to BDS course which remits in the decision being unreasonable. Consideration of factors other than availability of eligible students would be the result of being influenced by irrelevant or extraneous matters. There is an implicit obligation on the decision maker to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote⁵.

12. The first Respondent reduced the minimum marks for admission into first-year BDS course for the year 2019-2020 in consultation with the second Respondent. In spite of the recommendation made by the second Respondent to reduce the minimum marks for the year 2020-2021, the first Respondent deemed it fit not to lower the minimum marks for the current year. While arriving at a decision on 30.12.2020 not to lower the minimum marks it does not appear that the first Respondent has consulted the second Respondent in accordance with the proviso to Sub-Regulation (ii) of the Regulation II. There is no dispute that the

⁴ Baldev Raj vs. Union of India (1980) 4 SCC 321

⁵ Commissioner of Income Tax vs. Mahindra & Mahindra, (1983) 4 SCC 392

minimum marks have been reduced by the first Respondent for the super speciality courses for the last year and AYUSH courses for the current year. If reducing minimum marks amounts to lowering the standards, the first Respondent would not do so for super speciality courses. We are in agreement with Mr. Maninder Singh, learned Senior Counsel for the Petitioners that lowering the minimum marks and reducing percentile for admission to the first-year BDS course would not amount to lowering the standards of education.

13. There are about 7,000 seats available for admission to the first-year BDS course during the year 2020-2021. We are not impressed by the argument of the learned Additional Solicitor General that there are sufficient number of Dentists in the country and, therefore, there is no harm in the seats being unfilled. However, we find force in the submission made by the learned Additional Solicitor General that the fee charged by the private dental colleges is a deterrent for the seats not being filled up. Only 265 out of 7,000 seats are vacant in government colleges. All the other unfilled seats are in private Dental colleges. The Managements of private Dental Colleges shall consider reducing the fee charged by them to encourage students to join the Colleges. Reliance

was placed by the first Respondent in an order passed by this Court in ***Union of India v. Federation of Self-Financed Ayurvedic Colleges, Punjab, (2020) SCC 115*** to submit that non-availability of eligible candidates for admission to AYUSH (UG) courses cannot be a reason to lower the standards prescribed by the Central Council for admission. The facts of this case are entirely different as the Dental Council of India itself recommended for lowering the minimum marks and the Regulations provide for lowering the minimum marks. That apart, the first Respondent has exercised its discretion and lowered the minimum marks for admission to first-year BDS course for the year 2019-2020.

14. For the aforementioned reasons, we set aside the decision of the first Respondent dated 30.12.2020 to not reduce the minimum marks for admission to BDS course as it suffers from the vices of illegality and irrationality. We direct that the vacant seats in first year BDS course for the year 2020-2021 shall be filled up from the candidates who have participated in the NEET (UG) courses for the year 2020-2021 after lowering the percentile mark by 10 percentile. The candidates belonging to the general category who have secured 40 percentile shall be eligible to be considered for admission in the first year BDS course for the

year 2020-2021. Likewise, students belonging to the SC/ST/OBC categories shall be qualified if they have secured 30 percentile. In so far as General candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, they would be eligible if they have secured 35 percentile. The admissions shall be made strictly in accordance with merit and the admission process shall be completed by 18.02.2021. Any other student who has qualified in NEET (UG) - 2020 even without lowering the minimum marks and is willing to participate in the admission process shall also be considered for admission to BDS course.

15. The Writ Petitions are allowed.

.....J.
[L. NAGESWARA RAO]

.....J.
[KRISHNA MURARI]

**New Delhi,
February 08, 2021.**