

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. _____ OF 2020
(D.No.11011 of 2020)

Alapati Jyotsna & Others ...Petitioners

VERSUS

Union of India & Others ...Respondents

J U D G M E N T

Uday Umesh Lalit, J.

1. This Petition under Article 32 of the Constitution of India seeks appropriate orders directing the Respondents to conduct “single counselling” for filling up seats in the Post Graduate Medical Courses leading to Degrees and Diplomas and the seats in DNB (Diplomate of National Board) Courses.

2. On 01.11.2019, a Notification was issued and Information Bulletin was published for holding NEET-PG¹ 2020 examination. The relevant portions of the Information Bulletin are as under:-

“ ...

SCOPE OF NEET-PG 2020

NEET-PG 2020 shall be the single qualifying cum ranking examination for admission to Post Graduate MD/MS/Diploma Courses for the academic session 2020 which will include the following:

- i. All India 50% quota seats (all States & UT's)
- ii. State quota seats. (including the UT's)
- iii. All Private Medical Colleges, Institutions & Universities/ Deemed Universities all across the country
- iv. Armed Forces Medical Services Institutions
- v. DNB (Post MBBS) Courses.

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3. GENERAL INSTRUCTIONS, TERMS AND CONDITIONS

3.1 NEET-PG 2020 is a qualifying-cum-ranking examination for admission to MD/MS/Post Graduate Diploma Courses of 2020 admission session. NEET-PG 2020 will be conducted by National Board of Examinations. Candidates may note that NBE has no role regarding counselling and allotment of seats except for DNB courses. NBE will not entertain any queries regarding availability of seats, counselling and allotment of seats other than for DNB Courses.

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15. COUNSELLING FOR PG SEATS

¹ National Eligibility cum Entrance Test (Post Graduate)

The Merit Based Counselling for allotment of PG seats shall be in accordance with gazette notification dated 31.07.2017. As per the Gazette notification:

“The Designated Authority for counselling for the 50% All India Quota seats of 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 post graduate courses (Diploma, M.D./M.S.,D.M/M.Ch) in Medical Education Institutions of the Central Government, Universities established by an Act of Parliament and the Deemed Universities.

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

The counselling authorities for allotment of various types of seats to eligible and successful candidates is as follows:

S. No.	Types of seats	Counselling Authority
1.	All India 50% quota AFMS and ESI Institutions Medical Educational Institutions of Central Govt. Universities established by an Act of Parliament Deemed Universities.	Directorate General of Health Services, Ministry of Health & Family Welfare, Govt. of India Website: www.mcc.nic.in

2.	State quota seats in All Medical Institutions in a State and seats in institutions established by State Govt., Universities established by Act of State/Union Territory Legislature, Municipal Bodies Trust, Society, Company or Minority Institutions.	State Government or authority designated by the State Government.
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Candidates are advised to regularly visit the website of MCC, NBE & State Counselling Authorities for latest updates.

17. NEET PG FOR DNB COURSES

The merit list of NEET-PG 2020 shall be utilized by National Board of Examinations for admission to various Post MBBS DNB courses. No separate DNB CET shall be conducted.

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17.3 ALLOTMENT OF SEATS

The allotment of seats will be done by NBE based on NEET-PG 2020 marks and merit position.

NBE will publish a separate information bulletin for admission to Post MBBS DNB courses.”

3. The petitioners 1 to 4 appeared in the examination and secured ranks 35057, 35071, 45906 and 39667 respectively. In the counselling undertaken by the Medical Counselling Committee, going by their ranks, the petitioners could not get Degree courses or courses of their choice. Their grievance is that it is only after the regular seats of Post Graduate Courses leading to Degree and Diploma are exhausted that the counselling for DNB courses is undertaken; and those who have secured any seat in courses leading to Degrees and Diplomas

are disentitled to lay any claim for DNB courses. Their grievance as culled out in one of the grounds taken in the Writ Petition is as under:-

“V. Because the candidates like the petitioners are being deprived of their choice of allotment as the counselling for DNB seats is not being conducted by the Medical Counselling Committee. The All India quota consists of various kinds of seats including payment seats and free seats. Suppose the petitioners select a payment seat or a discipline about which they are not keen, they cannot opt out and wait for counselling by the National Board of Examinations for DNB seats. They may or may not be allotted seat in DNB courses. If the counselling is conducted through a single stream for the DNB courses also, the candidates will be free to opt for either a payment seat of a seat in DNB courses. Now as they are not sure of getting a seat in DNB, they cannot forfeit their seat in the MD and MS courses through the same are not of their choices.”

4. This Writ Petition came up on 29.04.2020 when the following order was passed by this Court:-

“Mr. Anumolu submitted that NEET Examination is the qualifying examination for admissions to Post Graduate courses leading to Degrees of MS and MD as well as various Diplomas, whereafter the rankings in the NEET Examination are taken into account to fill up the seats available for Diplomate of National Board (DNB) Courses. However, the candidates who are selected either for said Post Graduate Degree or Diploma Courses are not entitled to put in their candidature for DNB Courses.

Mr. Anumolu further submitted that DNB Courses have been made equivalent to Post Graduate Degrees of MS and MD. Resultantly the candidates who may get selected for Diploma Courses would thereafter lose

the chance to be considered for courses like DNB which are equivalent to Degree courses and would thus be put to great prejudice.

Issue notice, returnable on 08.05.2020.”

5. Thereafter concerned respondents put in their appearances and considering the urgency in the matter, all the learned counsel were finally heard on 08.05.2020 at the notice stage. At the request of the learned counsel appearing for the respondents they were granted some time to place on record their responses along with relevant documents and material.

6. The submissions in the affidavit in reply of the National Board of Examination which is the designated authority to conduct NEET-PG 2020 Examination are as under:-

“10. It is respectfully submitted that the rank obtained by a candidate in the NEET-PG is utilized for various counsellings including All India Quota, State Quota and DNB seats.

11. It is respectfully submitted that the counselling of All India Quota seats of post graduate medical courses is being conducted by the Medical Counselling Committee, DGHS, Central Government (hereinafter referred to as “MCC”) First round of which commenced on 12.03.2020 and was ultimately complete by 24.4.2020 with various candidates joining the allotted institutes, the details whereof are set out in the affidavit of the Union of India. In terms of letter U-12021/44/2019-MEC dated 06.05.2020 issued by the MCC, time to resign from the allotted institute

through First round of counselling, has been extended to 12.5.2020 in view of the COVID 19 Pandemic.

12. It is respectfully submitted that in the meanwhile, the answering respondent vide notice dated 1.5.2020 had initiated their counselling process for the DNB seats and the 1st Round of Counselling for DNB seats has commenced on 8.5.2020.”

... ..

14. It is therefore respectfully submitted that since the counselling process for the DNB seats has already been initiated vide public notice dated 1.5.2020 and the DNB seat matrix is already out, candidates can reasonably assess their options on the basis of their merit in the NEET-PB Examination, 2020.

15. It is respectfully submitted that in terms of the extant counselling process, a candidate who has participated in the first round AIQ can also participate in the first round DNB, the results whereof will be declared by 22.05.2020. If the candidate prefers the allotment made to him in the 1st Round DNB to the allotment made to him in the 1st Round AIQ, he can opt for the same. If on the other hand he is not satisfied with either, he can move out and seek to participate in the further rounds of AIQ Counselling and DNB Counselling, in accordance with the terms and conditions are set out in the respective brochures for the same. It is therefore submitted that the grievance of petitioner that they are not given sufficient opportunity and choice is even otherwise misconceived.

... ..

17. It is respectfully submitted that as on 12.05.2020, 13527 candidates have registered for the counselling for the DNB seats and the answering Respondent has floated 3069 DNB (Post MBBS) seats for the First round of counselling. It is relevant to mention herein that few DNB (Post MBBS) seats are likely to be added in the Second round of counselling.

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**COMMON COUNSELLING FOR THE NEXT
ADMISSION SESSION OF 2021:**

19. It is submitted that after some deliberations between Ministry of Health & Family Welfare, Govt. of India and the answering Respondent, the answering Respondent agreed “in principle” for consideration for conducting common counselling for DNB PG seats alongwith MD/MS seats from the next year and accordingly a letter dated 27/02/2020 was sent to the Ministry of Health & Family Welfare, Govt. of India.”

7. The Medical Council of India in its response submitted:-

“7. It is submitted that at the post-graduate level in the field of Medicine the specialty/subject are divided under two categories-Clinical and Non-clinical. It is relevant to submit that the preference of every student is to first get a seat in Clinical subjects, and then aim for securing a seat in their preferred Clinical subject in which the student is desirous of taking admission and pursue further studies. Seats in Non-Clinical subjects at the post-graduate level are not the preferred choice of students and there are very few students who opt for these seats.

8. It is humbly submitted that at the post graduate level the entire counselling process from the perspective of the students revolves around the specialty/subject in which the student is able to secure the seat based on their rank in the NEET examination. It is further submitted that generally students prefer to opt for Diploma or DNB course in Clinical subject over Post Graduate Degree Course in Non-Clinical subject.

9. It is further submitted that the objective behind conducting online common counselling is to provide a level playing field to all the candidates. It ensures that the meritorious students as per their NEET rank are

given the first preference to opt for the subject/specialty in which they intend to take admission, subject to the availability of seats in Clinical and Non-Clinical subjects. Further, online common counselling conducted by DGHS is a single window system to allot seats in PG Medical Courses (MD/MS/and Diploma seats). It would benefit the students to include DNB courses in the said online common counselling, thereby, giving the students equal opportunity to compete for all the available seats in the above-mentioned courses.

10. In the respectful submission of the answering respondent, it would be in the larger interest of the students that they are given the option of choosing between MD/MS and Diploma seats as well as DNB courses in the online common counselling conducted by DGHS. In other words, the allotment of seats in DNB courses may be done by the DGHS at the time of online common counselling for All India Quota seats in MD/MS and Diploma seats. This will ensure that the students have the option of choosing seats of their choice in MD/MS and Diploma seats as well as DNB seats.

11. It is further submitted that as far as the admission for the academic year 2020-21 is concerned the 1st round of counselling for 50% All India Quota seats in MD/MS/Diploma and MDS courses is already concluded and seats have been allotted to the students. In the respectful submission of the answering respondent, at this juncture, to turn the clock back and redo the whole exercise will lead to a complete and avoidable chaos. It is most humbly and respectfully submitted that direction, if any, be passed by this Hon'ble Court may be made applicable from the next academic session 2021-22."

8. The stand taken by the Union of India, Ministry of Health and Family

Welfare is to the following effect:-

“11. The petitioners herein were well aware in the month of November, 2019 that there are two systems of P.G. Medical counselling, for MD/MS Courses the counselling for 50% AIQ/Central Universities/Deemed Universities/Central Institutes is conducted by Medical Counselling Committee (MCC) and for the remaining 50% State Quota seat is done by respective DMEs. Further, it was also categorically mentioned that counselling for DNB seats is to be done by National Board of Examination at their level as per NBE Rules and Regulations for admission to various Post Graduate DNB Courses on the basis common merit which students get through NEET-PG Examination. Despite being well aware that there would not be common counselling and it may result in a scenario where they have to choose between the two, the petitioners choose not to challenge it at the relevant time.

... ..

15. As per the schedule for first round of counselling total 41,903 candidates had participated in the NEET PG, 2020 Counselling (Medical and Dental) and 14,381 Candidates had been allotted a seat through the NEET PG Counselling, 2020 (Medical & Dental) and 9,071 Candidates have joined the allotted college either by online or physical reporting to the concerned/allotted college (Medical & Dental) till 24.04.2020 upto 05:00 p.m.

... ..

22. The answering Respondent is ready and willing to conduct a common Counselling for MD/MS and DNB Courses from the next academic session i.e. 2021-22.”

9. As stressed in the responses of the National Board of Examination as well as of the Ministry of Health and Family Welfare the counselling and consequential process of admission is now at an advanced stage. The

submission made by the petitioners, if accepted at this stage, would result in complete disturbance of the process of admission for the present year. At the same time the submission raised by the petitioners has found acceptance in the response of the Medical Council of India particularly in paragraphs 8 and 10. Insofar as the present year is concerned, in view of the amendments to the Schedule as a result of Covid 19 Pandemic, a window of opportunity was still available to the concerned candidates as stated in paragraph 15 of the response filed by the National Board of Examination.

10. Since the petitioners have approached the Court at a stage where the entire process has been undertaken and many candidates have been allocated various courses in the Counselling, we do not deem it appropriate to pass any direction for the present year. However, going by the assertions made in the response filed by the Medical Council of India, we may observe that a common counselling or single online counselling in the coming years would definitely take care of any similar grievance. Even paragraph 19 of the response filed by the National Board of Examination, the designated authority to conduct NEET-PG, 2020 Examination accepts that said authority is agreeable “in principle” to conduct common counselling from the next year.

11. Consequently, while refusing to pass any directions in so far as the present year is concerned, we hope that the authorities will be able to have common counselling for DNB PG seats along with all Post Graduate seats leading to Degrees and Diplomas as set out in paragraph 19 of the response of the National Board of Examination so also in paragraph 22 of the response of Ministry of Health and Family Welfare for coming years starting with NEET-PG 2021 Examination.

12. This Writ Petition stands disposed of accordingly.

.....J.
(Uday Umesh Lalit)

.....J.
(Dinesh Maheshwari)

New Delhi;
May 26, 2020.