

Reportable

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

Writ Petition (Civil) No 316 of 2022

NIMS University

Petitioner

Versus

Union of India and Others

Respondents

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

- 1 In these proceedings under Article 32 of the Constitution, the petitioners seek directions (a) for the lowering of the cut off percentile for admission to Super Specialty courses; and (ii) to the Medical Counselling Committee (MCC) to conduct a mop up and stray vacancy round of the NEET - Super Specialty counselling to fill up seats which are vacant for the DM/MCh courses.

- 2 On 5 April 2018, Gazette Notification No MCI-19(I)/2018-Med./100818 was issued by the then Medical Council of India in the following terms:

“In order to be eligible for admission to Postgraduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the ‘National Eligibility-Cum-Entrance Test for Postgraduate courses’ held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. 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 Postgraduate courses.

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

- 3 The respondents have declined to exercise the power under the above proviso to reduce the eligibility percentile below 50 for the current year. This has resulted in the invocation of the jurisdiction under Article 32.
- 4 Mr P S Patwalia, senior counsel appearing on behalf of the petitioners submitted that 940 Super Specialty seats are vacant for academic year

2021-2022 and that it will be a colossal waste of scarce resources if these seats are not filled up. Moreover, it was submitted that during the previous academic years, 2019-2020 and 2020-2021, the cut off percentile which was initially fixed at 50 was reduced to 30 (for 2019-2020) and 45 (for 2020-2021). Moreover, it has been submitted that the cut off percentile has been reduced in the case of admissions in respect of post graduate medical courses and hence there is no reason why a distinction should be made for Super Specialty courses.

- 5 Ms Aishwarya Bhati, Additional Solicitor General has tendered a note on record. The note contains the following comparative tables:

“For Academic Year 2019-20

Total Seats	Percentile	Eligible candidates	Vacant Seats
3183	50	10,037	809
3183	30	11,930	537

For Academic Year 2020-21

Total Seats	Percentile	Eligible candidates	Vacant Seats
3693	50	10,359	916
3693	45	11,149	825

For Academic Year 2021-22

Total Seats	Percentile	Eligible candidates	Vacant Seats
4691	50	9850	940

- 6 The above table indicates that during 2019-2020, the eligibility percentile of 50 was reduced to 30 as a result of which the number of vacant seats came down by 272 from 809 to 537. For 2020-2021, the percentile was reduced from 50 to 45, as a result of which the number of vacancies reduced from the original 916 seats to 825. For the current academic year 2021-2022, the percentile has been maintained at 50 for Super Specialty courses resulting in 940 vacant seats. The table is only a broad indication because the percentile was reduced for the general category and for reserved seats to a differing extent.
- 7 The note which has been submitted by the Union Government indicates that:
- (i) A major part of the seats which have remained vacant is in subjects such as Cardiology, Pediatric surgery, Neurology and Nephrology, where seats do remain vacant as a matter of contemporary experience;
 - (ii) For the current year 2021-2022, 13,000 candidates appeared for the NEET - Super Specialty examination, out of which 9850 candidates were eligible for 4691 seats;
 - (iii) A meeting was convened by the Ministry of Health and Family Welfare on 4 May 2022 comprising of other stake holders and after considering whether a reduction in the percentile should be made, it was decided

against doing so since a lowering of the cut off in the NEET - Super Specialty examination would lead to a compromising of the standards; and

- (iv) A sufficient number of candidates was available for undertaking the counselling for vacant seats and the decision not to reduce the percentile is based on the rationale of not compromising on merit. Doctors have to deal with life and death situations and merit cannot be disregarded in the Super Specialty courses.

- 8 Mr P S Patwalia, senior counsel, in the course of his submissions has relied upon the earlier decision of a two-Judge Bench of this Court in the case of **Harshit Agarwal and Others v Union of India and Others**¹. This decision has been recently considered by this Court in ***Neppali Sai Vikash and Others vs Union of India and Others***²:

“8. The counsel for the petitioners relied on the judgment of a two-Judge Bench of this Court in Harshit Agarwal v. Union of India, where the petitioners had sought a direction to lower the minimum marks by 20 percentile in each category for NEET-UG 2020 for admission to the BDS course. Allowing the writ petition, the decision of the Central Government dated 30 December 2020 to not reduce the minimum marks for admission to the BDS course was set aside on the ground that it suffered from illegality and irrationality. This Court directed that the vacant seats in first year BDS course for 2020-21 were to be filled after

1 (2021) 2 SCC 710

2 MA No 735 of 2022 In WP (C) No 124 of 2022.

reducing the percentile by 10 points. However, the circumstances were different in that case. The Dental Council of India had recommended the lowering of the qualifying cut-off percentile to the BDS courses for the year 2020-21. The petitioners then submitted a representation to the Union Government seeking a 2 WP(C) 54 of 2021 5 reduction in the qualifying percentile based on the recommendation of the Dental Council of India. Sub-Regulation (ii) of Regulation II of the Dental Council of India, Revised BDS Course Regulations 2007 stipulates that the Central Government in consultation with the Dental Council of India may at its discretion, lower the minimum marks required for admission if a 'sufficient' number of candidates fail to secure the minimum marks. This Court in that case was deciding on the limited question of whether the decision of the Union Government to not reduce the percentile in spite of the recommendations of the Dental Council of India was arbitrary. It was observed that the contention of the Union of India that the percentile was not reduced because there were sufficient eligible candidates was erroneous since it had not considered vital facts on the ratio of seats available vis-à-vis eligible candidates:

[...]

9. The proviso to Regulation 9(3) of the Post-Graduate Medical Education Regulations 2000 stipulates that the Central Government has the power to lower the minimum marks for admission to PG courses in consultation with the National Medical Commission when a sufficient number of candidates fail to secure minimum marks. On 12 March 2020, the Central Government in exercise of this power reduced the minimum marks in consultation with the National Medical Commission. After the stray rounds were conducted on the reduction in the percentile, only 282 seats are left vacant. The Union of India has taken a considered decision to not reduce the minimum marks further. As submitted by the respondent, the vacancy in the seats does not arise from non-fulfillment of minimum marks but also from course preferences and college preferences of the students. This Court would not be inclined to interfere unless there is a manifest arbitrariness in the decision making process or in the decision."

- 9 The question as to whether the percentile should be reduced is a matter of academic policy. The reasons which have weighed with the Ministry of Health and Family Welfare in declining to reduce the percentile cannot be regarded as extraneous or arbitrary. Super specialty courses cannot be equated with post graduate courses or for that matter with the percentile fixed for under graduate admission. In the circumstances, it is not possible for this Court to entertain the request of the petitioner by directing a reduction in the percentile. The Court cannot be unmindful of the fact that Super Specialty courses are at the apex of the academic spectrum. If a considered decision is taken not to lower standards by reducing the percentile fixed for eligibility, such a decision cannot be faulted. The reasons furnished are not extraneous or arbitrary.
- 10 However, in regard to the alternate prayer, since a second round of counselling has been held at the end of which 940 seats still remain vacant, the Additional Solicitor General has informed the Court that a mop up round of counselling shall be held for those seats including for the stray vacancies, while maintaining the eligibility percentile at 50 for the year 2021-2022.

11 The Petition is accordingly disposed of in the above terms.

12 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Surya Kant]

New Delhi;
May 9, 2022
CKB

SECTION X

Writ Petition (Civil) No.316/2022

(With IA No.66295/2022 - APPROPRIATE ORDERS/DIRECTIONS)

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE SURYA KANT

For Respondent(s) Ms. Aishwarya Bhati, ASG
Ms. Ruchi Kohli, Adv.
Mr. Aman Sharma, Adv.
Ms. Srishti Mishra, Adv.
Mr. Manvendra Singh, Adv.
Ms. Shivika Mehra, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The Petition is disposed of in terms of the signed reportable judgment.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)	(SAROJ KUMARI GAUR)
A.R. -cum-P.S.	Court Master
(Signed reportable judgment is placed on the file)	