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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16743 OF 2024

Akhilesh Kalyan Chothe)
Age: 17 years, since minor through)
his father Dr. Kalyan Shankar Chothe,))
Age: 49, presently residing at Flat)
No. 1203, Madhoor Maitri,)
Co-operative Housing Society,)
Vanvihar Colony, Parijatnagar,)
Kamgarnagar Road, Nashik-422 007)

... Petitioner

Versus

1. State of Maharashtra)
Through its Department of Medical)
Education & Drugs, Mantralaya,)
Mumbai)
2. Director of Medical Education)
& Research St. Georges' Hospital)
Compound Mumbai)
3. State CET Cell)
Through its' Commissioner, 8th Floor)
New Excelsior Cinema Building,)
AK Nayak, Marg, Fort,)
Mumbai – 400 001)
4. Topiwala National Medical College)
Having address at Dr. A.L.,)
Dr. Anandrao Nair Marg,)
Mumbai Central, Mumbai-400008)
5. Government Medical College)
Medical Square, Hanuman Nagar)
Nagpur - 440003)
6. Namisha Jayant Dhake)
Age: Adult, Residing at C/o.Dr.Jayant))
Murlidhar Dhake Gajanan Plaza,)
Behind Veterinary Dispensary, Ashok)
Stambh, Nashik)

...Respondents

**WITH
INTERIM APPLICATION (ST.) NO. 34620 OF 2024**

Akhilesh Kalyan Chothe)
 Age: 17 years, since minor through)
 his father Dr. Kalyan Shankar Chothe,))
 Age: 49, presently residing at Flat)
 No. 1203, Madhoor Maitri,)
 Co-operative Housing Society,)
 Vanvihar Colony, Parijatnagar,)
 Kamgarnagar Road, Nashik-422 007) ... Applicant

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 Age: Adult, Residing at C/o.Dr.Jayant))
 Murlidhar Dhake Gajanan Plaza,)
 Behind Veterinary Dispensary, Ashok)
 Stambh, Nashik)
7. Atharva Nitin Chikar) ...Respondents

Ms.Pooja V. Thorat a/w Mr.Amar Bodke, Advocates for the Petitioner/
Applicant.

Mrs.Reena A. Salunkhe, AGP for the Respondent Nos.1 & 2 -State.

Mr.Sameer Khedekar a/w Ms.Bharti Gerella, Advocates for the
Respondent No.3 - CET Cell.

Mr.Mayur Sosa a/w Mr.Divakar Rai, Mr.Aditya Rai & Mr.Raj Tamhankar
i/b. Mr.Ramchandra Rane, Advocates for the Respondent No.6.

**CORAM : A.S. CHANDURKAR &
M.M. SATHAYE, JJ.**

RESERVED ON : 31ST JANUARY, 2025

PRONOUNCED ON : 27TH FEBRUARY, 2025

JUDGMENT (Per M.M. Sathaye, J.)

1. This is NOT a case of a student who has not got an admission to MBBS course. This is a case of a student who has secured an admission in “A” government MBBS college but still insists for an admission in “B” government MBBS college, by dislodging other students.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The Petitioner is a student of MBBS course who has already got an admission in Government Medical College, Nagpur and is pursuing the same. The Petitioner being a permanent resident of a hilly area as notified by the State of Maharashtra, claims eligibility for reservation under the Hilly Area (HA) category. The Petitioner passed his SSC examination in the year 2022 scoring 92.2% marks. He thereafter appeared for the HSC examination in science faculty and passed the same by scoring 90.2% marks in February 2024.

4. The Petitioner, being desirous of pursuing a health science course, appeared for NEET-UG-2024 examination and scored 666 marks out of 720 and secured All India Rank ('AIR' for short) 14874. The Petitioner thereafter registered for participation in on-line admission process of 85% State quota conducted by the Respondent No.3 - State CET Cell. The Petitioner, being from HA category has been issued necessary certificate and therefore, registered himself and filled the form under the said category. Thus, the Petitioner belongs to the 'HA Open category'. In the CAP-1 Round, the Petitioner entered preference for the Respondent No.4 - Topiwala National Medical College, Mumbai (Nair Medical College and Hospital) as preference No.5 and Respondent No.5 - Government Medical College, Nagpur as preference No.8. After CAP-1 Round, one Ms. Saachi Sandesh Parthe having AIR-3649 belonging to the 'HA category' was allotted a seat at Nair Medical College, Mumbai under 'HA Open Women Category' and the other available 'HA Open' seat was allotted to one Ms. Samruddhi Kishor Deshmukh having AIR-7519. The Petitioner was not satisfied with the allotment during CAP-1 Round and therefore, opted for betterment/up-gradation and again filled his preference opting for Nair Medical College, Mumbai at Sr. No. 5. At the end of CAP-2 Round, the said candidate Ms. Saachi Sandesh Parthe got allotted St. George' Medical College under 'HA Open Women Category' by way of up-gradation.

5. Here begins the dispute by the Petitioner.

6. According to the Petitioner, instead of allotting 'HA Open Women Category' seat of Nair Medical College, Mumbai to the next woman candidate i.e. Ms. Samruddhi K. Deshmukh, one Ms. Namisha Jayant Dhake (Respondent No.6) with AIR-16549 was allotted the said 'HA

Open Women Category' and Ms. Samruddhi K. Deshmukh was retained under the 'HA Open Category' in Nair Medical College, Mumbai. This, according to the Petitioner, is not as per rules and regulations and has caused injustice to the Petitioner. According to the Petitioner, the Respondent Nos.2 & 3 i.e. Director, Medical Education and Research ("DMER", for short) and State CET Cell were required to first exhaust female reservation within HA reservation and then fill up open category seat in HA reservation. Therefore, according to the Petitioner, if Ms. Samruddhi K. Deshmukh was allotted the seat under "HA Open Women Category" of Nair Medical College, then HA Open seat in Nair Medical College would have become available/vacant and would have been then allotted to the Petitioner having AIR-14874. According to the Petitioner, Respondent No.6 having lesser marks (AIR-16549) than the Petitioner, was not entitled to the seat allotted. It is contended that the Petitioner was hopeful that this mistake would be corrected in CAP-3 Round but the same position continued and therefore, the Petitioner made representation to the State CET Cell and the Respondent DMER. The State CET Cell through its email dated 28/10/2024 informed the Petitioner that the seat allotment is done as per applicable rules and regulations. The Petitioner thereafter again made representation on 04/11/2024. The Respondent State CET Cell again through its email dated 04/11/2024 replied to the Petitioner that as per clause 13(f) of the NEET-UG-Information brochure, the seat marked for women cannot be shifted to other candidates. It is in these circumstances, the Petitioner has approached this Court.

7. The Petitioner has prayed for a direction to the Respondent Nos.2 & 3 to transfer the Petitioner to Nair Medical College, Mumbai, and transfer the Respondent No.6 to Government Medical College, Nagpur

for the MBBS course for the academic year 2024-25. The Petitioner has, in the alternative sought a direction to the Respondent Nos.1, 2 & 3 to create an additional seat and allot admission to the Petitioner at Nair Medical College, Mumbai for the academic year 2024-25. The Petitioner has also prayed for compensation.

8. During pendency of the petition, the Petitioner has filed the above interim application, making another student - Atharva Nitin Chikar as party Respondent No.7, contending *inter alia* that said Mr. Atharva has been allotted a seat in Nair Medical College, Mumbai in the subsequent 'stray vacancy round', against rules and regulation and made further prayer to allot that vacant seat in stray vacancy round to the Petitioner and to quash and set aside the selection list by which Mr. Atharva was allotted the seat. It is the case of the Petitioner that a special stray vacancy round was declared to be conducted both on all India and State level and it was scheduled to be conducted from 25/11/2024 to 29/11/2024 for the State counseling. It is contended that the vacancy list for seat matrix for a special stray round was never published and State CET Cell directly on 27/11/2024 published a circular about the special stray vacancy round along with the allotment list on the same date. According to the Petitioner, one MBBS seat was filled at Nair Medical College, Mumbai under the open category on 27/11/2024 (to Mr. Atharva) when there was no vacancy available at Nair Medical College, Mumbai at the stage of commencement of the stray vacancy round. It is further contended that when the present petition was listed on board on 22/11/2024, it was not informed to the Court that vacancy of one seat under the open category at Nair Medical College, Mumbai is available. According to the Petitioner, the said candidate Mr. Atharva has AIR-30233 which is much below the Petitioner but he has secured a

seat in Nair Medical College, Mumbai. Thus, the Petitioner contends that despite being more meritorious, the Petitioner is not allotted Nair Medical College, Mumbai. The Petitioner has also alleged that the said candidate Mr. Atharva was not eligible for the stray vacancy round.

9. The Commissioner of the Respondent No.3 State CET Cell has filed affidavit-in-rely dated 25/11/2024 contending inter alia as under. That several disputed question of facts are raised by the Petitioner, which cannot be adjudicated in writ jurisdiction. That the Petitioner has already filed retention form and has already joined the allotted college within stipulated time and on this ground alone, the petition should be dismissed. That State CET Cell is an implementing authority and bound to follow the rules and regulations as mentioned in information of the NEET-UG-Brochure 2024 (**'the said brochure'**, for short) approved by the State Government including the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 (**'the said Rules of 2016'** for short) and merit lists are published accordingly. That the Petitioner after being allotted Government Medical College, Nagpur in CAP-1 round, was unable to get upgradation in subsequent rounds to other college, as per his merit and choice and ultimately he has opted to file retention form on 22/10/2024 and under applicable rules, the Petitioner cannot be considered thereafter for any subsequent round of selection. That as per the said brochure, the seat marked for special reservation i.e. Hilly Area, PW, woman, MKB, defence etc. are allotted first, followed by the general seats. That as per the seat matrix, Nair Medical College, Mumbai has four reserved seats for Hilly Area namely:

1. Hilly Area ST Geneal – 1
2. Hilly Area VJ Geneal – 1
3. Hilly Area (Open Women) Geneal – 1
4. Hilly Area (Open) Geneal – 1

10. That at the time of CAP-1 round, student with higher merit Ms. Saachi Sandesh Parthe (AIR-3649) was allotted Hilly Area Open Women, followed by Hilly Area Open (general category seat) allotted to student Ms. Samruddhi K. Deshmukh (AIR-7519). It is specifically contended that Hilly Area Open (General) seat is available for both male and female candidate as per merit and student Ms. Samruddhi K. Deshmukh being higher in the merit than the Petitioner, was allotted seat for Hilly Area (Open) General. That in CAP-2 round candidates are allowed to have betterment option or upgradation and at this stage, student Ms. Saachi Sandesh Parthe was allotted G.S. Medical College, Mumbai as upgradation/betterment as per her merit and preference. That since student Ms. Saachi S. Parthe was holding Hilly Area Open Women category, the said seat become vacant and since it was marked for 'women' category, though the Petitioner was having higher merit, it could not be allotted to the Petitioner being male candidate and the said seat was allotted to next meritorious candidate from Hilly Area Women category i.e. Respondent No.6 Namisha Jayant Dhake as per her merit and preference. It is specifically contended that as per the applicable rules, seat marked for women category cannot be allotted to any male candidate. It is contended that Ms. Samruddhi K. Deshmukh was allotted Hilly Area Open seat as per merit. She could not be shifted to Hilly Area Open Women as per Rule 13(f) of the the said Rules of 2016, which specifically provides that a candidate cannot be shifted to other category within same college.

11. For ready reference, Rule 13(f) of the said Rules, 2016 is

reproduced under:

“13(f) It is hereby made abundantly clear that shifting on account of a better choice given by a candidate in any round, shall be effected only and only if such a candidate in the subsequent rounds is found entitled for 'change of course' or a 'change of college'. Mere possibility of a 'change in category' on account of availability of seat in the same college and/or same course in the further rounds shall not amount to "betterment" as such and therefore, no shifting shall be effected in such an eventuality. Such a change in category shall include *inter-alia* change from reserved category to open category or *vice-versa*. The shift in such betterment shall be compulsory and mandatory, except those who have filled Status Retention Form.”

[Emphasis supplied]

It is contended that as per Government Resolution (GR) dated 16/12/2015, Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 (**‘the said Act of 2015’**, for short) is applicable to Government/ Corporation/Medical and Dental colleges and therefore Gazette notified Rules of 2015 made thereunder, are also applicable to the present case. It is further contended that as per Gazette dated 02/06/2023 issued by National Medical Council (NMC) clause No.18, a candidate cannot be permitted to change the institute after the admission is confirmed. It is contended that the Petitioner is making all sort of bald, false and baseless allegations and therefore, no indulgence be shown under extra ordinary jurisdiction.

12. The Petitioner has filed affidavit in rejoinder dated 29/11/2024 contending *inter alia* that status retention form is meant only for CAP-3 Round and same is by default and/or automatic. It is contended that the said Act of 2015 is not applicable to the Government Medical Colleges and they are only applicable to unaided private professional education

institutes and therefore, Rule 13(f) cannot be made applicable to the present case.

13. Respondent No.6 student Ms. Namisha Jayant Dhake who has allotted seat in Nair Medical College, Mumbai has filed affidavit-in-rely dated 12/12/2024 contending *inter alia* that she is eligible for reservation under Hilly Area Women Category. She has relied on rule No. 9.4.9 of the said brochure to assert that the 30% reservation for female candidates is applicable to all categories including Hilly Area category and same operates in parallel, and female candidate will be first allotted female quota seats and after exhausting female quota, male candidate will be allotted seat as per merit and if requisite numbers of female candidates are not available only then such seat can be offered to male candidate of that category. Said Rule No. 9.4.9 is reproduced in subsequent paragraphs of the judgment for ready reference.

14. It is contended that since Hilly Area Open Women category seat got vacant due to upgradation of student Ms. Saachi S. Parthe, the seat must be filled up by another women category and not by a male candidate. It is urged that if the prayer of the Petitioner to transfer Respondent No.6 to Government Medical College, Nagpur is granted, the same will be grave injustice to her which cannot be compensated.

15. The Commissioner of Respondent No.3 State CET Cell has also filed affidavit-in-rely dated 26/12/2024 to the above interim application, *inter alia* contending as under. That the prayer for transferring the Petitioner to 'special stray vacancy' in Nair Medical College, Mumbai cannot be considered, after the Petitioner filed status retention form and after reporting to the college allotted to him in

earlier CAP round. That on 05/11/2024 no vacant seat in Nair Medical College was available as per records with the State CET Cell. That by notification dated 19/11/2024 schedule for conducting special stay vacancy round was issued. Hence, the State CET Cell came to know about availability of one vacant seat at Nair Medical College after completion of admission process on 05/11/2024. That Nair Medical College, Mumbai by its letter dated 25/11/2024 informed the State CET Cell about cancellation of admission by one student on 14/10/2024. However, the said college failed to report it to the State CET Cell and was informed only after cut off date of 05/11/2024, only when special stray vacancy rounds were declared. Relying on Rule 11.1.9 about subsequent rounds, it is contended that candidates who have joined seat in CAP-1 and CAP-2 rounds and/ or allotted a seat in CAP-3 round, are not eligible for being considered for stray vacancy rounds and since the Petitioner had participated in earlier rounds and had filed status retention form for college allotted to him, the Petitioner was not eligible for participation in special stray vacancy round. It is submitted that student Mr. Atharva Nitin Chikar who participated in online vacancy round was eligible because he had opted 'free exit' i.e. he did not report to allotted college after CAP-1 round and he participated in subsequent rounds 2 & 3 but was not allotted any seat as per his preference and merit. As such, the said Mr. Atharva was eligible, who had participated in stray vacancy round and was allotted a seat. It is specifically contended that the Petitioner is making all sort of frivolous, false and unsubstantiated allegations and therefore, no indulgence be shown.

16. We have considered the rival submissions and perused the record.

17. At the outset, let us consider the argument of the Petitioner that

the said Act of 2015 as also the said Rules of 2016 framed thereunder are not applicable to admissions in Government Medical College. Learned counsel for the Petitioner has stressed upon the word “Unaided Private Professional Educational Institutions” appearing in the name of said Act of 2015 and said Rules of 2016. However, this argument is only stated to be rejected, in view of Government Resolution dated 16/12/2015, issued in respect of Government, Government aided and Municipal Corporation colleges for professional courses of health sciences, including MBBS course in question. The said GR clearly applies the provisions of the said Act of 2015 to Government, Government aided as well as Municipal Corporation and minority institutes ‘for the purpose of centralized admission through Common Entrance Test’. In that view of the matter, the present petition being concerned to admission to academic year 2024-25, it is governed by the provisions of the said Act of 2015 as well as the said Rules of 2016 framed thereunder. Rule 13(f) thereof clearly provides that the upgradation/betterment choice can be effected only and only if a candidate in subsequent round is found entitled for ‘change of course’ or ‘change of college’. It is also specifically provided that mere possibility of change in category on account of availability of seat in the same college and/ or same course in further rounds shall not amount to betterment and no shifting shall be effected in such a situation.

18. The star argument of the Petitioner is that after student Ms. Saachi got upgradation, her seat in Hilly Area Open Women got vacant and the same should have been allotted to student Ms. Samruddhi K. Deshmukh, thereby creating a vacancy in Hilly Area Open category, which should have been then allotted to the Petitioner. In the teeth of Rule 13(f), shifting of student Ms. Samruddhi from Hilly Area Open

category to Hilly Area Open Women category, as suggested by the Petitioner, is not permitted because the course and the college remains the same. As such, there is no merit in the said argument. It is nobody's case that the said student Ms. Samruddhi had opted for change from hilly area open to hilly area open women seat. In any case, such upgradation is not permitted under Rule 13(f) as explained above.

19. Secondly, the seat of student Ms. Saachi was reserved for women category and therefore it was required to be filled in by the next woman eligible under CAP-2 round as per merit and preference also belonging to Hilly Area reservation. Such candidate was Respondent No.6 – Ms. Namisha.

20. Under definition clause 3(u) of the said brochure, specified reservation is defined, as under:

“3(u) **“Specified Reservation”** means Reservation other than constitutional like Female, Hilly area, PWD, Defence and MKB are classified as specified Reservation. During allotment of seat in specified Reservation seat will be filled first.”

21. Therefore, it is clear that the reservation of women and hilly area are both covered under this definition which are required to be filled first and therefore, the next question that falls for our consideration is whether the State CET Cell was right in giving preference to ‘women category’ within ‘Hilly Area’ category. In this respect, it is rightly pointed out by the learned counsel for the State CET Cell that as between Hilly Area reservation and Women reservation, the preference will have to be given to Women reservation being a horizontal reservation as also being a specified reservation. In this respect, it is material to note Rule 9.4.7 & 9.4.9 of the the said brochure, which read as under:

“9.4.7 Hilly Area (HA) Reservation: The candidate should have claimed the Hilly area reservation in the original Online application form. Request for Hilly area reservation claim after submission application form will not be granted.

As per G.R. No MED-1003/CR 641/03/Edu-2, dated 16/3/2004, 3% seats at Govt. / Corporation Medical colleges (MBBS course only) are reserved for the candidates from Hilly area. These seats will be distributed uniformly at State level. There will be constitutional reservation and female reservation. Any seat remaining vacant will be reverted back to State quota in respective category. For filling unfilled H.A. quota seats, no fresh preference(s) will be called from the candidates. These seats will be added to the seat matrix of the state quota in respective category and allotted as per the preferences (choices) already exercised by the eligible candidate(s) during online preference filing process. Hilly area quota is specified reservation, seat of Hilly area quota will be allotted first (**Refer Annexure – F**)”

x

x

9.4.9 RESERVATION FOR FEMALE CANDIDATES:

30% seats at the disposal of the Competent Authority shall be reserved for female candidates in all the courses. This reservation shall be for all the categories like SC, ST, DT(A), NT(B), NT(C), NT(D), SEBC, OBC, EWS, Common, HA, MKB & DEF and will be operated in parallel. Female Candidate will be first allotted female quota seats after exhausting female quota seat then female candidate will be allotted general seat as per merit. If requisite numbers of female candidates are not available, then these seats shall be offered to male candidates of that category.

[Emphasis supplied]

Joint reading of the aforesaid two rules, in our opinion clearly provides that as between Hilly Area category and Women category, the reservation for Women/female candidate will take preference.

22. Apart from what is held above, let us also consider whether at the instance of the Petitioner, students like Respondent No.6 Ms. Namisha or Respondent No. 7 (In Interim Application) Mr. Atharva, can be dislodged from their allotted seats. The answer is NO and we say so for the following reasons.

23. The Petitioner at the end of CAP-3 round has filed retention form, which is sufficiently established by the State CET Cell by producing admission and retention acknowledgment. It is therefore clear that the Petitioner had joined Government Medical College, Nagpur on 03/09/2024 and he has retained the allotted seat on 24/10/2024 and he has not cancelled the same. It is therefore clear that the Petitioner opted out of further rounds by exercising a conscious choice. In this respect, it is material to consider Rules 11.1.5, 11.1.8 and 11.1.9 of the said brochure, which read as under:

“11.1.5 Status Retention: In case if a candidate to whom a seat has been allotted in the first round and who has joined the college accordingly, is satisfied with the allotment, such a candidate must submit a Status-Retention Form (Annexure-J) in the given format on or before prescribed date with the Dean/Principal of the College where such a seat has been allotted to such a candidate The Dean/Principal of every Medical / Dental College in which admissions are so made in terms of these rules, may appoint an appropriate Officer to receive such Status Retention Forms. Upon receipt of such Status Retention Forms, an acknowledgement in writing shall be issued immediately to the concerned candidate(s) by the officer appointed by the Dean/Principal of the concerned college. It is mandatory for every such candidate submitting a Status Retention Form to insist for issuance of acknowledgement thereof and to preserve such acknowledgement till the present admission process is finally concluded. In absence of such an acknowledgement, the claim of submission of Status Retention Form within the prescribed time shall not be entertained. Candidate who has submitted status retention forms will not be eligible for remaining subsequent round(s). It is hereby made clear that the period provided for submission of Status Retention Form is crucial and vital. This period shall not be extended for any reason whatsoever. Submission of the Status Retention Form is an irrevocable and irreversible act for the candidate submitting such Status Retention Form. It is made clear that under no circumstances whatsoever, a candidate will be allowed to submit a Status Retention Form after the aforesaid last date. Under any circumstances whatsoever, a candidate who has submitted a Status Retention Form shall not be allowed to

withdraw the same. All the candidates therefore, should take the note of this before submission of such a Status Retention Form.

Names of all the candidates who have submitted the Status Retention Form as above within the prescribed time and the seats occupied by them will be removed out of consideration for the remaining admission process for academic year 2024-25. Candidate who has joined during Round1 and filled Status Retention form will be considered as Status Retention during further Rounds.

All the institutions should inform the joining of the candidates and vacancies arising due to non-joining of the candidates and cancellations/status retention at their institutions after the last date of reporting of respective rounds, immediately to Maharashtra State CET Cell through online College feedback module.

The academic year will start as per the guidelines from NMC/DCI.”

x

x

11.1.8 CAP Round 3 Process:

11.1.8.1 Available Seats for Round 3:

- Seats not allotted during Round2.
- Seats vacant due to non-joining / cancellation by candidate(s) allotted in Round1 or Round2.

11.1.8.2 Following types of Candidates are eligible for seat allotment in Round 3

- Registered candidates who did not fill choices in Round1 & Round2.
- Candidates who are joined in Round 2 but did not filled Status Retention Form.
- Registered candidates who participated in Round1 & Round2 but did not get any seat allotted in Round1 & Round2.
- Candidates who have registered in Round 3.

11.1.8.3 Candidate will have to fill fresh preferences for Round 3. **All previous preferences will be considered as null & void.** Candidate(s) selected during Round 3 will have to join the allotted college / seat within the prescribed period as per schedule. It is mandatory for the candidate to join the allotted seat in Round 3.

11.1.8.4 Candidates not eligible for Round 3:

- Candidates who have joined seat up to Round 2 and filled Status Retention Form.

11.1.8.5 After the allotment of seat in Round 3 the candidate

will not be eligible to participate in any further rounds of State Counseling Process. Names of such candidates will be informed to MCC.

11.1.9 Subsequent Round(s):

After Round 3, subsequent Online CAP Stray Vacancy Round(s) will be conducted if seat(s) remain vacant.

11.1.9.1 Online CAP Stray Vacancy Round Process:

Available Seats for Online CAP Stray Vacancy Round:

- Seats not allotted during Round 3.
- Seats vacant due to non-joining of candidate(s) allotted in Round 3.

Eligible Candidates:

- Candidate who have registered & filled online preference form previously but not been allotted a seat till Round 3.

Candidates not eligible:

- Candidates who have joined seat in Round1, Round2 and/or allotted a seat in Round 3.
- Candidates who have joined seat in Round1, Round2 and/or allotted a seat in Round 3 of All India Quota seats.

Note -

- No new registration will be done for this Round.
- **Candidate will have to fill fresh choices for CAP Online Stray Vacancy Round. Round3 choices will be considered as null & void.**
- Allotment of seat will be done Online by running software.
- There will be no institutional level round for any seats remaining vacant after Online CAP Stray Vacancy Round Process. (As per NMC circular dated 24/07/2023 - Annexure – KK)”

(Underlines are supplied by us but bold lettering is as per original.)

24. Conjoint reading of the aforesaid rules clearly establishes that the candidate who has submitted the status retention form is not eligible for participating in subsequent rounds and after seat allotment in CAP-3 round, the candidate is not eligible to participate in any further rounds of State counseling process.

25. It is clear from Rule 11.1.5 that the period for submission of status retention form is crucial and vital and the said period is not extendable for any reason whatsoever and submission of status retention form is irrevocable and irreversible act and under any circumstances the candidate who submitted status retention form shall not be allowed to withdraw the same. This Rule is absolutely essential for giving finality to the process. It is clear from the present petition that students and their parents are ready today to pursue their never ending desire, even if this is to be achieved by dislodging other fellow students such as Respondent Nos.6 & 7.

26. Even if this Rule is to be considered in a dispassionate and clinical manner, such Rule is necessary for the purpose of giving finality to the process of admission, which is a process handling lakhs of aspiring students every year. Unless we respect and value such strict Rules granting finality to the process, it will be very difficult for agencies conducting the admission process to operate meaningfully.

27. We therefore have no hesitation to hold that the Petitioner, who has filed status retention form accepting the allotted seat and has joined the allotted college, is not at all entitled to question any subsequent admission granted under subsequent rounds including stray vacancy rounds.

28. Learned counsel for the Petitioner submitted that the Petitioner has joined his allotted college in CAP-3 round, under compulsion and even if he had not filled retention form, it would have been an allotment under CAP-3 round for the present college i.e. Government Medical College, Nagpur. This argument is also devoid of merits. It has come on record under the affidavit-in-reply filed by State CET Cell that

the student Mr. Atharva had opted for 'free exit' under the Rules and he did not report to the allotted college after CAP-1 round. Without reporting to the college, he had participated in subsequent rounds including on-line stray vacancy round and was allotted seat under stray vacancy. It was open for the Petitioner also not to report to the allotted college and take a chance, if he was so keen for a particular medical college. The conduct of the Petitioner by filing status retention form and joining the allotted college and thereafter turning around and prosecuting this petition, shows a clear intention of taking chance, that too, making other students party and praying for their dislodgement. We deprecate such attempts.

29. So far as the argument of the Petitioner about the stray vacancy created in Nair Medical college, Mumbai not being reported in time purposely or otherwise, about which much was said during arguments, learned counsel for the Respondent - State CET Cell has clearly refuted the allegation and has pointed out that the stray vacancy was informed by Nair Medical College, Mumbai only on 25/11/2024 by a written letter alongwith with necessary affidavit from the said college. In writ jurisdiction, this Court cannot enter and adjudicate disputed questions of the fact, such as this one, sought to be raised by the Petitioner about stray vacancy not being informed purposely or otherwise. We do not say any more.

30. In the aforesaid facts and circumstances and for all the reasons stated above, we find this petition devoid of merits and therefore we are not inclined to grant any indulgence under our extra ordinary writ jurisdiction.

31. This case serves as a classic example of a man's never ending

desire for more. The Petitioner being a minor is prosecuting this petition through his father, who is apparently a doctor. Our society has reached a point where unsuspecting innocent students are sought to be dislodged from their admissions in MBBS colleges at the hands of a fellow student. It is unfortunate but true. Desperation of students and their parents for admission to MBBS course 'from a particular college' is palpable. We place on record our disapproval for taking precious judicial time of this Court in an effort to seek allotment in 'a particular government college' when the Petitioner is already allotted a seat in 'other government medical college'.

32. For all these reasons, we dismiss this petition and the interim application with no order as to costs. Rule stands discharged accordingly.

33. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)

(A.S. CHANDURKAR, J.)