

IN THE SUPREME COURT OF INDIA

WRIT PETITION (C) NO. 1002 OF 2021

Madhura Kavishwar & Ors.

...Petitioners

versus

Union of India & Anr.

... Respondents

**Rejoinder Submissions by Mr. Shyam Divan, Senior Advocate
on behalf of Petitioners**

1. The submissions of UOI that since clause 11.1 and 11.2 of the NEET PG Bulletin prescribes that the reservation shall be as per norms of GOI as may be applicable and a separate handbook of applicable reservation shall be released by designated counselling authority shows that the Rule of the game has not begun, **is absurd**, for the following reasons:
 - (i) The candidates had registered for the exam on 23.02.2021 with the particular seat matrix available at that time knowing in what seats he has to compete. Now by impugned notification you cannot change the seat matrix by including further reservation, thus changing the rules of the game unfairly. A candidate know the seat matrix on the date of registration, meaning thereby, when the game began 2500 OBC and 1000 EWS seats were available to the open category candidates, which now has been sucked out by the impugned notification.
 - (ii) The term “ as may be applicable” in clause 11.1 & 11.2 of the bulletin must necessarily mean the reservation applicable as on date of registration and no other date.
 - (iii) By this logic of UOI, the criteria can be changed even one day before counselling, which is perverse, arbitrary and illegal.
2. As far as MDS is concerned, it is altogether a separate exercise for which a separate notification, separate exam and separate counselling are held. For MDS, the results were out on 30.12.2020, counselling was due in Feb 2021, which could not take place due to Covid. The impugned notification was issued in between. However, a separate challenge has been raised in W.P. (C) No. 1105/2021 listed as item 33.4 today challenging the applicability of this notification in NEET – MDS.
3. It is submitted that this Hon’ble Court has repeatedly emphasised that reservation in PG medical courses should be minimal. In *Dr. Preeti Srivastava v. State of MP* [(1999) 7 SCC 120], this Hon’ble Court in

paragraph 23 has held that - at the level of super specialisation there cannot be any reservation. It is submitted that the post graduate medical course in most cases are the end of the branch and there is no further specialisation or super specialisation. The PG course in those cases are itself a specialisation and final top of pyramid from the point of view of society and students. Thus, there shall be no reservation in 50% AIQ seats in PG courses. In the following courses, there is no further specialisation or super specialisation after Post Graduation:

(i) MD Radiology, (ii) MD Dermatology, (iii) MD Gynaecology, (iv) MD Psychiatry, (v) MD (Chest), (vi) MD PSM (preventive and social medicine), (vii) MD Forensic Medicine, (viii) MD Microbiology, (ix) MD Pathology, (x) MD Biochemistry, (xi) MS Anatomy, (xii) MS Orthopaedics, (xiii) MS Ophthalmology, (xiv) MS ENT.

4. There are express rights provided under the Constitution of India such as Article 14, 19, 21 etc. There are second set of rights which have been derived by the Hon'ble Supreme Court by various judgments such for e.g. right to privacy in K.S. Puttaswamy vs UOI (2017) 10 SCC 1; 50% reservation in Indira Sawhney case; right to promote gender equality without any discrimination in Vishakha case, etc. These are balancing rights devised by Hon'ble Supreme Court. Similarly 50% All India Quota seats for open category students were evolved and created by Hon'ble Supreme Court in the context of domiciliary requirement. It is a Court created entitlement, in which UOI did not have the right to make changes without approaching the Court and that too by an executive order.
5. As far as Central Education Institutions (Reservation in Admission) Act, 2006 is concerned, these institutions such as AIIMS, PGI, etc. holds their separate exams through INICET (Institute of National Importance Common Entrance Test) twice a year for PG courses. There are no seats for any State quota or All India Quota in these institutions. All India Quota is carved by forming 50% seats of State Government Medical Colleges only and not from the seats from these Central Institutions. Thus the 50% AIQ PG seats are altogether different from PG seats of these Central Institution.

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FOR THE PETITIONERS