

(2018) 04 RAJ CK 0213

In the Rajasthan High Court

Case No : Civil Writ Petition No. 13776, 12907, 13305, 13422, 13432, 13450, 13491, 13492, 13494, 13564, 13580, 13590, 14093 of 2017

Mahendra Mension @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 19-04-2018

Acts Referred:

Dentists Act, 1948 — Section 20

Citation : (2018) 04 RAJ CK 0213

Hon'ble Judges : NIRMALJIT KAUR, J

Bench : Single Bench

Advocate : M.S. Singhvi, Akhilesh Rajpurohit, Abhishek Mehta, Kuldeep Mathur, Vikas Balia, A.A. Bhansali, Himanshu Maheshwari, Sachin Acharya, D.S. Sodha, Dinesh Pal Singh Charan, Ashok Choudhary, Ravi Bhansali, Vipul Dharnia, Dhanesh Saraswat, Sanjeet Purohit

Final Decision : Allowed

Judgement

“

All the above mentioned writ petitions shall stand decided by this common order as the issue involved is identical. For convenience, the facts are being”,,

taken from S.B.Civil Writ Petition No.13776/2017 (Mahendra Mension & Ors. Vs. State of Raj. & Ors.),,,

The petitioners are first year students of Bachelor of Dental Surgery (hereinafter referred to as “BDS”) in the respondent College. They have,,

preferred the writ petition against the order dated 10.04.2017 passed by the Dental Council of India directing the respondents No.4-College to,,

discharge the petitioners and other students on the ground that admissions were in violation of Dentists Act, 1948 since they were granted admission”,,

on the lower percentile and did not qualify National Eligibility-cum Entrance Test (NEET), 2016.”,,

The Dental Council of India is a body constituted under the provisions of Dentists

Act, 1948. In order to maintain the uniform standard of dental",,,
education at undergraduate and postgraduate level in the country, Dental Council of India, in exercise of rule making powers vested in it under Section",,,
20 of the Dentists Act, has framed Revised BDS Course Regulations, 2007.Â In exercise of the powers conferred by Section 20 of the Dentists Act,",,
1948, the Regulations of 2007 were amended vide notification dated 31.05.2012. The eligibility criteria for selection to BDS course provided in the 5th",,,
Amendment of Regulations, 2007 is reproduced as under:-",,,
â??6. In the existing Sub-regulation 5 of Regulation II, under the heading â?? Procedure for selection to BDS courseâ? shall be as follows:-shall be",,,
deleted and substituted as under:-",,,
(i) There shall be a single eligibility-cum-entrance examination namely â?? National Eligibility-cum-Entrance Test for admission to BDS courseâ? in,,
each academic year.â?,,
(ii) 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 at 50th percentile in â??National Eligibility-cum-Entrance Test to BDS courseâ? held for the said academic years. However, in respect of",,,
candidates belonging to Scheduled Castes,Â Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of",,,
candidates with locomotory disability of lower limbs terms of subregulation 4 above, after the commencement of these 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,,
â??National Eligibility-cum-Entrance Test for admission to BDS courseâ?.,,,
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.,,,
(iii) The reservation of seats in dental colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all,,

India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-,,

Entrance Test and candidates shall be admitted to BDS course from the said lists only.,,

(iv) No Candidate who has failed to obtain the minimum eligibility marks as prescribed in Clause (ii) above shall be admitted to BDS course in the said,,
academic year.,,

(v) All admissions to BDS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance,,
Test.,,

(vi) To be eligible for admission to BDS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology/ Biotechnology and",,,

English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Biotechnology at the",,,

qualifying examination as mentioned in Sub Regulation 2 of Regulation I and in addition must have come in the merit list of â??National Eligibility-,,

cum-Entrance Testâ? for admission to BDS course in respect of â??candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward",,,

Classesâ?? the minimum marks obtained in Physics, Chemistry and Biology/bio-technology taken together in qualifying examination shall be 40%",,,

instead of 50% in respect of candidates with locomotory disability of lower limbs in terms of sub-regulation 4, after the commencement of these",,,

amendments, of Regulation I above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in",,,

qualifying examination shall be 45% instead of 50%.,,

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally",,,

permitted to take up the National Eligibility-cum-Entrance Test and in case of selection for admission to the BDS Course, he/she shall not be admitted",,,

to that course until he fulfills the eligibility criteria under Regulation I.,,

(vii)The Central Board of Secondary Education shall be the organization to conduct National Eligibility-cumEntrance Test for admission to BDS,,

course.â??.,,

Thereafter, by an ordinance promulgated by the CentralGovernment on

24.05.2016, it was mandated, inter-alia that:-",,,

10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate,,

level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated",,,

authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:,,

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance",,,

examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect",,,

of the State Government seats (whether in Government Dental College or in a private Dental College) where such State has not opted for such,,

examination.â??,,

Accordingly, the respondent No.1-State decided to opt for NEET, 2016. The Apex Court on 09.05.2016 in Transfer Case No.7 of 2013 (Association",,,

of Managements of Unaided Pvt. Medical & Dental College & Anr. Vs. Union of India & Ors.) and various other applications filed for modification,,

of the order dated 28.04.2016 passed in WP(C) No.261/2016, while disposing of the same, directed that only NEET would enable a student to get",,,

admission in BDS and MBBS Course. The entire admission process was to be completed by 30.09.2016. However, a large number of BDS course",,,

seats were still lying vacant in the private Dental Colleges in the State of Rajasthan. Hence, the Federation of Private Medical & Dental Colleges",,,

approached the Apex Court by filing a writ petition seeking a reduction in the minimum cut off percentile of the NEET.,,,

The Apex Court in Writ Petition (C) No.747/2016 (Federation of Pvt. Medical & Dental Colleges of Rajasthan & Anr. Vs. Union of India & Anr.),,,

vide order dated 23.09.2016, allowed the Federation to withdraw the writ petition and granted liberty to file a representation before the Central",,,

Government seeking the same relief. The Central Government was directed to decide the representation within a period of one week. The Federation,,

filed the representation to the Central Board of Secondary Education with a copy to the respondent No.2-Union of India and the respondent No.3-,,

Dental Council of India requesting the respondents to lower the minimum marks/

percentile required for admission to the BDS Course as per the,,

NEET since only 225 seats out of total 892 seats could be filled and the remaining were lying vacant in the 11 Dental Colleges of the State of,,

Rajasthan. Meanwhile, the Apex Court vide its order dated 27.09.2016 passed in WP(C) No.652/2016 extended the last date of admission to",,,

07.10.2016 to enable the Colleges to fill up the vacancies in the BDS Course like all over India.,,,

The respondent No.2-Central Government vide its letter dated 29.09.2016 forwarded the representation of the Federation dated 23.09.2016 to the,,

respondent No.1-State of Rajasthan to take necessary action as deemed fit. Taking note of the said letter, the State of Rajasthan in its turn permitted",,,

all the private Dental Colleges to fill the vacant seats on their own on the basis of NEET merit through its letter dated 30.09.2016, followed by another",,,

letter dated 29.09.2016 reducing the minimum required NEET percentile to the extent of 10%. The petitioners participated in the counselling,,

conducted by the University and were admitted in the respondent College. The State of Rajasthan lowered the qualifying marks by an additional 5,,

percentile and simultaneously, wrote a letter to the Central Government for post-facto approval vide letter dated 04.10.2016. The Central Government",,,

immediately vide its letter dated 06.10.2016 requested the State Government to withdraw/cancel its order dated 30.09.2016 as well as order dated,,

04.10.2016 lowering the percentile to an extent of 10% and an additional 5% on the ground that the State has no power to relax the percentile and the,,

said power vested only with the Central Government and not with any State Government and that admission in such terms of relaxation, was void ab",,,

initio. Thereafter, the said letter was forwarded by the State of Rajasthan to the respective Colleges vide their forwarding letter dated 06.10.2016.",,,

Simultaneously, the Dental Council of India vide its letter dated 03.10.2016 recommended to the Central Government of India to take a final decision",,,

since the Government of Rajasthan has permitted the Federation of Medical and Dental Colleges of Rajasthan to lower the marks to the extent of,,

10% only for the academic year 2016 and not to be quoted as precedent in future. The Dental Council of India further requested the Central,,

Government to take a final decision to cope with the last date of admission i.e. 07.10.2016.,,,

This time, the Central Government had although vide its earlier letter dated 29.09.2016 written to the Government of Rajasthan to take necessary",,

action as deemed fit, took a "U" turn and rejected the recommendation of the Dental Council of India vide its letter dated 07.10.2016, which",,

necessitated the Dental Council of India to issue the impugned order/letter dated 28.08.2017 to the State of Rajasthan conveying the decision of the",,

Executive Committee whereby the request of the State Government to grant ex-post facto approval for lowering down the percentile for BDS",,

admissions for the academic session 2016 in the State of Rajasthan, was rejected.",,

With this background as above, the learned counsel for the petitioners in short raised the following manifold arguments:",,

(a) The National Eligibility-cum-Entrance Test was only a competitive examination. The eligibility under the Regulations is 10+2 in Science subject",,

with requisite marks, whereas NEET was a competitive examination and the same is undertaken for only fixing cut off marks for filling up the vacant",,

seats. Since more than 50% of the vacant seats were lying vacant, the cut off marks had to be reduced.",,

(b) The Central Government vide its letter dated 29.09.2016 had allowed the respondent no.1 to take "necessary action as deemed fit" and the",,

respondent no.1 accordingly taking into account the circumstances reduced the minimum eligibility percentile to the extent of 10% and additional 5%.",,

(c) The Central Government could not have withdrawn the said permission accorded to the State Government after the said admission had been",,

granted to the petitioners. The Dental Council of India itself has recommended the Central Government to lower the minimum percentile looking to the",,

larger number of vacant seats in the BDS Course.",,

(d) Lastly, the petitioners cannot be made to suffer on account of no fault of theirs. They have already completed one year and have paid heavy fees",,

to undergo the said course.",,

Reply has been filed. Learned counsel for the respondents Central Government and Dental Council of India while vehemently opposing the prayer of",,

the petitioners submitted that it was mandatory to attain minimum 50th percentile in the NEET examination. The percentile could be reduced only by",,

the Central Government in consultation with the Dental Council of India. The

action of the State in suo motu reducing the percentile is without,,
jurisdiction and void ab-initio. There were sufficient number of eligible candidates who had attained percentile to the extent of 50% in the NEET,,
examination. Hence, there was no need to reduce the percentile. The respondent-Institute have admitted students who have got zero and even minus",,,
marks. Heavy reliance was placed on the judgment rendered in the case of Rishabh Choudhary Vs. Union of India & Ors., reported in (2017) 3",,,
Supreme Court Cases 652.,,,
The first question herein is as to whether the National Eligibility-cum-Entrance Test is only a competitive examination for the purpose of fixing cut off,,
marks and whether it was necessary to obtain marks at 50th percentile. The very name of the examination, namely, National Eligibility-cum-Entrance Test suggests that it was necessary to appear and qualify the said examination. In fact, Regulation 6(v) of the amended Regulations, 2007",,,
specifies that all admissions to BDS Course within the respective categories shall be based solely on marks obtained in National Eligibility-cum-Entrance Test. Regulation 6(ii) of the Regulations, 2007, as reproduced above, further suggests that "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 at 50th percentile in National Eligibility-cum-Entrance Test to BDS course held for the said academic year",,,
The reason for having to undertake NEET is borne out from the judgment of the Apex Court in the case of Dr.Dinesh Kumar & Ors. Vs. Motilal Nehru Medical College, Allahabad & Ors., reported in (1985) 3 Supreme Court Cases 22. While giving reasons for recommending that admissions to Medical Colleges should be based on All-India Entrance examination the Apex Court observed that the same was necessary only for avoiding harassment and distress to the students seeking admission to the MBBS course who rush from one State to other to appear in the respective entrance test of that State so that they can get admission at least in one of them or as per their priority. The relevant para of the said judgment reads as under:-
"The admissions must be based on one valuation of relative merits through an entrance examination which would be open to all qualified candidates through out the country. Such entrance examination should in our opinion be held by the Government of India or the Indian,

Medical Council on an all India basis and admissions should be granted to the various medical colleges in the country on the basis of the marks,,
obtained at such entrance examination and while granting admission any preference expressed by the students for any particular State or University or,,
Medical College or Colleges shall be kept in mind, and as far as possible, effort shall be made to conform to such preferences so that the students who",,,
secure admissions are least inconvenienced and they are able to carry on their studies near their place of residence. There can be no constitutional,,
impediment in the way of the Government of India or the Indian Medical Council for holding such entrance examination, because the topic of",,,
education is in the Concurrent List. We are of the view that such entrance examination must be held by the Government of India or the Indian,,
Medical Council because then there will be only one examination in which the students seeking admission to the M.B.B.S course will have to appear",,,
irrespective of the place where or the University or Medical College in which, they are seeking admission is located. Today we are witnessing the",,,
highly distressing spectacle of students rushing from place to place to appear at entrance examinations which are being held in Delhi, Chandigarh",,,
Bangalore and various other places. So much time, money and energy of the students is wasted and in addition there is a gnawing anxiety at the",,,
almost chaotic uncertainty in regard to admission. It is therefore absolutely essential that there should be only one entrance examination common to all,,
the medical colleges in the country and such entrance examination can be held only by the Government of India or the Indian Medical Council. That is,,
why at the last hearing of the present writ petition, we directed the Indian Medical Council to come forward with a positive scheme for holding an all-",,,
India entrance examination for regulating admissions to the minimum 30% non reserved seats for the M.B.B.S. course. We hope and trust that at the,,
next hearing of this writ petition, the Indian Medical Council will produce a will thought out scheme for holding an all India entrance examination so",,,
that the necessary directions can be given by the court in regard to the holding of such entrance examination well in time before the next academic,,
year begins in June/July 1985.â??,,
The judgment rendered in the case of Rishabh Choudhary Vs. Union of India & Ors. (supra) too only deals with the mandatory requirement of,,

undertaking the NEET examination for admission to MBBS Course and not with minimum percentile required to attain eligibility,,

The argument of the learned counsel for the respondent Central Government and the Dental Council of India that it was necessary for a candidate to,,

obtain a minimum marks in NEET was mandatory in view of Regulation 6(ii) of the Regulation, 2007 and the same not having been challenged was",,,

liable to be followed in letter and spirit, may have had some merit in case the same was also the intention of the legislature. The mandatory",,,

requirement of having the minimum marks of 50th percentile does not appear to be correct in view of the proviso to the Regulation 6(ii) itself, which",,,

reads as under:-Â,,

â??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.â?,,

A perusal of the proviso shows that the Central Government in consultation with the Dental Council of India could always lower the minimum marks,,

required for admission to BDS Course in the respective category. Thus, in case the minimum marks of 50th percentile was required to be mandatory",,,

the said proviso would never have been incorporated. The language of the proviso suggests that the Central Government in consultation with Council,,

of India can exercise its discretion to lower the maximum marks required for admission to BDS Course. The level to which the marks can be lowered,,

has not been suggested. In fact, free hand has been given and in absence of a limitation to the extent which the marks can be lowered is probably",,,

keeping in mind the eventuality of the number of candidates available being more than vis-a-vis the seats. This reasoning behind reducing the minimum,,

marks attained by a candidate in the NEET is also evident from the letter dated 03.10.2016 written by Dental Council of India recommending,,

reduction of marks by 10 percentile in order to fill up the seats lying vacant in the BDS course as reported from the different parts of the country for,,

the said academic session only and not to be quoted as precedent in future. The impugned letter dated 07.10.2016 written by the Central Government,,

itself rejected the recommendation on the ground that "there are adequate number of candidates who have qualified NEET UG for the academic,,

year 2016-2017". Thus, there is no doubt that the requirement of 50th percentile in the NEET examination was not mandatory. It could be reduced as,,

per the ratio of the students available vis-a-vis the seats. The mandatory requirement of attaining the minimum marks was in the qualifying,,

examination of 10+2. Only a candidate who had achieved the minimum marks as required in 10+2 of Science subject was qualified to take up the,,

NEET examination.Â,,

In view of the above discussion, it is evident that although it was necessary to take the NEET examination for entrance to the courses, its purpose was,,

only short-listing the candidates. Therefore, attaining 50th percentile minimum marks was not mandatory as the same could be reduced as per the,,

discretion to be exercised by the Central Government in consultation with Dental Council of India, in case of inadequate number of available,,

candidates.,,

Having held as above, the next argument raised by the learned counsel for the respondents which requires to be dealt with is whether the respondent-,,

State could have reduced the percentile marks in the circumstances when only the Central Government had the jurisdiction and discretion to do so.,,

In order to adjudicate the same, this Court requires to go into the sequence of events.",,

There is no doubt, the eligibility criteria for selection to BDS course provided in 5th Regulation of 2017 grants the power only to the "Central",,

Government" in consultation with Dental Council of India. However, as already noticed above, a number of seats were lying vacant. Accordingly,,

the Federation of Private Medical and Dental Colleges approached the Apex Court. The Apex Court in Writ Petition (C) No.747/2016 (Federation of,,

Pvt. Medical & Dental Colleges of Rajasthan & Anr. Vs. Union of India & Anr.) vide its order and judgment dated 23.09.2016, allowed the,,

Federation to withdraw the writ petition with liberty to file a representation and approach the Central Government seeking the same relief as the,,

power of reduction as per the proviso to the amended SubRegulation (v) of

Regulation 2017 vested with the Central Government. The Federation,,
accordingly filed a representation on 23.09.2016 before the Central Board of
Secondary Education with copies to Central Government and Dental,,
Council of India pointing out that only 225 seats out of total of 892 seats have
been filled and remaining were still lying vacant. In fact, the Supreme",,
Court too had meanwhile extended the date for last date of admission from
27.09.2016 to 07.10.2016 to enable the institutes to fill up the vacancies in,,
BDS course. The Central Government instead of deciding the said representation
and exercising powers under the Regulation, very conveniently",,
directed the State Government vide its letter dated 29.09.2016 to take necessary
action as deemed fit.,,

The said letter dated 29.09.2016 is reproduced as under:-,,

To",,,

The Principal Secretary,,

Medical health & Family Welfare,,

Department of health & Family Welfare government of Rajasthan Room,,

No.5208, Govt. Secretariat",,,

Main Building, Jaipur-302005",,,

Â Â Â Sub: Regarding reducing the merit of NEET-2016 for admission in BDS
(Supreme Court of India, Writ",,,

Petition Â© number747/20016),,,

Sir",,,

I am directed to forward herewith a copy of the representation of Federation of
Private Medical and Dental,,

Colleges of,,

Rajasthan vide no.FPMDCR/Admn/2016-17/223 dated 23.09.2016 received in
this Ministry on the subject cited,,

above for necessary action as deemed fit.,,

Â Â Â Â,,

Yours sincerely",,,

(Pradeep Kumar),,,

Â Â Â Â Â Under Secretary in the Govt. of India,,

Â Â Â Â Â Ph. No.01123083018,,

Acting upon the said letter, the State Government vide letter dated 30.09.2016 permitted all the private Dental Colleges to fill up the vacant seats by",,,

lowering the marks to the extent of 10 percentile so that optimum number of seats are filled with stipulation that the same was applicable only for the,,

academic year and sent the information to the Central Government. Meanwhile, the Dental Council of India vide its letter dated 03.10.2016 also",,,

recommended the Central Government to take a final decision in the matter so as to cope with the last date of admission i.e. 07.10.2016 by stating in,,

para 4 of the said letter as under:-,,

4. The General Body after taking into consideration the fact that the CBSE has, by and large, prescribed the course curriculum/syllabus of the",,,

NEET purely based on its syllabus and the CBSE Board is existing most properly in urban areas not in rural areas. The students of rural areas are,,

rarely are enrolled with CBSE Board and they have pursued their courses from the board constituted by the respective state or any other board. The,,

issue has now been considered by the General Body in its meeting held on 30th September and 1st October, 2016 and decided to recommend to the",,,

Central Government in terms of the proviso (b) of the Eligibility Criteria has prescribed in Chapter-6 captioned as MERIT LIST AND QUALIFYING,,

CRITERIA, that in order to fill up the seat lying vacant in BDS Course as reported from the different part of the country, the 50th percentile",,,

prescribed for general category and 40th percentile for reserve category be reduced by 10th percentile. The student secured 40th percentile in general,,

category and 30th percentile for reserved category be made eligible for admission in BDS Course only for the current academic session 2016 not to be,,

quoted as precedent in future provided that there shall be no deviation or relaxation from academic qualification and percentage as prescribed by the,,

Dental Council of India in its Revised BDS Course Regulation, 2007 and all the students shall be made only from the students who have appeared in",,,

NEET purely on their order of merit. These recommendations be sent to Central Government to take its final decision in the matter so as to cope with,,

the last date i.e. 07.10.2016 for completion of admission in BDS Course.â??,,

Thus, the Dental Council of India had also duly recommended reduction of percentile of marks in view of heavy number of vacant seats still lying",,,

available with the State. The problem ticked off when the Department of Medical Education, Government of Rajasthan, permitted further reducing by",,,

another 5% and informed to Central Government vide letter dated 04.10.2016. At this juncture, the Central Government ignored its own letter dated",,,

29.09.2016 allowing the State to take action â??as deemed fitâ?? and took a â??Uâ?? turn and directed the State of Rajasthan to withdraw and",,,

cancel the admissions, being void ab initio on the ground that power to lower down the percentile is vested with the Central Government and not with",,,

any State Government.,,,

At the first instance, the Central Government allowed the State of Rajasthan to take whatever action deemed fit in the circumstances but thereafter",,,

vide their letter dated 07.10.2016 rejected the proposal for lowering the percentile on the ground that there was adequate number of candidates who",,,

have qualified NEET UG for the academic session 2016-2017. An affidavit dated 21.01.2018 was filed by the Joint Secretary, Ministry of Health and",,,

Family Welfare before this Court stating therein that for the State of Rajasthan, the ratio of available seats to the number of qualified candidate was",,,

1:11 for the academic year 2016-2017. However, on ground level, it was found that only about 500 candidates had been admitted against 1350 seats",,,

for BDS course including Government colleges. Thus, about 850 seats were lying vacant.Â In the said affidavit, there is no explanation as to how the",,,

number of seats of the BDS course were lying vacant even in spite of stand that a sufficient number of candidates who had attained the minimum of",,,

percentile in the NEET were available for the academic year 2016-2017. The tabulation so given is for both MBBS and BDS courses, whereas, the",,,

controversy at hand relates to the BDS course only. Obviously, the ratio was taken jointly for both MBBS and BDS courses. Maximum number of",,,

students opted for MBBS and therefore, there was no separate calculation of the students with respect to the BDS course. The said situation was",,,

required to be examined by the Central Government. In fact, the petitioners have placed on record the letter dated 23.03.2018 of the Central",,,

Government, Ministry of health and Family Welfare, Dental Education Section regarding the revision in the result of NEET MDS-2018, vide which the",,,

cut off percentile was reduced by 29.735 for each category. The same is taken on record as Annexure-A. With this development and anomaly having",,,

been pointed out, the Central Government was required to take a similar decision in terms of the provision of the Act in consultation with the Medical",,,

Council of India and Dental Council of India at its discretion with respect to the lowering of the minimum marks required for admission to BDS course,,

for candidates belonging to respective categories. The failure by the Central Government to take a decision at the appropriate time resulted in the,,

present situation. Instead of taking a decision itself, the same was passed off to the State Government to "take a decision as deemed fit".",,,

Therefore, in the circumstances, it is too late in the day to say that the Central Government could not delegate its power to exercise the discretion for",,,

reducing the minimum marks. Once it is evident that the State took steps to reduce the percentile in special exigency and in order to fill up the vacant,,

seats and that too after the Central government allowed it to do so, the same cannot be revoked on the ground that Central Government could not",,,

delegate its power as the same has far reaching and important consequences.Â,,

The next question which bothers this Court is whether the decision by the State to reduce the percentile could have been exercised to the extent of,,

admitting even those students who got zero and minus marks i.e. the extent to which the percentile could have been reduced.,,,

As stated above, the Dental Council of India recommended to the Central Government for reducing the percentile as it was feared that if the same is",,,

not done, all the college seats will remain vacant and due to which Colleges shall suffer. The relevant part of the recommendation dated 23.09.2016",,,

reads as under:-,,

"Out of total 892 seats for BDS available for counselling only 225 candidates opted for BDS Course and these 225 candidates were allotted in 11,,

Dental Colleges of Rajasthan as per their choice.,,,

The status is exactly same in other states of India; the seats are vacant as very less number of students are showing interest in pursuing their studies,,

in Dental Stream.,,,

The status can only be changed if we reduce the entrance test merit of NEET 2016 so that the NEET 2016 appeared students which were not,,

successful in securing minimum qualifying marks in NEET 2016 will get the option for admission in BDS Course. NEET-2016 Information Bulletin,,

also says that the required minimum marks can be reduced if sufficient number

of candidates fail to secure minimum marks as prescribed (Page 20,",,
Chapter 6, Point 1 (b)) copy enclosed. DCI Notification (DE-22-2012 dated 31.05.2012) Point No.6(ii) states that (when sufficient number of",,
candidates in the respective categories fail to secure minimum marks as prescribed in the NEET held for any academic year for admission in BDS,,
Course, the Central Govt. in consultation with DCI 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.),,,
This way the students who have secured less marks shall have an option of taking an admission in BDS course and will be a boon for them as a,,
valuable year will be saved.,,,
If the above measure is not taken then all the colleges seat will remain vacant and due to this these colleges will suffer which might result in closure of,,
many colleges and ultimately resulting in reducing of the option for students in near future.,,,
Therefore, kindly look into the matter and reduce the qualifying criteria of NEET-2016 for taking admission in BDS Course.â??Â Â Â Â Â Â Â Â",,
Another letter dated 03.10.2016 was written by the Dental Council of India to the Central Government recommending reduction of the percentile by,,
10% qua different categories provided there was no deviation or relaxation of academic qualification as prescribed by Dental Council of India in its,,
revised BDS Course Regulation, 2007. Paras 3 & 4 of the said letter reads as under:-",,
â??3. The Govt. of Rajasthan, Director of Medical Education, vide its communication No.F7(119)DME/Acad/2015-pt1/6777 on 30.09.2016 (copy",,
enclosed) addressed to the Chairman, Federation of Medical and Dental Colleges of Rajasthan, has, inter-alia permitted to lower the marks to an",,
extent of 10 percentile so that the optimal number of seats is filled through transparent and fair process without compromising merit. This will be,,
applicable for the academic year only, will not be used as precedence for next and further academic years.",,

Category,Cut off Marks,Percentage

Others,145,20.14%

SC/ST/OBC,118,16.39%

,131,18.19%

SC/ST/OBC-PH,118,16.39%