

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (M/S) No. 1495 of 2018**

Jitesh Talwar

.....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

**Writ Petition (M/S) No. 1471 of 2018**

Yasmoon Akhtar Siddiqui

.....Petitioner

Versus

State of Uttarakhand and others

.....Respondents

Present : Mr. M.S. Pal, Senior Advocate assisted by Mr. T.P.S. Takuli and Amir Malik, Advocates for the petitioners.  
Mr. S.R. Joshi, Standing Counsel for the State of Uttarakhand.  
Mr. V.K. Kohli, Senior Advocate assisted by Mr. Parikshit Saini, Advocate for the Medical Council of India.  
Mr. Rajendra Dobhal, Senior Advocate assisted by Mr. Jitendra Chaudhary, Advocate for Sri Guru Ram Rai Institute of Medical and Health Science.  
Mr. Shailendra Nauriyal, Advocate for the Hemwati Nandan Bahuguna Medical Education University.  
Mr. D.S. Patni, Advocate for the private respondents.

**Hon'ble Sudhanshu Dhulia, J.**

Medical education is a big business in India. Unethical practices adopted by some medical colleges in the past have deprived meritorious students from getting admission in medical colleges, or deprived them of getting admission in a course of their choice.

2. We are presently concerned with admission in postgraduate courses in Medical College in Uttarakhand.

3. In order to bring sanctity to these unethical practices, the Hon'ble Apex Court in innumerable judgments have given guidelines

for adopting a fair and transparent procedure. In the seminal decision in **Ashish Ranjan v. Union of India (2016) 11 SCC 225**, the Hon'ble Apex Court directed that the admissions be given in postgraduate courses in the medical colleges on the basis of an All-India Examination known as "National Entrance Eligibility Test" (NEET). By the orders of the Hon'ble Apex Court now, it is the duty of the Medical Council of India to fix the schedule for admission in postgraduate courses in medical colleges throughout the country, well in time, each year. For the year 2018-19, the schedule fixed by the Medical Council of India is as follows:

Sr. No.	Schedule for Admission	Central Counselling	State Counselling	
		All India Quota	Deemed + Central Institute	
1	Conduct of Exam	By 10 <sup>th</sup> January		
2	Declaration of Result	By end of January		
3	1 <sup>st</sup> Round of Counselling	12 <sup>th</sup> March – 24 <sup>th</sup> March,	12 <sup>th</sup> March – 24 <sup>th</sup> March,	25 <sup>th</sup> March – 5 <sup>th</sup> April
4	Last date of joining	3 <sup>rd</sup> April,	3 <sup>rd</sup> April	12 <sup>th</sup> April
5	2 <sup>nd</sup> Round of Counselling	6 <sup>th</sup> April – 12 April	6 <sup>th</sup> April – 12 April	15 <sup>th</sup> April – 26 <sup>th</sup> April
6	Last date of joining	22 <sup>nd</sup> April	22 <sup>nd</sup> April	3 <sup>rd</sup> May
7	Mop up Round		12 <sup>th</sup> May-	4 <sup>th</sup> May-
8	Late date of joining		22 <sup>nd</sup> May	8 <sup>th</sup> May
9	Forwarding the list of students in order of merit equaling to ten times the number of vacant seats to the Medical Colleges by the Counselling Authority		27 <sup>th</sup> May	13 <sup>th</sup> May
10	Last date of joining		31 <sup>st</sup> May	18 <sup>th</sup> May

4. In the case of **Rachit Sinha & others v. Union of India and others (Writ Petition (C) No. 357 of 2018**, the Hon'ble Apex

Court modified the schedule and the date of second round of counselling and the mop up round, etc. were shifted to a later date. Second round of counseling was now to be completed by 10<sup>th</sup> May, 2018 and the mop round of State Colleges was extended upto 15<sup>th</sup> May, 2018.

5. In the State of Uttarakhand, there are four medical colleges, out of which two are State Medical Colleges and the remaining two are private medical colleges. These are as follows:

- (1) Government Medical College, Haldwani (State College)
- (2) Veer Chandra Garhwali Government Medical Science and Research (State College)
- (3) Himalayan Medical College, Jollygrant, Dehradun (Private College)
- (4) Sri Guru Ram Rai Medical Institute of Health Science, Dehradun (Private College)

6. The State Counseling Board has been constituted in Uttarakhand which is responsible for these admissions and presently the responsibility is given to Hemwati Nandan Bahuguna Medical Education University, which is represented by Mr. Shailendra Nauriyal, Advocate.

7. Usually every year even after the mop up round, seats remain vacant with different medical colleges. These are clinical seats as well as non-clinical seats. Preference is given by the students for the clinical seats.

8. The schedule fixed by the Hemwati Nandan Bahuguna Medical Education University, which is the State Board and which is a schedule of mop up round for filling up the vacancies in Uttarakhand is as follows:

“For all registered eligible candidates for MS/MD/PG Diploma Courses/FAPUs

<b>Mop-up Round of Counselling</b>	
<b>Venue: Government Doon Medical College, Dehradun, Patel Nagar, Dehradun (On the date of manual allotment of mop up round i.e. 14-05-2018 the candidate has to appear personally along with the required original documents)</b>	
New/Fresh Registration with document uploading and payment of fee (Online mode only) (Already registered candidates need not register again)	12.05.2018 (01:00 p.m.) to 13.05.2018 (upto 01:00 p.m, as server time)
Online Reporting and uploading of new documents (if any) by already registered candidates & Reporting by New Registered candidates	12.05.2018 (01:00 p.m.) to 13.05.2018 (upto 01:00 p.m, as server time)
Display of Merit List on website of online reported candidates only	13.05.2018 (after 09:00 p.m.)
Manual reporting and documents verification at counselling venue	14.05.2018 (09:00 am to 01:00 pm)
Manual seat allotment by counselling board to eligible and manually reported candidates only (Candidate presence with all original documents is mandatory)	14.05.2018 (02:00 pm onwards)

On the spot admission at the concerned college counter available at the counselling venue	14.5.2018
Last date of Completion of rest of admission formalities at college level	15.05.2018
Vacant seat details submitted by the college concerned, if any to the counselling board	16.05.2018 (01:00 pm)
Forwarding the list of Student to Colleges, in order of merit equaling 1:10 for filling any stray vacant seats	16.05.2018 (after 02:00 pm)
Last Date of Admission at College Level <b>(In any Case)</b>	18.05.2018

9. In the mop up round the seats which remain to be filled in the medical colleges, the details of such seats were to be submitted by each of the colleges to the counseling board by 01:00 p.m. on 16.05.2018. The counselling board was to forward the list of students to these colleges in order of merit equaling in the ratio of 1:10 for filling up the vacancies which was to be done by the State Counseling Board on the same day within next one hour i.e. by 02:00 p.m. and the last date for admission was 18.05.2018.

10. In the present case, the admitted case of Sri Guru Ram Rai Medical College with which we are concerned is that on 16.05.2018, there was no clinical seat available in the postgraduate course with the college, but there were 15 non-clinical seats which

were yet to be filled and the details of which were sent to the State Counseling Board.

11. At this stage, we must note that it is an admitted case of the medical colleges that it did not inform the State Counselling Board that it has any vacant clinical seat with it.

12. Mr. D.S. Patni, learned counsel for the private respondents has submitted that in the advertisement, a note was given by the medical college that although no clinical seat is vacant, but suddenly if any clinical seat gets vacated admission shall be given on that clinical seat in the medical college.

13. The list of 87 candidates was forwarded to the medical colleges by the State Counseling Board, as it was done to the other three remaining colleges. 18.5.2018 was the last date of admission. The case of the medical college is that on 18.5.2018, exactly at 04:45 p.m., three clinical seats suddenly became vacant in the college as the students who had taken admission on these seats in the first or second round of counseling intimated the college that as they have got admission elsewhere, they are vacating the seats. On these seats, the private respondents i.e. respondent no. 7 and 8 in Writ Petition (M/S) No. 1495 of 2018 i.e. respondent no. 6, 7 & 8 in W.P. No. 1471/2018, have been given admission. Their selection has been challenged by the petitioners before this Court, as their case is that the petitioner is higher in merit than the private respondents, inasmuch as petitioner in Writ Petition (M/S) No. 1495 of 2018 petitioner is at Sr. No. 63 in the merit list, while the private respondent nos. 7 & 8 are at Sr. Nos. 65 and 76, respectively. In Writ Petition (M/S) No. 1471 of 2018, the petitioner is at Sr. No. 50, while private respondent nos. 6, 7 & 8 are at Sr. Nos. 53, 65 and 76, respectively.

14. In both the cases of **Rachit Sinha and Darul Islam**, the Hon'ble Apex Court have noticed such practices being adopted by the

students in vacating seats only at the last moment which deprive other students from making their claim on these seats. Further it also gives the handle to the medical colleges to give admission to students irrespective of their merit as their case is that only students who were present at the relevant point of time were given admission. The Hon'ble Apex Court in its order dated 03.05.2018 have this to say on this practice:

“7. It is clear from the record that the Medical Council of India decided to make certain changes to the method of admissions to the Postgraduate Courses to arrest the blocking of seats by certain candidates which was detrimental to the interest of meritorious candidates in the All India Quota. There is material on record to suggest that devious methods were adopted by certain candidates to block the seats in the All India Quota and resign thereafter from those seats later which resulted in reversion of the All India Quota seats to the State Quota. The Medical Counselling Committee identified about thousand candidates who were indulging in such illegal practice and proposes to take action against them after a thorough inquiry.

8. There is no infringement of any legal right of the Petitioners in the change of the method of Counselling made by the notice dated 09.04.2018. Reduction of chances of admission does not entail in violation of any right. If the change in the method of Counselling was due to the circumstances mentioned above, we see no reason to interfere. Further, the Petitioners have participated in the second round of Counselling for up-gradation. We are informed that the second round of Counselling for All India Quota is completed. No interference is warranted at this stage in respect of the All India Quota.”

15. The above remark was also made by the Hon'ble Apex Court in the case of Dar-Us-Slam Educational Trust and Others v. Medical Council of India and others (Writ Petition (C) No. 267 of 2017) in para 7, which reads as under:

“7. In order to ascertain the number of seats that still remain vacant after the counselling the

State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.”

16. Before the final decision could be taken in the matter, the counsel who is representing the State Counseling Board Sri Shailendra Nauriyal has apprised that in the State of U.P. the cut off date which was 18.05.2018 has been extended to 31.05.2018 for all the medical colleges, by direction of Hon’ble Apex Court **Rachit Sinha & others v. Union of India and others**, decided on 03.05.2018.

17. In view thereof, learned counsel suggests that they propose to give the advertisement today itself and they shall be doing the counselling tomorrow and day after tomorrow i.e. on 30.05.2018 and 31.05.2018 and all the anomalies pointed out will be rectified, and admission be made as per merit and law.

18. Put up on 01.06.2018 in the daily cause list.

19. Meanwhile, the seats on which the admission has been given to the private respondents in these two writ petitions shall be held to be vacant and shall be given in the fresh counselling by the State Counselling Board on 30.05.2018 and 31.05.2018. Admission shall be given by the colleges strictly in accordance with law.

20. It is made clear that if such anomaly is committed by the other medical colleges as well, the State Counselling Board shall



be at liberty to take appropriate action, in accordance with law so that right candidates are given admission.

A copy of this order to be given forthwith to the parties.

**(Sudhanshu Dhulia, J.)**

29.05.2018

Prabodh/-