

# CJI Kabir's final judgment comes as boon for pvt medical colleges

## SC Bench Scraps Single-Window Entrance Test

**Dhananjay Mahapatra TNN**

New Delhi: The Supreme Court on Thursday quashed the single-window National Eligibility-cum-Entrance Test (NEET) dealing a body blow to uniform admission norms for MBBS, BDS and MD seats in all medical colleges and allowing private medical colleges to frame their own admissions norms, and in many cases, stiff capitation fees.

A three-judge bench, by a 2-1 majority, struck down the NEET as unconstitutional and ruled that the Medical Council of India (MCI) had no power to issue

notifications in 2010 to regulate admissions to 271 medical colleges—138 run by government and 133 under private management—offering 31,000 MBBS and BDS as well as 11,000 MD seats.

The NEET had been welcomed by students and parents because of transparency and the respite it offered from the ordeal that aspiring doctors had to endure until last year when they had to file multiple applications and shuttle between cities across the country to take entrance tests that medical colleges would hold with no coordination among them. It had also curbed the room for the promoters of several medical colleges to extort hefty capitation fees.

Chief Justice Altamas Kabir, on his last day before retirement, and Justice Vikramjit Sen formed the majority to hold that the notification mandating NEET for all violated private medical colleges' rights to carry on business guaranteed under Article 19(1)(g) and the constitutional guarantee under Article 30 to the minority community to set up and manage educational institutions.

### **Advocate knew crux of split verdict in advance**

An article captioned "Into the Darkness" by advocate Gopal Shankararayan and uploaded on the website "Bar and Bench" at 8.36am on Thursday—a good two hours prior to the pronouncement of the NEET judgment—not only predicted that the petitions by private medical colleges would be allowed by CJI Altamas Kabir and Justice Vikramjit Sen on the grounds that the MCI had no jurisdiction to notify NEET, but also that Justice A R Dave would dissent. P 10

**Outgoing CJI plugged HC justice to collegium** In an unprecedented move a fortnight before his retirement on Thursday, Chief Justice of India Altamas Kabir had proposed that a high court Chief Justice be appointed as a judge of the apex court. However, all four senior-most judges of the SC collegium to whom he pitched his suggestion concurred that it would not be proper for the outgoing CJI to push for an appointment to the apex court, especially when his successor was set to be sworn in on July 19. P 10

### **STRONG DISSENT BY JUSTICE DAVE**

In 2-1 verdict, three-judge SC bench says Medical Council of India and Dental Council of India have no statutory authority to conduct common entrance test, control admissions to all medical colleges

MCI and DCI only have a mandate under law to prescribe standards to ensure excellence of medical education

Judgment of CJI Altamas Kabir and Justice Vikramjit Sen quashes NEET, which was envisioned, formulated and approved in 2010 by a 2-judge SC bench to remove corruption in medical seat allotment. Justice A R Dave strongly dissents

Admissions made on basis of NEET this year will not be affected; pvt medical colleges had already taken exemption from NEET this year **Single test brought in transparency, reduced hardship: Dissenting judge**

Justice A R Dave did not agree and, in a strong dissent, stressed that there was no proper discussion on the draft majority verdict which appeared to have been rushed because the CJI was to retire in a few days. Justices Kabir and Sen said that the MCI did not have the power to force a single entrance test for controlling admissions to the medical colleges as it had been created only for the purpose of ensuring "excellence of medical education in India". "We also have no hesitation in holding that the Medical Council of India is not empowered under the MCI Act, 1956 to actually conduct the NEET," the CJI said articulating the majority view.

Though the only edition of NEET, which was held this year, stands quashed, the admissions already made on its basis would not be affected by the judgment, the court clarified. The clarification was meaningless as far as admissions to private medical colleges are concerned as these institutions had already obtained exemption from the purview of NEET for this year.

While it will be business as usual for the private medical colleges, the restoration of the old scheme for admission into medical colleges for the poor and meritorious stands. The All India Quota entrance examination offers them a hope to bag a seat in a medical college. Under this, the states would contribute 50% of the seats to be decided for allocation to students who clear the single entrance test.

The majority judgment on Thursday took away what was actually given four years ago by another bench of Justice R V Raveendran (since retired) and Justice A K Patnaik after long deliberations during which it had focused on the benefit of single-window entrance test for all medical colleges.

In 2010, the bench of Justices Raveendran and Patnaik had strived to bring together the MCI and CBSE on the same page for conducting NEET. The bench was convinced that a single entrance test would help poor and meritorious students by sparing them the physical and financial stress of having to travel from one city to another to appear in multiple entrance tests in the hope of bagging a MBBS, BDS or MD seat.

What Justices Raveendran and Patnaik had expressed in 2010 found reflection in Justice Dave's dissent. In differing with the views of Justices Kabir and Sen, he appeared to rely on the old proverb "justice hurried is justice buried". Against a 173-page judgment by the CJI, Justice Dave penned a 35-page dissent and said: "As the Chief Justice is to retire within a few days, I have to be quick and therefore, also short. Prior to preparation of our draft judgments we had no discussion on the subject due to paucity of time and therefore, I have to express my different views..."

Justice Dave said: "It cannot be said that introduction of the NEET would either violate any of the fundamental or legal rights of the petitioners or even adversely affect the medical profession. In my opinion, introduction of the NEET would ensure more transparency and less hardship to the students eager to join the medical profession.

"Let us see the consequences, if the apex bodies of medical profession are not permitted to conduct NEET. A student, who is good at studies and is keen to join the medical profession, will have to visit several different states to appear at different examination held by different medical colleges or institutes so as to ensure that he gets admission somewhere," he said.

On the other hand, "The NEET will facilitate all students desirous of joining the medical profession because the students will have to appear only at one examination and on the basis of the result of the NEET, if he is found suitable, he would be in a position to get admission somewhere in the country and he can have the medical education if he is inclined to go to a different place."

Quoting MCI counsel Nidesh Gupta, Justice Dave said he had been informed that some medical colleges, who are more in the profiteering business rather than in the noble work of imparting medical education, take a huge amount by way of donation or capitation fees and give admission to undeserving or weak students under one pretext or the other. "If only one examination in the country is conducted and admissions are given on the basis of the result of the said examination, in my opinion, unscrupulous and money-minded businessmen operating in the field of education would be constrained to stop their corrupt practices and it would help a lot, not only the deserving students but also the nation in bringing down level of corruption."

