

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9313 OF 2022

1. Deoyani Multispeciality Hospital
(Through Its Proprietor)
Jignesh Singh
Age: 28 years, Occu.: Doctor,
Dhanukar Colony, Plot No.121+ 109,
Kothrud, Pune - 411 038. Petitioner

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Medical Education and Drugs
Department, Mantralaya,
Mumbai - 32
2. The Director,
Director of Medical Education and
Research, MS
Mumbai
3. The Commissioner,
Directorate of Medical and Education
and Research, Mumbai and the
Competent Authority Respondents

Mr.S.B.Talekar i/b M/s.Talekar and Associates for the Petitioner

Mrs.M.P.Thakur, A.G.P. for the State

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

RESERVED ON: AUGUST 22, 2022

PRONOUNCED ON: SEPTEMBER 14, 2022

JUDGEMENT : (PER : S.V.GANGAPURWALA, J.)

1 The Petitioner seeks direction against the Respondent no.3 to hold stray-vacancy round for selection and admission to the medical postgraduate CPS fellowship, diploma courses based on NEET PG merit in Maharashtra State Government / Corporation Medical Colleges, Hospitals and Unaided Private Institutes / Hospitals for the academic year 2021-22 at the level of institutions by issuing a writ of mandamus or any other appropriate writ.

2 Mr.Talekar the learned advocate for the Petitioner submits that on 11.05.2021 the competent authority issued a notice prescribing the schedule for conducting admission process for NEET-PG-CPS. On 16.12.2021 the Schedule for NEET-PG Counselling for the academic year 2021 was published. The said schedule was approved by the Hon'ble Supreme Court.

3 On 22.06.2022 the Competent Authority after CAP rounds conducted Mop-up round pursuant to notice No.3. On or about 07.07.2022 the competent authority, vide notice no.5 decided to fill 297 vacant seats by holding personal counselling rather than online counselling from 14.07.2022 to 16.07.2022. 1409 candidates were found eligible to participate in the final counselling round. From

14.07.2022 to 16.07.2022 State of Maharashtra and the City of Mumbai experienced heavy rains and flood like situation and several parts of Mumbai were declared as red alert areas. As a result, 157 seats still remained to fill. Even in the Petitioner hospital, 5 seats of institutional quota and 2 seats of merit quota remained vacant at the end of final round of counselling. The Petitioner preferred representation to the Respondents on 26.07.2022 requesting to hold one more stray-vacancy round at the level of institutions to enable the institutions to fill in their seats but no cognizance is taken of the same.

4 Mr. Talekar the learned counsel further submits that no fruitful purpose would be served by keeping the post vacant. It will be loss to the students as well as the institute. The learned counsel relying upon the order of the Apex Court in *Nihila P.P. vs. Medical Counselling Committee (MCC) and Others*¹, submitted that the Supreme Court directed 4 rounds of counselling and directions were given. The said directions were with a view that the seats vacant shall be filled in.

5 The Respondents have not held the second mop-up round. It is failure on their part. The admission process for the year 2021-22

1 (2021) SCC Online SC 3283

continued upto July 2022. There will be no impediment for the Respondents to conduct one more round so that the vacant seats can be filled in. The Petitioner institute is an unaided one. It runs only on the fees collected. So also the seats going vacant would not cater well to the students fraternity. The seats could not be filled in because instead of conducting online admission process, the Respondents ventured to conduct physical selection and at the time when Mumbai was declared red alert area and facing flood like situation. The Apex court in the case of *Harshid Agarwal & Ors. vs. Union of India & Ors.*² held that vacant seats in professional course is a national waste and directed the authorities to fill in the seats by lowering the minimum required marks for admission to BDS course. The learned counsel further submits that inaction on the part of the Respondent authority in holding the stray-vacancy rounds at the level of institutions thereby depriving the institutes to fill in the seats amounts to infringement of right of occupation guaranteed under Article 19(1) (g) of the Constitution of India.

6 The learned A.G.P. submits that it would not be possible now to conduct the stray-vacancy round for the admission process for the year 2021-22. Admission process for the academic year 2022-23 would be commencing. The learned A.G.P. relies upon the order of

2 (2021) 2 SCC 710

the Apex Court in the case of *Dr.Astha Goel and Others vs. The Medical Counselling Committee & Ors. dated 10.06.2022 in Writ Petition No.409 of 2022 with connected Writ Petitions* and submits that the Apex Court directed that the time schedule for completing the admission process more particularly when the current admission of NEET-PG-2021 is already behind time schedule, has to be adhered to. Therefore, conscious decision taken by the Union Government / the Medical Counselling Committee, not to conduct a further Special Stray Round of counselling, cannot be said to be arbitrary.

7 Result of NEET-PG-2022 has been announced. Therefore, one more special round of counselling cannot be conducted. Learned AGP submits that no case is made out. Hence, Writ Petition be dismissed.

8 We have considered the submissions. No doubt the Post Graduate seats remaining vacant would be a national loss. At the same time, sanctity will have to be given to the schedule of admission process for Post Graduate 2022 which would now start. Results are declared. Petitioner is seeking directions against the Respondents for conducting Stray-vacancy round for admission

process of 2021 pursuant to the NEET-PG-2021, it would be too late in the day for us to issue directions to conduct the admission process pursuant to NEET-PG-2021 when the admission process for NEET-PG-2022 would commence. Apex Court in the case of ***Dr.Astha Goel and Others vs. The Medical Counselling Committee & Ors.*** (Supra) has observed as under:

“10.4 Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and when the Medical Counselling Committee and the Union of India have to adhere to the time schedule for completing the admission process and when the current admission of NEET-PG-2021 is already behind time schedule and ever after conducting eight to nine rounds of counselling, still some seats, which are mainly non-clinical courses seats have remained vacant and thereafter when a conscious decision is taken by the Union Government/the Medical Counselling Committee, not to conduct a further Special Stray Round of counselling, it cannot be said that the same is arbitrary. The decision of the Union Government and the Medical Counselling Committee not to have Special Stray Round of counselling is in the interest of Medical Education and Public Health. There cannot be any compromise with the merits and/or quality of Medical Education, which may ultimately affect the Public Health.

10.5 The process of admission and that too in the medical education cannot be endless. It must end at a particular point of time. The time schedule has to be adhered to, otherwise, ultimately, it may affect the medical education and the public health.

10.6 Apart from the fact that after closure of the last round of counselling on 07.05.2022, the entire software mechanism has been closed and the security deposit is

refunded to the eligible candidates, it is to be noted that the admission process for NEET-PG-2022 has already begun, the results for the NEET-PG-2022 has been announced on 01.06.2022 and as per the time schedule, the counselling process is going to start in July, 2022. Therefore, if one additional Special Stray Round of counselling is conducted now, as prayed, in that case, it may affect the admission process for NEET-PG-2022.”

9 In the aforesaid case also directions were sought to conduct Special Stray Round of counselling to allow the candidates to participate for the vacant seats, which were available after the conduct of stray-vacancy round of AIQ. The Apex Court negatived the said prayer.

10 In the light of the aforesaid facts, it would not be possible to accede to the request of the Petitioner.

11 Writ Petition as such is disposed of. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)