



W.P.No.28223 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.28223 of 2022
and WMP.No.27521 of 2022

Sri Venkateshwaraa Medical College
Hospital and Research Centre
Represented by its Dean,
No.13-A, Pondy – Villupuram main Road,
Ariyur, Puducherry – 605 102.

... Petitioner

-Vs-

1. The National Medical Commission,
Represented by its Under Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi – 110 077.
2. The Board of Governors in
Supersession of Medical Council of India,
Represented by its Secretary-General,
Sector VIII, Dwaraka Phase II,
New Delhi – 110 077.
Now superseded by,
The National Medical Commission,
Represented by its Under Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi – 110 077.
3. The Government of India,
Represented by its Under Secretary,
Ministry of Health and Family Welfare,
Nirmanbhawan, New Delhi – 110 001.



W.P.No.28223 of 2022

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4. The Government of Puducherry,
Represented by its Secretary,
Health Department, Chief Secretariat, Puducherry.

5. The Centralized Admission Committee,
Rep. By Coordinator (Admission)
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry – 605 104.

6. The Pondicherry University,
Represented by its Registrar,
R.V.Nagar, Kalapet,
Puducherry – 605 014.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the record pertaining to the impugned order of the 1st respondent in proceeding No. NMC/Legal/2022/19718/006818 dated 18.01.2022 confirming the order passed by the 2nd respondent in proceeding No.MCI-34(MC)/308/2018-19/137 dated 24.09.2020, quash the same and consequently direct the respondents to permit the petitioner Institution to fill up four vacancies by relaxing the penalty No.(iii) in the order passed by the 2nd respondent in proceeding No.MCI-34(MC)/308/2018-19/137 dated 24.09.2020 directing the petitioner college to surrender equivalent number of MBBS seats in view of Regulation 5(7) of GMER, 1997 for the next three academic years to Government of Puducherry insofar as academic year 2022-2023 alone is concerned.



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W.P.No.28223 of 2022

For Petitioner : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.D.R.Arun Kumar

For Respondents : Ms.Shubharanjani Ananth
Standing Counsel [R1 & R2]
Mr.R.K.Gandhi
Central Government Standing
Counsel [R3]
Mr.C.T.Ramesh
Additional Government Pleader
[R4 & R5]
Mr.M.Ravi
Standing Counsel [R6]

ORDER

The prayer sought for herein is for a writ of Certiorarified Mandamus to quash the impugned order of the 1st respondent in proceeding No. NMC/Legal/2022/19718/006818 dated 18.01.2022 confirming the order passed by the 2nd respondent in proceeding No.MCI-34(MC)/308/2018-19/137 dated 24.09.2020 and consequently direct the respondents to permit the petitioner Institution to fill up four vacancies by relaxing the penalty No.(iii) in the order passed by the 2nd respondent in proceeding No.MCI-34(MC)/308/2018-19/137 dated 24.09.2020 directing the petitioner college to surrender equivalent



W.P.No.28223 of 2022

number of MBBS seats in view of Regulation 5(7) of GMER, 1997 for the next three academic years to Government of Puducherry insofar as academic year 2022-2023 alone is concerned.

2. The petitioner is a medical college, which offers education for both graduates i.e., undergraduate and postgraduate level in various specialities. It is one of the reputed institution situated in the Union Territory of Puducherry and it is minority (linguistic-Telugu) institution recognized by the fourth respondent and affiliated to the sixth respondent herein. The petitioner institution is duly recognized by the first respondent with a sanctioned intake of 150 seats per academic year in undergraduate course i.e., MBBS course.

3. On 26.08.2018, 146 candidates (Government quota 53 & management quota 93) were admitted to the MBBS course as per the list approved by the fifth respondent. There were four more vacancies under the Management quota as on 31.08.2018, which was the last day to fill up the vacancy for the academic year 2018-2019.



W.P.No.28223 of 2022

4. Though after the two rounds of counselling and the mop-up round counselling, the fifth respondent has sent a list of 40 candidates for filling up the four management quota, but none turned up for admission even on 31.08.2018, which is the last day for admission.

5. Hence, in order to avoid stray vacancies, which would adversely affect the financial position and efficiency of the management, the petitioner management had admitted four candidates under the management quota, who have cleared the NEET examination and participated in the counselling under the bonafide impression that the act of the management was proper under the said circumstances as per MCI norms.

6. However, insofar as the said four admissions made by the petitioner institution for the academic year 2018-19 is concerned, the first respondent National Medical Commission having invoked clause 5(7) of the Regulations of the Medical Council, had passed an order disapproving such admission and imposed the punishments with the following terms:



W.P.No.28223 of 2022

“The Board of Governors considered the matter with regard to Admission of 1st year MBBS student at Sri Venkateshwara Medical College Hospital & Research Centre, Pondicherry for the Academic year 2018-19 and in compliance of the order of the Hon'ble Madras High Court dated 13.08.2020 and decided that the following actions may be initiated against Sri Venkateshwara Medical College, Hospital & Research Centre, Puducherry of Academic year 2018-2019:

i) Discharge students (given below) admitted without common counselling forthwith;

ii) Impose a penalty of Rs.10 lakhs per student upon the college; and

iii) Direct the college to surrender equivalent number of MBBS seat in view of Regulation 5(7) of GMER, 1997 for the next three(3) academic years to Government of Puducherry.”

Sr.No.	Merit No.	Name of Candidate	Roll No.	Date of Admission
1.	577185	Shri Preeth M.	512012089	31/08/2018
2.	534934	Bollini Damu	510401154	31/08/2018
3.	505988	Mahesh Senthivelan	512010794	31/08/2018
4.	470767	Sabri Ganesh Prabakaran	511524324	31/08/2018

Therefore, you are directed to discharge the above quoted 04 students and submit the compliance immediately failing which necessary action will be taken in this regard.”



W.P.No.28223 of 2022

7. Out of the three punishments awarded against the petitioner, the first two have been complied with by the petitioner i.e., the petitioner discharged the four students admitted without common counselling and paid the penalty of Rs.10,00,000/- each (Rupees ten lakhs only) for four students. In respect of the third punishment only the petitioner had approached this Court after giving representation to the respondent to reconsider the said decision dated 24.09.2020.

8. In the said writ petition in W.P.No.1099 of 2021, a learned Judge having considered the plea raised by the petitioner against the impugned order therein i.e., order referred to above imposing three types of punishments, has passed the following order on 21.12.2021:

“3. Learned counsel for the petitioner submitted that, it would suffice if a direction is issued to the 1st respondent herein to consider the petitioner's representation dated 19.10.2020 in accordance with law and pass appropriate orders within a stipulated time.

4. Learned counsel appearing for the 1st respondent submitted that, without interfering with the orders impugned in this Writ Petition, this Court may issue a direction to the 1st respondent to consider the petitioner's representation within a reasonable time.



W.P.No.28223 of 2022

5. Considering the facts and circumstances of the case and taking note of the submissions made by the learned Counsel on either side, this Court directs the 1st respondent herein to consider the petitioner's representation dated 19.10.2020 in accordance with law, and pass appropriate orders after affording an opportunity of hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs. Consequently, connected W.M.P.Nos.1216 to 1218 of 2021 are closed.”

9. Pursuant to the said order passed by this Court, the order passed by the first respondent dated 24.09.2020 has been revisited and after revisiting the same, order has been passed on 18.01.2022 reiterating the earlier stand that the three punishments awarded against the petitioner has been confirmed once again. Challenging the said order dated 18.01.2022, this writ petition has been filed.

10. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner, who would submit that insofar as the first two punishments viz., discharge of four students and paying the penalty of



W.P.No.28223 of 2022

Rs.10,00,000/- each (Rupees Ten lakhs only) for four students are concerned, those two punishments have been complied with by the petitioner.

11. Insofar as the third punishment viz., to surrender equivalent number of MBBS seats for next three academic years to Government of Puducherry is concerned, even though such punishment according to the learned Senior Counsel is an excessive or disproportionate, due to paucity of time, the two years punishment have been undergone by the petitioner as the four seats for two academic years i.e., 2020-2021 and 2021-2022 have already been surrendered to the respondent Government from Management quota to Government quota.

12. Atleast for the punishment of the third year i.e., current academic year 2022-202 is concerned, the first respondent could have reviewed its order, but even the first respondent has refused to review the order to modify the third limb of the punishment instead of three years to two years and therefore aggrieved over the same, the present writ petition has been filed.



W.P.No.28223 of 2022

13. Insofar as the proportionality of the punishment awarded to the petitioner is concerned, the learned Senior Counsel has submitted that the four students, who were admitted have been directed to be discharged and they have been discharged and the penalty of Rs.10,00,000/-(Rupees Ten lakhs only) for each students have been imposed and that has been paid and the surrender of seats for thee academic years have been ordered, for which, two years, seats have been surrendered itself is not only the maximum punishment it is an excessive punishment corresponding to the act done by the petitioner and if it is considered to be an unlawful one, for a extended punishment surrendering the seats for the three year also as per the impugned order, which has reflected in the earlier order passed in this regard is concerned, it is too hard and it is to be considered as an excessive. Therefore, in this context, learned Senior Counsel would submit that, Hon'ble Supreme Court in such circumstances of similar nature of the issue has considered the plea raised by the institution concerned and had granted some relief to the institution, where either the punishment of surrendering of seats for one year itself having not been awarded or the punishment of surrendering of seats was restricted to only one academic year. In this context, learned Senior Counsel has relied upon the following decisions of the Hon'ble



W.P.No.28223 of 2022

Supreme Court:

WEB COPY I. *National Medical Commission Vs. Mothukuru Sriyah Koumudi and Ors. [MANU/SC/0922/2020]*

2. *Maharishi Markandeshwar University and Ors. Vs. Akriti Sharma and Ors.[MANU/SC/1336/2022]*

14. Heard Ms.Shubharanjani Ananth, learned Standing Counsel appearing for the first and second respondents, Mr.R.K.Gandhi, learned Central Government Standing Counsel appearing for the third respondent, Mr.C.T.Ramesh, learned Additional Government Pleader appearing for the fourth and fifth respondents and Mr.M.Ravi, learned Standing Counsel appearing for the sixth respondent.

15. Ms.Shubharanjani Ananth, learned Standing Counsel appearing for the first and second respondents, who are the contesting respondents, submitted that, as against the order earlier passed, when the petitioner has approached this Court and filed writ petition in W.P.No.15095 of 2019, a learned judge while dismissing the writ petition has observed that the petitioner institution has admitted four candidates unilaterally without any authority and the petitioner



W.P.No.28223 of 2022

institution has a pattern of admitting candidates for MBBS course in violation of the Regulations of the Medical Council of India and directions of the Hon'ble Supreme Court.

16. After giving such a finding against the petitioner, the writ petition was rejected and the punishment awarded against the petitioner under Regulation 5(7) was justified.

17. The learned counsel would also submit that, the said order having been appealed before the Division Bench of this Court in W.A.Nos.494 & 500 of 2020 and the Division Bench also by order dated 13.08.2020, has confirmed the order passed by the learned single Judge, as against which, the petitioner filed Special Leave Petition before the Hon'ble Supreme Court but that was also rejected. Therefore, the finding given by the learned Judge was confirmed by the Division Bench and has further been confirmed by the Hon'ble supreme Court.

18. Hence the learned counsel appearing for the first and second respondents would contend that, the question of reconsideration of the order passed by the second respondent imposing the three types of



W.P.No.28223 of 2022

punishments including the surrender of seats for three successive academic years does not warrant any reconsideration.

19. The learned counsel would further submit that, despite these factors, when the petitioner has once again approached this Court by filing a writ petition in W.P.No.1099 of 2021 challenging the order dated 24.09.2020, the learned Judge without disturbing the order passed by the Medical Council has simply given a direction to the first respondent to consider the representation of the petitioner dated 19.10.2020 in accordance with law and pass appropriate orders within a reasonable time.

20. That order only give raise to considering the representation of the petitioner dated 19.10.2020, therefore it is not a reconsideration of the order passed by the Medical Council as claimed by the petitioner and since there was no substance in considering the representation of the petitioner dated 19.10.2020 that was rightly rejected through the impugned order dated 18.01.2022. Therefore, the petitioner cannot have any successful challenge against the said order dated 18.01.2022 in this writ petition on the ground or alleged reason that the surrender of seats



W.P.No.28223 of 2022

punishment imposed against the petitioner for three academic years is an excessive or disproportionate one.

21. The learned counsel would also submit that, the first respondent is empowered under the Act as well as the Regulations to use its discretion as to what type of punishment has to be imposed against the erring institution like the petitioner and in this context, the learned counsel heavily relied upon Clause 5(7) of the Regulation, under which, such kind of punishments including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic 'year'/'years' can be imposed by the first respondent. Therefore, when the word year/years also included in Clause 5(7), it need not be restricted to only for one academic year for surrendering of equal seats and it can be extended to several other academic or successive academic years and in this case, having taken note of the conduct of the petitioner institution, the first respondent by using their discretion has imposed such a punishment of surrendering of seats against the petitioner for three academic years. Therefore, it is neither an excessive punishment nor the disproportionate punishment and it is in consonance with the Regulation 5(7), hence it does not require any reconsideration. Therefore,



W.P.No.28223 of 2022

the learned Standing Counsel would contend that the impugned order is to be sustained.

22. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

23. It is the case of the petitioner that four students have been admitted on the last date i.e., 31.08.2018 as per the alleged reason on the part of the petitioner that 40 students sent by the CENTAC authorities of the Puducherry Government have not reported to the college till the last minute of the last date of admission. This issue has already been decided by this Court on two occasions earlier by the writ Court and subsequently by the Division Bench. Therefore, this Court has no say as to the plea raised by the petitioner with regard to the said ground raised.

24. However, insofar as the quantum of the punishment is concerned, three types of punishments have been imposed against the petitioner, the first punishment is, four students admitted in violation of the regulations have to be immediately discharged and that punishment



W.P.No.28223 of 2022

has been accepted and those students have been discharged. The second punishment is, penalty of Rs.10,00,000/- (Rupees Ten lakhs only) have been imposed against each of the students admitted, therefore, 4 X 10,00,000/- = 40,00,000/- (Rupees Forty lakhs only) penalty imposed against the petitioner was accepted and complied with by the petitioner.

25. Insofar as the third punishment viz., the surrender of seats equivalent to four seats for three academic years successively is concerned, the learned Senior Counsel's plea is that, that kind of punishment is definitely excessive because in similar circumstances atleast in two cases, where the petitioner counsel is able to point out that, Hon'ble Supreme Court has shown its indulgence that either 10 lakhs penalty or some other punishments have been imposed against the erring institution and the surrender of seats punishment not been imposed and in one case, even surrender of seats punishment though has been imposed that has been imposed only for one academic year. However, this was the language used by the Regulation making authority in Regulation 5(7), the following words have been mentioned:

“shall also be liable to face such action as may be prescribed by the Council, including surrender of seats



W.P.No.28223 of 2022

equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.”

(emphasis supplied)

26. The word 'year'/'years' have been mentioned under the regulation. That means, it is up to the discretion of the first respondent to impose such a punishment of surrendering of seats either for one year or more than one year.

27. Only in this context, it is a strong case of the first respondent counsel that, that kind of discretion since is given to the first respondent to exercise, where the first respondent has exercised their discretion and imposed the punishment of surrendering of seats for three academic years that cannot be stated beyond the scope of power and jurisdiction of the first respondent. Therefore, it cannot be stated that it is an excessive or disproportionate punishment.

28. In this context, if we look at the two decisions of the Hon'ble Supreme Court, in the first decision in ***National Medical Commission Vs. Mothukuru Sriyah Koumudi and Ors.***, the Supreme Court has



W.P.No.28223 of 2022

ultimately passed the following order:

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“12. As the last date for admissions for the present academic year is 30.08.2020, we are not inclined to grant admission to respondent No.1 for this academic year. Even if the admission of respondent No.5 is cancelled as having not been in accordance with the Regulations, it would not be of any use to Respondent No.1 or to any other eligible candidate. Furthermore, the High Court is right in holding that Respondent No.5 might not have known about the denial of admission to Respondent No.1 illegally. Though we disapprove the practice of Respondent No.2 – College in picking up students for granting admission without following the merit list, we do not seek to disturb the admission granted to Respondent No.5. Respondent No.2 – college adopted unfair means to deprive Respondent No.1 admission to PG course. Respondent No.1 has lost one precious academic year for not fault of hers for which she has to be compensated by way of an amount of Rs.10 lakhs to be paid by Respondent No.2 – College within a period of four weeks from today. Furthermore, Respondent No.1 is entitled for admission to the MS(General Surgery) course in the next academic year 2021-22 and shall be given admission in a seat allocated to Respondent No.2- college. In other words, one seat in MS(General Surgery) course from the Management Quota of Respondent No.2 – College for the next academic year (2021-22) shall be granted to Respondent No.1.”



W.P.No.28223 of 2022

29. In the second case in ***Maharishi Markandeshwar University and Ors. Vs. Akriti Sharma and Ors.***, the Supreme has ultimately passed the following order:

25. On a considered view of the matter, we direct that the Appellants shall pay to the first respondent compensation quantified at Rs.10 lakhs within a period of one month from the date of this order. Hence, for the reasons which are indicated above, we are in agreement with the interpretation which has been placed by the High Court on the interplay between clauses 3 and 4 of the prospectus. However, for the reasons set out above, we set aside the direction of the High Court for redrawing of the merit list and to grant admission to the first respondent and substitute it with the direction that the Appellants shall pay compensation quantified at Rs.10 lakhs to the first respondent. The compensation shall be paid within one month.”

30. In the first case, the punishment of surrendering of seats was imposed, however for only one year. In the second case, the punishment of compensation quantified at Rs.10,00,000/- (Rupees Ten lakhs only) alone was imposed, but no other punishment has been imposed.



W.P.No.28223 of 2022

31. Therefore, the punishment to be awarded to the erring institutions of this nature is concerned, it varies from case to case. It does not mean that the first respondent can never impose a punishment of surrendering of seats for year or years.

32. But at the same time, insofar as the punishment i.e., third limb of the punishment imposed against the petitioner is concerned, such a punishment of surrendering of seats have been imposed for three successive academic years, thereby, $3 \times 4 = 12$ seats have to be surrendered by the petitioners.

33. Assuming that, four students have been unlawfully or without following the regulations have been admitted by the petitioner, those four students have been directed to be discharged and the penalty of Rs.10,00,000/- (Rupees Ten lakhs only) for each of the students have been imposed and those two punishments have been accepted and complied with by the petitioner. Even in respect of surrender of seats is concerned, the petitioner having surrendered the seats for two successive academic years, is now making the plea to make a revisit of the punishment to modify the same by restricting the punishment of



W.P.No.28223 of 2022

surrendering of seats only for two years not for the third academic year also i.e., for the current academic year.

34. In this context, whether such a reconsideration is required or not is concerned, when a learned judge passed an order on 21.12.2021 in W.P.No.1099 of 2021, it was the stand taken by the first respondent that without interfering with the impugned order in that writ petition, the Court may issue a direction to the first respondent to consider the petitioner's representation within a reasonable time.

35. Only in that context, such a direction was given by the learned Judge to the first respondent to consider the representation given by the petitioner to reconsider the punishment awarded against the petitioner mainly in respect of the third limb of the punishment i.e., surrendering of seats for three academic years.

36. However, in the impugned order, the earlier punishment awarded has been reiterated, by thus, the first respondent refused to reconsider the punishment already imposed.



W.P.No.28223 of 2022

WEB COURT

37. If this is the decision to be taken by the first respondent that issue could have been agitated before the learned Judge on 21.12.2021 when the writ petition was ordered by the learned Judge giving the direction to the first respondent to reconsider the same by considering the representation of the petitioner dated 19.10.2020.

38. The learned counsel appearing for the first respondent in fact would contend with regard to the proportionality of the punishment of the third limb of the order is concerned, that there were four seats admitted without following the regulations. Therefore, maximum of four years punishment could have been given, but they restricted only to three years. Therefore, it is not an excessive one or disproportionate one and in as much as the punishment given or awarded by the authorities concerned does not shock the conscience of the Court, normally the proportionality of the punishment would not be interfered with. Therefore, in this case also it does not shock the conscience of the Court, hence, the proportionality of the punishment need not be gone into, therefore, on that ground, the third limb of the punishment does not require any interference from this Court, she contended.



W.P.No.28223 of 2022

39. In respect of the said submission, this Court feels that, it may not shock the conscience of this Court, but at the same time, this Court also feels that there must be a reason or rationality behind any authority to impose any punishment against the erring person that is the basic theory of imposing a punishment or penalty.

40. Suppose a statute imposes a punishment i.e., minimum punishment, the Authority or even Law Courts do not have power to reduce such punishment, but at the same time if a range of punishment is prescribed under the statute, it is the discretion of the Authority to impose the punishment to the extent of minimum or maximum or in between.

41. Herein the case in the hand, no such minimum punishment has been prescribed under Regulation 5(7). However, we must also take note that the words year/years have been mentioned. Therefore, it may be for one year or more than one year i.e, minimum two years.

42. If that being so, it cannot be stated that, such kind of punishment should not be awarded or if the punishment is awarded for two years even that is also not in consonance with the Regulation 5(7).



W.P.No.28223 of 2022

43. But at the same time for imposing such punishment for three successive academic year is concerned, there must be a special reason attached with the order passed by the respondent imposing such a punishment.

44. The reason that for four seats have been filled up, such a punishment of three years was given as stated by the learned counsel may not be a justifiable reason for imposing such a punishment for three years. Therefore, even though it may not be a punishment to shock the conscience of the Court, this Court feels that, since there has been no fitting reason to justify, such a punishment of three years for surrendering of seats is an excessive punishment.

45. Therefore, for all these reasons stated above, this Court feels that the third limb of the punishment reiterated in the impugned order for surrendering of seats for the third year i.e., 2022-2023 is definitely an excessive punishment comparing with the violation committed by the petitioner institution in admitting the four students for the academic year 2018-2019. Accordingly, this Court is inclined to dispose of this writ petition with the following orders:



W.P.No.28223 of 2022

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- ◆ That the impugned order dated 18.01.2022 insofar as the third limb of the punishment i.e., surrendering of seats for the third academic year i.e., 2022-2023 alone is hereby set aside.
- ◆ As a sequel the petitioner would be entitled to retain four seats under the Management Quota for the academic year 2022-2023. While passing this order, this Court wants to put a note of caution against the petitioner institution, that hereafter, if any such violation is noticed even at once, it is open to the first respondent to take any drastic action including for taking an action to withdraw the recognition against the petitioner institution.

With these observations and directions, this writ petition is ordered accordingly. No costs. Connected miscellaneous petition is closed.

31.10.2022

Index: Yes

Speaking Order: Yes

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Note: Issue order copy on 07.11.2022



W.P.No.28223 of 2022

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To

1. The Under Secretary,
National Medical Commission,
Sector VIII, Dwaraka Phase II,
New Delhi – 110 077.
2. The Under Secretary,
The Board of Governors in
Supersession of Medical Council of India,
Sector VIII, Dwaraka Phase II,
New Delhi – 110 077.
3. The Under Secretary,
Government of India,
Ministry of Health and Family Welfare,
Nirmanbhawan, New Delhi – 110 001.
4. The Secretary,
Government of Puducherry,
Health Department, Chief Secretariat, Puducherry.
5. The Coordinator (Admission)
Centralized Admission Committee,
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry – 605 104.
6. The Registrar,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry – 605 014.



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W.P.No.28223 of 2022

R.SURESH KUMAR.J.,

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W.P.No.28223 of 2022

31.10.2022