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W.P.Nos.31191 & 31192 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM :

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR**

**W.P.Nos.31191 & 31192 of 2022**

**and**

**W.M.P.Nos.30622, 30623, 30625 & 30626 of 2022**

Dr. T.Suresh

...Petitioner in W.P.No.31191/2022

1.Dr.A.Prabhakaran

2.Dr.M.Abirami

3.Dr.T.Mythili

4.Dr.Saravanvaasan VM

5.Dr.R.Sangeetha

...Petitioners in W.P.No.31192/2022

Vs.

1.The State of Tamil Nadu,  
Rep. by Principal Secretary to Government,  
Health and Family Welfare Department,  
Fort St. George, Secretariat,  
Chennai - 600 009.

2.The Director of Medical Education,  
Kilpauk, Chennai - 600 010.

3.The Secretary,  
Selection Committee,  
Directorate of Medical Education,  
Kilpauk, Chennai - 600 010.



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4.The National Medical Commission,

Rep. by its Secretary,

Pocket 14, Sector - 8,

Dwaraka New Delhi - 110 077. ...Respondents in both WPs

**Common Prayer:** Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, directing the respondents to consider the petitioners to participate in the Mop-up Counselling to remedy the situation arose due to change of condition as introduced in Notification No.2745/SCSII(1)/2022-16 dated 02.11.2022 issued by the 3<sup>rd</sup> respondent and to ensure merit in selection for admission to Post Graduate Medical Courses, in consideration of representations submitted by the petitioners.

(in both WPs)

For Petitioners : Mr.G.Sankaran

For R1 & R2 : Mr.U.M.Ravichandran,  
Special Government Pleader

For R3 : Ms.M.Sneha,  
Standing Counsel

For R4 : Ms.Shubjaranjani Ananth,  
Standing Counsel

### **COMMON ORDER**

Since the issue raised in these writ petitions is one and the same, with the consent of learned counsel appearing for both sides, these writ petitions were heard together and are disposed of by this common order.



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WEB COPY 2. In W.P.No.31191 of 2022, the petitioner written the PG-NEET-

2022 and applied to the respondents for getting admission in PG Course in Medicine. As per the prospectus issued by the Selection Committee, the petitioner participated in the first round of counselling and he was allotted a seat. However, he has not joined in the same. Even though he was allotted a seat in the first round and not joined, he would be eligible to participate in the second round of counselling by virtue of Clause 18 of the prospectus. Accordingly, he has also participated in the second round, where he locked his choice. However, based on his ranking, he was allotted only the third choice of his choice locking, but not the first choice. Therefore, since the petitioner had no other option, joined in the course.

3. In W.P.No.31192 of 2022, there are five petitioners, who are also similarly placed, as they written PG-NEET-2022 and applied to the respondents for getting admission in PG Course in Medicine. They had also participated in the first round of counselling, where seats were allotted to them and they also joined in the respective seats.



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4. Pursuant to the privilege given to them, who have been allotted seats in the first round of counselling and also joined, under Clause 25(3) of the prospectus, they can also participate in the second round of counselling for up-gradation and therefore, they participated in the second round and by way of up-gradation, they locked their choices. However, such an upgraded choice locked by the respective petitioners in W.P.No.31192 of 2022 have not been allotted to them.

5. In these circumstances, the petitioners in both the writ petitions wanted to participate in the Mop-up counselling, which is to be conducted by the respondents, in order to fill up the remaining vacant seats.

6. When the petitioners wanted to participate in the Mop-up counselling, by citing the communication dated 02.11.2022 issued by the Directorate of Medical Education, they were not permitted to participate, which according to the respondents is in consonance with Clause 26(c) of the prospectus issued in this regard. It is also the case of the petitioners that, if a candidate joined after the first round of counselling, however could not get the upgraded seat in the second round even after



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participation, the said candidate would be eligible to participate in the Mop-up counselling. Since that choice has now been refused by the respondents to the petitioners, they have moved the present writ petitions with the aforesaid prayer seeking Mandamus to the respondents to permit the petitioners to participate in the Mop-up counselling.

7. Heard Mr.G.Sankaran, learned counsel for the petitioners, who having reiterated the aforestated, would submit that, insofar as the second round of counselling, for which, notification was issued on 17.10.2022, one of the bullet point that has been brought in is that, the candidates who have been allotted seats and not joined in the second round of counselling, should forfeit the security deposit and are not allowed to participate in the further rounds of counselling.

8. The said clause was inserted only to prevent the seat blocking exercise undertaken by various candidates. Therefore, it would not affect the chance of the petitioners to participate in the Mop-up counselling. However, by citing the notification dated 02.11.2022 issued by the Directorate of Medical Education, it has been denied to the petitioners.



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9. In this context, it is the further contention of the learned counsel for the petitioners that, on 31.10.2022, a notification was issued by the Directorate of Medical Education, where it has been stated that, candidates, who resigned/not joined after being allotted seats on completion of the second round of counselling through online, will have to forfeit the processing fee, security deposit and tuition fee and further that, he/she shall not be eligible to participate in the subsequent rounds of counselling.

10. Subsequently, contrary to the notification dated 31.10.2022, the Directorate of Medical Education has issued a notification dated 02.11.2022, where it has been stated that, those who participated and not joined in the allotted seat, is permitted to participate in the Mop-up counselling. This contrary stand taken by the Directorate of Medical Education between 31.10.2022 and 02.11.2022 makes these petitioners ineligible to participate in the Mop-up counselling, whereas the others have been permitted to participate. Therefore, the choice lock made by the petitioners, even though for which the petitioners are entitled if they are permitted to participate in the Mop-up counselling, are going to be given to some other candidates, who may be less meritorious if they are



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permitted to participate in the counselling by virtue of notification dated

02.11.2022.

11. On the other hand, Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the first and second respondent and Ms.M.Sneha, learned Standing Counsel appearing for the Selection Committee contended that, the prospectus issued in this regard by the respondents is strictly in consonance with the Hon'ble Supreme Court's order as well as the directive issued in this regard by the Director General of Health Services, Government of India, dated 05.08.2018.

12. They would also submit that, insofar as participation of the petitioners in the first round of counselling is concerned, they can very well take a seat and join or not join. Nevertheless, pursuant to joining in the seat allotted to him/her arising out of the first round of counselling, they can also participate in the second round of counselling, by virtue of Clause 18 of the prospectus. Further, insofar as the candidates, who discontinued or not joined in the course after completion of the second round of online counselling, they will have to forfeit the processing fee, security deposit and tuition fee paid by them.



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13. Insofar as the virtual vacancies are concerned, a candidate, who has been allotted a seat in first round and has opted for up-gradation in second round, that allotted seats of first round will be shown as virtual vacancy in second round and candidates can fill the said seat during the choice filling in second round, they contended.

14. In clause 26(c) of the prospectus, it has been stated that if a candidate is allotted any seat from his/her locked choices in first and second rounds and has joined, they are not eligible for the Mop-up counselling and subsequent rounds of counselling. According to the learned counsel for the respondents, this was issued as per the Gazette Notification No.MCI-18(1)/2018-Med./100818, dated 05.08.2018 and the orders of the Hon'ble Supreme Court in W.P.(C) No.174/2022, dated 31.03.2022.

15. Relying upon these communications, the learned counsel for the respondents would submit that the Hon'ble Supreme Court in its judgement dated 31.03.2022, inter alia, has given the following directions:-



*(v) In line with the regulations which have been notified on 5 April 2018, students who have joined in round 2 of the state quota or round 2 of the AIQ shall not be eligible to participate in the mop-up round for All India Quota.*

16. In tune with the said direction issued by the Hon'ble Supreme Court of India, the said clause was inserted in the prospectus as Clause 26(c). Only based on the said clause, the counselling should be conducted and in this context, while issuing the notification dated 17.10.2022, it has been stated that the candidates, who have been allotted and not joined after the second round of counselling, should forfeit the processing fee and he/she will not be eligible to participate in the subsequent rounds of counselling.

17. Subsequently, another notification dated 31.10.2022 was issued, where it has been stated that the candidates, who resigned/not joined after being allotted the course on completion of round 2 of online counselling, will have to forfeit the processing fee, security deposit and tuition fee and that he/she will not be eligible to participate in the subsequent rounds of counselling.



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**WEB COPY** 18. In the said notification dated 31.10.2022, the word 'resigned' has been inserted, which means the candidate who joined and left. Therefore, there is a difference between the candidates who joined and left and the candidates who have not joined. Thus, the very notification was against the spirit of the direction issued by the Hon'ble Supreme Court. Therefore, it necessitated the respondents to issue a clarification by way of the subsequent notification dated 02.11.2022, where it has been stated that the candidates who participated in the second round of counselling and not joined, would also be eligible to participate in the Mop-up counselling.

19. By citing the aforesaid, the learned counsel appearing for the respondents would contend that, if we read the Clauses 18, 25 and 26 of the prospectus as well the bullet points stated in the notifications dated 17.10.2022, 31.10.2022 and 02.11.2022 in conjunction, it conveys the meaning that, those who joined after the second round of counselling alone would be debarred from participating in the Mop-up counselling and those who have taken the seats and did not join will be permitted to participate in the Mop-up counselling, which is the sum and substance of



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the notifications issued in consonance with the directions issued by the Hon'ble Supreme Court by the judgement dated 31.03.2022.

20. I have considered the said submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

21. No doubt, in the direction given by the Hon'ble Supreme Court by judgement dated 31.03.2022, it has been made very clear that the students who have joined in round 2 of the State Quota or round 2 of the All India Quota shall not be eligible to participate in the mop-up round for All India Quota. The same direction would *mutatis mutandis* be applicable to the State Quota also, where if a student had joined after the round 2 of counselling would not be eligible to participate in the Mop-up counselling of the State Quota. If that is the spirit of the direction given by the Hon'ble Supreme Court, based on which, if a consistent stand is taken by the respondents, as stated by the learned counsel appearing for the respondents, then the earlier communications issued upto 31.10.2022 need not have been changed in the subsequent notification dated 02.11.2022. In this context, the respondents could have been more



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vigilant in drafting these clauses in the prospectus and the subsequent notification which was issued at the time of second round of counselling as well as the Mop-up counselling.

22. Be that as it may, now the petitioners, even though had joined after the second round of counselling, can be permitted to participate in the Mop-up counselling, as per the instructions issued by the Selection Committee and other respondents. This has been brought to the notice of this Court by the learned Special Government Pleader as well as the learned Standing Counsel for the Selection Committee.

23. Because of this change in pattern, even though a subsequent clarification was issued in this regard, it had created a confusion. Therefore, though the petitioners choice are deprived, still the entire chance of the petitioners have not been closed, as the Mop-up counselling result is yet to be published. Therefore, at this juncture, based on the ranking, the petitioners can be permitted to participate in the Mop-up counselling and they can choose a seat by way of choice locking among the available seats in the Mop-up counselling.



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24. In respect of this stand taken by the respondents, this Court feels that, instead of going into the confusion that has been created because of the clauses mentioned in the prospectus as well as in the subsequent notifications dated 17.10.2022, 31.10.2022 and 02.11.2022, the petitioners can be permitted to participate in the Mop-up counselling.

25. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

(i) There shall be a direction to the respondents to permit the petitioners to participate in the ongoing Mop-up Counselling on the basis of the ranking the respective petitioners earned.

(ii) The petitioners shall be permitted to have the choice locking in the Mop-up Counselling and based on the NEET ranking it is open to the respondents to allot seats to the petitioners, if they come within the zone of consideration, based on their ranking.

(iii) The needful, as indicated above, shall be undertaken by the respondents forthwith, as the



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Counselling has already begun and by virtue of interim orders already passed by this Court, the final results are yet to be published.

26. In view of the aforesaid orders, the interim order already granted by this Court in this regard is hereby vacated.

27. At this juncture, since it is brought to the notice of this Court that, as per the latest extension of last date of completing the Mop-up Counselling as well as the Stray Vacancy Counselling, which has been extended upto 25.11.2022 insofar as Mop-up Counselling and upto 02.12.2022 insofar as Stray Vacancy, the learned counsel appearing for the respondents submits that this time has to be further extended.

28. However, Ms.Shubharanjani Ananth, learned Standing Counsel appearing for the fourth respondent/National Medical Commission submitted that, even though the National Medical Commission is the proper authority to approach the Hon'ble Supreme Court to get any clarification for further extension of time for Mop-up Counselling as well as for Stray Vacancy Counselling, that directive has to come only from



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the Director General of Health Services, Government of India. Unless such a directive is given by the said authority, the National Medical Commission cannot act upon immediately, she contended.

29. In view of the said situation, this Court is of the view that a direction can be given to the State Authorities, namely the Directorate of Medical Education as well as the Selection Committee for State Counselling, to approach the National Medical Commission as well as the Director General of Health Services, Government of India simultaneously, seeking for extension of further time for the purpose of completing the Mop-up Counselling as well as to fill up the Stray Vacancies beyond 02.12.2022.

30. With these directions, both these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

**28.11.2022**

Index: Yes/No

Speaking order/Non-speaking order

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Note: Issue order copy on 29.11.2022



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To  
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- 1.The Principal Secretary to Government,  
State of Tamil Nadu,  
Health and Family Welfare Department,  
Fort St. George, Secretariat,  
Chennai - 600 009.
- 2.The Director of Medical Education,  
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**R. SURESH KUMAR, J.**

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