

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

WRIT PETITION NO. 11615 OF 2023

Vedantaa Institute of Medical Science & Ors. ... Petitioners

V/s.

State of Maharashtra and Ors. ... Respondents

with

WRIT PETITION NO. 11675 OF 2023

Mahatma Gandhi Vidyamandir, Nashik & Anr. ... Petitioners

V/s.

State of Maharashtra and Ors. ... Respondents

with

WRIT PETITION NO. 11956 OF 2023

Sahil Pramod Shinde ... Petitioner

V/s.

State of Maharashtra and Ors. ... Respondents

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. V.M. Thorat and Mr. Amar Bodke and Mr. Avinash Bailmare for the Petitioners in all Petitions

Mr. Ganesh Gole with Mr. Viraj Shelatkar for the Respondent No.4

Mr. Nagesh Y. Chavan for Respondent No. 5

Mr. N.K. Rajpurohit, AGP for the Respondent – State

***CORAM : NITIN JAMDAR &
MANJUSHA DESHPANDE, JJ.***

DATE : 19 OCTOBER 2023

P.C. :-

Heard the learned Counsel for the parties.

2. These Petitions have come up on board from time to time and on 17 October 2023, we passed the following order :-

“In this group of Petitions Writ Petition No. 11675 of 2023 concerns admission process for the Undergraduate Dental Courses. Writ Petition No. 11615 of 2023 is filed in respect of Postgraduate Medical Courses.

2. The Petitioners aggrieved by the stipulation in clause 7.13 of the procedure for admission and selection introduced by the State Common Entrance Test Cell, Mumbai. The stipulation reads thus :-

“7.13. The Postgraduate seats of Unaided Private and Minority Medical Colleges from State of Maharashtra will be filled through Online CAP only by State Competent Authority on the basis of merit of NEET- PG 2023. As per National Medical Commission Circular No. N-P018(20)/5/2023-PGMEB-NMC/044351, dated : 24/07/2023, there will not be Institutional Level Stray Vacancy Round for Medical Postgraduate Courses.”

The Petitioners contend that the circular issued by the National Medical Commission does not state that there will be no institutional level stray vacancy rounds but it only refers to conducting the counselling online for the stray vacancy both, in undergraduate and postgraduate courses.

3. The learned Counsel for the National Medical Commission has drawn our attention to the National Medical Council Postgraduate Medical Education Regulations, 2000 more particularly, clause 9A(3) where

the common counselling shall be done under the overall supervision and directions of the State Government. The learned Counsel for the National Medical Council states that pursuant to this stipulation the circular has been issued. It is the Petitioners contention that as far as the circular of the National Medical Commission and the stipulation contained in the Rules of 2000, there is no quarrel however it is not contemplated by the circular or the Rules of 2000 that there shall be no institutional stray vacancies at all.

4. Along with these Petitions, Writ Petition No. 11614 of 2023 was also on board earlier concerning undergraduate medical courses wherein same challenge was raised. The Petitions were adjourned for the learned AGP to take instructions. We were informed on 27 September 2023 that the State Government had accepted the interpretation of the Petitioner in Writ Petition No. 11614 of 2023 as regards undergraduate medical courses are concerned and the said Petition was withdrawn.

5. These two Petitions concerning undergraduate dental courses and postgraduate medical courses have been adjourned awaiting the response of the State Government whether they would follow the same interpretation as taken in the undergraduate medical courses.

6. The learned AGP again seeks time. The Petitions cannot be adjourned merely to take instructions. Therefore, we direct the Respondents to take necessary decision as regard the undergraduate dental courses and postgraduate medical courses as to whether they will adopt the same interpretation as done in the cases of undergraduate medical courses and place the same on record of these Petitions. As regard the postgraduate

medical courses are concerned, we are informed that the cut-off date is 20 October 2023. Therefore, the decision at least in the case of postgraduate medical courses be taken by next date assigned.

*7. Stand over to **18 October 2023 at 2.30 p.m.***

8. The learned AGP states in view of the urgency that the directions would be communicated without waiting for the copy of the order.”

A communication issued to the office of the Government Pleader is placed on record, however it does not make the position very clear. We note that in spite of repeated adjournments and queries, the stand is not made clear.

3. The Petitioners rely on the Rules of the Maharashtra Unaided Private Professional Education Institution (Regulation of Admissions to the Full Time Professional Post Graduate Medical and Dental Courses) Rules, 2017 and Amendment Rules, 2018, more particularly, Rule 14 thereof. This Rule reads thus :-

“ 14. Institution Level Round for vacant seats after CAP rounds.- If the seats remain vacant after all CAP Rounds, the said seats shall be filled in by the institution through Institution Level Round with the prior approval of the Competent Authority. The institute shall invite applications from the desirous candidates who are declared eligible in the NEET-PG or NEET-MDS, as the case may be. The admission shall be granted by the institution strictly on the basis of Inter-se-Merit of the NEET-PG or NEET-MDS, as the case may be.”

We are informed that as on date the Rule has not been modified. The Petitioners however point out that in the brochure issued by the State Common Entrance Test Cell, Mumbai (NEET-PG 2023) a different note is sounded. They draw our attention to clause 7.14 which reads thus :-

“7.14. The Seats available for admission to Post Graduate Medical Courses shall be as stipulated by the appropriate authority and declared by Government from time to time.”

This clause is based on the circular of the National Medical Commission issued on 24 July 2023. The circular dated 24 July 2023 reads thus :-

“ As per the Orders of Hon’ble Supreme Court of India in I.A. No. 132614/2022 in WP© 267/2017, the Medical Counselling Committee (MCC) of DGHS, Ministry of Health & Family Welfare shall conduct Online Counselling for stray round for 100% seats in Deemed Universities in UG & PG courses.

2. All the state Counselling Agencies are requested to make necessary arrangement for conducting the counselling in online mode, for all rounds including stray vacancy round in Private Medical Colleges, from the academic year 2023-24. No College/Institute should conduct the counselling, including the stray vacancy round, in physical mode.

3. It will help in tackling the issue of seat blocking & complaints/court cases related to counselling.

4. This issues with the approval of Competent Authority.”

4. Prima facie, we find that the emphasis in this circular is of conducting counselling online and not in physical mode which is also supported by the affidavit in reply filed by the National Medical Commission and orally explained to us by its Counsel asserting its stand on the same line as the circular dated 24 July 2023.

5. The Petitioners face a deadline, one of them of 20 October 2023. In this state of affairs, in view of this shortage of time all that we observe is that since the statutory Rules hold the field, more particularly, Rules 14 and 16 as applicable, the State of Maharashtra will have to follow its statutory Rules. As regard the circular of the National Medical Commission reflected in the brochure, before proceeding further, the State of Maharashtra will take guidance from the National Medical Commission on the action to be taken and proceed further. The National Medical Commission will give necessary clarification to the Respondent – State the moment it is received on urgent basis so that further steps can be taken.

6. We make it clear that we have in no manner modified the ongoing process of allotment of seat, that is, the CAP Rounds.

7. The Writ Petitions are accordingly disposed of.

MANJUSHA DESHPANDE, J.

NITIN JAMDAR, J.