

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 12040 OF 2023

Dr.Deepesh Ashok Jain and others. ... Petitioners.
V/s.
Union of India and others. ... Respondents.

Mr.Pramod N. Patil with Mr.Ajit Hon i/b. P.NP & Associate
for the Petitioners.

Mr.Rui Rodrigues with Ms.Gargi Warunjikar and Mr.Jainendra
Sheth for Respondent Nos.1 to 3.

Mr.S.H.Kankal, AGP for Respondent No.4.

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

DATE : 29 September 2023.

P.C. :

Not on board. Taken up on board as the petition was due today but was not notified. Heard the learned counsel for the parties.

2. These five petitioners are aspirant for admission to various post-graduate medical courses having passed M.B.B.S. examination and appeared for NEET-PG examination. The Petitioners filed this petition originally with the prayer for directing the Respondents to postpone the third round of counseling for

admission to post-graduate medical courses for the academic year 2023-24 for all India quota. The main grievance of the Petitioner is that for successful completion of third round there has to be a data from the States and Union Territories in respect of second round of counselling and on the analysis of this data there can be further round. It is also the contention of the Petitioners that for this a commitment is given by the Respondents before the Hon'ble Supreme Court that they have developed a software for fetching such data, yet without adhering to the commitment the Respondents are proceeding with the third round.

3. When the petition came up on board on earlier date, the learned counsel for Respondent Nos.1 to 3 sought time to take instructions. At that time we declined to pass any order such as ad-interim order without giving an opportunity to the Respondents as passing of such order would have given rise to several unforeseen cascading effects. The Petitioner has amended the petition to place subsequent developments on record. The learned counsel for Respondent Nos.1 to 3 had stated that the third round of counselling is deferred and, therefore, the petition was adjourned. Thereafter the petition was circulated by the Petitioner stating that third round is now continued and is now likely to immediately conclude.

4. By way of amendment the Petitioners have sought to question the change of FAQ No.37 of PG Information Bulletin published by the Directorate General of Health Services. According

to the Petitioners, FAQ 37 refers to State quota seats in respect of eligibility of third round of counselling which has been completely omitted. The learned counsel submitted that the limitless up-gradation of the candidates who have secured more marks has created a situation where students such as Petitioners have been deprived of by not getting the seats of their choices or none at all. The Petitioners, by way of amendment, have sought relief which is a postponement of admission process.

5. The learned counsel for Respondent Nos.1 to 3 has placed before us the time-schedule which is published. As per this time-schedule, the processing of allotting seats for third round and Stray Vacancy Round was 26 and 27 September 2023, publication of results was yesterday this is 28 September 2023 the reporting at the allotted college would commence from today up to 6 October 2023. Therefore, even in third round the results have been published. With the backdrop of this position, as of today, we have to consider the request of the Petitioner.

6. We are informed that Petitioner Nos.1 and 2 participated in the third round, however, did not get the seats in view of placement in the merit list. The other Petitioners have got their seats but the seats are not as per their choices. Therefore, it is not that the Petitioners have been completely removed from the admission process.

7. The main grievance of the Petitioners is that the concept of up-gradation of the students higher in merit which is a policy in force and to which there is no challenge and even if such challenge is levelled, it will have to be examined in detail with further hearing in the context of its seriousness. By ad-interim order we cannot direct further deferment of third round, which is already complete nor we can stay the policy which will nullify the grant of option of up-gradation which is prevalent as on today. This will affect large number of students already taken admission. The learned counsel for the Petitioners states that if no order is passed as on today, the petition will become infructuous. That is the position which the Petitioners will have to accept, as it is not possible for us to modify the schedule affecting thousands of students.

8. Keeping larger question, which the Petitioners have sought to raise, open to be considered in an appropriate case, we dispose of this writ petition.

(MANJUSHA DESHPANDE, J.)

(NITIN JAMDAR, J.)