



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7223 OF 2023

- 1) Saniya Fatima Rahman d/o
Mohd. Naeemur Rahman,
Aged about 18 years, Occ.-Student,
R/o House No. 520, Near Qadar
Sahab Masjid, Bhankheda,
Moninpura, Nagpur – 440 018.
- 2) Aarya d/o Sanjay Thakare,
Aged about 18 years, Occ. - Student,
R/o 54, Bhole Nagar, Uday Nagar
Ring Road, Nagpur – 440034.

.... **PETITIONERS**

VERSUS

- 1) The National Medical Commission,
through its Secretary,
having an office at Poket 14, Sector-8,
Dwarka, Phase-I, New Delhi-110 077.
- 2) The Under-Graduate Medical Education
Board, through its Director,
Office at Poket 14, Sector-8, Dwarka,
Phase-I, New Delhi-110 077.
(Email – ug@nmc.org.in)
- 3) Admission Regulatory Authority,
Maharashtra State, through its
Secretary, 9th Floor, New Excelsior
Building, A.K. Nayak Road, Fort,
Mumbai – 400 001. (Email – ara@)
- 4) State Common Entrance Test Cell,
Maharashtra State, Mumbai, 8th

Floor, New Excelsior Building,
A.K. Nayak Road, Fort, Mumbai-
400 001. (Email – cetcell@ahacet.org)

5) NKP Salve Institute of Medical
Sciences & Research Centre & Lata
Mangeshkar Hospital, Digdoh Hills,
Hingna Road, Nagpur-440 019,
through its Dean.
(Email – nkpsim1@rediffmail.com). RESPONDENTS

Mr. Rohit Joshi & Madhur Deo, Counsel for the petitioners,
Mr. R.M. Bhangde, Counsel for respondent Nos. 1 and 2,
Mr. N.A. Gaikwad, Counsel for respondent Nos. 3 and 4,
Mr. A.A. Naik, Counsel for respondent No.5.

CORAM : A.S. CHANDURKAR
& ABHAY J. MANTRI, JJ.
DATED : 10th NOVEMBER, 2023

ORAL JUDGMENT : (PER : ABHAY J. MANTRI, J.)

Heard. **Rule.** Rule made returnable forthwith.

2. The petitioners have preferred this petition challenging the communication/order dated 18-10-2023 issued by respondent No.2 informing that the notice dated 26-9-2023 issued by respondent No.4 for filling up the vacant seats in Private Medical Unaided College at College/Institutional Level is in violation of the letter dated 24-7-2023 issued by the Post Graduate Medical Education Board (*for short "PGMEB"*).

3. The petitioners are students and had appeared for the NEET-UG-2023 Examination. Petitioner No.1 and Petitioner No.2 have secured 531 and 157 marks respectively in the said examination. They were eligible for admission to MBBS courses conducted by various colleges in the State of Maharashtra.

4. Respondent No.1 is a Statutory Body constituted under Section 3 of the National Medical Commission Act, 2019 (short “*NMC Act*”) for the purpose of regulating and maintaining of standards of Medical Institutions, Medical Research, and Medical Professionals. Respondent No.2 is an Autonomous Board constituted under Section 16(1)(a) of the NMC Act. Respondent No.3 is a Body constituted under Section 7 of the Maharashtra Unaided Private Professional Educational Institution (Regulation of Admission & Fees) Act, 2015 (for short “*Act of 2015*”). Respondent No.4 is a State Common Entrance Test Cell constituted under Section 10 of the Act of 2015. Respondent No.5 is a Private Unaided Medical College that is affiliated with the Maharashtra University of Health Sciences.

5. The petitioners submit that Common Entrance Test i.e. NEET-UG-2023 was conducted by respondent No.1 for admission

to MBBS and other Health Science Courses for the academic year 2023-24. Accordingly, respondent No.4 published an information brochure regarding the examination and admission process. The petitioners had appeared for the said examination. The admission process for MBBS and other Health Science Courses commenced pursuant to Notice No.1, NEET-UG-2023, dated 23-7-2023 issued by respondent No.4. The candidates were directed to apply for online registration from 23-7-2023 to 29-7-2023. Accordingly, the schedule of the process for admission was published in the said notice dated 23-7-2023. On 27-7-2023 respondent No.4 issued a revised schedule for admission.

6. The petitioners participated in the admission process through online registration. Petitioner No.1 has opted for admission to the MBBS course in 85% of State quota seats to be filled up through the Centralized Admission Process (for short “CAP”). Petitioner No.3 has opted for a 15% institutional quota through CAP. On 24-7-2023 Clause No.11.5.2 was issued as per Circular No.044351 by PGMEB. Said Circular was issued pursuant to the order of the Hon’ble Supreme Court. Accordingly, respondent No.4 had conducted three CAP Rounds and one Stray

Vacancy Round. The Notice No.5 for the second and third CAP Rounds was issued on 21-8-2023. The candidates admitted in the third CAP Round were given time up to 5.30 p.m. on 20-9-2023 to join the allotted colleges by depositing all original documents and requisite fees.

7. It is further contended that since all the seats in the eligible colleges could not be filled in on completion of the third CAP Round, respondent No.4 issued Notice No.9 dated 18-9-2023 prescribing a schedule for filling in vacant seats through Online Stray Vacancy Round for MBBS and BDS courses. Despite all the vacant seats not being filled in the Stray Vacancy Round, respondent No.4 issued another notice No.10 dated 26-9-2023 prescribing the schedule for the Online Stray Vacancy Round, and as per the said Notice No. 10 applications were to be submitted between 27-9-2023 to 28-9-2023.

8. Pursuant to Notice No.10 Respondent No.5-College, on 29-9-2023 published two separate merit lists, one was for State Quota Seat and another was for Institutional Quota Seat. The name of petitioner No.1 appeared in the merit list prepared for the State Quota Seat and the name of petitioner No.2 appeared in

the merit list prepared for Institutional Quota Seat. Accordingly, on 30-9-2023 the petitioners had taken admissions for first year MBBS course in respondent No.5-College.

9. On 30/09/2023 the observer Dr. Kanchan Wankhede submitted an observer report to respondent No.4 certifying that the process was conducted smoothly and fairly without any irregularity.

10. Pursuant to the above procedure the petitioners are pursuing their studies in respondent No.5-College. However, respondent No.2 issued an impugned communication/order dated 18-10-2023 to respondent No.5-College and other colleges informing that Notice No.10 dated 26-9-2023 issued by respondent No.4 to fill vacant seats in Private Unaided Colleges is in violation of letter dated 24-7-2023. In the said communication/order, it is further categorically stated that all such admissions granted at the Institutional Level Round shall be considered to be invalid and the students if admitted shall be discharged immediately.

Being aggrieved by the said communication/order, the petitioners have preferred this petition.

11. Heard the learned Counsel for the parties at length. Perused the record as well as authorities cited by the learned Counsels. During the argument, the learned Counsel Mr. R.M. Bhangde for respondents Nos.1 and 2 has produced on record public notice dated 19-10-2023 and show cause notice dated 20-10-2023 issued by respondent No. 2. Likewise, the learned Counsel Mr. N.A. Gaikwad for respondent Nos. 3 and 4 have produced on record a letter dated 26-9-2023 as well as notice dated 31-10-2023 along with a schedule of the Special Stray Vacancy Round.

12. Having considered the same, the core questions that arise for consideration before us are :

- (i) Whether the issuance of Notice No.10 dated 26-9-2023 by respondent No.4 to the colleges is just and proper? **Or**
- (ii) Whether the issuance of Notice No.10 dated 26-9-2023 by respondent No.4 to the colleges is contrary to the rules and regulations of the NMC Act. ?
- (iii) Whether the admission given by respondent No.5 to the petitioners in pursuance of Notice No.10 dated 26-9-2023 is just and proper. ?

13. The thrust of the argument of the learned Counsel Mr. Rohit Joshi for the petitioners was that Clause 11.5.2 was inserted in the Brochure as per the Circular dated 24-7-2023 by PGMEB, which is constituted under Section 16(1) of the NMC Act, which does not apply to MBBS course but inserted erroneously. The powers and functions of the PGMEB are provided under Section 25 of the NMC Act. However, the competent Board for the MBBS course for Under-Graduate Medical Education Board (for short “UGMEB”) is prescribed under section 24 of the NMC Act. Under Section 24 of the NMC Act, the powers and functions of the Medical Education Board are provided and, therefore, the Circular dated 24-7-2023 does not apply to the MBBS and other Under-Graduate Medical Education Courses. Secondly, he canvassed that Section 5A of the Medical Council of India Regulations on Graduate Medical Education, 1997 (for short “Regulations”) has become inoperative. Therefore, the directions for cancellation of admission issued vide communication/order dated 18-10-2023 are clearly based on misconception and unsustainable. Thus, he has submitted that the procedure directed to be followed under the Notice dated 26-9-2023 is just, fair, and transparent. Alternatively, he has argued that the petitioners were eligible for

admission to the first-year MBBS course, therefore, their selection was based on merit. Therefore, assuming that there is any irregularity with respect to the procedure followed while granting them admission, the fault does not lie with the petitioners. Moreover, no eligible candidates are aggrieved by the procedure directed to be followed vide Notice No.10 dated 26-9-2023. Therefore, he has prayed for setting aside the communication/order dated 18-10-2023. During the argument, the learned Counsel for the petitioners took us through the entire record, rules, and notifications.

14. Per contra, the learned Counsel Mr. R.M. Bhangde for respondents Nos. 1 and 2 harped on the point that admission to all medical seats shall be conducted by the Central Counseling process only by the State Government and none else. The State Government cannot further delegate powers to the colleges to fill up the admissions, therefore, the college has no right to interfere in the process. The learned Counsel further relied on the judgments of the Hon'ble Apex Court in the cases of *State of Madhya Pradesh v. Jainarayan Chouksey and another*, (2016) 9 SCC 412, and *Education Promotion Society for India and another v. Union of India and others*, (2019) 7 SCC 38 and submitted that as per the mandate of

the judgments of the Hon'ble Apex Court has to hold Centralized Entrance Test followed by Centralized State Counseling by the State to make it a one composite process and, therefore, the Constitution Bench of the Hon'ble Apex Court has categorically directed that "admission to all medical seats shall be conducted by Centralized Counseling only by the State Government and none else." The learned Counsel further submits that respondent No.4 issued the notice dated 26-9-2023 contrary to the mandate laid down by the Hon'ble Apex Court. He has pointed out Clause 5A of the Regulations and submitted that as per Clause 5A, the State Government has no authority to issue any direction. But the State Government ignoring the said provision has issued notice dated 26-9-2023 contrary to the said regulations and, therefore, issuance of the said notice is arbitrary and contrary to the said regulations. Hence, he has prayed for the dismissal of the petition.

15. Mr. N.A. Gaikwad, learned Counsel for respondent Nos. 3 and 4 have submitted the pursis on record along with one letter dated 26-9-2023 and notice dated 31-10-2023 and submitted that the schedule of the '*Special Stray Vacancy Round*' for MBBS and BDS seats 2023 has been published by it.

16. Mr. A.A. Naik, learned Counsel for respondent No.5 has vehemently submitted that the Circular dated 24-7-2023 was issued pursuant to the order dated 12-12-2022 passed by the Hon'ble Apex Court. He has taken us through the admission process for NEET-UG-2023 and Notice No.10 dated 26-9-2023 and has submitted that only in sixteen colleges seats were not filled up in CAP Round and some seats remained vacant. Therefore, as per the notice dated 26-9-2023 colleges prepared the list of eligible candidates on a merit basis. The college has not compromised the merit during the process. But as per the merit list published by the college in Stray Vacancy Round, they have given admissions to the petitioners and, therefore, no illegality has been committed by respondent No.5. The college has granted admission to the petitioners in accordance with the Rules and Regulations and, therefore, it cannot be said that they have committed any error while giving admissions to the petitioners. Hence, he has supported the claim of the petitioners.

17. It is pertinent to note that the Constitution Bench of the Hon'ble Apex Court in the case of *State of Madhya Pradesh v. Jainarayan Chouksey and others* (supra), has given the directions

“to hold Centralized Entrance Test followed by Centralized State Counseling by the State to make it one composite process and, further directed that admission to all seats shall be conducted by Centralized Counseling only by the State Government and none else.” It was also observed that *“If any counseling has been done by any College or University or any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per the Centralized Counseling only by the State Government.”*

18. The Hon’ble Apex Court in the case of the *Education Promotion Society for India and another* has held that *“the schedule must be followed. If violation of schedule is permitted and extension is granted, a Pandora’s box will be opened and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.”* It was further observed that *“extension to admission process cannot be granted just because some seats are lying vacant without there being any other justification.”*

It is further observed that *“there are three rounds of counseling, the first round, the second round, and the mop-up round. The mop-up round was to be completed by 31-5-2019 and if some seats remained vacant even after the mop-up round, it*

cannot be helped.” Thus, in view of the law laid down by the Hon’ble Apex Court, in the above two citations, it would be proper to consider the relevant facts in the case at hand.

19. Admittedly, in the case at hand the admission process for Health Sciences Courses had commenced in pursuance to the notice dated 23-7-2023 and candidates were directed to apply for online registration between 23-7-2023 to 29-7-2023. Respondent No.4 further revised the said schedule vide Notice No. 2 dated 27-7-2023. Then Vide Notice No.6 dated 21-8-2023 respondent No.4 permitted the candidates to fill up the forms through an online CAP round only. As per Notice No.5 dated 21-8-2023, the schedule for the second CAP round was between 22-8-2023 to 08-9-2023 and the third CAP round commenced between 09-9-2023 to 20-9-2023.

Since all seats in all colleges could not be filled in on completion of the third CAP round, respondent No.4 issued Notice No.9 dated 18-9-2023 prescribing a schedule for filling in vacant seats through the online **Stray Vacancy Round** for MBBS and BDS Course. As per the said schedule, candidates had to fill up the form between 21-9-2023 to 26-9-2023 and as per the said notice,

the academic session for MBBS and BDS was commenced from 01-9-2023.

20. Thus it appears that as per the law laid down by the Hon'ble Apex Court, the third CAP round and subsequent Stray Vacancy Round were completed and, therefore, as per the law laid down in the case of *Education Promotion Society for India and Another*, “*extension cannot be granted just because some seats are lying vacant without there being any other justification*”.

21. However, on 26-9-2023 respondent no.4 issued Notice No.10 stating that “*the seats remaining vacant in Government/ Government aided/ Corporation Medical College will be filled up by Online Stray Vacancy round(s) as per the schedule given in Table 1, whereas the seat remaining vacant in private unaided Medical Colleges will be filled at institutional level as per the schedule given in Table 2,*” which is not at all permissible as per the law laid down by the Hon'ble Apex Court as well as the Rules and Regulations of the NMC Act.

22. Having considered the law laid down by the Hon'ble Apex Court as well as the Rules and Regulations and facts of the

case, it is evident that as per rules, three CAP rounds and thereafter Stray Vacancy Round was completed as per the issuance of the notice dated 18-9-2023. Therefore, the issuance of further Notice No.10 dated 26-9-2023 permitting the medical colleges to fill up the vacant seats at **the institutional level** as per the schedule, does not arise at all. As per the law laid down by the Hon'ble Apex Court, admission to all medical colleges shall be conducted by the Centralized Counseling process only by the State Government and none else. Also, if any counseling has been done by any College or University or any admission is given by College or University, such admission shall stand cancelled forthwith. Thus, it seems that respondent No.4 without having any authority issued Notice No.10 dated 26-9-2023 and permitted the medical colleges to fill up the seats at the institutional level, which is contrary to the law laid down by the Hon'ble Apex Court as well as the Rules and Regulations of the NMC Act.

23. Mr. Rohit Joshi, learned Counsel for the petitioners has pointed out communication dated 24-7-2023 and submitted that the said communication is applicable to the PGMEB only and same does not apply to the UGMEB as in the title clause it is mentioned for ' PGME Board'. However, on perusal of the said

letter, we do not find substance in it as in paragraph No.1 of the said letter it is categorically mentioned that '*the online counseling for stray vacancy round for 100% seats in Deemed Universities in UG and PG courses shall be conducted for the year 2023-24*'. In para 2 it is stated that '*No College/Institute should conduct the counseling, including the stray vacancy round, in physical mode.*'

24. On perusal of Clause 5A of the Regulations, it seems that as per the said Regulations, the counseling for admission to MBBS courses in all Medical Education Institutions on the basis of the merit list of the National Eligibility Entrance Test in a State/Union Territory shall be conducted by the State/Union Territory and no authority/institution shall admit any candidate to the MBBS course in contravention of the procedure as laid down in the Regulations. Therefore, we do not find any substance in the submission of the learned Counsel for the petitioners that Clause 5A of the Regulations has become inoperative.

25. Perused the judgment rendered by the Hon'ble Apex Court in the case of *Index Medical College, Hospital and Research Centre v. State of Madhya Pradesh and others, 2021 SCC OnLine SC 318* relied upon by the learned Counsel Mr. A.A. Naik. In the said judgment

the Hon'ble Apex Court has observed that "*there is no doubt that the object with which Rule 12 (8)(a) is made appropriate as malpractice by students in the admission process should be curtailed.*" In the said case, the Hon'ble Apex Court has considered the mandate of Rules 12(8)(a) and 12(7)(c) and how those rules appear to be violative of Articles 14 and 19(1)(g) of the Constitution of India. However, in the case at hand, facts are different than the aforesaid cited case, and, therefore, observations made by the Hon'ble Apex Court in the cited case are not helpful for respondent No.5 in support of their contentions.

26. Mr. A.A. Naik, learned Counsel has also relied upon the order of the Hon'ble Apex Court in the case of *Dar-US-Slam Educational Trust and others v. Medical Council of India and others* in *Writ Petition No.267/2017*, wherein the Hon'ble Apex Court dealt with the common counseling for allotment of students can be conducted by the State Government and observed that the counseling conducted by the State Government will not in any manner affects the rights of minority institution to admit the students of their respective minority community. The said facts in the cited case are different than the case at hand and, therefore,

the observations made in the said order are not helpful for respondent No.5 in support of their contentions.

27. In the case of *Managing Director, Chhatisgarh State Co-operative Bank Maryadit v. Zila Sahkari Kendriya Bank Maryadit and others*, (2020) 6 SCC 411, the Hon'ble Apex Court has observed that "*it is a well-settled principle of law that where two provisions of an enactment appear to conflict, courts must adopt an interpretation which harmonises, to the best extent possible, both provisions.*" However, in view of the ratio laid down by the Constitution Bench of the Hon'ble Apex Court, the observations made in the said judgment are not helpful for the petitioners in support of their contentions.

28. It further appears that on 25-10-2023 after hearing the learned Counsel for the petitioners and based on his submissions, the order was passed that "*the admission of the petitioners shall not be disturbed in the light of the impugned communication dated 18-10-2023.*" However, as per the above discussion, it seems that Notice No.10 dated 26-9-2023 issued by respondent No.4 appears contrary to the law laid down by the Hon'ble Apex Court as well as the Rules and Regulations and, therefore,

issuance of the communication/order dated 18-10-2023 by respondent no. 2 is just and proper and in consonance with the ratio laid down by the Hon'ble Apex Court. Therefore, in our view, the petitioners are not entitled to the relief as claimed.

29. To sum up the above discussion, it reveals that as per the law laid down by the Hon'ble Apex Court as well as the Rules and Regulations three CAP rounds and one Stray Vacancy Round were conducted by respondents Nos. 3, 4, and 5 till the issuance of the notice dated 18-9-2023. Therefore, respondent No.4 had no authority to issue further Notice No.10 dated 26-9-2023 contrary to the Rules and Regulations of the NMC Act. Thus, it seems that the issuance of Notice No.10 dated 26-9-2023 by respondent No.4 was in violation of the rules and regulations as well as public notice dated 24-7-2023 issued by the National Medical Commission. It also seems that vide show cause notice dated 20-10-2023 respondents Nos. 1 and 2 called upon the written clarification from respondent No.4 about the issuance of Notice No.10 dated 26-9-2023. Consequently, it appears that the issuance of communication/order dated 18-10-2023 by respondent No.2 to respondent No.5 is just legal and proper and

hence we answer question Nos. 1 and 3 in the negative and 2 in the affirmative.

It is pertinent to note that during the pendency of the petition on 04-11-2023 the learned Counsel for respondent No.4 has tendered communication dated 26-9-2023 along with notice dated 31-10-2023 before the Court. On perusal of the notice, it seems that the Government of India, Directorate General of Health Services issued the said notice informing that they are going to conduct Special Stray Vacancy Round for the vacant MBBS/BDS/B.Sc. Nursing Seats of AIQ and State Quota. Along with the said, they have given schedule for the said round. As per the said schedule, the last date for reporting at allotted college is shown as 15-11-2023. Thus considering the said fact, the petitioners can apply in the said round for the said course.

30. For the aforesaid reasons, we do not find any substance in the contention of the petitioners that the issuance of communication/order dated 18-10-2023 by respondent No.2 to respondent No.5 is invalid. Per contra, it is evident that the issuance of the said communication/order is just and proper, and therefore, we are not inclined to interfere in the petition to grant

relief in favour of the petitioners. It is clarified that the petitioners can apply in the said Special Stray Vacancy Round.

31. The writ petition is dismissed. No costs. Interim order granted on 25-10-2023 stands vacated.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)

The learned Counsel for the petitioners urge that the interim order granted on 25-10-2023 be continued for a period of four weeks. However, considering the facts of the case as well as the fact that respondent No.4 has published notice dated 31-10-2023 to fill up the vacant seats through Online Special Stray Vacancy Round for the MBBS and BDS courses of AIQ and State Quota and the last date to report at allotted college is shown as 15-11-2023, we are not inclined to extend the interim order granted on 25-10-2023.

(ABHAY J. MANTRI, J.)

(A.S. CHANDURKAR, J.)