



W.P.No.29086 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.10.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.29086 of 2023

& WMP.Nos.28678, 28680 & 28681 of 2023

M.Shriram

... petitioner

VS

- 1 Government of Tamil Nadu
Represented by its Secretary.
Department of Health and Family Welfare,
Fort St George
Chennai- 600 009
- 2 The Director of Medical Education and Research,
156, Poonamallee High Rd,
New Bupathy Nagar,
Chetpet, Chennai- 600031.
- 3 The Secretary
Selection Committee
Directorate of Medical Education and Research
156, Poonamallee High Rd,
New Bupathy Nagar,
Chetpet, Chennai 600031.
- 4 The Secretary,
Medical Council of India,
Sector -8, Pocket -14, Dwarka,
New Delhi – 110077.



W.P.No.29086 of 2023

5 The Medical Counselling Committee (MCC)
Rep. by Director General of Health Service (DGHS)
Nirman Bhawan,
New Delhi – 110108.
(R4 & R5 suo moto impleaded as per order dated
04.10.2023 by this Court in W.P.No.29086 of 2023)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent in Notification No.154/SCS II (1)/2023/2022 dated 27.09.2023 and the consequential re-allotment/allotment issued by the 2nd respondent for III round of counseling dated 29.09.2023 (published on the official website of the 3rd respondent) and quash the same as being against the prospectus issued by the 2nd respondent and consequently direct the respondents to conduct Mop Up counseling for allotment of Post Graduate seats in General Medicine strictly by following the conditions of the prospectus more specifically clause 27 of the prospectus without allowing the candidates who have joined the seat in the I and II round of counseling and without allowing the candidate who have been allocated a set in the 3rd round of counseling in the All India Quota and accordingly allot the petitioner a seat in the PG General Medicine in any of the Government colleges in the State of Tamil Nadu.



W.P.No.29086 of 2023

WEB COPY

For Petitioner : Ms.Dakshayani Reddy
Senior Counsel
For Ms.Suneetha

For Respondents : Mr.KMD.Muhilan (R1 & R2)
Additional Government Pleader
Ms.M.Sneha (R3)
Ms.Shubaranjani Ananth (R4)

ORDER

The All India NEET examinations for Post Graduate (PG) Medical courses were conducted in the State of Tamil Nadu on 5th March, 2023. The petitioner has completed MBBS from the Government Medical College at Chengalpet in the year 2021. He secured All India rank 4479 and State rank 597 in the NEET PG examination.

2. The prospectus for 2023-2024 session for PG courses was issued under a Government Order in G.O.Ms.No.792 dated 05.07.2023 (in short 'prospectus'). The prospectus envisioned two rounds of counselling (Round I and Round II) and registration by the aspirants on the web portal of the respondents. The two regular rounds were to be followed by a Mop-up Round and Stray Round of counselling.

3. The counselling was conducted online and clauses 24 and 25 of the prospectus that deal with the first round of counselling required the candidates,



W.P.No.29086 of 2023

if selected in the first round, to join the allotted medical college on or before the stipulated time with all required documents. The second round of counselling was to be held thereafter and permitted the following categories of candidates to apply:

i) a candidate who had not registered or choice locked in the first round of online counselling.

ii) a candidate who had been allotted a seat and either not joined, or had resigned the course within the stipulated time.

iii) candidates who retained their allotted seat beyond the stipulated date, those who had availed a re-allotment seat during the second round or who were allotted a seat anew during the second round were not permitted to vacate the seat and thus could not avail the subsequent round of counselling.

iv) candidates who had joined the allotted seat in Round II or further rounds, i.e., Mop-up and the stray rounds of counselling would not be allowed to resign and would also be ineligible to participate in further rounds of counselling.

4. The conduct of Mop-up round as stipulated in the prospectus was as follows:

27. MOP-UP ROUND



W.P.No.29086 of 2023

a. After completion of second round of ONLINE COUNSELLING, the remaining vacancies will be filled up with the candidates from the Rank list by MOPUP ONLINE COUNSELLING.

b. If the candidate is allotted any seat from his /her locked choices in first and second rounds and has joined, then the candidate is not eligible for the Mop-up counseling and subsequent rounds of counseling (as per the Gazette Notification No.MCI-18(1)/2018- Med./100818, Dated 05/08/2018 and the orders of the Supreme Court of India in W.P.(C)No. 174/2022,dated:31.03.2022). From the Mop up phase onwards, restriction has been implemented to candidates in order to avoid lapsing of seats and holding of AIQ seats and State quota seats thus blocking seats. A candidate allotted a seat in Mop-up round in State counseling shall be ineligible to participate in any further counseling. Hence candidates are advised to exercise due diligence in their options and do not file unwanted options to seats in which they do not wish to pursue studies.

Registration fee for Mop-up round: Rs.1000/-

- i. Candidates who have been allotted and not joined/resigned/discontinued with penalty have to pay registration fee to participate in Mop-up round
- ii. Candidates who freshly register for Mop-up round also need to pay registration fee.
- iii. Only Candidates who have not been allotted in round 1 and 2, need not pay registration fees

ELIGIBILITY CRITERIA FOR MOPUP ROUND:

- i. The candidates who have not been allotted in round I and Round II counselling.
- ii. The candidates who have been allotted, but not joined in Round I & Round II of State Quota and All India Quota are eligible to participate in this counselling.
- iii. A Candidate who has not registered and not choice locked in the First round or Second round ONLINE COUNSELLING will be permitted to attend mop up rounds of ONLINE COUNSELING.

NON - ELIGIBILITY CRITERIA FORMOPUP ROUND:



W.P.No.29086 of 2023

WEB COPY

i. The candidates who have joined PG course in Round I and (or) Round II of State Counselling are not eligible to participate in Mop Up Counselling.

ii. The candidates who have joined in Round I & Round II in All India Quota / Deemed university/DNB (conducted by NBE) are not eligible to participate in Mop Up counseling.

iii. The candidates who have been allotted in mop up round of All India Quota/Deemed university/DNB (conducted by NBE) are not eligible to participate in Mop Up counselling.

As per the directions of Hon'ble Supreme Court of India in W.P.(c)267/2017 DAR-US-SLAM EDUCATIONAL TRUST and Ors. Vs. MEDICAL COUNCIL OF INDIA and Ors. Dated 09-05-2017, the candidates joined in All India Quota Round II counselling are not allowed to vacate the seat. On similar ground the candidates who have joined in Round II of State counselling will not be permitted to vacate the seat.

5. Thus, the non-eligibility criteria for Mop-up round disentitled the following categories of candidates from participating in the Mop-up round of counselling:

i) candidates who have joined PG courses in Round I and (or) Round II of State counselling;

ii) candidates who have joined in Round I and Round II in All India Quota (AIQ)/Deemed University/Diplomate of National Board (DNB) (conducted by NDE);

iii) candidates who have been allotted a seat in Mop-up counselling round of AIQ/Deemed University/DNB (conducted by NDE).



W.P.No.29086 of 2023

6. The ineligibility criteria specifically referred to the directions of the Hon'ble Supreme Court in in the case of *Dar-Us-Slam Educational Trust and others V. Medical Council of India and others*¹, pointing out that those candidates who had joined in AIQ round II of counselling were not permitted to vacate their seat. Similarly, candidates who had joined the second round of State counselling would also not be permitted to vacate the seat.

7. The present petitioner was allotted a PG seat in the General Surgery course in Madras Medical College on 27.07.2023 in Round I of AIQ, but did not choose to join. He participated in the Round I of State Quota counselling on 08.08.2023 and was allotted MS General Surgery in Stanley Medical College which allotment too he did not avail. In both instances, he preferred to await his choices in the subsequent rounds.

8. In Round II of the AIQ counselling, he was allotted a seat in DNB General Medicine in G.Kuppusamy Naidu Memorial Hospital, Coimbatore on 30.08.2023. Counselling in Round II of the State Quota commenced from 02.09.2023 and results were to be declared on 11.09.2023.

9. Based on the prospectus, the petitioner was barred from participating in Round II of State counselling till such time the candidate resigned the seat allotted under the AIQ. The petitioner believed that his prospects for a seat in

¹ W.P.(C) No.267 of 2017 dated 09.05.2017



W.P.No.29086 of 2023

the subsequent rounds of counselling were bright. Thus, he had to make a choice at that juncture as to whether he wished to participate in Round II of State counselling and subsequent rounds of counselling by resigning in Round II of AIQ or whether he wished to remain content with the seat allotted to him in Round II of AIQ.

10. To be noted, that the last date for resignation of seats allotted under Round II of AIQ was 07.09.2023. The petitioner analysed the situation that prevailed then, finding that candidates who had been ranked higher than him in the NEET had joined the seats allotted to them in earlier rounds of AIQ counselling and had not resigned the same.

11. He was thus confident of the availability of seats in MD General Medicine course in Round II and subsequent rounds of State Quota counselling. In the meanwhile, the time for registration in Round II sans resignation, had been extended vide proceedings of the Medical Counselling Committee (MCC) bearing Ref.U-12021/02/2023-MEC dated 12.09.2023.

12. That communication is part of a series of notices issued by MCC (Notice dated 01.09.2023, 04.09.2023, 12.09.2023 and 18.09.2023) that modify the Rules for upgradation and the conditions relating to forfeiture and re-registration from time to time, based on requests from candidates.



W.P.No.29086 of 2023

13. Specifically notice dated 12.09.2023 refers to *'many requests from PG candidates who have been allotted seats through Round – II of State counselling'* for resignation of their seats. The notice permits them to resign stating thus:

'Since, many States have declared their Round - II results after the start of Round-III of PG counselling being conducted by MCC, candidates who have been allotted in Round II of State counselling now want to resign their Round – II seats allotted through MCC so that they are able to join in State counselling'.

14. The facility of resignation was thus additionally extended to such candidates to be exercised within a stipulated time and the seat so vacated were to be added to the seat matrix of Round – III, to be available to participating candidates.

15. While the petitioner now awaited the Mop-up round of State counselling, proceedings came to be issued on 27.09.2023 pursuant to a decision of this Court in W.P.No.28341 of 2023 dated 25.09.2023 that I shall advert to presently.

16. The first version of the *'Information bulletin and counselling scheme for AIQ'* was issued by the Director General of Health Services (DGHS), MCC on 24.07.2023. The conduct of NEET and the procedure/schedule of counselling proposed to be followed every year are



required to be placed before the Hon'ble Supreme Court by the MCC for approval.

17. The Hon'ble Supreme Court in *Dar-Us-Slam* (supra) by order dated 09.05.2017 had stipulated the basis upon which counselling for AIQ and seats in Government Medical Colleges is to be conducted by the DGHS. Such counselling was also to include Deemed Universities, since they have an All India character, including those run by Religious Linguistic Minorities.

18. As regards State Quota, seats in Government, private and Deemed Universities, common counselling was to be conducted by the State or by the authority designated by the State in that regard. Referring to the judgment in *Ashish Ranjan V. Union of India and others*², the Court mandated that there shall be two rounds of common counselling each, conducted by the DGHS and the State/Designated Authority for All India Quota including Deemed University and State Quota respectively. The Court made the procedure clear in the following terms:

'4.After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from the all India merit list only. The students who take admission and secure admission in Deemed Universities pursuant to the second round

2 ((2016) 11 SCC 225)



W.P.No.29086 of 2023

of counselling conducted by the DGHS shall not be eligible to participate in any other counselling.'

19. The Bench also provided for manual counselling in order to fill the seats that remained vacant after the State counselling. Post that stage, the State Government was to determine the total number of available seats and forward a list of students in order of merit, equalling ten times the number of vacant seats to the medical colleges, so that stray vacancies arising in any college may be filled in from that merit list.

20. In *Nihila P.P. V. The Medical Counselling Committee and others*³, three Judges of the Hon'ble Supreme Court permitted the DGHS to conduct four rounds of AIQ counselling, effective from 2021-22 onwards for both NEET UG-PG as per the modified policy. The salient features as noted by the Court are:

- a) There are four rounds of online counselling i.e., AIQ Round I, Round II, AIQ Mop-up and AIQ Stray Vacancy Round.
- b) Seats which had earlier reverted to the respective States after completion of Round II of AIQ will continue to be filled in the AIQ Mop-up Round and AIQ Stray Vacancy Round, to be conducted by MCC online.

3 SLP (C) Nos.10487 of 2021 dated 16.12.2021



W.P.No.29086 of 2023

WEB COPY

- c) Such rounds would only relate to AIQ seats having All India character contributed by the seats towards 15% UG and 50% PG seats.
- d) Fresh registration was to be allowed in AIQ Round I, Round II and AIQ Mop-up Round, while no fresh registration was to be allowed in AIQ Stray Vacancy Round.
- e) Option for upgradation and free exit was permitted only in Round I of AIQ counselling. There was no option for upgradation to Mop-up Round from Round II.
- f) Candidates who had joined the allotted seat in Round II or further Rounds of counselling were not permitted to resign and were also ineligible to participate in further rounds of any type of counselling.
- g) Candidates who have not joined the allotted seat in Round II were eligible for further rounds of counselling subject to forfeiture of security deposit and fresh registration in only the Mop-up round.

The above was the procedure approved by the Court for the year 2021-22.

21. For the academic year 2022-23 a unique event had transpired in that, some Government Medical Colleges had increased their seat capacity. Thus,



W.P.No.29086 of 2023

146 new seats became available for allocation in the Mop-up round that were unavailable in the earlier rounds, i.e., Round I or II for AIQ seats.

22. Thus, students who had participated and been allotted seats in Rounds I and II had missed the opportunity to participate in the counselling for these seats. The inclusion of these seats in the Mop-up round had presented a new opportunity to those students who were, in fact, lower in merit when compared to the students who had been successful in Rounds I and II.

23. In *Anjana Chari S N V. The Medical Counselling Committee (MCC) and others*⁴, three Judges of the Hon'ble Supreme Court noted the incongruity in the situation, as students higher in merit had not been given the opportunity to seek admission for 146 seats that were being offered specifically only to students who were lower in merit. These students were all in Government colleges.

24. The second aspect of the matter that caught their attention was an advisory that had been issued by MCC on 16.03.2022, as a consequence of which those candidates who had been allotted seats in Round I and II of the State Quota had been prevented from participating in the Mop-up Round of AIQ.

4 (W.P.(C) No.174 of 2022 dated 30.03.2022)



25. The contention of the candidates was that the scheme sanctioned in *Nihila's* case dealt with only the AIQ and there was no bar on candidates in State Quota participating in AIQ Mop-up Round. Since the advisory dated 16.03.2022 had not been consistently followed across the Country, the Court felt that the allocation of 146 seats had not been made in a proper or fair manner. DGHS was given a day's time to set right the anomaly.

26. When the matter was called on 31.03.2022, the Bench cancelled the Mop-up Round counselling that had been conducted and directed a fresh round of counselling to be conducted in respect of the 146 additional seats. The students who had joined in Round II, both State and AIQ were given liberty to participate in the counselling for 146 seats without any financial penalty. The procedure for the allotment of the 146 seats was set out by the Court.

27. In line with the Regulations that had been notified on 05.04.2018, students who had joined in Round II of either State or AIQ were debarred from participating in the Mop-up Round of AIQ. One student in that batch, Subhankar Pattanayak alleged contempt of the direction in order dated 31.03.2022 in the case of *Anjana Chari* (supra). The allegation of contempt related to the direction as below:

'(v)In line with the regulations which have been notified on 5 April 2018, students who have joined in round 2 of the state



W.P.No.29086 of 2023

quota or round 2 of the AIQ shall not be eligible to participate in the mop-up round for All India Quota.'

28. In *Subhankar Pattanayak V. K.Ramesh Reddy and others*⁵ the

Supreme Court noticed that the States had complied with order dated 31.03.2022 in varied ways, and inconsistently. The Court refers therein to a notice issued on 11.07.2022 by the DGHS that read thus:

"Urgent Attention all Participating States/Counselling Authorities and Candidates:

In compliance of the directions of the Hon'ble Supreme Court of India vide Order dated 31/03/2022 in W.P.(C) No.174 of 2022, Medical Counselling Committee of DGJS, MoHFW has developed a software for all the participating states/counselling authorities for NEET-UG/PG to upload the names and roll numbers of students who have joined up to round 2 and further rounds of the state quota or round 2 of the AIQ on the common portal.

These joined candidates upto round 2 of AIQ or State Quota shall not be eligible to participate in the further rounds for All India Quota or for State Quota from the academic year 2022-23 onwards".

29. At paragraph 7 of that order, the Court notes that MCC has developed a software for all participating States and counselling authorities for NEET-UG/PG to ensure that the names and roll numbers of candidates who had joined upto Round II and further rounds of the State or AIQ are available on a common portal.

5 (Contempt Petition (C) No.289 of 2022 in W.P.(C) No.223 of 2022 dated 22.07.2022)



W.P.No.29086 of 2023

30. Relevantly, in the present case, though the stage-wise procedure contemplated under the prospectus/instructions require that the list of joined candidates be put up on the website of the DGHS, it is the contention of the State that such a list encompassing the results of all rounds of counselling held upto now have been put up on the MCC/DGHS website only a day ago.

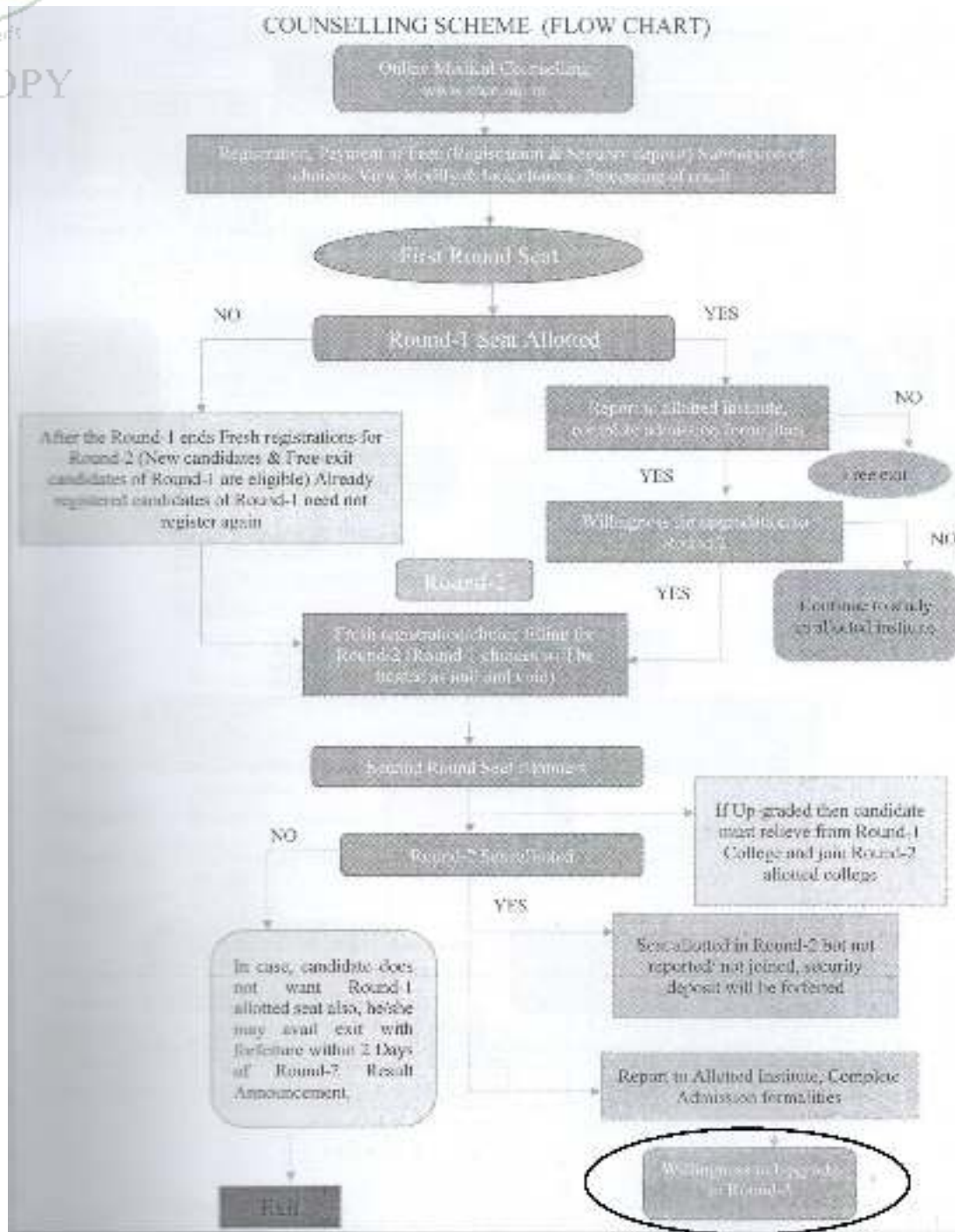
31. As far as the order in contempt is concerned, that order of the Hon'ble Supreme Court specifically takes note of the DGHS notice that candidates who have joined upto Round II for AIQ/State Quota are not eligible to participate in further rounds of AIQ or State counselling from academic year 2022-23.

32. The Instructions that have been issued on 24.07.2023 by the MCC contains a counselling scheme/flow chart, extracted below:



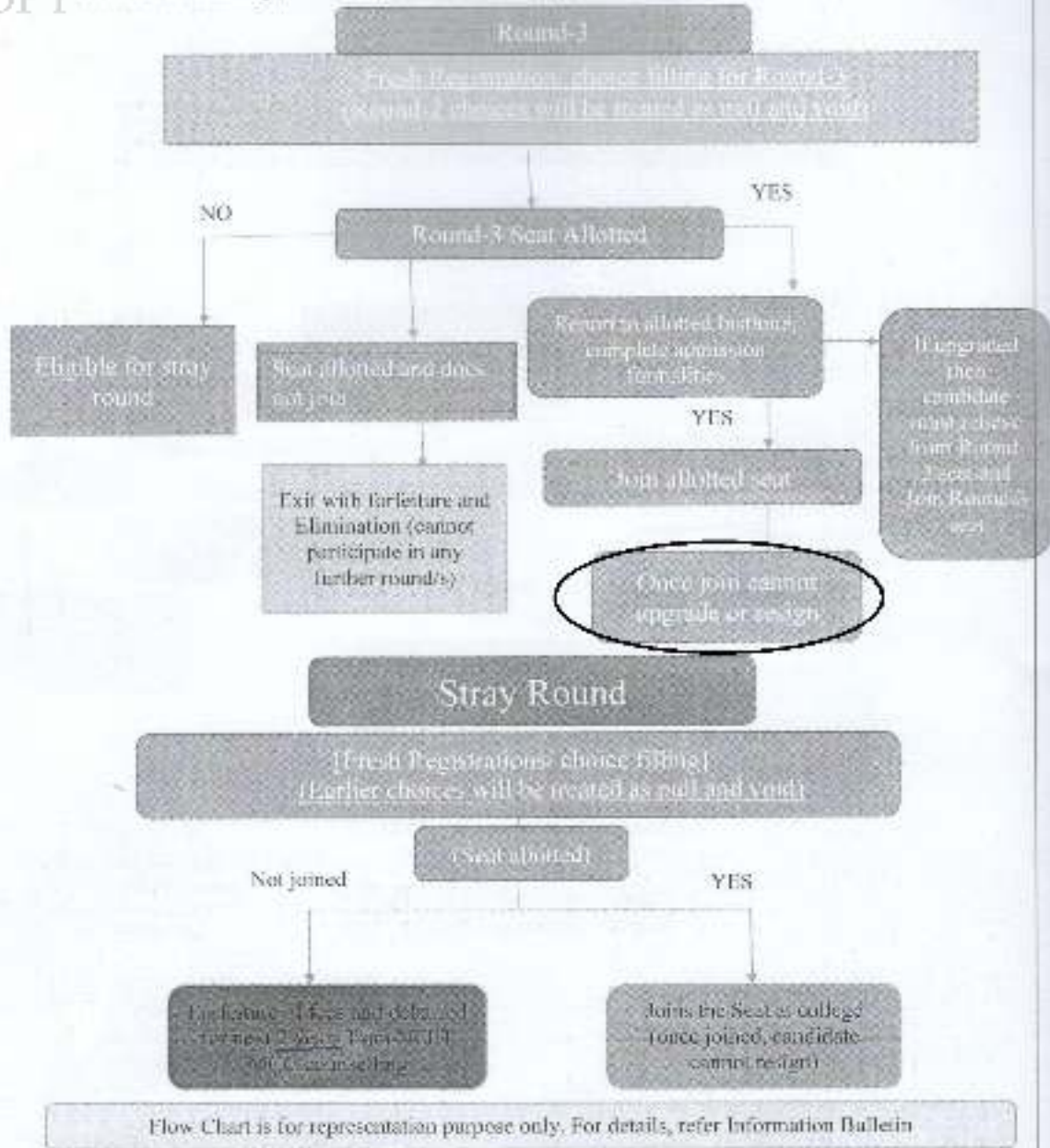
W.P.No.29086 of 2023

WEB COPY





WEB COPY Process of Counselling (Flow Chart)... continued from page 1





W.P.No.29086 of 2023

33. The procedure as per the flow chart above contemplates a situation where the candidate is allotted a seat in Round II and reports therein, and is still permitted to upgrade to Round III. Inherent in this is the eligibility to resign as well. The petitioner in this case has joined in MD General Medicine in DNB in Round II of AIQ in G.Kuppusamy Naidu Memorial Hospital, Coimbatore, but has resigned the seat on 07.09.2023 believing himself poised to obtain a better seat in the subsequent rounds.

34. As per the flow chart, it is only at the stage of Round III, when, upon allotment of a seat and once the candidate joins, is there a bar from either resigning from the same or upgrading. A comparison of the procedures in Rounds II and III two reveal that the embargo on resignation applies only to seat allocations in Round III and not the seat allocations in Round II.

35. The second Information bulletin issued on 29.07.2023 by the MCC makes certain minor amendments. As far as the flow chart is concerned, the debarment from NEET MCC counselling contemplated for two years in the first Information bulletin has been reduced to one year in bulletin dated 29.07.2023.

36. On 13.09.2023 MCC issues a third Information bulletin, again making some changes in the procedure to be followed. At the national level, a decision was taken reducing the eligibility mark for PG NEET to '0'. DGHS



W.P.No.29086 of 2023

had also, under communication dated 20.09.2023 revised the entire counselling scheme, and as against the original permitted scheme of Round I and Round II, Mop-up Round and Stray Vacancy Round, the schedule that was devised was Round I, Round II, Round III and Stray Vacancy Round. The fresh schedule commenced from 22.09.2023 onwards and the revised sequence of dates and events is as follows:

NEET – PG SCHEDULE – 2023

**All India Quota/Deemed/Central/PG-DNB/State Quota for
MD/MS/Diploma/PG DNB Courses**

S.No	Admission	All India Quota/Deemed & Central Universities/PG DNB Institutes	Sharing of Joined candidates Data by MCC	State Counselling	Sharing of Joined candidates Data by states
1	1 st Round of Counselling	27 th July to 5 th Aug., 2023	---	5 th Aug., to 16 th Aug., 2023	---
2	Last date of Joining	13 th Aug., 2023	16 th Aug., 2023	20 th Aug., 2023	21 st Aug., 2023
3	2 nd round of Counselling	17 th Aug., to 25 th Aug., 2023	---	25 th Aug., to 6 th Sept., 2023	---
4	Last date of Joining	4 th Sept., 2023	6 th Sept., 2023	11 th Sept., 2023	12 th Sept., 2023



W.P.No.29086 of 2023

5	<i>Round -3</i>	<i>7th Sept., 2023 To 27th Sept., 2023</i>		<i>26th Sept., 2023 to 6th Oct., 2023</i>	
6	<i>Last date of joining</i>	<i>6th Oct., 2023</i>	<i>7th Oct., 2023</i>	<i>10th Oct., 2023</i>	<i>11th Oct., 2023</i>
7	<i>Stray Vacancy</i>	<i>9th Oct., 2023 to 13th Oct., 2023</i>	-	<i>13th Oct., to 16th Oct., 2023</i>	-
8	<i>Last date of joining</i>	<i>20th Oct., 2023</i>		<i>20th Oct., 2023</i>	
9	<i>Last date of PG Counselling 2023</i>	<i>20th Oct., 2023</i>			
10	<i>Commencement of Academic Session for PG Courses</i>	<i>5th Sept., 2023</i>			

37. This schedule does not entirely align with the dates supplied earlier, particularly in relation to Round III. That apart, there is one interesting aspect of the matter that a comparison of the original schedule and the revised schedule throw up.

38. The State submits that it was informed of the counselling schedule for academic year 2023-24 under a communication of the DGHS dated 25.07.2023. By that time, the State prospectus had already been released on



W.P.No.29086 of 2023

05.07.2023 providing for Round I, Round II, Mop-up and Stray Vacancy Round.

39. Though letter dated 25.07.2023 does not refer to any annexure, the eligibility criteria and rules for upgradation, the Court is informed by the respondents that the counselling schedule at page 79 of the State compilation dated 05.10.2023 was sent to the State along with communication dated 25.07.2023.

40. That schedule reveals the conduct of a Round III. Thus, it appears that even as early as on 25.07.2023 the State was well aware that Round III of the counselling shall be conducted and not a Mop-up counselling as the prospectus reveals.

41. However, the State prospectus which is binding upon the parties and is a Government Order has not been modified till date to reflect this revision. That apart, the date of State counselling as far as the second round of counselling is concerned does not align with the dates when the second round of counselling was actually conducted by the State.

42. To be noted, that the original schedule requires second round of counselling to be conducted between 25.08.2023 and 06.09.2023, whereas the counselling in reality took place between 02.09.2023 and 11.09.2023.



W.P.No.29086 of 2023

43. Pursuant to the reduction of the qualifying percentile to '0', a Writ Petition was filed by five candidates in W.P.No.28314 of 2023 seeking a mandamus directing the State of Tamil Nadu, Director of Medical Education and Selection Committee to conduct a third round of NEET State counselling for PG courses with an upgradation option to candidates who have joined in the seats allotted in the Round I and II.

44. The relief sought has been premised upon the revised rules as reflected in the third Information bulletin of the MCC dated 13.09.2023. The aforesaid Writ Petition was disposed vide order dated 25.09.2023. The Writ Court has crystallised the issue that arose therein, as being the difference between the nature of counselling as provided under the prospectus for filling in PG seats of AIQ and State quota after the second round of counselling.

45. The Writ Court has also recorded the specific submission of the National Medical Commission (NMC) that the change in the schedule for conduct of counselling was before the Hon'ble Supreme Court for ratification. The stand of the State in that Writ Petition was that they were unaware of what was to be done as pursuant to the change in schedule as well as new admission rules and whether such changes were to be incorporated in the State procedure/schedule as well.



46. The State has pointed out that it has written to DGHS on 20.09.2023, seeking a clarification in this regard, but there had been no response from the DGHS till date. The Writ Court permitted those petitioners to upgrade their option in newly introduced Round 3 mostly on the logic that, having been selected in Round I and II, they have a far better rank than those who may otherwise compete in Round III and thus fairness required that the candidate with better marks must secure a better seat.

47. While passing that order, what was before the Court was the interests of those students falling in one fact situation, i.e., candidates who had been allotted seats in Round I and II and who had joined those seats and were continuing to hold those seats, who wanted the benefit of upgradation. The interests of other candidates who fall within different factual situations were not before this Court for the Court to be in a position to balance or take note of the same.

48. Pursuant to that order of the writ Court, the State has issued communication dated 27.09.2023 issuing a fresh series of instructions for counselling. As far as upgradation was concerned, the Instructions state as follows:

Up-gradation in Mop-up Round (Round 3)



W.P.No.29086 of 2023

WEB COPY

- ❖ *Candidates who resigned of Round1, Round2 with forfeiture of security deposit, registration fee will **not be allowed to participate in Mop-up Round (Round-3) and subsequent round.***
- ❖ *Candidates of Round 1 and Round 2 who has not resigned can go for Up-gradation in Mop-Up Round (Round 3).*
- ❖ *Candidates of Round 1 and Round 2 allotted and not joined can go for up-gradation in Mop-up Round (Round 3)*

49. The second bullet point states that candidates of Round I and II who had not resigned can avail upgradation in Round III and the third bullet point states that the candidates in Round I and II who were allotted seats but who had not joined can avail upgradation in Round III.

50. In the third Information bulletin issued on 13.09.2023, the MCC has come out with a completely revised scheme '*in supersession*' of the previous AIQ scheme under the earlier Information bulletin. At paragraph 1.3, they refer to the order of the Hon'ble Supreme Court in the case of *Consortium of Deemed Universities in Karnataka and another V. Union of India and others*⁶.

51. At paragraph 1.4, they convey their decision that in supersession of the previous AIQ scheme, upgradation will be permitted upto third round which was earlier known as Mop-up round. They state '*accordingly NMC will approach the Hon'ble Supreme Court of India for approval in this matter*'.

6 (W.P.(C) No.689 of 2017 dated 22.08.2017)



W.P.No.29086 of 2023

52. It is thus clear that as on 13.09.2023, there has been no approval obtained by NMC in respect of the modified scheme of counselling. Learned counsel for NMC has supplied a copy of the application filed by NMC on 02.08.2023 before the Hon'ble Supreme Court and order dated 14.08.2023 passed therein.

53. The prayer in that application is for a direction, as a one-time measure, for modification of the time schedule for admission in PG medical courses so as to extend the last date for admission in PG medical courses to 10.10.2023 in larger public interest.

54. At paragraph 14, they refer to upgradation of seats which decision had been already been taken. Such a decision is clearly unilateral and without the approval of the Hon'ble Supreme Court. It is the upgradation in AIQ counselling that is the basis of the order passed by the learned Judge in W.P.No.28314 of 2023 dated 25.09.2023, extending such benefit to State Quota also.

55. If the upgradation in AIQ were itself to be unapproved by the Hon'ble Supreme Court, any action based on such upgradation would/should also suffer the same fate, which would include Instructions dated 27.09.2023, impugned now. This flows from the position admitted by the State before me,



W.P.No.29086 of 2023

that the State Counselling follows the same pattern of rules as the AIQ counselling, except that the scheduling of the State counselling rounds would follow the AIQ rounds.

56. Information bulletin dated 13.09.2023 sets out the procedure for Round III earlier known as Mop-up round. The eligibility criteria includes those students who had not registered in Round I or II or those who had resigned from Round II who were permitted to fill fresh choice. In both categories, the requirement was payment of full fee.

57. In the present case, the petitioner has resigned from Round II on 07.09.2023. He has been permitted to register for Round III and lock-in his choice. However, that means little in this case for two reasons. Firstly, the reduction of eligibility of candidates to '0' percentile has opened the flood gates as far as the inflow of new candidates are concerned.

58. However, this Court is given to understand from learned counsel for MCC that due permission has been taken from the Hon'ble Supreme Court for such reduced eligibility criteria though no order is produced. Secondly, the permission extended for upgradation in Round III is what really affects this petitioner, as by virtue of this process, students who had hitherto not been permitted to upgrade to Round III have now been permitted to upgrade.



59. The legitimate expectation of the petitioner when he resigned from Round II was twofold - that he would be entitled to participate in the Mop-up round of State counselling and that others who had exercised their choices in Rounds I and II, joined and not resigned, would be barred from seeking upgradation to Round III.

60. Both the aforesaid expectations were based on the prospectus issued by the State on 05.07.2023 which remains the same till date. The impugned instructions have, in fact, amended the rules set out under a Government Order in several ways which is impermissible in law.

61. The respondents have pointed out that this is a solitary instance where there is a challenge to Instructions dated 27.09.2023 and that thousands of students have, in fact, been benefitted by this Instruction. This Court will not, it has been urged, intervene in larger public interest, particularly when the policy of the State is seen to be proper and in alignment with the policy for AIQ.

62. The last submission of the State is found to be incorrect. The policy under the impugned Instructions is a modification of the rules under the Prospectus which is a Government Order. Further, they differ from the rules contained in Information bulletin dated 13.09.2023 in relation to Mop-up round.



63. While the MCC permits those who have resigned from Round II to upgrade to Round III will full payment of fee, and this is what the petitioner has done in this case, the impugned instructions in bullet points 2 and 3 as extracted in paragraph No.48 above permit three categories of students to avail upgradation.

- a) Those who have been allotted a seat in Round I and Round II and still hold the seat
- b) Those who have reported to the allotted seat and still hold the seat
- c) Those who have not resigned and still hold the seat.

64. Thus, there is a specific embargo only against those students who have resigned from the seat allotted in Round I/Round II. This is at variance with the condition under the MCC Information bulletin.

65. In order to explore if there could be a natural quietus given to the matter, the State was asked to ascertain the number of applicants in Round III who have secured ranks in excess of 597 which the petitioner has secured and report to this Court. The following tabulation has been filed by the State:

<i>RANK</i>	<i>TOTAL MARKS</i>	<i>STATUS</i>	<i>CATEGORY</i>	
95	631.00	FRESH	ALLOTTED IN OC CATEGORY	OC-1



W.P.No.29086 of 2023

115	626.00	FRESH	ALLOTTED IN OC CATEGORY	OC-2
189	615.00	FRESH	ALLOTTED IN OC CATEGORY	OC-3
285	603.00	FRESH	ALLOTTED IN OC CATEGORY	OC-4
296	602.00	FRESH	ALLOTTED IN OC CATEGORY	OC-5
308	601.00	FRESH	ALLOTTED IN OC CATEGORY	OC-6
310	600.00	FRESH	ALLOTTED IN OC CATEGORY	OC-7
430	590.00	FRESH	ALLOTTED IN OC CATEGORY	OC-8
546	581.00	FRESH	ALLOTTED IN OC CATEGORY	MBC-1

66. All candidates are ranked higher than the petitioner who are proposed to be allotted a seat in Round III. Their status of application is stated to be ‘fresh’, whereas the petitioner, on verification of the DGHS website, would point out that all those candidates had, in fact, been allotted seats in either Round I or Round II of the counselling and in some cases have joined the Institutions. Thus, the description of their application as ‘fresh’ is incorrect. This is defended by the State to say that their allotments earlier were under AIQ and it is for the first time that they have applied in State Quota.

67. I have heard the parties in detail and also perused the various documents produced.



68. This Court is cognizant of the impact of intervention in the selection process, since the interests of a large number of students is involved. The question would be whether such significant public interest must be made subject to the interests of one candidate. However, it is also my view that not a single candidate must suffer from a process of selection which has been established to be unilateral, unclear, opaque and riddled with uncertainty at all stages of the process.

69. Thus, while I do not propose to quash Notification dated 27.09.2023 for the above reasons, I also believe that the petitioner is entitled to relief on two counts (i) his meritorious performance in the qualifying examinations and (ii) the conundrum in the selection process being so apparent and well established.

70. The aberrations that have been found in the process thus far are summarised as follows:

- i) The State prospectus issued on 05.07.2023 provides for selection with two rounds of regular counselling followed by one round of Mop-up counselling and one round of Stray Vacancy counselling.
- ii) Even as early as on 27.07.2023, the counselling schedule that was forwarded by DGHS/MCC to the State indicates a third round and the information bulletin of MCC dated 13.09.2023 refers to a decision



W.P.No.29086 of 2023

WEB COPY

already having been taken relating to upgradation being permitted to third round. The irregularity and lack of transparency in the process followed is thus clear.

iii) According to the State, there has been no assistance extended to it or response to its letter, from the DGHS/MCC and the State is thus in the dark as to what procedure it is expected to follow.

iv) The State counsel has circulated a detailed communication sent by the State on 20.09.2023 seeking an opinion from the Assistant Director General, DGHS and the Chairman, National Medical Commission as to what the upgradation policy must be as per the orders of the Hon'ble Supreme Court of India and what procedure should be followed at the end of Round II. No reply has been received thus far they say.

v) This belies the motto of the MCC which is '*Ensuring transparency & fairness in Counselling*'. Had this motto been applied in reality and timely response given to the State, things may have been otherwise.

vi) Information bulletin dated 13.09.2023 makes it clear that the change in process of selection with regard to upgradation was made even prior to sanction and approval having been obtained from the Hon'ble Supreme



W.P.No.29086 of 2023

WEB COPY

Court and though a specific query was put to the learned Counsel no order of approval has been produced before this Court.

71. This Court also considered briefly the possibility that order passed in W.P.No.28314 of 2023 dated 25.09.2023 be taken to be applicable to those Writ Petitioners alone. However, since Round III has been conducted with several candidates participating, I am not inclined to disturb the entirety of the exercise at this juncture.

72. One phrase that has been repeatedly used by all learned counsel before me in the context of the modification to the procedure and rules at various stages, is the '*rules of the game being played*'. One thing is clear – this is not a game. Year on year, the uncertainty in admission procedures and constant modifications are seen to affect not just the academic prospects of the candidates but their faith in the process. This tells on them in so many ways, including their state of mind and general health. The State and authorities cannot be complicit in, and contribute to this deliberating scenario.

73. In light of the narration of events as above, I am of the view that the petitioner should not be denied his right to a seat based decisions taken by him premised on the then prevailing rules or equally, subsequent modifications. His resignation on 07.09.2023 was made anticipating that higher ranked students



(who have upgraded now based on the revised rules) would have already chosen the seats in Round I and Round II and held on to them.

74. Cases have been cited on both sides that reiterate the position that the rules must stay consistent throughout the selection process. The latest judgment in this regard is in the case of *State of Uttarpradesh V. Karunesh Kumar & others*⁷. Therein, the Hon'ble Supreme Court has held that the principle governing changing the Rules of the game at the eleventh hour will have only little application when the change is with respect to the selection process but become relevant where the changes impact qualification or eligibility.

75. In other words, the Rules relating to qualification of a candidate cannot be changed after a Notification/advertisement has been made initially. In the present case, the Rule of eligibility has been modified so as to whittle down the entitlement of the petitioner. Thus, while not wanting to stand in the way of those who have received a bonanza from the recent decisions of the respondents, there is a direction to the State to accommodate the petitioner in a Government College for MD General Medicine course based on his merit and ranking. In doing so, those seats vacated by candidates who may be successful

7 (2022 Live Law (SC) 1035)



W.P.No.29086 of 2023

in Round III (now conducted in place of Mop-up Round) will also be taken into account.

76. The petitioner has obtained from the DGHS website the following details in regard to the seats proposed to be allotted to the candidate ranked higher than him:

<i>S.No.</i>	<i>All India Rank</i>	<i>TN GENERAL RANK</i>	<i>All India COURSE</i>	<i>COLLEGE</i>	<i>STATUS</i>
1.	889	95	MS OBSTETRICS AND GYNECOLOGY	MADRAS MEDICAL COLLEGE	JOINED (All India Round 1)
2.	1036	115	MD GENERAL MEDICINE	MADURAI MEDICAL COLLEGE	JOINED (All India Round 1)
3.	1564	189	MD PAEDIATRICS	SRIRAMA CHANDRA BHANJA COLLEGE, CUTTACK	JOINED (All India Round 1)
4.	2303	285	MD GENERAL MEDICINE	K.A.P.V. GOVERNMENT MEDICAL COLLEGE, TRICHY	JOINED (All India Round2)
5.	2383	296	MD GENERAL MEDICINE	JAWAHARLAL NEHRU MEDICAL COLLEGE, ALIGARH, UTTAR PRADESH	ALLOTTED BUT NOT JOINED (All India Round 3) Allotment itself not



W.P.No.29086 of 2023

					<i>eligible</i>
6.	2477	308	<i>MD PAEDIATRICS</i>	<i>STANLEY MEDICAL COLLEGE</i>	<i>JOINED (All India Round 2)</i>
7.	2525	310	<i>MD GENERAL MEDICINE</i>	<i>VELLORE MEDICAL COLLEGE</i>	<i>JOINED (All India Round 3)</i>
8.	3273	430	<i>DNB RADIOLOGICAL</i>	<i>SRM, VADAPALANI</i>	<i>JOINED (All India Round 3)</i>

77. It is seen that candidates in serial numbers 2, 4 and 7 were initially allotted MD General Medicine in Madurai Medical College, K.A.P.V.Government Medical College, Trichy and Vellore Medical College respectively. Thus, the petitioner can be accommodated in any one of these seats as well, if vacated now by the candidates by virtue of the upgradation in Round III.

78. This Writ Petition stands disposed moulding the relief sought for by the petitioner, as above. No costs. Consequently, connected Miscellaneous Petitions are closed.

11.10.2023

sl
Index : Yes
Speaking Order



W.P.No.29086 of 2023

Neutral citation: Yes

Note: Registry is directed to issue a copy of this order today (11.10.2023)

To

- 1 The Secretary
Government of Tamil Nadu
Department of Health and Family Welfare,
Fort St George
Chennai- 600 009
- 2 The Director of Medical Education and Research,
156, Poonamallee High Rd,
New Bupathy Nagar,
Chetpet, Chennai- 600031.
- 3 The Secretary
Selection Committee
Directorate of Medical Education and Research
156, Poonamallee High Rd,
New Bupathy Nagar,
Chetpet, Chennai 600031.
- 4 The Secretary,
Medical Council of India,
Sector -8, Pocket -14, Dwarka,
New Delhi – 110077.
- 5 The Director General of Health Service (DGHS)
The Medical Counselling Committee (MCC)
Nirman Bhawan,
New Delhi – 110108.



WEB COPY



W.P.No.29086 of 2023



WEB COPY



W.P.No.29086 of 2023

DR.ANITA SUMANTH, J.

sl

WP.No.29086 of 2023

& WMP.Nos.28678, 28680 & 28681 of 2023

11.10.2023