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W.P.No.32700 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA ,
CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P.No.32700 of 2023

1. Dr.Madesh Ramamoorthy
 2. Dr.Mohamed Niyas Ali
- .. Petitioners

Versus

1. State of Tamil Nadu,
Represented by its Principal Secretary,
Health and Family (MCA-1) Department,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Selection Committee,
Represented by its Secretary,
Directorate of Medical Education,
162, Periyar E.V.R. High Road, Kilpauk,
Chennai - 500 010.
4. Medical Counselling Committee,
Represented by Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhawan,
New Delhi - 110 011.



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5. Directorate of General of Health Services,
Represented by the Deputy Director General of Health Services,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhawan,
New Delhi - 110 011.

6. National Medical Commission,
Represented by its Secretary,
Pocket 14, Sector - 8, Dwarka Phase I,
New Delhi - 110 077.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Declaration, declaring the letter bearing reference F.No.U-12021/02/2023-MEC issued by the 5th respondent, dated 14.11.2023 and the consequential Special Stray Vacancy Round Schedule - 2023 published by the 4th respondent as arbitrary, unjust and illegal to the extent that it permits the respondent Nos.1 to 3 to conduct a Special Stray Vacancy counselling for NEET PG 2023 without revising the results of the third round of NEET PG 2023 Counselling for State Quota seats in accordance with the prospectus for admission to Post Graduate Degree/Diploma Courses in Tamilnadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges affiliated for the Tamil Nadu Dr.M.G.R. Medical University, 2023-24 Session read with the Notification No.154.SCSII(1)/2023-22, dated 27.09.2023 and Schedule and instructions for the third round of Counselling.

For Petitioners : Mr.Suhrith Parthasarathy

For Respondents : Mr.P.Muthukumar,
State Government Pleader,
for RR-1 and 2

: Mrs.Sneha, for R3

: Mr.AR.L.Sundaresan,
Additional Solicitor General of India,



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Assisted by Mr.K.Srinivasamurthy,
Senior Panel Central Government Counsel,
for RR-4 and 5

: Mrs.Shubharanjani Ananth, for R6



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ORDER

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This Writ Petition has been filed with a prayer to declare the letter bearing Reference No.U-12021/02/2023-MEC issued by the fifth respondent, dated 14.11.2023 and the consequential Special Stray Vacancy Round Schedule 2023 published by the fourth respondent as arbitrary, unjust and illegal, to the extent that it permits the respondent Nos.1 to 3, to conduct a Special State Vacancy Counselling for NEET PG 2023 without revising the results of third round of NEET PG 2023.

2. The grievance of the petitioners in short is that during the course of admission process to the Post Graduate Medical Seats in the State of Tamil Nadu, the candidates who have locked their seats in the third round of the All India Quota were also allowed to participate in the third round for the State Quota. In the result, (i) 44 seats which are now vacated by those candidates were carried directly to the stray round; and (ii) 6 candidates also joined the State Quota seats in third round after locking the allotted / upgraded seats in All India Quota third round, which seats now became unavailable to the eligible participants of the third round of the State Quota; resulting in persons like the petitioners being more meritorious to be content



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with their second or third options while the most sought after seats are now wrested by the less meritorious candidates by sheer fortuitous circumstance. Therefore, when the Special Stray Counselling is now slated to happen on 25.11.2023, they are knocking the doors of this Court to set things right by undoing the mischief which happened in the third round so that least injustice would result to the meritorious candidates.

3. The brief facts which are relevant for deciding the Writ Petition are that the National Eligible-cum-Entrance Test for the Post Graduate Medical Admissions, for the Academic Year 2023–2024, was conducted by the National Board of Examinations on 05.03.2023. The petitioners participated in the same and secured 1650 and 6222 All India Ranks respectively. The Government of Tamil Nadu had issued the prospectus for admission to Post Graduate Degree / Diploma courses in Tamil Nadu Government Medical Colleges and Government seats in self financing Medical Colleges on 05.07.2023. The prospectus was issued strictly in compliance of the directions of the Hon'ble Supreme Court of India and the counselling consisted of 4 rounds, viz., Round-I, Round-II, Mop up and Stray. As per the prospectus, the candidates are given an option for



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upgradation and free exit in Round-I. Once the candidates join the seats in Round-II, there will not be an option of upgradation to Mop-up round. Candidates joined up to Round-II of All India Quota or State Quota shall not be eligible to participate in the further rounds for All India Quota or State Quota. Candidates who have joined the allotted seats in Round-II and further rounds of Counselling will not be allowed to resign and will also be ineligible to take part in further rounds of any type of counselling. Fresh registration of candidates will be allowed in Round-I and Round-II and there will be no fresh registration for stray round. Candidates who have not joined the allotted seats in Round-II will be eligible for further rounds of Counselling, subject to forfeiture of security deposit and fresh registration in Mop-up round only. As per the above prospectus and as per the orders of the Hon'ble Supreme Court of India in ***Sudhakar Patnaik*** (Contempt Petition (Civil) No. 289 of 2022 in Writ Petition (Civil) No. 223 of 2022), at the end of Round-II, the All India Quota and State Quota, a list should be published in the common portal, in order to block the joined candidates from participating further in the All India Quota or State Quota or Mop-up.

4. While, according to the prospectus, the schedule was fixed as



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above consisting of Round-I, Round-II, Mop-up and Stray Counselling, the third respondent viz., the Director General of Health Services issued notification on 25.07.2023, which reads as follows :-

NEET-PG SCHEDULE - 2023

All India Quota/Deemed/Central/PG-DNB/State Quota for MD/ MS/ Diploma/ MDS / 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.	1st Round of Counselling	27th July to 5th Aug., 2023	---	5th Aug., to 16th Aug., 2023	---
2.	Last date of Joining	13th Aug., 2023	16th Aug., 2023	20th Aug., 2023	21st Aug., 2023
3.	2nd round of Counselling	17th Aug. to 25th Aug., 2023	---	25th Aug., to 6th Sept., 2023	---
4.	Last date of joining	4th Sept., 2023	6th Sept., 2023	11th Sept., 2023	12th Sept., 2023
5.	Round-3	7th Sept., 2023 to 16th Sept., 2023		16th Sept., to 26th Sept., 2023	
6.	Last date of joining	25th Sept., 2023	26th Sept., 2023	30th Sept., 2023	1st Oct., 2023
7.	Stray Vacancy	28th Sept., 2023 to 4th Oct., 2023	-	1st Oct., to 10th Oct., 2023	-
8.	Last date of joining	10th Oct., 2023		10th Oct., 2023	



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9.	Last date of PG Counselling 2023	10th Oct., 2023
10.	Commence ment of Academic Session for PG Courses	5th Sept., 2023

5. Pursuant to the above said notification, the third respondent had also issued Information Bulletin and Counselling Scheme on 29.07.2023.

Mop- Up Round was now made as *Round No.3*. The following were the rules in respect of the Round-III :-

“Round-3 Start (earlier known as MOP -UP ROUND)”

- Eligibility criteria for Round 3 candidates:
- Fresh Registration with payment of registration fee for Round-3.
- Fresh/New Registration Round 3 for those candidates who
 - Have not registered in Round-1 or Round 2 (with full payment of fees).
 - Have Resigned from Round 2 need to fill fresh choices with full payment of fees.
- who registered in Round-2 and exited with Forfeiture of fees without joining can register again with fresh payment of fees.
- Those who registered but were not allotted a seat in Round-1 & Round-2 need not register again.



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- f) Exercising of Fresh Choice filling and locking of choices*
- g) Publication of result of third Round on MCC website, mandatory Uploading of essential certificates on MCC website.*
- h) Physical Reporting at the Allotted Medical/ Dental College/institute after third Round with original documents.*
- a) If upgraded, the candidate must take relieving from Round 2 seat and join Round 3 seat. Once joined, he cannot upgrade or resign from this third round seat.*
- b) If any candidate does not join Round 3 seat, he may exit with forfeiture of security deposit and elimination (cannot participate in further rounds of counseling conducted by MCC, DGHS).*
- c) If a candidate freshly registers in round 3 and is **not** allotted any seat, he/she is eligible to participate in stray/further rounds.*
- d) Candidates getting upgraded in Round 3 shall **Not** have any claim on earlier round allotted seat.*

Note: MCC of DGHS will share the data of joined candidates in round 1, round 2, round 3 of counselling with all the participating States. Similarly, the participating States will also share the data of joined candidates. Candidates who have joined in round 3 of state will be filtered and weeded out before processing for AIQ Stray Vacancy round of counselling."

(emphasis supplied)

6. It can be seen that a departure from the procedure which is followed in respect of the earlier years is made by firstly allowing fresh new



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registrations for the Round-III. The candidates who have joined their seats in Round-II were also permitted to participate and upgrade their choices in Round-III. A candidate, if upgraded, should join the third round seat by relieving from Round-II. The said bulletin also states that at the end of the Round-III, the list of candidates who have joined the seats shall be shared in common portal by the State, in order to weed the candidates participating in the stray round.

7. Subsequently, on 29.09.2023, the NEET percentile was brought down to zero by the fourth respondent. Since these new rules were introduced, there was stark difference in procedure between the Counselling and Information Bulletin of the All India Quota and the prospectus in respect of the State Quota. Some of the candidates, namely, *Dr.M.Rajakumar*, and four others approached this Court by way of a Writ Petition in W.P.No.28314 of 2023. The learned Single Judge of this Court noticed the difference and gave directions to the third respondent to conduct the Counselling as per the rules framed by the fourth respondent. It is relevant to extract paragraph Nos.2 and 3, by which, the learned Single Judge had considered the difference between the two procedures and the



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final directions were given in paragraph No.11, which are reproduced as follows:

“2. A counselling that goes by the name as III round of counselling is conceptually different from a mop-up round, even though both are after the II round of counselling, since they leave different consequences in the fortunes of the candidates. To elaborate it, in the case of III round of counselling, the candidates who might have secured a seat in round I or II for a particular PG course, will have an opportunity to seek for upgradation of the course, in that the candidate will now have an opportunity to participate in the III round of counselling and try for a course of his or her preferred choice and liking, without losing a seat already secured. In other words, even if the candidates do not get a seat of their preference in III round of counselling, they still will have a seat that they had obtained in round I or II of the counselling. But, in the case of the mop-up round counselling, such candidates who intend to migrate to a course of their preference, have to resign the seat which they had obtained in round I or II, and only thereafter can participate in the mop-up round. Here, there is a risk involved, in that, if the said candidate does not get a seat in the mop-up round, he/she will not have the security of the candidates participating in the III round of counselling and prosecute their studies in the course for which they had obtained a seat in round I or II. While a III round of counselling enables the candidate to try for a better course without losing the seat already secured, participation in the mop-up round counselling with a view to seek admission to a preferred



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course involves a big gamble.

3. This difference which the prospectus for the AIQ and the SQ is sought to be alleviated in this proceedings. The petitioners herein, having secured for themselves a seat in PG course, perhaps may not be to their liking or preference, require respondents 1 to 3 to hold a III round of counselling instead of mop-up counselling in the same manner which is introduced for the AIQ seats, and the reasons are obvious: they want to seek upgradation of their course without losing the seat that they have already secured.

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11. Therefore, this Court passes the following order :

(i) Since fresh applications pursuant to zero marks ends today, and this court permits upgradation to Round-3 as done for the All India Quota, time for upgradation is extended till 04.10.2023 for the State Counselling. This is due to the extended date for PG Counselling i.e. 20.10.2023.

(ii) The candidates, who seek upgradation, shall so apply for the same till 04.10.2023. In this regard, the procedure which is applicable for upgradation from Round-1 to Round-2 will be replicated for upgradation to Round-3."

(emphasis supplied)

8. As per the directions of this Court above, the third respondent had



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issued notification for State Quota Round-III on 29.09.2023. The said notification is being challenged before this Court and the same is pending in W.P.No.32197 of 2023. Even though initially stay was granted, the interim order was later modified that the selection will be subject to the outcome of the Writ Petition. It is stated by the third respondent that due to the orders of stay, the results which were scheduled to be released on 06.10.2023 could not be released. However, the last date for joining for the candidates in Round-III in the All India Quota was on 06.10.2023 and therefore, those of the candidates who had participated both in the State Quota and All India Quota third rounds and who have been allotted seats in both, could not exercise the option of joining the State Quota and were forced to join in the seats allotted only in the All India Quota Round-III. However, 6 candidates, who joined their allotted seats in All India Quota Round-III had thereafter resigned by paying penalty fee and joined the seats locked by them in the State Quota Round-III, once the results were declared after the order of interim stay was modified in appeal.

9. In the Writ Petition filed by the third parties in W.P.No.29086 of 2023 and by order, dated 11.10.2023, a positive direction was also issued to



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allot seats in Round-III. However, the third respondent filed W.A.No.2863 of 2023 and by order dated 17.10.2023, the said order was also modified making the selections subject to the result of the Writ Petition. The Writ Petitions challenging the Round-III and other actions are pending on the file of the learned Single Judge. It is at this stage the present petition is filed.

10. Heard *Mr.Suhrith Parthasarathy*, learned Counsel appearing on behalf of the petitioners, *Mr.P.Muthukumar*, learned State Government Pleader appearing on behalf of the respondent Nos.1 and 2, *Mrs.Sneha*, learned Counsel appearing on behalf of the the third respondent, *Mr.A.R.L.Sundaresan*, learned Additional Solicitor General of India appearing on behalf of the respondent Nos.4 and 5 and *Mrs.Shubharanjani Ananth*, learned Counsel appearing on behalf of the sixth respondent.

11. *Mr.Suhrith Parthasarathy*, learned Counsel appearing on behalf of the petitioners, pointing out the marks secured by the petitioners and the marks scored by the candidates who were allotted seats in the Stray round and the possibilities of the 63 seats now being the subject matter of the Special Stray Counselling which is to be conducted by the State on 25.11.2023, would submit that in the whole process, merit has now become



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the casualty. In the rules for Round-III framed by the fourth respondent as well as in the order of this Court in W.P.No.28314 of 2023, what was different in respect of Round-III and the erstwhile Mop-up counselling was only the up-gradation from Round-II, which is permitted and exit from the seats locked in the All India Quota and to participate in the State Quota Round-III was never permitted. However, the third respondent permitted participation as if it is a case of Round - I and Round - II. On account of the said violation of the rules, a total number of 50 seats were vacated by the candidates who were wrongly permitted to participate in the State Quota Round-III. This results in a situation whereby the meritorious candidates like that of the petitioners are affected. He would submit that the said exercise of the State in permitting the candidates who have joined their seats in Round-I, Round-II and Round-III of All India Quota to participate in the Round-III of the State Quota is directly contrary to the information bulletin issued by the third respondent. Clause 1.5 of the bulletin clearly states that a candidate who joins the All India Quota shall not be permitted to resign from the said seat. Under similar circumstances, the Hon'ble Jammu & Kashmir and Ladakh High Court in the matter of ***Dr.Insha Abid Vs. The Union of India*** (W.P.(C) No.2720 of 2023) by order dated 02.11.2023 held



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that such an exercise which was permitted is illegal and quashed the entire Round-III of the State Counselling. As a matter of fact, in view of the change of rules during the course of the Counselling, the State of Kerala recalibrated the entire list for Round-III by weeding out the blocked seats and thus published a fresh set of results for its State Quota Round-III of Counselling, thereby, minimising the injustice and prejudice.

12. *Mr.Suhrith Parthasarathy*, the learned counsel, would submit that on account of illegality committed by the third respondent, 44 seats that were blocked by the participation of All India Quota candidates were pushed into the State Stray Counselling list, where those of the persons like the petitioners joined in Round-III of the State Counselling cannot participate and have gone to the less meritorious. Similarly, 6 seats which have been retained by the ineligible candidates who participated in the third round of State Counselling would have been available to the petitioners. Therefore, he would submit that when *ex facie* merit has been sacrificed, the petitioners should not be left remedy less. He would conclude his submissions by stating that the third respondent can be directed to re-publish the results for third round State Counselling as while vacating the



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interim order, the entire results were made subject to the results of the pending Writ Petition and therefore, nobody has any equity on the basis of the allotment of third round of counselling. Or in the alternative, at least the Stray Rounds conducted should be declared as void and the candidates who joined the first second and third round of the State Counselling may be allowed to upgrade in a fresh stray round of Counselling and upon conduct of this exercise, the resultant vacancies, vacant seats can be allotted through a Special Stray Round.

13. Opposing the above submissions, *Mrs.Sneha*, the learned counsel appearing on behalf the third respondent would submit that the entire procedure to be complied with while making admissions to the UG and PG medical seats governed by the various orders of the Hon'ble Supreme Court of India, more specifically:

- (i) *Ashish Ranjan and Ors. Vs. Union of India*¹;
- (ii) *Educational Trust and Ors. Vs. Medical Council of India (W.P.Nos.267 of 2017 etc.)*;
- (iii) *Nikhila PP Vs. The Medical Counselling Committee and Ors.*

¹ (2016) 11 SCC 225



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(S.L.P.Nos.10487 of 2021 etc.);

(iv) *Anjana Chari SN Vs. DMCC (W.P. (Civil) No.174 of 2022 etc.);*

(v) *Shubhankar Patnaik Vs. DMCC and Ors. (Cont. P.(Civil) No.289 of 2022).*

14. On a cumulative reading of the above decisions, it would be clear that there shall be four rounds of Counselling, namely Round-I, Round-II, Mop-up and Stray Counselling. Fresh registration is permitted only for Round-I, Round-II and Mop-up. Free exit is permitted for Round-I and upgradation from Round-I to Round-II is permitted. At the end of Round-II, there is no free exit and no upgradation from Round-II to Mop-up. At the end of Round-II, joint list of All India Quota and State Quota candidates should be shared in the common portal so as to enable the State and the Centre to prevent those candidates from participating in the further rounds of Counselling. Candidates who had not joined the allotted seats in Round-II will be eligible for further rounds of Counselling subject to the forfeiture of security deposit and fresh registration in Mop-up. Fresh registration in Round-I and Round-II means that those candidates who had participated in All India Quota Round-I can participate in State Quota Round-I and those



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candidates were participated in All India Quota Round-I (can participate in State Quota Round-II).

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15. When this being the position, in departure of the existing practice, when Round-III has been introduced which permitted the All India candidates who participated in Round-II to again participate in Round-III for upgradation and when fresh registrations in respect of Round-III were also permitted, as a natural corollary, the candidates who participated in Round-III of All India Quota have also to be permitted to be participated in Round-III of State Quota. Only because of the direction of this court in W.P.No.28340 of 2023, the State was directed to follow the same procedure as announced by the fourth respondent in respect of the All India Quota. As a matter of fact, pointing out to the revised schedule which commenced from 22.09.2023 onwards, she would point out that the Round-III of All India Quota was to take place from 07.09.2023 to 27.09.2023 and the Round-III of the State Quota was from 26.09.2023 to 06.10.2023. The last date of joining the Round-III of All India Quota was 06.10.2023. But, however, since there was a stay, the final results of the said Round-III could not be declared on 06.10.2023. As such, the candidates had no other option,



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except to join the seats allotted to them in the All India Quota. Even then, by forfeiting the security deposit, 6 of the candidates have subsequently joined the State Quota seats.

16. *Mrs.Sneha*, the learned Counsel would submit that only because of the change of rules by the fifth respondent in introducing a new Round-III and also reducing the NEET percentile to zero in between the process of Counselling, the entire confusion has arisen. The three rounds of Counselling and also the Stray Counselling is also now over. The candidates including the petitioners have joined their respective seats. Now only, the leftover seats are sought to be filled up in the Special Stray Counselling. At this stage, the petitioners who are fence sitters have approached the Court by filing this Writ Petition only on 16.11.2023. They had not even challenged the notification for the third round or the results thereunder. The prayer of the petitioners if allowed would not only affect the candidates who after getting the seats in the third round of All India Quota were permitted to participate in the third round of State Quota, but also will have spiral effect of affecting the other candidates also. They were never before this Court. Therefore, even though there may be hardship, the



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same did not arise on account of any illegality or malafide action on the part of the authorities. In view of the special circumstances which arose for the present year were under the rules of the game were changed during the course of the game by the fifth respondent, there may be hardship for the petitioners who could not lock in their most preferred seats. However, they have also repeatedly participated in three rounds and got there second best or their third best seats. In such a situation, she would pray that when the main Writ Petition is not yet decided by the learned Single Judge, no relief can be granted in the present Writ Petition.

17. *Mr.AR.L.Sundaresan*, the learned Additional Solicitor General of India appearing on behalf of the respondent Nos.4 and 5, would submit that the DGHS has issued the notification only pursuant to the demand made by the States and to avoid seats going waste. The action of permitting the All India Quota Round-III candidates in State Quota Round-III was done by the State on its own. He would submit that any decision which is rendered in these matters should ensure maximum favour to the meritorious candidates and minimum hardship to everyone concerned. *Mrs.Shubharanjani Ananth*, learned Counsel appearing on behalf of the sixth respondent / the National



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Medical Commission would also adopt the same line of submissions as that of the Additional Solicitor General.

18. We have perused the material records of the case and given our anxious consideration to the submissions made on behalf of the learned Counsel appearing on either side. The questions that would arise for our consideration is (i) Whether the procedure as adopted by the respondents in carrying out the admissions for PG Medical Seats for the Academic Year 2023-2024 is in order ? (ii) To what reliefs the petitioners are entitled ?

Question No.i :

19. Upon consideration of the submissions made and the material records and the earlier Orders of this Court, we find the following :

(i) After the prospectus is issued and during the process of admission, the following departures are made from the established and approved procedure:

(a) The Mop-up Round is made as Round-III. Upgradation was permitted in Round -III;

(b) The NEET Percentile is reduced to Zero;



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(c) The number of rounds for Counseling which is 4 is now made 5 by Stray Round and Special Stray Round. We are informed that even there is Round -VI in form of the Second Special Stray Round;

(ii) A perusal of the Order of the Supreme Court of India, dated 14.08.2023 in *Ashish Ranjan & Ors Vs. Union of India* (cited *supra*), it is clear that only extension of time is granted. There is no specific approval to depart from 4 rounds to 5 or 6 rounds of Counselling;

(iii) New candidates became eligible to participate due to the rule relating to change of zero percentile, with effect from 20.09.2023;

(iv) On account of the upgradation being permitted in Round-III, the entire process as to publication of the Joint List in the Web Portal as mandated by the Hon'ble Supreme Court in *Subhankar Patnaik* (cited *supra*) could be carried out only after Round-III;

20. On a perusal of the paragraph No.2 of the judgment of the learned Single Judge in W.P.No.28314 of 2023, which is extracted above, it can be seen that the learned Single Judge has clearly explained the position that the candidates who have secured a seat in Round-I and Round-II, will have an opportunity to seek for upgradation of the course that is to attempt for a



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course of his or her preferred choice and liking without losing a seat already secured. Similarly, the Clauses 1.4 and 1.5 of the Information Bulletin and Counselling Scheme published by the Medical Counselling Scheme reads as follows :-

“ 1.4. In supersession to previous AIQ scheme, it has been decided by competent authority (MoHFW) that upgradation will be upto 3rd round which was earlier known as mop up round. Accordingly NMC will approach the Hon'ble Supreme Court of India for approval in this matter.

1.5. The candidate is now allowed to upgrade seat from second round to 3rd (mop up) round. Candidates are advised to take an informed decision of continuing in Third round of AIQ/Deemed/Central Universities. If a candidate joins in 3rd round, they shall not be permitted to resign from 3rd round of AIQ/Deemed/Central Universities. They will not be allowed to participate in any further rounds of Counseling after joining in Third Round of AIQ.”
(emphasis supplied)

21. Thus, it can be seen that while upgradation of seat from Round-II to Round-III alone was permitted, the same was taken by the State authorities that a participant even for upgradation in Round-III has also to be permitted to participate in State Quota Round-III. This understanding of the State authorities had lead the 44 seats that were blocked by the



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participation of the All India quota candidates unavailable to the meritorious candidates such as the petitioners who locked their seat in the third round and went into Stray Counselling list which was garnered by the less meritorious candidates in the fray. The direction of the learned Single Judge, that the same procedure for Round-I to Round-II shall be replicated in respect of Round -III, was implemented without carefully considering that it was in respect of 'upgradation' alone.

22. We see the departure of the rules was made by considering various factors. Similarly, the State authorities also implemented the order of this Court in respect of Round-III beyond the positive direction contained therein. These excesses by the respondent Nos.3 to 5, however, are not tainted with any malafide or bias and but are uniformly followed for everyone. At the same time, implementing these decisions resulted in fortuitous allotment of seats to less meritorious candidates. Though, there may be heartburn or disappointment to particular candidates in following a selection process, at the same time, in the instant case, the hardship travels beyond what is incidental to a fair process. When the respondents 3 to 5 implemented their respective decisions, they lost focus on the very basis of



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selection process, namely 'merit'. At all times material, while implementing their sudden decisions in the course of this terrible rat race, they had not taken special care to re-check whether it would result in hardship to the meritorious candidates. To the said extent, the procedure adopted for selection for the present Academic Year 2023-2024 cannot be said to be in order and accordingly, we answer this question.

Question No. ii:

23. The present Writ Petition is filed to declare the notification made in respect of Special Stray Counselling, without recalibrating the results of Round-III as bad in law. The results of Round-III or the procedure adopted is not directly under challenge. Even though challenge is made by other petitioners and the selections were made subject to the result of the Writ Petition, the said Writ Petition stands pending before the learned Single Judge as on today. After the conduct of Round-III, the Special Stray Counseling has also been conducted and the candidates have been allotted seats and they have all joined. Now only the Special Stray Counseling alone is pending, which is slated to be on tomorrow i.e., on 25.11.2023.



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24. While every endeavour has to be made to redress the grievance and undo the mischief, in matters of medical admission, the stages crossed has to be considered especially in Post Graduate admission where the choice of seats is extremely important. Any relief granted to one particular candidate or in respect of one particular issue, will have rippling effects which may affect not only the 50 candidates who are erroneously allowed to participate, but also others who are so far not involved in any of the litigation and process also. All the candidates are also not before this Court. The final counselling is on 25.11.2023. Medical admission process is to be completed within the time schedule as prescribed.

25. With the materials placed for deciding the *lis* before us, we are unable to conclusively gauge and foresee all the effects of undoing the Selection of the State Quota Round-III and the consequential Stray Round. While every endeavour shall be made to redress the grievance of the meritorious candidates, the procedure adopted shall not result in further prejudice or undesirable consequences as, the cure cannot be worse than the disease itself. But the third respondent authorities who are actually carrying out the selection are the best judges given the dearth of time as they can



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weigh the pros and cons and all the effects of undoing the decision of permitting the 50 candidates who locked their seats in the third round of All India Quota to participate in the third round of State quota. They can apply their mind to the procedure as adopted by the State of Kerala and decide whether it would be feasible to address the grievance of the more meritorious candidates (a) either by resorting to the republishing / recalibrating of Round-III of State Quota and consequently, the Stray Counseling; or (b) by undoing the Stray Rounds alone and permitting the petitioner or such other willing candidates who are more meritorious, to upgrade the seats of their choice by redoing the Stray Counseling Rounds alone and filling up the resultant vacancies which the petitioners may leave in the Special Stay Counseling. A decision may be taken by taking into account the objective criteria as to how many seats in the most sought after disciplines are bagged by less meritorious candidates; if remedial measures have to be adopted, a mock / tentative exercise can be considered thereby gauging the ripple effects or the incidental / unforeseen effects and pass an order accordingly, and thereafter shall proceed accordingly as per their decision on merits in accordance with law. We expect the third respondent Committee facing the ground situation every year to consider the issue in a



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holistic manner, as far as possible with an endeavour to redress, the grievance of the meritorious candidates and take a decision in the best interests of all the candidates while maintaining the sanctity of the selection process as such.

26. In the result, the Writ Petition is disposed of with the following directions :-

(i) Before proceeding with the Special Stay Counseling, the third respondent is directed to explore the possibility of redressing the grievance of more meritorious candidates such as the petitioners considering the ill-effects on 'merit' by permitting the 50 candidates who locked their seats in the third round of All India Quota to again participate in the third round of the State quota and the ripple effects it may have in re-doing or recalibrating the exercise, in any manner as may be determined by them;

(ii) It would be open for the third respondent to proceed further accordingly as per their decision made;

(iii) There shall be no order as to costs;

(iv) Consequently, W.M.P.Nos.32309, 32311 and 32312 of 2023 are closed.



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(S.V.G., CJ.)

(D.B.C., J.)

24.11.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
jer/grs



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To
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1. The Principal Secretary,
Health and Family (MCA-1) Department,
Fort St. George, Chennai - 600 009.
2. The Director of Medical Education,
Directorate of Medical Education,
Kilpauk, Chennai - 600 010.
3. The Secretary,
The Selection Committee,
Directorate of Medical Education,
162, Periyar E.V.R. High Road, Kilpauk, Chennai - 500 010.
4. The Director General of Health Services,
Medical Counselling Committee,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhawan,
New Delhi - 110 011.
5. The Deputy Director General of Health Services,
Directorate of General of Health Services,
Ministry of Health and Family Welfare,
Government of India, Nirman Bhawan,
New Delhi - 110 011.
6. The Secretary,
National Medical Commission,
Pocket 14, Sector - 8, Dwarka Phase I,
New Delhi - 110 077.



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**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

jer/grs

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24.11.2023