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W.A.Nos.3489 of 2023 etc., (batch cases)

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA,

CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.3489 of 2023; W.P.Nos.30367, 31096, 31678, 32197, 32988 and
33688 of 2023 & W.P.(MD).No.26195 of 2023

In W.A.No.3489 of 2023 :

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 Road,
New Bupathy Nagar,
Chetpet, Chennai – 600 031.
3. The Secretary,
The Selection Committee,
The Director of Medical Education and Research,
156, Poonamallee High Road,
New Bupathy Nagar,
Chetpet, Chennai – 600 031.

.. Appellants



W.A.Nos.3489 of 2023 etc., (batch cases)

Versus

1. K.Velan

2. The Secretary,
National Medical Commission,
Pocket 14, Sector – 8, Dwaraka, Phase – 1,
New Delhi – 110077, India.

3. Medical Counselling Committee,
Represented by Directorate General of
Health Services (DGHS),
Nirman Bhawan, New Delhi – 110108.

.. Respondents

Prayer in W.A.No.3489 of 2023 : Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 28.11.2023 passed in W.M.P.No.29962 of 2023 in W.P.No.30367 of 2023 on the file of this Court.

In W.A.No.3489 of 2023 :

For Appellants : Ms.M.Sneha

For Respondents : Mrs.Dhakshayini Reddy,
Senior Counsel
for Ms.S.Suneetha, for R1
: Mrs.Shubharanjani Ananth, for R2
: Mr.K.Ramanamoorthy,
Central Government Standing Counsel,
for R3

In W.P.No.30367 of 2023 :



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For Petitioner : Mrs.Dhakshayini Reddy,
Senior Counsel
for Ms.S.Suneetha

For Respondents : Mr.P.Muthukumar,
State Government Pleader, for RR-1 and 2
: Ms.M.Sneha, for R3
: Mrs.Shubharanjani Ananth, for R4
: Mr.K.Ramanamoorthy,
Central Government Standing Counsel,
for R5

In W.P.No.31096 of 2023 :

For Petitioners : Mr.E.Manoharan

For Respondents : Mr.P.Muthukumar,
State Government Pleader, for RR-1 and 2
: Ms.M.Sneha, for R3
: Mr.K.Ramanamoorthy,
Central Government Standing Counsel,
for R4
: Mrs.Shubharanjani Ananth, for R5

In W.P.No.31678 of 2023 :

For Petitioners : Mr.E.Manoharan

For Respondents : Mr.P.Muthukumar,



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State Government Pleader, for RR-1 and 2

: Ms.M.Sneha, for R3

: Mr.V.Chandrasekar, Senior Panel Counsel,
for R4

: Mrs.Shubharanjani Ananth, for R5

In W.P.No.32197 of 2023 :

For Petitioners : Mr.Suhrith Parthasarathy

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

: Ms.M.Sneha, for R3

: Mr.V.Chandrasekar, for R4

: Mrs.Shubharanjani Ananth, for R5

In W.P.No.32988 of 2023 :

For Petitioners : Mr.Suhrith Parthasarathy

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

: Ms.M.Sneha, for R3

: Mr.V.Chandrasekar, Senior Panel Counsel
for R4

: Ms.Shubharanjani Ananth, for R5



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In W.P.No.33688 of 2023 :

For Petitioner : Mrs.Dhakshayini Reddy, Senior Counsel
for Ms.S.Suneetha

For Respondents : Mr.P.Muthukumar,
State Government Pleader, for RR-1 and 2
: Ms.M.Sneha, for R3
: Mrs.Shubharanjani Ananth, for R4
: Mr.V.Chandrasekar,
Senior Panel Counsel for R5

In W.P.(MD).No.26195 of 2023 :

For Petitioner : Mr.Ajmal Khan
for Mr.C.Venkatesh Kumar

For Respondents : Mr.P.Muthukumar,
State Government Pleader for RR-1 and 2
: Ms.M.Sneha, for RR-3 and 4
: Mrs.Shubharanjani Ananth, for R5
: Mr.V.Chandrasekar,
Senior Panel Counsel for R6

COMMON JUDGMENT

(Judgment made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)



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The Writ Appeal in W.A.No.3489 of 2023 is filed challenging the

interim order dated 28.11.2023 granted by the learned Single Judge in W.P.No.30367 of 2023 and batch of matters, thereby, granting stay of all further proceedings in connection with the Special Stray Counselling round. Thereafter, by an order dated 29.11.2023, the learned Single Judge directed posting of the main Writ Petition as well as all the connected Writ Petitions also before this Court and accordingly, all these matters are taken up together and disposed of by this common judgment.

2. On 05.07.2023, Government of Tamil Nadu, through the Selection Committee, issued prospectus for admission to Postgraduate Degree / Diploma courses in Tamil Nadu Government Medical Colleges and Government seats in Self-Financing Medical Colleges affiliated to Dr.M.G.R.Medical University for the academic session 2023 – 2024.

3. On 05.07.2023, as per the prospectus, the following were the rules relating to the admission, resignation and participation in the further round :-



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" **FIRST ROUND OF COUNSELLING:**

All candidates Participating by ONLINE COUNSELLING for PG Degree / Diploma Courses will have to remit a non-refundable amount of ₹1000/- through online as registration fee and the fee should be remitted online by logging on web portal of our official website.

25. The candidates allotted during first round of the online counseling should download their provisional allotment order and join the course in the concerned Medical College on or before the date and time stipulated with relevant documents. (As mentioned in Clause 22).

26. SECOND ROUND OF COUNSELLING:

i. i. Second round of online counseling will be conducted for the vacancies arising due to not joined/not allotted seats and / or newly sanctioned seats arising after the first round counseling. The vacancies will be filled as per rank and communal reservation.

ii. A Candidate who has not registered and not choice locked in the 1st round of ONLINE COUNSELLING will be permitted to attend second round of ONLINE COUNSELING.

iii. A candidate who has taken a seat and not joined or resigned the course within the stipulated time in the first round online counseling, is eligible to attend second round of ONLINE COUNSELLING

iv. Candidates who retained their seat allotted during first round beyond stipulated date, or who have taken re-allotment seat during second round or candidates who got newly allotted during second round will not be permitted to vacate the seat.(as per Hon'ble Supreme Court directions WP(C) no 174/2022)

v. Candidates who have joined the allotted seat in round 2 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.

vi. The State Quota candidates who joined and discontinue the course after the date as stipulated by selection committee (after second round) should pay the



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Discontinuation Fees besides foregoing tuition fees already paid by them as specified in Clause 24.(c) to the Dean of the respective Colleges, the sum as specified below in total by means of a Demand Draft drawn in favour of “The Secretary, Selection Committee, Kilpauk, Chennai– 10”, payable at Chennai

Discontinuation fees for

P.G.Diploma Course Rs.10 lakh

P.G. Degree Course Rs.15Lakh

vii. (a) If the candidate is allotted and has not downloaded allotment order and Not joined, the course after completion of second round of ONLINE CONSELLING, then they will have to forfeit the registration fee and security Deposit paid by them.

(b) If the candidate is allotted but has **Not joined the course after downloading allotment order**, after completion of second round of ONLINE CONSELLING, then they will have to forfeit the registration fee, security Deposit and tuition fees paid by them.

viii. **Virtual Vacancies**- Any Candidate who has been allotted a seat in Round 1 and has opted for up-gradation in Round 2, that allotted seat of Round 1 will be shown as virtual vacancy in Round 2, any Candidates can fill the said seat (virtual seat) during the choice filling in Round 2. However, such seat will be allotted in Round 2 only, if the allotted candidate of Round 1 vacates that seat. Thus, that virtual vacancy becomes real vacancy, it is open to all in the order of merit.

Round	Free exit	Resignation	Exit with forfeiture of fees	Ineligible for further counseling	Discontinuation fees after joining
					After the resignation



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Round 1	allowed	Allowed only once within stipulated time	Allowed to exit within stipulated time without forfeiture	Eligible for further counseling	period of round 1, discontinuation fees will be Rs.10 lakhs for diploma and Rs.15 lakhs for PG degree and forfeit Registration fee, security deposit and tuition fees
Round 2	Not allowed	Not allowed	If not joined, forfeit Registration fee, security deposit and tuition fees	If joined, become ineligible	After joining the allotted seat of round 2, discontinuation fees will be Rs.10 lakhs for diploma and Rs.15 lakhs for PG degree and forfeit Registration fee, security deposit and tuition fees
			If not		After joining the allotted seat of Mop up



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Mop up	Not allowed	Not allowed	joined, forfeit Registration fee, security deposit and tuition fees	If allotted not allowed to participate to stray round	round, discontinuation fees will be Rs.10 lakhs for diploma and Rs.15 lakhs for PG degree and forfeit Registration fee, security deposit and tuition fees
Stray round	Not allowed	Not allowed	If not joined forfeit Registration fee, security deposit and tuition fees		After joining, discontinuation penalty applies and forfeit Registration fee, security deposit and tuition fees

Further details are as under:

Round	Candidate	Forfeiture of fees	Eligibility
	If allotted and joined	No forfeiture of fees	Can participate in round 2 for re-allotment
	If allotted and not joined/Resigned	No forfeiture of fees	Can participate in subsequent rounds of conseling



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Round 1	If not allotted		Can participate in subsequent rounds of conseling
	Not registered		Can participate in subsequent rounds of conseling
Round 2	If allotted and joined	Not allowed to vacate seat If wants to discontinue, then forfeit Registration Fee, security depsoit and tuition fees and pay penalty	Not allowed for further rounds of counseling
	If allotted/Re-allotted and not joined	Forfeit Registration fee, security deposit and tuition fees (if paid for downloading allotment order)	Eligible for Mop up round
	If not allotted		Eligible for Mop up round
	Not registered		Eligible for Mop up round
		Not allowed to vacate seat. If wants to	



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Mop up round	If allotted and joined	discontinue, then forfeit Registration fee, security deposit and tuition fees and pay penalty	Not allowed for stray round
	If allotted and not joined	Forfeit security deposit	eligible for stray round
	If not allowed		Eligible for stray round
Stray vacancy round	If allotted and joined	Not allowed to vacate seat. If wants to discontinue, then forfeit Registration fee, security deposit and tuition fees and pay penalty	
	If allotted and not joined	Forfeit Registration fee, security deposit and tuition fees	

4. By his communication dated 25.07.2023, for the first time for in the present academic year, the Director General of Health Services communicated a new pattern of counseling schedule, a new Round – III was



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introduced and the Mop-up Round was done away with. It is essential to extract the schedule which reads thus :-

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.	Ist 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



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

5. On 29.07.2023, the Medical Counselling Committee issued its information bulletin containing the counselling scheme departing from the earlier rules, whereby, it permitted fresh registration in Round – III and also upgradation of seats and the flowchart is as follows :-



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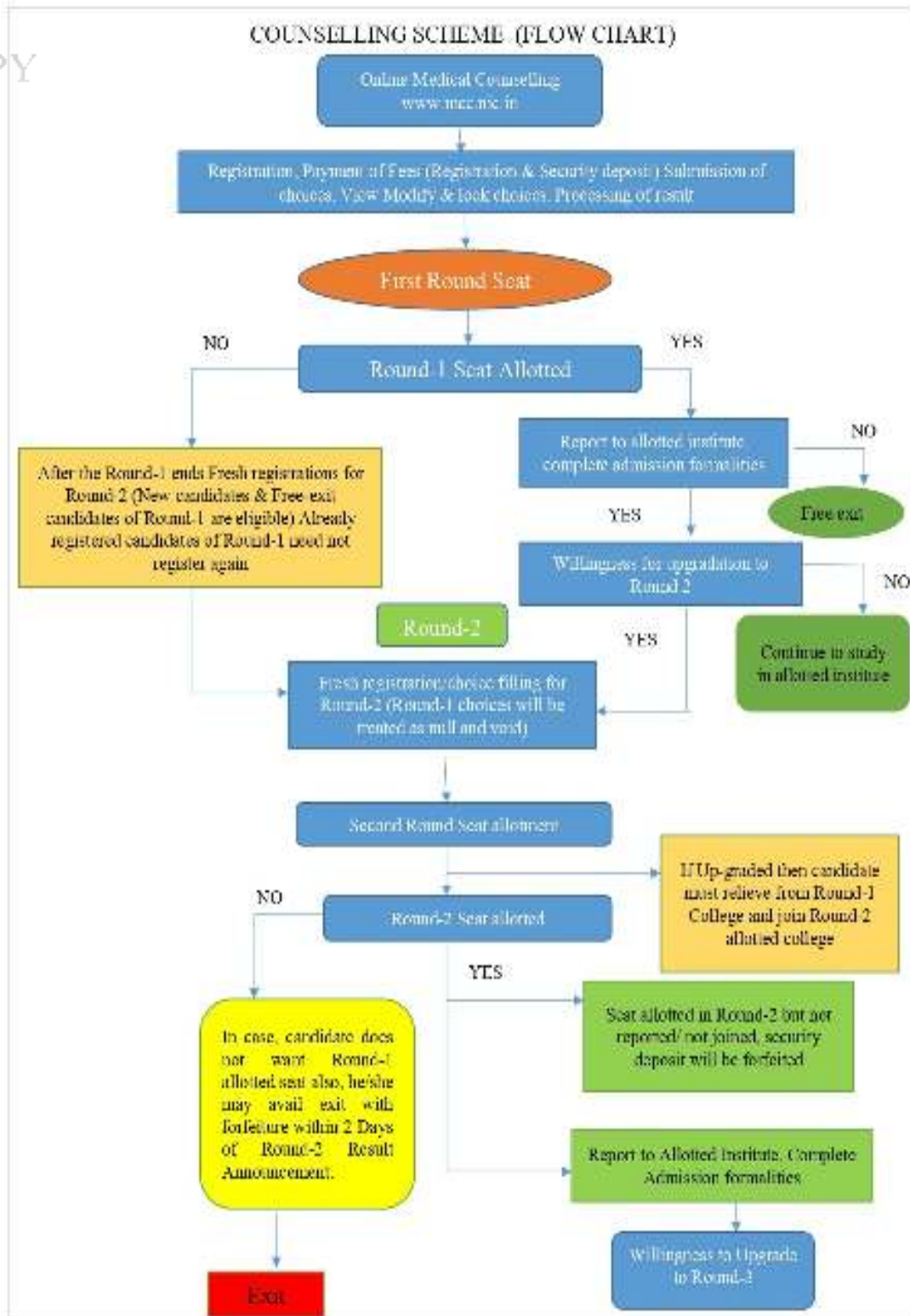


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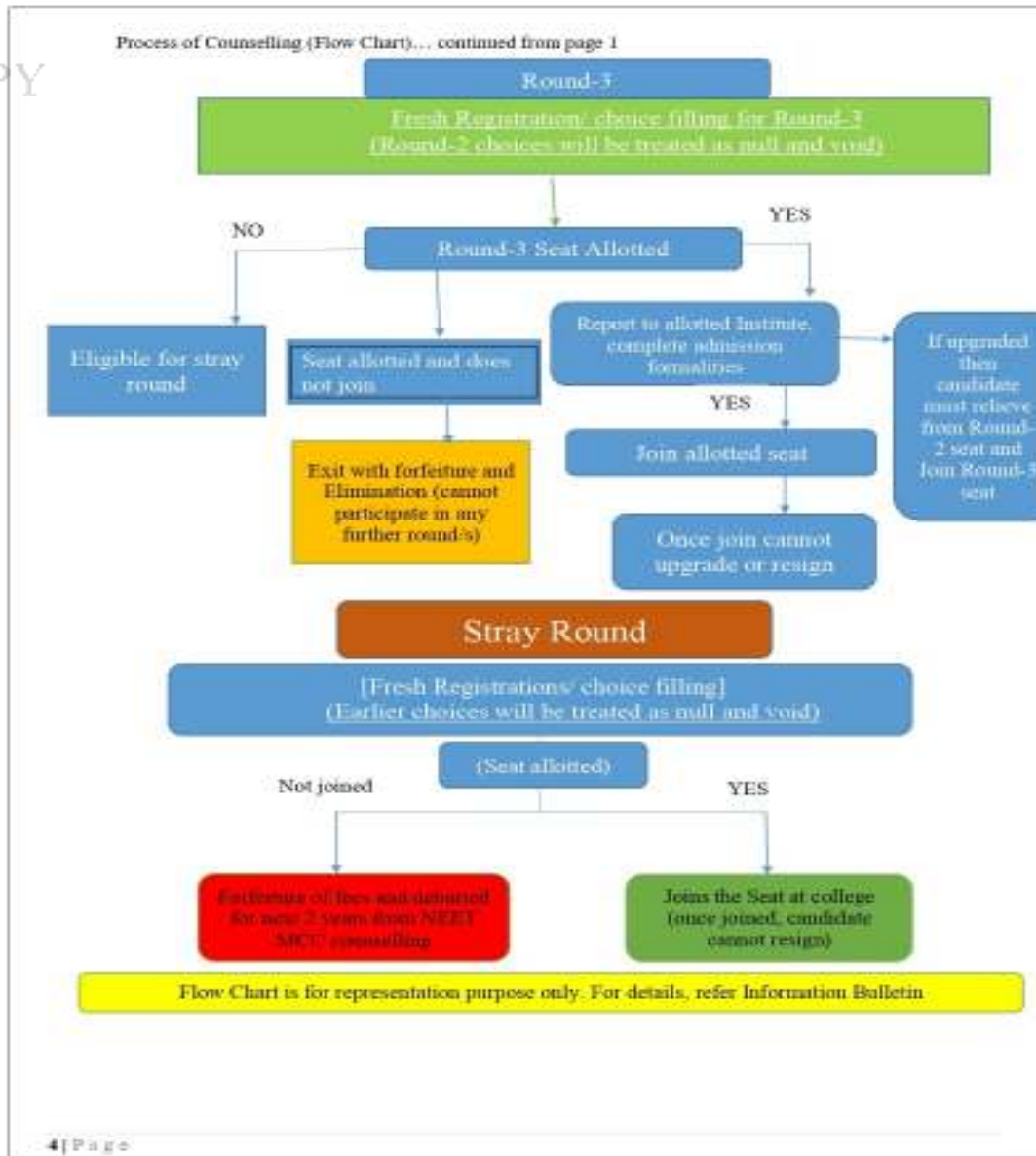
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6. It is also essential to extract paragraph Nos.1.4 and 1.5 of Chapter-I

which read as follows :-

" 1.4. In supersession to previous AIQ scheme, it has been decided by competent authority (MoHEW) that upgradation will be upto 3rd round which was earlier known as mop up round. Accordingly NMC



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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.

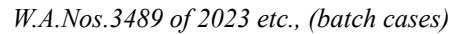
Candidates are advised to take an informed decision of continuing in Third round of AIQ/Deemed/Central Universities. If a candidate joins in 3rd round, they shall not be permitted to resign from 3rd round of AIQ/Deemed/Central Universities. They **will not be** allowed to participate in any further rounds of Counseling after joining in Third Round of AIQ."

7. On 02.08.2023, an application is made on behalf of the Director General of Health Services before the Hon'ble Supreme Court of India in W.P.(Civil).No.76 of 2015 (***Dr.Ashish Ranjan & Ors. Vs. Union of India & Ors.***) and the prayer in the said application reads as follows :-

" **a.** Allow the present application by approving the proposed time schedule for academic year 2023-24, (as mentioned in ANNEXURE - 5) for admission in Postgraduate medical courses, thereby, extending the last date for admission to 10th October, 2023, for All India Quota as well as Deemed & Central Institutes and for State Quota seats; and

b. Pass such order or further orders as this Hon'ble Court deems fit and proper in the Interest of Justice."

8. However, in the body of the said application, the facts as to the revised counselling process are also mentioned in paragraph No.14. On



Medical Admission for the session 2023 - 2024 upto 10.10.2023 by order in

reads as follows :-

2. In the facts and circumstances which have been narrated in the application, particularly the delays which took place in the previous schedule on account of the onset of Covid-19, a one-time extension is granted until 10 October 2023 as proposed by the Director of Health Services.

3. The Miscellaneous Application is accordingly disposed of."

9. From 08.08.2023 to 14.08.2023, the Selection Committee conducted the Round – I counselling for the State Quota seats. On 25.08.2023, the Selection Committee intimated the date and time for resigning the seats without forfeiture of security deposit, which was upto 3.00 P.M on 30.08.2023. On 31.08.2023, the Director General of Health Services communicated the rules in respect of the Round – III, whereby, free

Exit candidates of Round – I were also allowed to participate in Round – III



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and fresh allottees of Round - II were permitted upgradation in Round – III.

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It is necessary to extract the following instructions :-

"1. Round-1 candidates who have given willingness as 'Yes' during reporting of Round-1 can fill choices for up gradation in Round-3.

2. Free Exit candidates of Round-1 can also participate in Round-3.

3. Freshly allotted candidates of Round-2 may fill choices for up gradation in Round-3 by giving willingness as 'YES' at the time of reporting for Round-2 seat at the allotted college. Only those candidates who have given willingness as 'YES' at the time of reporting of Round-2 will be able to fill choices for Round-3.

4. Round-1 & Round-2 candidates who are satisfied with their allotted seats and do not want to get upgraded in Round-3 may not fill fresh choices in Round-3.

5. Round-2 candidates who do not get upgraded in Round-3 cannot resign their seat and will have to continue studying on their Round-2 seat. Hence, any such resignation is allowed only upto Round-2.

6. Candidates of Round-3 who do not report on allotted seat will not be able to participate in Stray Vacancy Round."

10. The schedule for All India Quota which was fixed originally by

the said communication is reproduced hereunder :-

NEET-PG SCHEDULE - 2023

All India Quota/Deemed/Central/PG-DNB/State Quota for

MD/MS/Diploma/MDS/PG DNB Courses



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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.	Commencement of Academic Session for PG Courses	5th Sept., 2023

11. On 31.08.2023, the Selection Committee as well as the Director General of Health Services by separate notices notified the rules regarding resignation from Round – I. From 06.09.2023 to 08.09.2023, the choice of filling and locking in respect of Round – II of the State Quota was conducted by the Selection Committee. On 12.09.2023, the Director General of Health Services again made modification for resignation and rejoining, whereby, after accepting request of many P.G candidates who have been allotted seats in Round – II, decided to provide the facility of resignation to the said candidates from 10.00 A.M to 3.00 P.M on 13.09.2023 and directed the seats so vacated will be added to the seat matrix of Round – III so that they are available to participating candidates for choice filling in Round – III. It is essential to extract the contents of the said notice which reads as follows :-



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" Medical Counselling Committee (MCC) is in receipt of many requests from PG candidates who have been allotted seats through Round-2 of state counselling. Since, many states have declared their Round-2 results after the start of Round-3 of PG Counselling being conducted by MCC, candidates who have been allotted in Round-2 of state counselling now want to resign their Round-2 seats allotted through MCC so that they are able to join in state counselling.

In larger interest of candidates the competent authority has decided to provide facility of resignation to such candidates from 10:00 A.M of 13.09.2023 to 3:00 P.M of 13.09.2023. The seats so vacated will be added to the seat matrix of Round-3 so that they are available to participating candidates for choice filling in Round-3.

Hence, candidates during the above mentioned stipulated time can exit from their Round-1 or Round-2 seat allotted through MCC with 'Forfeiture of Security Deposit'."

12. In view of the changes, a fresh information bulletin was also issued by the Medical Counselling Committee on 13.09.2023. On 20.09.2023, the Director General of Health Services reduced the qualifying percentile in the NEET PG examination to ZERO across all categories. In view thereof, it was also ordered fresh registration and choice filling for Round - III of PG counselling will be allowed again for the candidates who have become eligible by way of reduced percentile, so as to enable them to register and participate in Round - III. A new schedule of counselling was



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also published on 20.09.2023 by extending the date upto 20.10.2023. It is

essential to reproduce the new counselling schedule 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

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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



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

13. On 20.09.2023, the Secretary of the Selection Committee addressed a communication to the Director General of Health Services and also to the National Health Commission seeking clarification as to the extension of time, alteration of rules etc. It is submitted that no reply was received till date.



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14. On 25.09.2023, a learned Single Judge of this Court passed an

order in W.P.No.28314 of 2023, filed by *Dr.M.Rajkumar* and four others, by considering the effect of introduction of a new Round – III of counselling, whereby, the opportunity to seek for upgradation of posts by all candidates who have secured a seat in Round – I and Round – II was taken into consideration and issued the following directions :-

" (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."

15. On 11.10.2023, in W.P.No.29086 of 2023 filed by *Mr.Shriram*, a learned Single Judge of this Court considered that by introduction of the Round – III and the Special Stray Counselling rounds and by permitting the candidates who have locked in All India Quota seats in Round – III also to participate in the State Quota in Round – III held that in view of the change



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of the rules of the game during course of the game, the right of the petitioner to his seat based on decisions take by him cannot be affected and considered specifically three seats namely, a seat in M.D. General Medicine in Madurai Medical College, K.A.P.V. Government Medical College, Trichy and Vellore Medical College and directed that the petitioner can be accommodated in any one of those seats.

16. On 17.10.2023, in the appeal preferred by the Government of Tamil Nadu and two others in W.A.No.2863 of 2023 against the order of the learned Single Judge in W.P.No.29086 of 2023, dated 11.10.2023, we modified the order of the learned Single Judge by adding that the observation of the learned Single Judge in giving direction to accommodate the petitioner in the aforesaid three vacancies would be subject to the other meritorious candidates above the said writ petitioner, namely, *M.Shriram*. By the said order, the seat already allotted to the said *M.Shriram* in M.D. General Surgery was also protected.



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17. On 19.10.2023, in W.M.P.No.29962 of 2023 in W.P.No.30367 of

2023 filed by one *Mr.Velan*, an order of interim stay of declaration of results with respect to 50 seats set out to the Annexure to the Writ Petitions was granted by the learned Single Judge by considering that 50 candidates who were successful in getting their seats allotted in Round – I of All India Quota and joined those colleges were permitted to participate in State Quota Round - III.

18. On 20.10.2023, this Court passed an order in W.A.No.2966 of 2023 on the appeal filed by the Government of Tamil Nadu and two others as against the interim order, dated 19.10.2023 made in W.M.P.No.29962 in W.P.No.30367 of 2023, whereby, the order of the learned Single Judge granting interim stay was modified by considering the fact that the process should continue and accordingly, passed the following order :-

"9. In the result, we modify the order of the learned Single Judge as under:

(a) the present appellants and respondents 2 and 3 may declare the results of the stray round with a rider that allotment of seats to 50 candidates in the writ annexure shall be subject to the final decision in W.P.No.30367 of



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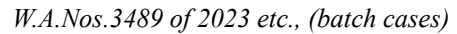
2023, pending before the learned Single Judge of this Court; and

(b) all the 50 candidates in the writ annexure shall be individually intimated that their admission is subject to the final decision in W.P.No.30367 of 2023 and in case, the order adverse to their interest is passed, they may not be entitled for equity nor any right would accrue to them."

19. Thereafter, one *Dr.Madesh Ramamoorthy* and *Dr.Mohamed Niyas Ali* also filed W.P.No.32700 of 2023 on 15.11.2023 which was also placed before us.

20. On 24.11.2023, after hearing both sides, by considering the fact that the Stray Round counselling was scheduled on the very next day, even though we found that there was merit in the submission of the said writ petitioners, *Dr.Madesh Ramamoorthy* and *Dr.Mohamed Niyas Ali*, since the process was in an advanced stage, that is, after Round III, the Stray Round was also over and only Special Stray Round was remaining, undoing the process without hearing all parties and other candidates who have locked their seats and joined the Colleges would be upsetting the entire selection

itself, we disposed off the Writ Petition by making the following



which read thus :-

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 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



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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 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;"

21. On 24.11.2023, the Selection Committee held its meeting pursuant

to the direction of this Court between 5.00 P.M and 8.10 P.M and after



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deliberations and considering the facts which are mentioned in the minutes of the meeting, came to the conclusion that inspite of their best efforts and elaborate consideration of various aspects, the possibility of redoing the entire exercise in full or partly could not be arrived at in the larger interest of the student community and the Committee decided to proceed further without any redressal of the grievance of the writ petitioners therein.

22. On 28.11.2023, by an interim order in WP.Nos.30367, 31678, 32197, 32988 & 31096 of 2023 & W.P.(MD).No.26195 of 2023 and W.M.P.(MD).No.22549 of 2023 & W.M.P.Nos.30721, 31305, 31306, 31802, 31803, 30722, 31799, 30724, 32667, 32668, 32669 & 29962 of 2023 filed by *K.Velan* (W.P.No.30367 of 2023), *M.Rajkumar* (W.P.No.31678 of 2023), *Dr.Madesh Ramamoorthy* (W.P.No.32197 of 2023), *Dr.G.Prabhakaran* (W.P.No.32988 of 2023), *Dr.M.Sameer* (W.P.No.31096 of 2023) and *Ranjith Kumar.J* (W.P.(MD).No.26195 of 2023), the learned Single Judge held that the order of this Court dated 24.11.2023 has been consciously violated and even though the Special Stray counselling scheduled provided that the



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results will be declared on 29.11.2023 at 3.00 P.M, the results were published on 27.11.2023 itself and the fact that the further process shall be subject to the result of the Writ Petition has not been brought to the notice of the public and the action of the respondent was contumacious and for the said reasons, granted an interim stay of all further proceedings in connection with the Special Stray counselling Round – I until further orders and the matters were listed on the next day i.e., 29.11.2023.

23. On 29.11.2023, the learned Single Judge also posted the above matters in W.P.No.33688 of 2023 etc., before Division Bench i.e., before this Court.

" 9. Today, when the matter is listed, the third respondent i.e., Selection committee has filed an affidavit enclosing the minutes of the meeting held on 24.11.2023 pursuant to the orders of the First Bench and stated to be in compliance thereof.

10. The petitioners commences advancing detailed submissions pointing to various alleged fallacies in the minutes.

11. In light of the order passed by the First Bench on 24.11.2023, I am of the considered view that it would not be appropriate for me to look into the veracity or otherwise of these minutes as the directions in compliance



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with which the minutes have been drafted, have been issued by the Bench.

12. Hence Registry to place these writ petitions before the First Bench, after obtaining appropriate orders from The Hon'ble the Chief Justice."

24. On 29.11.2023, the Hon'ble Supreme Court of India, while considering M.A.Diary.No.459 of 2013, in an application filed for inclusion of certain seats in the Special Stray Round, took note of the Special Stray Round being conducted and passed the following order :-

"MA Diary No 45911 of 2023

1. Counsel appearing on behalf of the applicants states that a Special Stray Vacancy Round of counselling for the vacant MD/MS/MDS/DNB courses - 2023 of the All India Quota and State Quota, has been conducted by the authorities.

2. Mr Gaurav Sharma, counsel appearing on behalf of the National Medical Commission states that the last date for counselling under the present stray round is 30 November 2023.

3. Hence, the Miscellaneous Application is rendered infructuous and is disposed of as such.

Writ Petition (Civil) No 1245 of 2023

1. Mr Devashish Bharuka, counsel for the petitioner seeks the permission of the Court to withdraw the Petition.

2. The Petition is dismissed as withdrawn.



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Writ Petition (Civil) No 1238 of 2023

1. We have heard Mr Devashish Bharuka, counsel for the petitioner, Attorney General for India appearing on behalf of the first and second respondents and Mr Gaurav Sharma, counsel appearing for the third respondent.

2. Three Post Graduate seats in the disciplines of ophthalmology, orthopedics, anesthesiology for academic year 2023-2024 are vacant. The stray vacancies have arisen because three students who were allotted the seats withdrew.

3. Mr Gaurav Sharma, counsel appearing on behalf of the National Medical Commission states that the counselling for the stray vacancies for Post Graduate seats in both, the All India Quota and the State Quota has been extended till 30 November 2023.

4. In this view of the matter, the Attorney General submits that these three seats in the disciplines of ophthalmology, orthopedics and anesthesiology can be added to the stray round of counselling.

5. We accordingly order that the three vacant seats in the disciplines of ophthalmology, orthopedics and anesthesiology for Post Graduate admissions for 2023 shall be considered as stray vacancies.

6. The Petition is accordingly disposed of."

25. Under these circumstances, we have heard the learned counsel for the parties. *Mrs.Dhakshayani Reddy*, the learned Senior Counsel appearing for the first Respondent / writ petitioner in W.A.No.3489 of 2023 and W.P.Nos.33688 and 30367 of 2023, would submit that the earlier challenge to Round - III was disposed of with a direction to consider the case of the



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writ petitioner therein, unless the seat was allotted to a more meritorious

candidate. The respondents interpreted the order to their own whims and did

not allot the seat to the petitioner and as such, the matter is now pending in

the Contempt. As far as the present Writ Petitions are concerned, she would

submit that immediately after the Round - III, on 17.10.2023 itself one of the

writ petitioner had approached this Court. The entire issue was considered

in detail by this Court in its order dated 24.11.2023 in W.P.No.32700 of 2023

and this Court had only granted two options to the Selection Committee.

However, without following any one of the above, they proceeded further

with the matter. Accordingly, the learned Single Judge has stayed the matter.

The Selection Committee is liable to redo the exercise as the admission of 44

candidates, who were permitted to migrate from All India Quota, was subject

to the result of the Writ Petition. Those candidates cannot plead any equity.

On account of the error committed by the Selection Committee, the first

respondent neither got his most preferred option of Radio Diagnosis nor

could he get the college of his preference even in respect of the M.D.

General Surgery to which he was allotted a seat at Cuddalore Medical



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College, while person with much more lower mark was allotted the same seat in Stanley Medical College, Chennai. Therefore, she would pray that the Writ Petitions are liable to be allowed.

26. *Mr.Suhrith Parthasarathy*, the learned Counsel appearing for the petitioners in W.P.Nos.32988 and 32197 of 2023, would submit that when this Court had already concluded that merit is the casualty, then the petitioners cannot go remediless. The Selection Committee cannot take umbrage under the ripple effect argument. In any event, there is a possibility to reduce the ill effects and remedy the situation atleast in respect of the petitioners by taking the 44 seats along with the seats available in the Special Stray Counselling, including the seats which are to be vacated by the petitioners if they are allotted better option and fill up in one word go. This would atleast partially remedy the injustice but will not in any manner affect the others who are not parties to these proceedings.



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27. *Mr.E.Manoharan*, learned appearing for the Writ Petitioners in

W.P.Nos.31678 and 31096 of 2023, would submit that the petitioners cannot be faulted for not approaching before, as things became clear only upon the stray round. They did not waste any time in approaching this Court.

28. Opposing the submissions, *Ms.Sneha*, the learned Counsel appearing on behalf of the Selection Committee and the Government of Tamil Nadu, would submit that firstly, the challenge to Round - III has already been negated by this Court and the order has become final. As per the direction of this Court in W.P.No.32700 of 2023, the Selection Committee met on 24.11.2023 and held deliberations from 5.00 P.M to 8.10 P.M and findings are recorded in the minutes. It concluded that any redoing of Round - III or Stray Round would only result in greater injustice to the greater number of students. All of them have locked their choices and are formally allotted the seat and admissions are over. Only the results of the Special Stray round remains to be announced. Since those candidates have also choice locked their seats before 30.11.2023, the Selection Committee



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can proceed ahead and fill up the vacancies. As a matter of fact, only

because of the interim order granted earlier, the Round – III results were not declared in time which resulted in prejudice to the All India Quota Students.

29. The learned Counsel would further submit that even attempting the limited exercise as proposed by *Mr.Suhrith Parthasarathy*, would result in grave prejudice to third parties and many candidates. She would submit that as a matter of fact, if the entire exercise is redone as claimed by the petitioners, the petitioners would not even get their present seats and that they are arguing in the air without any basis as if injustice is done to them.

The entire counselling process is done as per the rules and slight prejudice is bound to result in view of the choice locking and vacating the seats by the candidates in repeated rounds. The petitioners cannot blame the Selection Committee for changing the rules of the game during the course of the game and entire structure of rounds, the rules, the zero percentile eligibility are all made only by the Director General of Health Services and the National

Medical Council of India.



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30. *Mrs.Shubaranjani Ananth*, the learned Counsel appearing on behalf of the National Medical Council would submit that any remedy which can be granted to the petitioners cannot affect the entire selection.

31. We have considered the rival submissions made on either side and perused the material records of the case. The process and the stage by stage events in the matter of filling up of the PG medical seats for the current year 2023-24 are narrated above. We had an occasion to consider the entire gamut of facts and by our order dated 24.11.2023 in W.P No. 32700 of 2023, we had found that due to the change of rules in the course of the admission process by which the Mop-Up round is altered into Round - III and by conduct of two Stray Rounds and also change of eligibility as Zero Percentile, thus necessitating the new eligible candidates to register fresh in Round - III, and due to the incorrect understanding of the order of this Court by the Selection Committee, candidates such as the petitioners who are higher in rank did not get to lock their first choice subjects while some of the



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candidates in the Stray Round with less marks had the windfall in respect of the Seats vacated by 44 All India Quota students. Thus, the very purpose of labourious planning, supervision and conduct of counselling, being allotment of seats to Meritorious Candidates was compromised. However, we found that in view of the sheer lapse of time and because the Round - III and the Stray counselling already completed, any order of setting aside the selection and ordering redoing of Round - III by excluding the 44 the All India Quota students and consequently to permit the candidates such as the petitioners to resign / relinquish their seat for better options may have ripple effects affecting the other students.

32. Cure cannot be worse than the disease itself. In view thereof, since time was short as the last Special Stray Counselling was to be conducted 28.11.2023, we directed the respondents to apply their mind and if possible to re-do or implement any of the solutions proposed by the petitioners so as to mitigate the hardship and scale down the injustice to an extent.



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33. As a matter of fact, the relevant portion of the minutes of the

meeting held by the Selection Committee reads thus :

“The possibility of taking the 44 such seats allotted in the stray vacancy along with 69 vacancy which is available for the Special stray, to the special stray round. On analysing the same it was brought to light by the statistician that doing such an exercise would have a rippling effect. He would contend that, the seats which are allotted to the said 44 candidates on the merit basis on that day, would have been the choice lock of other candidates who are immediately behind the merit list of those allotted candidates and in the process it would have been denied to them and they would have been allotted other seats. Those such candidates would be higher in rank than the petitioners and merit would be compromised in larger extent and it would have rippling effect of the 3rd round and stray round. Therefore such an exercise would result in compromising merit to a very great extent of very less meritorious students taking the seat.

The entire round 3, and stray round cannot be redone which would bring a chain reaction affecting those numerous other candidates who had not taken the said 44 seats. The damage would be more.

There would have been students who would have taken seats by only choice locking two or one seats in stray vacancy and having allotted one of the seat in the said 44 seats would never be allotted a seat.”

34. Firstly, we had left it to the discretion of the Selection Committee

to consider if at all the situation could be remedied without causing much

harm to other candidates and the contention that we had only given two



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options to the Selection Committee to follow one of the two is incorrect.

Secondly, the reasons are mentioned in the minutes as extracted above for coming to the conclusion that no remedial measures could be undertaken at this stage. It is further contended that the said decision is only a lip service and without making any serious attempt and even now, the situation can be remedied. At this juncture when even the implied time limit granted by the Hon'ble Supreme Court by order dated 29.11.2023 had come to an end by 30.11.2023, we are unable to persuade ourselves that the Selection Committee should be directed to cancel the allotment of the 44 All India Quota Students' seats and have those also pooled together in the Special Stray Counselling and that the petitioners shall also be permitted to participate and that the seats which may be vacated by them may also be included in the Special Stray Round. When the time has already expired unless it is enlarged by the Hon'ble Supreme Court, such an exercise cannot be now undertaken. Secondly, even now it cannot be asserted that such a direction will affect only the 44 candidates whose selection was made subject to the result of the Writ Petition, but is bound to trigger a ripple



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effect again causing prejudice and hardship to other candidates who are not parties before this Court.

35. Under these circumstances, we are unable to grant any relief to the petitioners. It is unfortunate that some of the less meritorious have had a windfall of wresting the most coveted seats. It is in this context, the National Medical Council and the Director General of Health Services shall undertake a study and analysis as to the net effect of altering the counseling from Round 1 & 2 + Mop UP + Stray into Round 1 to 3 + Stray + Special Stray and remedy the situation by proposing an appropriate method for the next academic session 2024-2025, to completely minimize any hardship to meritorious students. The interim order granted in W.M.P. No.29962 of 2023 in W.P.No.30367 of 2023 etc., dated 28.11.2023 shall stand vacated and the Selection Committee shall proceed further in the manner known to law.

36. To the said extent, this Writ Appeal in W.A.No.3489 of 2023 shall stand allowed. For the foregoing reasons, these Writ Petitions in



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W.P.(MD).No.26195 of 2023 shall stand disposed of accordingly. There

shall be no order as to costs. Consequently, W.M.P(MD).No.22549 of 2023;

W.M.P.Nos.29962, 30721, 30722, 30724, 31305, 31306, 31799, 31802,

31803, 32667, 32668 and 32669 of 2023 and C.M.P.No.28512 of 2023 are

closed.

(S.V.G., CJ.)

(D.B.C., J.)

21.12.2023

Index : yes

Speaking order

Neutral Citation : yes

grs

To

1. The Secretary,
National Medical Commission,
Pocket 14, Sector – 8, Dwaraka, Phase – 1,
new Delhi – 110077, India.

2. The Director,
Medical Counselling Committee,
Directorate General of Health Services (DGHS),
Nirman Bhawan, New Delhi – 110108.



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

grs

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21.12.2023