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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ W.P.(C) 17442/2022 & CM APPL 55680/2022

Between: -

SAPAN VERMA

S/O ANJANI KANT VERMA

R/O FLAT NO.16, THIRD FLOOR,

NEW RESIDENT DOCTORS QUARTERS,

CHARAK PALIKA HOSPITAL CAMPUS,

MOTI BAGH, NEW DELHI-110021

.....PETITIONER

(Through: Mr. Aditya Kumar Choudhary, Mr. Gurmehar Vaan Singh, Mr. Raja Choudhary and Mr. Sandeep Pandey, Advocates.)

AND

UNION OF INDIA

THROUGH ITS SECRETARY,

MINISTRY OF HEALTH & FAMILY WELFARE,

GOVT. OF INDIA,

NIRMAN BHAWAN, DELHI- 110011

.... RESPONDENT NO. 1

MEDICAL COUNSELLING COMMITTEE DGHS,

THROUGH ITS SECRETARY,

NIRMAN BHAWAN, NEW DELHI- 110108

.... RESPONDENT NO. 2

DIRECTORATE GENERAL OF HEALTH SERVICES,

THROUGH SECRETARY,

NIRMAN BHAWAN, NEW DELHI- 110108

.... RESPONDENT NO. 3

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CHOPRA
Signing Date: 19.10.2023
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SUHAS SANDIPAN SHINDE

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KUMAR KAURAV

ALL INDIA RANK: 3705
STATE MERIT LIST: 322 (EWS)
ADDRESS NOT KNOWN
(MAY BE SERVED THROUGH
MEDICAL COUNSELLING COMMITTEE).. RESPONDENT NO. 4

RAM DEEPAK BHUPTA

ALL INDIA RANK: 5837
STATE MERIT LIST: 500
ADDRESS NOT KNOWN
(MAY BE SERVED THROUGH
MEDICAL COUNSELLING COMMITTEE

.... RESPONDENT NO. 5

*(Through: Mr. Shekhar Vyas, SPC with Ms. Archana Surve, G.P. alongwith Ms. Neha Warriore, Advocate for UOI.
Ms. Aakansha Kaul and Ms. Rhea Borkotoky, Advocates for UOI.
Mr. Gurjas Singh Narula, G.P. for UOI.
Mr. Kamal Kishore and Ms. Kholi Rakuzhuro, Advocates for R-5.
Mr. Omkar Jayant Deshpande, Advocate for R-9.)*

W.P.(C) 263/2023 & CM APPL 1033/2023

SAPAN VERMA

S/O ANJANI KANT VERMA
R/O FLAT NO.16, THIRD FLOOR,
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.... RESPONDENT NO. 1

NIRMAN BHAWAN, NEW DELHI- 110108

.... RESPONDENT NO. 2

**DIRECTORATE GENERAL OF HEALTH SERVICES,
THROUGH SECRETARY,
NIRMAN BHAWAN, NEW DELHI- 110108**

.... RESPONDENT NO. 3

**MR. SRINIVAS,
ADGME,
DIRECTORATE GENERAL OF HEALTH SERVICES
NIRMAN BHAWAN, NEW DELHI- 110108.**

.... RESPONDENT NO. 4

*(Through: Mr. Shekhar Vyas, SPC with Ms. Archana Surve, G.P.
along with Ms.Neha Warriore, Advocate for UOI.)*

% Pronounced on: 18.10.2023

J U D G M E N T

1. These two writ petitions are at the instance of the same petitioner and pertain to admission in Post Graduation course in medical college for the year 2022-23, therefore, the same are being decided by this common order.

2. The writ petition being W.P.(C) No.17442/2022 has been filed by the petitioner, seeking directions to respondent no.2-Medical Counselling Committee (*hereinafter referred to as "MCC"*) to take appropriate steps to allot a seat to the petitioner in the institute of his preference, while upgrading the seat earlier allotted to him. The petitioner has also prayed for directions to respondent no.2-MCC to rectify its mistake in allotting All-India Quota seat in General

3. The petitioner appeared in NEET PG-2022 examination which was conducted on 21.05.2022. The result was declared on 01.06.2022 and the petitioner secured an All-India rank of 3508 in General Category.

4. As per the scheme of the counselling, the petitioner participated in the first round of counselling between 15.09.2022 to 07.10.2022 and he took free exit for the second round of counselling. Even in the second round also, the petitioner preferred to take exit for participating in the mop-up round of counselling subject to forfeiture of his registration fees.

5. The second round of counselling was conducted between 10.10.2022 to 26.10.2022 and the mop-up round of counselling was conducted during the period of 31.10.2022 to 13.11.2022. The petitioner, on 18.11.2022, was allotted a seat in Shyam Shah Medical College, Rewa, Madhya Pradesh which was his preference no.30. According to the petitioner, there were irregularities in the counselling process and therefore, he approached the Hon'ble Supreme Court in W.P.(C)1123/2022 under Article 32 of the Constitution of India. The said writ petition, however, was withdrawn with liberty to approach the High Court and accordingly, the petitioner filed the instant writ petition being W.P.(C) No.17442/2022. The relief prayed for reads as under:

“(a) Issue an appropriate writ, order, or direction moreover in the nature of mandamus thereby directing the Respondent No. 2 to take appropriate steps to allot to the petitioner seat in the institute of his preference by allowing him to upgrade to the seats allotted to candidates behind him in rank; and/or

(b) Issue an appropriate writ, order or direction moreover in the nature of mandamus thereby directing the Respondent No. 2 to rectify its mistake in allotting a general category All India Quota seat to the Respondent No. 4 who was a EWS candidate and was already holding allotted seat in the State Mop-up Round & similarly to rectify its mistake in allotting All India Quota seat

the respondent who was already holding seat allotted in the State Mop-up Round.”

6. On 21.12.2022, this court directed for issuance of notice.
7. During the pendency of W.P.(C) No.17442/2022, the petitioner filed another writ petition being W.P.(C) No.263/2023 praying for the following relief:-

“(a) Issue an appropriate writ, order, or direction moreover in the nature of certiorari thereby quashing the Notice No. U-12021/01/2022- MEC dated 03.01.2023 issued by the Respondent No. 2 thereby restricting them to initiate the Special Stray vacancy Round, and/or

(b) Pass any such order/order(S) as this Hon'ble Court may deem fit, proper and in the interest of justice of the petitioner in the present case.”

8. In W.P.(C) No.263/2023, the grievance of the petitioner appears to be against conducting the special stray round of counselling in terms of notification dated 03.01.2023. According to the petitioner, as per the directions of the Hon'ble Supreme Court, only four rounds of counselling are envisaged and therefore, any further round of counselling is in the teeth of Hon'ble Supreme Court's directions.

9. W.P.(C) No.263/2023 was taken up for consideration on 10.01.2023 and this court directed for issuance of notice. *Vide* order dated 10.01.2023, the grievance of the petitioner was noted which manifests that, according to the petitioner, some of the seats were not disclosed in earlier rounds of counselling and consequently, the meritorious candidates were deprived from exercising their option. When the hearing of the case was progressed on 25.01.2023, the grievance of the petitioner was further noted that three candidates blocked the seats under the State Quota and notwithstanding the same, they were allowed to participate in the mop-up round. Had they not been allowed to participate in the mop-up round, those seats would

have been offered to the petitioner. According to the petitioner, the

candidates who joined in round two of the State Quota counselling shall not be eligible to participate in the mop-up round. He has placed reliance on a decision of the Hon'ble Supreme Court in the case of *Anjana Chari S N v. The Medical Counselling Committee (MCC) & Ors.*¹ dated 31.03.2022 to support his arguments.

10. The parties, thereafter, completed their pleadings and the matter was heard finally.

11. Learned counsel appearing on behalf of the petitioner submits that if the entire counselling process of the respondents is examined, the same would exhibit various anomalies. He has specifically pointed out from *Annexure R-2* of counter-affidavit dated 07.02.2023, filed on behalf of respondents, that one candidate namely, M. Rajiv, whose rank was 4435, was allotted a seat of MD (Medicine) at Ravindra Nath Tagore Medical College, Udaipur. He, therefore, submits that the rank of the petitioner is 3508, which is much higher than the rank of M. Rajiv. The petitioner also submits that as per the directions of the Hon'ble Supreme Court, there can be four rounds of counselling namely, first round, second round, mop-up round and a final stray vacancy round. Any counselling beyond four rounds is illegal.

12. Learned counsel, therefore, contends that the special stray round counselling is neither permissible under the schedule nor directed by the Hon'ble Supreme Court. In the said special stray round vacancy, various candidates, who stood lower in merit, were considered for admission by the counselling committee. He, therefore, submits that in any case, if special stray round of counselling was conducted, the candidates like the petitioner should have been permitted to participate therein.

13. Learned counsel also raises objection with respect to the

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blocking of seats by respondent nos.4 and 5. He has taken this court through paragraph no.7 of the counter-affidavit filed by the respondents in W.P.(C) 17442/2022 to indicate that respondent nos.4 and 5 were allotted seats in stray round vacancy on account of delay caused by the State of Maharashtra in sharing the details of the candidates, who had been allotted the seat but did not join the concerned college. The petitioner, therefore, complains that if respondent nos.4 and 5, who were already allotted a seat by the State of Maharashtra, can be allowed to participate in the special stray round vacancy, there is no reason to deny the petitioner an opportunity to participate in the same. He submits that the same would ensure that the admissions are offered to the candidates strictly on the basis of merit.

14. Learned counsel appearing on behalf of the petitioner also submits that if the respondents had compiled the data as is directed by the Hon'ble Supreme Court before the mop-up round of counselling was conducted with respect to the candidates who were allotted seats through the State counselling, the petitioner would have possibly secured better preferred college on account of exclusion of the candidates who were blocking the seats. He further submits that respondent nos.4 and 5 in W.P.(C) 17442/2022 are less meritorious candidates than the petitioner and the seats were offered to them in the stray round of counselling.

15. Learned counsel appearing on behalf of the petitioner also submits that there are three candidates whose ranks are 2447, 2893 and 3183. The candidates with the aforesaid rank were allotted seats in mop-up round of counselling. He, therefore, points out from paragraph no.10 of the counter affidavit filed by respondent nos.1 to 4 in

did not join the allotted seats. He further submits that the seats allotted to these candidates are the ones which were more preferential seats for the petitioner than the one where he secured admission. He then tries to develop a point to indicate that these three candidates on the date of allotment of seat in the mop-up round of counselling had already blocked the seat elsewhere; and therefore, despite the allotment of a seat in the mop-up round, they did not take the admission.

16. He has also placed reliance on the decisions of the Hon'ble Supreme Court in the cases of *Maharishi Markandeshwar University & Anr. v. Akriti Sharma and Ors.*², *S. Krishna Sradha v. State of Andhra Pradesh and Ors.*³, *Priya Gupta v. State of Chhattisgarh & Ors.*⁴ and *Astha Goel v. Medical Counselling Committee*⁵.

17. Lastly, he submits that the seat at Ravindra Nath Tagore Medical College, Udaipur, which was offered to candidate i.e., M. Rajiv, who obtained AIR 4435, is still lying vacant which can be offered to the petitioner.

18. Learned counsel appearing on behalf of the respondents vehemently opposes the aforesaid submissions and he submits that there is no substance in the instant writ petitions.

19. Learned counsel for the respondents, while taking this court through the counter-affidavit filed in W.P.(C) 263/2023, points out that on the date of allotment of the seat in mop-up round of counselling, there was no anomaly at all. According to him, the comparison of merit will have to take place at each stage. The merit of mop-up round cannot be compared with the stray round of counselling

² 2022 SCC OnLine SC 1420

³ (2020) 17 SCC 465

⁴ (2012) 7 SCC 433

⁵ 2022 SCC OnLine SC 734

or vice versa. He submits that the entire apprehension of the petitioner that there was blockage of seats by the three candidates is misplaced.

20. He also submits that as per the directions given by this court, the respondents sent a communication to various State Governments *vide* letter dated 27.01.2023. In response to the said communication, various State Counselling Authorities i.e., States of Tripura, Chandigarh, Sikkim, Gujarat, Himachal Pradesh, Kerala, West Bengal, Maharashtra, Madhya Pradesh, Orissa, Rajasthan, Haryana, Manipur, Uttar Pradesh, Andhra Pradesh, Tamil Nadu, Goa have confirmed that those candidates had not been allotted any seat and there was no question of their joining in any college through their respective State counselling processes.

21. He, therefore, submits that there was no irregularity in allotment of seats in the mop-up round of counselling with respect to the said three candidates. He further submits that with respect to respondent nos.4 and 5, the seats were allotted to those candidates by the State Counselling Committee on 27.11.2022 on the basis of their merit. Since these candidates registered themselves for the mop-up round in All-India Quota and they were not allotted any seat in mop-up round in All-India Quota, therefore, their candidature was automatically updated to stray vacancy round. He then submits that the allotment in All-India stray vacancy round had taken place on 29.11.2022 and within two days, the data could not be updated by the concerned State Government and the same has resulted in automatic allotment of the concerned seats to respondent nos.4 and 5.

22. He then explains that in any case, respondent nos.4 and 5 have not joined the seats allotted in All-India stray vacancy round of counselling, however, they preferred to join the seats which were

is no violation of the directions passed by the Hon'ble Supreme Court and the counselling has taken place strictly in accordance with law. He contends that this court must confine its scrutiny to the extent of the mop-up round of counselling where the seat was allotted to the petitioner.

23. I have heard the learned counsel appearing on behalf of the parties and perused the record.

24. Before traversing to the merits of the case, this court finds it appropriate to allude to certain decisions of the Hon'ble Supreme Court which are relevant to adjudicate the cases at hand.

25. The Hon'ble Supreme Court in the case of **Priya Gupta** (supra) has succinctly addressed the concern of the student community with respect to admission based on favouritism, necessarily breaching the rule of merit on the one hand, while on the other, creating frustration in the minds of students who have attained higher ranks in the competitive examination, but have not been admitted. It has, thus, been held that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid stream admission and adoption of an admission process i.e., transparent, non-exploitative and fair are mandatory requirements of the entire scheme. In paragraph no.46 of the said decision, it has been summarised as under:-

“46.1. The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

46.2. The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.

46.3. After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year.

sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counselling, in accordance with the Rules.

46.4. Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counselling to be conducted by the authority concerned and that college would have no right to make admissions in the current academic year against such seats.

46.5. The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the State examination and there is a single medical college, then in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.

46.6. All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in Neelu Arora v. Union of India [(2003) 3 SCC 366] and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

46.7. If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex facie arbitrary and casts the shadow of favouritism.

46.9. The admissions to all government colleges have to be obtained in the entrance examination conducted by the

authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.”

26. The Hon'ble Supreme Court in the case of ***Nihila P.P. v. The Medical Counselling Committee (MCC) & Ors.***⁶ vide order dated 16.12.2021 recorded the statement on behalf of MCC, Directorate of Health Services that the modified scheme presented before the Hon'ble Supreme Court shall be implemented from the year 2021-2022. Order dated 16.12.2021 reads as under:-

“An affidavit has been filed by Medical Council Committee of Directorate General of Health Services (DGHS), Ministry of Health and Family Welfare and Union of India on 03.12.2021.

It has been stated in the affidavit that DGHS is the designated authority for counselling for 50% All India Quota seats of the contributing States. The competent authority has decided to conduct 4 rounds of All India Quota counseling from the current academic year 2021-2022 for NEET - Under Graduate and Post Graduate as per the modified policy approved by this Court and Government Orders issued from time to time.

The proposed modified scheme of Online 4 rounds of counselling will be in tune with the prevailing norms of counselling (including the fees and security deposit) being followed for Central Institutes/Universities. The silent points of the scheme are as follows:

“a) There will be 04 rounds of Online counselling i.e. AIQ Round I, AIQ Round 2, AIQ Mop-up Round and AIQ Stray Vacancy Round.

b) The seats which were earlier reverted back to the respective States after the completion of Round 2 of AIQ will continue to be filled in the AIQ MopUp Round and AIQ Stray Vacancy Round to be conducted by MCC of DGHS, MoHFW in online mode.

c) The said rounds will only be conducted for the AIQ seats having All India character which are contributed by the States for 15% UG seats and 50% PG seats.

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d) Fresh registration of candidates will be allowed in:

AIQ Round 1

AIQ Round 2

AIQ Mop-Up Round.

e) There will be no fresh registration for candidates in the AIQ Stray Vacancy Round.

f) There will be an option for up-gradation and free exit, only in Round 1 of the AIQ counselling.

g) There will not be an option of up-gradation to Mop-up round from round 2.

h) 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.

i) Candidates who have not joined the allotted seat in Round 2 will be eligible for further rounds of counselling subject to forfeiture of security deposit and fresh registration in only mop-up round.

j) The provisions with regard to security deposit, option of free exit and eligibility for participation will be as per the Gazette Notification No.MCI-34(41)/2018-Med./109835 dated 18/05/2018.”.

This Court has been informed that the modified schemes shall be implemented for the current year 2021- 2022 for admissions to NEET UG and PG.

In view of the aforesaid statement made on behalf of MCC, Directorate of Health Services, nothing remains to be adjudicated in the Special Leave Petition and Writ Petition which are disposed of accordingly. Pending application(s), if any, shall stand disposed of.”

27. *Vide another order dated 31.03.2022, in the case of **Anjana Chari S N v. The Medical Counselling Committee & Ors.**⁷, in exercise of powers under Article 142 of the Constitution of India and in order to resolve the imbroglio which had arisen due to the anomalies noted by the Hon'ble Supreme Court, certain directions were issued to facilitate the completion of the counselling process for the NEET PG 2021-2022 Examination.*

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28. In the case of ***Subhankar Pattnayak v. K Ramesh Reddy & Ors.***⁸ vide order dated 22.07.2022, the Hon'ble Supreme Court has noted that MCC has developed a software for all participating States and counselling authorities for NEET UG/PG, in order to ensure that the names and roll numbers of candidates who have joined up to round two and further rounds of the State Quota or round two of All-India Quota are put up on the common portal. Paragraph nos.7 and 8 read as under:-

“7 As the above notice indicates, the MCC has developed a software for all participating states and counselling authorities for the NEET-UG/PG in order to ensure that the names and roll numbers of candidates who have joined up to round 2 and further rounds of the state quota or round 2 of AIQ are put up on the common portal. Moreover, the notice expressly clarifies that candidates who have joined up to round 2 of AIQ or state quota shall not be eligible to participate in the further rounds of AIQ or state quota from the academic year 2022-23.

8 The development of the above software should ensure that a uniform pattern is followed by all the States across India commencing from the academic year 2022-2023. For the current academic year, since the students have already joined and the courses have commenced, we would, in the interest of justice, put an end to the contempt proceedings. However, we take on record the assurance which has been set out by the DGHS and direct that all the States and counselling authorities in the NEET-UG/PG shall scrupulously comply with the above directions from the academic year 2022-2023.”

29. The first and foremost question that arises for consideration is whether there has been any violation of the merit principle so far as the admission of the petitioner is concerned. The petitioner's All-India Rank is 3508 and he has been allotted M.D. (General Medicine) Shyam Shah Medical College, Rewa, Madhya Pradesh during the mop-up round, where at present he is continuing his study.

30. The petitioner, admittedly, joined the said college. In order to appreciate the submissions made by the petitioner, it has to be examined as to whether the colleges which were more preferential for

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the petitioner on the date of the mop-up round counselling, were allotted to any of the candidates who obtained lesser merit than the petitioner. Except All India Rank (AIR) 4435 of M. Rajiv, who has been allotted Rabindra Nath Tagore Medical College, Udaipur (one of the preferential seats of the petitioner), the petitioner has not pointed out any other instance which even remotely suggests that merit has been compromised on the date of the mop-up round of counselling. With respect to M. Rajiv (AIR 4435), this court directed the respondents to explain the aforesaid position.

31. The respondents in their additional counter-affidavit dated 06.10.2023, have unequivocally stated that Mr. M. Rajiv belongs to the OBC category and, therefore, the case of the petitioner cannot be compared with that of the reserved category candidate. Paragraph no.4 of the additional counter-affidavit filed by respondent nos.1 to 4 reads as under:-

“4. That the candidate Mr. M. Rajiv having AIQ rank 4435 got allotted M.D.(General Medicine at Ravindra Nath Tagore Medical College Udaipur) in the Mop up Round having lower merit than the petitioner (AIQ rank 3508), is an OBC candidate and is being mentioned to show that the seat was allotted to such candidate and since he did not report to the allotted college, the seat was further carried forward to the next round of counselling i.e., Stray Vacancy Round. A Copy of NEET PG Medical Counselling 2022 Mop-Up Round Provisional Allotment Letter of Mr. M. Rajiv is annex as ANNEXURE R-1.”

32. It is, thus, seen that at the stage of allotment of seat in the mop-up round, merit has not been compromised.

33. The next argument advanced by the petitioner relates to alleged blocking of seats by certain candidates, violating the directions of the Hon'ble Supreme Court. The petitioner has pointed out that the candidates with AIR 2447, 2893 and 3183 were allotted seats in the mop-up round and they did not take admission in their allotted

through State counselling and, therefore, they did not take admission on the basis of the mop-up round allotment. He tried to establish that if the directions of the Hon'ble Supreme Court were properly complied with, the candidates who were allotted seats by the State, ought to have been excluded and accordingly, those seats would have been made available to the petitioner in the mop-up round.

34. In order to appreciate the aforesaid submission, this court specifically directed the respondents to explain as to whether the candidates named by the petitioner have been granted admission in any of the medical colleges on the basis of State counselling. In pursuance of the directions passed by this court on 27.01.2023, DGHS wrote to all State DMEs and Director Health Services of all States requiring them to submit the necessary information by 30.01.2023. Communication dated 27.01.2023 of DGHS reads as under:-

By E-mail
Date: 27.01.2023

File No:- C/18018/216/2022-MEC

To,
All State DME's and Director Health Services of all States

Subject: W.P.No.263/2023 in the matter of Sapan Verman Vs. Union of India & Ors. before the High Court of Delhi-reg.

Respected Sir/Mam,

This is in reference to the subject mentioned above. The Hon'ble Court in the aforementioned matter has urgently called for records from all the State Counselling Authorities/ Counselling authorities. The following is the list of NEET PG Candidates who's allotment/reporting/joining & non-joining in each round (if any) of NEET-PG Counselling shall immediately be reported to the office of undersigned.

<i>S. No.</i>	<i>NEET PG Roll No.</i>	<i>NEET PG Rank</i>	<i>Name of the Candidate</i>	<i>AIQ Allotted College in Mop-Up Round but not-joined</i>
<i>1</i>	<i>2266051041</i>	<i>2893</i>	<i>Arnav Singh</i>	<i>M.D. General Medicine at Sardar Patel Medical College</i>

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				<i>Bikaner</i>
2	2266179940	2447	<i>Shwetank Shekhar</i>	<i>M.D. General Medicine at Gandhi Medical College Bhopal</i>
3	2266039171	3183	<i>Jiten Yadav</i>	<i>M.D. General Medicine at Ravindra Nath Tagore Medical College, Udaipur</i>
4	2266157920	4435	<i>M Rajiv</i>	<i>M.D. General Medicine at Ravindra Nath Tagore Medical College, Udaipur</i>

*As the above-mentioned data is required to be submitted in the court case, hence it may be treated as **MOST URGENT** and may be sent latest **by 4:00PM of 30.01.2023**.*

This issues with approval of the Competent Authority.”

35. In pursuance of the communication so made, respondent no.2 confirmed that those candidates had neither blocked any seat, nor had they joined any of the colleges through State counselling. Paragraph no.11 of the affidavit dated 07.02.2023 reads as under:-

“11.That as per the records with the Respondent No. 2 the Petitioner was allotted a seat at Shyam Shah Medical College in mop-up round, thus the allotment should be compared with allotment of candidates in mop-up round only. It is necessary to mention that the last rank in UR Category in the colleges contested by the Petitioner is, AIR 2447 at Gandhi Medical College, Bhopal (till Mop Up round) and AIR 2893 at Sardar Patel Medical College (till Mop up round). It is pertinent to note here that the candidates of above-mentioned rank who were allotted seat did not report at the college and hence the vacant seats were carry forwarded for consideration in the stray vacancy round of NEET-PG, 2022.”

36. The petitioner then objected that the response so far received by respondent no.2 is only from 17 States/Union Territories. He, then, stated that unless the response from all the States is received, it cannot be inferred that the aforesaid three candidates did not block any seat in any college.

37. Needless to state that this court cannot be expected to conduct a roving inquiry with respect to submissions based on mere presumptions and conjectures. Unless the petitioner points out a specific case or makes a positive assertion that a particular candidate is allotted a seat by the particular State counselling and resultantly, takes admission before the All-India mop-up round allotment, this court cannot direct for any further inquiry. The inquiry so far conducted fairly shows that these candidates did not block any seat in the State counselling.

38. On the basis of the material made available so far, it is seen that even the allegation of blocking of seats by the candidate in State counselling and simultaneously participating in All-India counselling is also bereft of merit and cannot be countenanced.

39. So far as the submission with respect to respondent nos.4 and 5 in W.P.(C) 17442/2022 is concerned, it is to be noted that these two candidates participated in stray round of vacancy, which was conducted only after the mop-up round of counselling. The participation of both the candidates in stray round vacancy and allotment of seat, if any, cannot be the reason for the petitioner to find irregularity in the mop-up round of counselling. Once the petitioner was allotted a seat, he duly exercised his option for the admission. Therefore, by virtue of his admission, his rights for further consideration in any further round of counselling got extinguished.

40. To satisfy the conscience of this court, even the aforesaid aspect has been examined in view of the stand taken by the respondent. It has come on record that these two candidates too did not get admission on the basis of All-India stray round vacancy allotment. Even respondent no.4 has filed his counter-affidavit and has unequivocally stated that he

whereas, the All-India Quota seat was also allotted to him, on account of him registering into All-India counselling prior to allotment of the State counselling seat. Even otherwise also, the seat was allotted to him by the State of Maharashtra Counselling Committee on 27.11.2022 and on 29.11.2022 by way of automatic upgradation, All-India Counselling Committee also allotted him a seat, which he did not opt. It is thus, seen that even on this ground also, the petitioner would not succeed.

41. With respect to special stray round vacancy, the respondents in their counter-affidavit stated that after the completion of the stray round vacancy (all four rounds) around 2244 seats i.e., 301 clinical seats, 928 non-clinical seats, 608 deemed quota seats and 407 DNB seats remained vacant due to non-reporting, not opting and non-takers of seats by the participating candidates. The matter was, therefore, brought to the notice of the competent authority, whereby, it was decided by the competent authority, after deliberation, to conduct an additional round of counselling i.e., special stray vacancy round. The rules of stray vacancy round were extended to conduct the special stray vacancy round counselling. The special stray vacancy round counselling commenced on 06.01.2023 and it concluded on 14.01.2023.

42. The objective of conducting special stray vacancy round of counselling was in the larger public interest. It is also to be noted that the comparison of merit of one round with another round would be highly inappropriate. In initial rounds, some of the candidates chose to wait for availing better prospects, however, other candidates having doubts over any better possibility, immediately opt for the seats and get themselves admitted. The counselling process cannot be envisioned

bound manner on the basis of the merit position at each round. More so, it is to be noted that a similar application was filed before the Hon'ble Supreme Court in the case of ***Dr. Hitaishi Sethi v. Medical Counselling Committee & Ors.***⁹ and the Hon'ble Supreme Court did not entertain the said application *vide* order dated 13.01.2023.

43. It is, therefore, seen that even the petitioner could not have been allowed to participate in special stray vacancy round as a similar prayer was rejected by the Hon'ble Supreme Court with respect to a similarly situated candidate. More importantly, the academic year 2022-2023 has already progressed substantially. The Hon'ble Supreme Court in the case of ***Medical Council of India v. Madhu Singh***¹⁰ has held that there is no scope for admitting students midstream, even if the seats are left vacant, as that would be against the very spirit of statutes governing medical education. A similar view was taken by the Hon'ble Supreme Court in the case of ***Mridul Dhar v. Union of India***¹¹, whereby, it was clearly held that mid stream admission or carry forward of seats is completely impermissible.

44. Even assuming the fact that the petitioner succeeds in the instant petition, it would be difficult to grant him relief for the reason that the petitioner is about to complete a year in Shyam Shah Medical College, Rewa, Madhya Pradesh and at this stage, his prayer is to grant him admission in any other better preferred college. Even if the seats are vacant in any of the other colleges with respect to the same stream, the petitioner cannot be granted admission in any other college on the basis of merit obtained in the year 2022.

45. Undeniably, M.D. courses in medical stream are highly specialised stream and undergoing a part of it in one college and other

part in another college may not be appropriate and may compromise the quality of education and training of the students. Assuming the syllabus of M.D. course being similar in all the colleges, still there are various distinguishing factors such as the stage of course, the method of teaching, faculty specialisation etc. and therefore, at this stage, the relief prayed for cannot be granted.

46. The Hon'ble Supreme Court in the case of *Arvind Kumar Kankane v. State of U.P.*¹², has observed that the process of counselling cannot go on incessantly for a long period and the resultant chain reaction should be checked. It was also held that some seats may have to be left vacant for compulsion as there may be exceptional and fortuitous circumstances to justify late admission, but the process of admission must stand the test of rationality. In the instant case, the admissions were completed within the stipulated time prescribed by the Hon'ble Supreme Court. There is no violation of the deadline and beyond that, there is no reason to interfere at this stage and to upgrade the college of the petitioner from the one which has been already allotted to him.

47. In view of the aforesaid, this court does not find any reason for intermeddling and accordingly, the instant petitions stand dismissed along with all pending application(s).

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

OCTOBER 18, 2023
p/lnc/MJ/shs

Signature Not Verified

Digitally Signed By: NEHA

CHOPRA

Signing Date: 19.10.2023¹² (2001) 8 SCC 355

13:59:24

Signature Not Verified

Digitally Signed

By: PURUSHAINDRA
KUMAR KAURAV