



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8470 OF 2025

Dr. Anshul Atul Agrawal ..Petitioner
vs.
Union of India and ors. ..Respondents

Ms. Pooja V. Thorat, for the Petitioner.

Mr. Rui Rodrigues a/w Mr. D. A. Dube, for Respondent Nos.1 and 2.

Ms. Kavita N. Solunke, AGP, for the Respondent-State.

Mr. Mahindra Deshmukh, for Respondent No.3.

Mr. Ganesh K. Gole a/w Mr. Viraj Shelatkar, for Respondent No.4-NMC.

**CORAM : M. S. KARNIK &
N. R. BORKAR, JJ.**

DATE : 4th AUGUST, 2025

ORAL ORDER (PER M. S. KARNIK, J.) :

- 1.** Heard learned counsel for the parties.
- 2.** The Petitioner completed his MBBS course from MGM Institute of Health Sciences, Kamothe, Navi Mumbai in February 2022. He thereafter finished his one year compulsory internship in May 2023 at the aforesaid college. The Petitioner thereafter was desirous of pursuing

postgraduate course and therefore, appeared for NEET-PG 2024. The Petitioner secured All India Rank of 181320 in Open category and was interested to seek admission in a deemed University under NRI quota. Unfortunately, the Petitioner was not allotted any college in all the three rounds of the counselling session. The special stray vacancy round result was declared on 12th March 2025 in which vacant seat of M. S. Orthopaedic was not shown.

3. It is the contention of learned counsel for the Petitioner that if the vacancy for the M. S. Orthopaedic seat had been declared by the Respondent No.2, the Petitioner had a chance that he could have been allotted seat under the NRI quota.

4. One Mr. Krishna Kailas Ghule filed Writ Petition No.2873 of 2025 before this Court wherein the present Respondents were also party Respondents. This Court passed an order dated 28th February 2025 wherein the vacant seat of M. D. General Medicine course at Respondent No.3 Bharati Vidyapeeth was allotted to Mr. Ghule in the stray vacancy round. The Petitioner therefore filed Writ

Petition No.6511 of 2025 seeking direction from this Court to fill up the vacant seat at Bharati Vidyapeeth Deemed University, Sangli in the discipline MS Orthopaedic.

5. This Court in Writ Petition No.12646 of 2024 passed the following order :-

"1. The challenge raised in this writ petition is to the validity of Clause 11.1.9 of the Admission Brochure published by the State CET Cell with regard to admissions under NEET-UG-2024 to the extent, it prohibits an Institution for filling in vacant seats at the Institutional Level Round.

2. The learned counsel for the petitioners by referring to Rule 16 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 (for short, "Rules of 2016") submits that seats remaining vacant at the end of all CAP Rounds are permitted to be filled in by the Institution through Institution Level Round with the prior approval of the Competent Authority. Since Rule 16 entitles such vacant seats that remain at the conclusion of all CAP rounds to be filled in by the Institution after conducting an Institutional Level Round with the prior approval of the Competent Authority, Rule 11.1.9.1 which prohibits filling in of such vacancies through an Institutional round is liable to be struck down. The said prohibition is in view of Circular dated 24/07/2023 that has been issued by the fourth respondent, National Medical Commission-NMC. Referring to the said Circular, it is submitted that the NMC has no authority in law to impose such restriction as it has no power to regulate admissions. In that regard, he referred to Schedule-VII of the Constitution of India, Union List- Entry 66 and Concurrent List-Entry 25. He referred to the observations of the Supreme Court in paragraph 101 of the decision in

Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others, (2016) 7 SCC 353 to submit that in the matter of admission of students for undertaking medical education, the relevant entry was Entry 25 of the Concurrent List. Referring to a similar situation that had arisen during academic year 2023-24 it was submitted that the State CET Cell on 26/09/2023 had permitted such vacant seats to be filled in at the Institutional Level. Though the NMC had proceeded to issue a notice dated 18/10/2023 stating therein that the notice dated 26/09/2023 issued by the State CET Cell was in violation of the Circular dated 24/07/2023, the admissions of students undertaken on the basis of notice dated 26/09/2023 were protected by the Supreme Court by passing an interim order. If at the end of all CAP rounds, some seats were vacant and were not permitted to be filled in, same would cause irreparable loss without any legal justification. The admissions to be undertaken at the Institution Level were on the basis of merit and through online process. It was thus prayed that the petitioners were entitled for interim relief.

3. This prayer was opposed by the learned counsel appearing for the respondent no.4-NMC. According to him, by virtue of the Circular dated 24/07/2023 such vacant seats could not be filled in by conducting Institutional Level Round. He referred to the affidavit in reply filed on behalf of the NMC and especially paragraph 112 thereof. He also referred to the decision in Baharul Islam and Others Vs. Indian Medical Association and Others (2023) SCC OnLine SC 79 to submit that the contentions raised by the petitioners could not be accepted. As regards, the interim relief granted by the Supreme Court in the last academic year, it was submitted that it was the students who had approached the Supreme Court and not any Institution. He therefore submitted that no interim relief ought to be granted.

4. Prima facie, we find that in view of Entry 25 in the Concurrent List, the regulation of education including medical education could be undertaken by the Union as well as the State. This issue has been considered by the

Supreme Court in Modern Dental College and Research Centre (supra) wherein it is held that in the matter of education including admission, the State Legislature has the necessary power by virtue of Entry 25 of the Concurrent List. It is pertinent to note that Rule 16 of the Rules of 2016 as framed by the State Legislature permits filling in of vacant seats after all CAP Rounds are over by an Institution through an Institutional Level Round. The State Legislature in view of Entry 25 of the Concurrent List was entitled to frame the said Rules. On the other hand, the Circular dated 24/07/2023 issued by the NMC is in the form of an Executive Instruction. The same cannot operate in the manner that would run counter to Rule 16 of the Rules of 2016 unless the primary legislation being the National Medical Commission Act, 2019 is amended. In the academic year 2023-2024, the CET Cell had permitted such vacant seats to be filled in at the Institutional Level. It is true that a co-ordinate Bench to which one of us (A. S. Chandurkar, J) was a party in its judgment dated 10/11/2023 – Writ Petition No.7223 of 2023 (Saniya Fatima Rahman d/o Mohd. Naeemur Rahman & Anr. Vs. The National Medical Commission & Ors.) had held the communication dated 18/10/2023 issued by the Under Graduate Medical Education Board, New Delhi to be valid, which communication had disapproved the notice dated 26/09/2023 issued by the State CET Cell, the Circular dated 24/07/2023 issued by the NMC was not under challenge therein. In the present case, there is a specific challenge raised to the Circular dated 24/07/2023.

5. In that view of the matter by adopting the course that was followed in the previous academic year 2023-2024, it is directed that the respondent nos.1 and 2 alongwith respondent no.5 shall take necessary steps to act in accordance with Rule 16 of the Rules of 2016 to enable the seats remaining vacant after all CAP rounds are over to be filled in by the Institution through an Institutional Level Round with the prior approval Competent Authority. To enable such steps to be taken and to indicate the further course of action, list the writ petition on 29/10/2024 so as to enable the said

respondents to place before the Court the steps taken by them in compliance with the aforesaid directions.

6. Parties to act on authenticated copy of this order.”

6. By order dated 23rd May 2025 the Petitioner withdrew the Writ Petition No.6511 of 2025 with a view to approach the Hon’ble Supreme Court. The order dated 23rd May 2025 reads thus :-

“1. Mr. Sawant, learned Counsel appearing for the Petitioner, on instructions, seeks leave to withdraw this Petition. He submits that the Petitioner seeks to approach the Hon’ble Supreme Court to redress his grievance raised in the present Petition.

2. Leave to withdraw the Petition is granted. However, we are not commenting on the second aspect of the request of the Petitioners reason to approach or not to approach the Supreme Court.

3. Petition is disposed of as withdrawn.”

7. The Petitioner thereafter approached the Hon’ble Supreme Court by filing Special Leave Petition (Civil) Diary No.31451 of 2025 seeking direction to the MCC to admit the Petitioner against the vacant seat at Respondent No.3 college in the discipline of MS Orthopaedic. By the order dated 16th June 2025 Their Lordships disposed the SLP by passing the following order :-

“1. Permission to file Special Leave Petition is granted.

2. We grant liberty to the petitioner to approach the High Court again by filing an independent Writ Petition. Needless to say, the order dated 23.05.2025 passed by the High Court of Judicature at Bombay in Writ Petition No.6511 of 2025 shall not come in the way of adjudication of the fresh writ petition.

3. Special Leave Petition stands disposed of accordingly. Pending application(s), if any, shall stand disposed of.”

8. Learned counsel for the Petitioner placing reliance on the decision of the Hon’ble Supreme Court in **S. Krishna Sradha vs. State of Andhra Pradesh and others**¹ invited our attention to paragraph 10.4 of the order. Drawing our attention to paragraph 13, learned counsel for the Petitioner submitted that there was no fault on the part of the Petitioner in approaching this Court in time and that he is a meritorious candidate. It is further submitted by learned counsel that it is because of the fault of the authorities that the seat will be going vacant. It is submitted that it would not be in the interest of anybody for the seat to go vacant and therefore it is a fit case where an exceptional and rare circumstances exists justifying the relief prayed for by the Petitioner. Learned counsel for the Petitioner moreover submitted that the Petitioner does not say that he should be

1 (2020) 17 SCC 465

given the admission against the vacant seat, but his claim be considered along with other meritorious candidates who may rank above the Petitioner. The Petitioner's concern is that the seat should not go vacant and this Court is well within its time to extend the time for counselling in the facts and circumstances of the present case.

9. Mr. Rodrigues appearing for the Union of India invited our attention to the additional affidavit filed by Dr. B. Srinivas, presently working as Deputy Director General (Medical Education), in Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India. In paragraph 7 of the affidavit-in-reply it is submitted that although the seat in M.S. Orthopedics is lying vacant in the Respondent college, the same cannot be allotted on nomination basis to the Petitioner as MCC does the allotment only on the basis of merit and by the process of counselling only. In paragraph 8 it is submitted that the Petitioner holds All India Rank of 181320, whereas, the candidate who left the seat of M. S. Orthopedics held an All India Rank of 158799. In this

regard, it is submitted that there are many candidates in between the ranks of the Petitioner and the candidate.

10. Learned counsel for the Petitioner has already clarified that the claim of the Petitioner be considered on the basis of merit and by the process of counselling. It is relevant to note paragraph 10 and 11 of the affidavit-in-reply filed on behalf of the Respondent Nos.1 and 2 which reads thus :-

"10. It is submitted that the counselling for NEET PG academic session 2024-25 has already concluded. The last date of admission, as per the schedule of National Medical Commission (NMC) was 20th March, 2025. Therefore, no new admissions are permissible. In case, the same is proposed, the same will be done through conduct of counselling only. No seat can be allotted to a candidate directly on nomination basis.

11. Additionally, it is submitted that every year a lot of seats go vacant due to non-reporting/resigning from the seats. In the previous academic session, a total of 262 seats were left vacant after successful completion of all the rounds of PG Counselling. If vacant seats are to be filled, it has to be done through counselling only and for that NMC will have to take special permission from the Hon'ble Supreme Court of India."

11. No doubt the seat will go vacant and every possible effort must be made to fill up such seat. It cannot be and it is not the Petitioner's case that the Petitioner be allotted the

same seat by way of nomination, as there are many candidates above the Petitioner who will have to be considered. It requires to be noted that so far as the postgraduate medical courses in respect of the same academic session which the Petitioner claims admission is concerned, the Hon'ble Supreme Court in an application filed by National Medical Commission ("NMC", for short) has by an order dated 9th May 2025 passed the following order :-

"I.A. No.85360 of 2025 in M.A. No.2663 of 2024

This application is allowed in terms of prayer clause (a), which reads as under :

"Allow the present application by extending the last date for admission in Postgraduate medical courses (in terms of Annexure-3) to 20th March 2025 for All India Quota as well as Deemed & Central Institutes and for State Counselling for the academic year 2024-25, only"

IA No.286951 of 2024 in M.A. No.2663 of 2024

1. No order is required to be passed in this miscellaneous application.
2. Hence, this application is disposed of."

12. Thus, the last date of admission for postgraduate medical courses, for All India quota for deemed and Central Institutes and for State counselling for the academic year

was extended by the Hon'ble Supreme Court till 20th March 2025. It is not possible for us to extend the time in view of the order passed by the Hon'ble Supreme Court.

13. We do not find any merit in the submission of learned counsel for the Petitioner that the revised notice regarding schedule and procedure for conduct of special round of counselling for admission to MD/MS course in respect of State of Punjab & Haryana should be a factor to be considered in favour of the Petitioner. The notice which is at page 38 of the paper-book of the Government Medical College and Hospital, Chandigarh reveals that a special round of counselling was held as per the directions issued by the Hon'ble Supreme Court of India in Civil Appeal No.9289 of 2019 in Dr. Tanvi Behl vs. Shrey Goel and ors. dated 29th January 2025 and Miscellaneous Application No.512 of 2025 dated 24th March 2025 in C.A. No.9829 of 2019 and Hon'ble Punjab and Haryana High Court in CWP No.9749-2025 (O&M) in Shubhamdeep Singh Kang Vs. Union Territory, Chandigarh. The said order was passed because there was a procedural error committed in the

admission process which generally affected all the candidates.

14. In our humble opinion in view of the order dated 9th May 2025 passed by the Hon'ble Supreme Court, we find ourselves persuaded by the submission of learned counsel for Respondents that if the vacant seats are to be filled at this stage, it has to be done through counseling only and for that NMC will have to take special permission from the Hon'ble Supreme Court of India.

15. The Petition stands dismissed. We make it clear that we have not expressed any opinion on the merits of the contentions.

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)