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

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Judgment Delivered on: 23.04.2025+ **W.P.(C) 2411/2025, CM APPL. 14571/2025 & CM APPL. 11415/2025****SANTOSH TRUST & ANR.**

.....Petitioners

Through: Mr. Sunil Dalal, Sr. Adv. with Mr. Vikram Singh Dalal, Mr. Nikhil Beniwal, Ms. Shipra Bali and Ms. Riya Rana, Advs.

versus

**MEDICAL COUNSELLING COMMITTEE
& ORS.**

.....Respondents

Through: Ms. Avshreya Pratap Singh Rudy, SPC with Ms. Usha Jamnal and Ms. Harshita Chaturvedi, Advs. for R-1(MCC) & R-2.
Mr. T.Singhdev, Mr. Abhijit Chakravarty, Ms. Anum Hussain, Mr. Sourabh Kumar, Mr. Tanishq Srivastava, Mr. Bhanu Gulati, Ms. Yamini Singh and Ms. Ramanpreet Kaur, Advs. for R-4/NMC.
Mr. Ankur Yadav, GP. For R-1 & R-2.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J (ORAL)**

1. The grievance articulated in the present petition is that one seat of NEET (PG) has become vacant in petitioner no.2 college after the third



round of counselling and it may be permitted to fill the said vacancy as per the merit in the stray vacancy round.

2. The case set out by the petitioners in the writ petition is that the petitioner no.1 is a trust which is running a petitioner no.2 college/institute which was established in the year 1995 and offering MBBS Course at Under Graduate level and also Post-Graduate Medical Courses like, MD, MS, M.Sc and Doctoral (Ph.D) Courses. These courses are stated to be well recognised by the Medical Council of India and University Grants Commission.

3. The NEET (PG) for the year 2024 was conducted by National Board of Examinations (NBE). One Dr. Bhagwan Sahay Sharma/respondent no.3 secured a rank 51747 and as such was allotted a seat in MS (General Surgery) at the petitioner no.2 college in the Round 1 of the counselling conducted by the respondent no.1/MCC, as per the NEET (PG) Counselling Seats Allotment 2024, the result whereof was declared on 20.11.2024. However, the respondent no.3 did not report to the petitioner no.2 college during the reporting dates i.e. from 21.11.2024 to 27.11.2024 as he opted for upgradation

4. The results of NEET (PG) Counselling Allotment Seat 2024 Round 2 were declared on 12.12.2024 and the respondent no.3, who was at Serial No. 24410, was allotted a seat in MD (General Medicine) in the petitioner no.2 college. The respondent no.3 was supposed to report on any date between 13.12.2024 to 20.12.2024. However, the respondent no.3 chose to report only on the last date i.e. 12.12.2024 and informed that he was opting for upgradation.



5. However, in the Round 3 of the counselling for which results were declared on 25.01.2025, the respondent no.3 did not get any upgradation. Accordingly, the respondent no.3 was supposed to report to the petitioner no.2 college to complete the admission formalities in MD (General Medicine) during the reporting dates i.e. from 26.01.2025 to 09.02.2025.

6. It is the case of the petitioners that the petitioner no.2 college was waiting for the respondent no.3 to complete admission process, however, to the utter surprise of petitioner no.2 college, the respondent no.3 sent an email on 05.02.2025 stating that he will not be able to join the petitioner no.2 college as he could not arrange funds.

7. By the end of the 3rd counselling, there were a total of 10 vacant seats in the petitioner no.2 College, therefore, the petitioner no.2 *vide* letter dated 08.02.2025 requested the respondent no.1 to allot alternative candidates for the said 10 vacant seats, including the seat which according to the petitioner had become vacant on account of the non-joining of respondent no.3. This was followed by a reminder dated 12.02.2025.

8. However, no action was taken by the respondent no.1, and the seat matrix for the stray vacancy round was declared by the MCC on 14.02.2025 and the counselling for the stray vacancy round was thus, scheduled to be held from 20.02.2025 to 28.02.2025.

9. In this backdrop, the writ petition was filed by the petitioners on 22.02.2025.

10. Mr. Sunil Dalal, the learned Senior Counsel for the petitioners submits that since the respondent no.3 had resigned from his seat *vide* email dated 05.02.2025 which was prior to 14.02.2025 when the seat matrix for



the stray vacancy round was declared, therefore, the seat which became vacant on account of non-joining of Dr. Bhagwan Sahay Sharma/respondent no.3 ought to have been included in the stray vacancy round, especially when the petitioners had written to MCC as early as on 08.02.2025.

11. He submits that the counselling software does not provide for any mechanism for the petitioner no.2 college to update the status of the candidate on portal unless the process is initiated by the candidate himself. He submits that there is no provision for offline admission and offline resignation. To make good his submission, Mr. Dalal draws attention of the Court to the Bulletin of Information for NEET (PG) Counselling 2024, more particularly to the clauses 2.20 and 2.21 thereof, which provides for resignation by the candidates from the seat allotted to them only through online mode and proscribes manual offline resignation. He, therefore, contends that it was not within the authority of the petitioner no.2 college to update the portal with regard to the vacancies available for the stray vacancy round.

12. According to Mr. Dalal, the petitioners find themselves in a peculiar situation where the respondent no.3 neither formally resigned on the MCC portal nor did he submit his documents with the petitioner, therefore, the petitioners were not in a position to indicate the vacancy of the seat to the respondent nos. 1 and 2 on their own through the MCC portal.

13. He further contends that the failure of the respondents to re-allocate seat in the stray vacancy round is not on account of lapse or negligence on part of the petitioner but it is due to the limitation inherent in the procedure devised by respondent nos.1 and 2 for which the petitioners cannot be made



to suffer.

14. Mr. Dalal submits that where the seats remained vacant even after the counselling, the State Government or the authority designated by the State Government can conduct manual counselling for allotment of students, therefore, there was no reason as to why the seat which became vacant on account of resignation of the respondent no.3 should not have been included in the seat matrix for the stray round on the request of the present petitioners. To buttress his contention, he places reliance on the decision of the Hon'ble Supreme Court in ***Dar-us-Slam Educational Trust & Ors., vs. Medical Counsel of India & Ors., 2017 SCC OnLine SC 2119.***

15. He further places reliance on the decision in ***Christian Medical College Ludhiana Society vs. Secretary, Medical Education Research, Punjab***, [W.P. (C) 102/2017 : Date of Decision: 12.12.2022] to contend that in the said decision, the Hon'ble Supreme Court had directed for four rounds of common counselling for All India Quota seats conducted by the Medical Counselling Committee in respect of 100 deemed Universities. He submits that since the petitioner no.2 is a deemed university, therefore, in respect of the seat which became vacant in petitioner no.2 university, a fourth round of common counselling ought to have been conducted by the respondents.

16. He also refers to the decision of the Hon'ble Supreme Court in ***Era Lucknow Medical College and Hospital vs. The State of U.P & Ors.***, [Date of Decision: 20.12.2024 in W. P (C) No. 833/2024] to submit that when the country is facing acute shortage of doctors, the precious medical seat should not be allowed to go waste. According to him, in the said decision, having regard to the fact that the seats had remained vacant, the Hon'ble Apex



Court had directed to hold a fresh stray/special counselling for the seats remaining vacant.

17. He, therefore, urges that necessary directions may be given to the respondents to hold a fresh stray/special counselling for the remaining one vacant seat in MD (General Medicine) which has remained vacant on account of non-joining/resignation of the respondent no.3.

18. *Per contra*, Mr. T. Singhdev, the learned counsel for the respondent no.4/NMC at the outset, submits that this Court does not have the territorial jurisdiction, and in any case, this Court is not a forum conveniens, both for the petitioner as well as the respondents.

19. He submits that the dates of the Round 1 counselling were from 20.09.2024 to 27.11.2024 in which the respondent no.3 secured All India Rank of 51747 in the General Category and was allotted MS (General Surgery) Seat in the petitioner no.2 college. However, the respondent no.3 had opted for upgradation and accordingly, participated in the Round 2 counselling which was held between 04.12.2024 to 11.12.2024. In the said round, the respondent no.3 was allotted MD (General Medicine) seat at petitioner no.2 college.

20. He submits that the candidates who were allotted seats during the Round 2 of the counselling were to report between 13.12.2024 to 20.12.2024. He refers to the notice dated 17.12.2024 issued by the MCC, which provides that candidates will have to report physically during the given dates at the allotted college to resign their seats. Candidates were also advised that they should ensure that their resignation letter is generated online (through portal provided by the MCC) by the allotted college failing



which the resignation will be treated as “null and void”.

21. He submits that the respondent no.3/Dr. Bhagwan Sahay Sharma had reported at the petitioner no.2 college and took admission, in the Round 2 counselling. He refers to the list of admissions from the Round 2 as well as final list of allotment of seats up to Round 3, which have been annexed as Annexure P-4 and Annexure P-5, respectively, to the present petition, to contend the respondent no.3 had ‘not reported’ for Round 1, however, he was allotted a seat in MD (General Medicine) in Round 2 counselling for which he ‘reported’ at the petitioner no.2 college along with documents for verification. According to him, final list (Annexure P-5) also makes it evident that the respondent no.3 did not fill any choices for the Round 3, which shows he was satisfied with the allotment made in the Round 2.

22. He further contends that as per notice dated 17.04.2024 issued by the MCC, the last date for resigning was 26.12.2024, however, the respondent no.3 did not resign by the said date and the portal also reveals that the respondent no.3 had “reported” to the petitioner no.2 college after the Round 2 of counselling.

23. Mr. Singhdev submits that prior to the Round 3, notice dated 06.01.2025 was issued by the National Board of Examinations in Medical Sciences (hereinafter referred to as ‘NBEMS’), New Delhi about the reduction in qualifying percentile for participating in further round of counselling. Inviting attention of the Court to the said notice, he contends that for General Category percentile was reduced from 50th to 15th percentile.

24. He further refers to the MCC notice dated 20.01.2025 to submit that



vide said notice, the MCC had informed the candidates that they could resign from their All India Seat from 20.01.2025 to 22.01.2025 and the seats so becoming vacant will be included in the seat matrix of Round 3. He further submits that the percentile was further reduced from 15th to 05th percentile *vide* NBEMS notice dated 25.02.2025.

25. He submits that the respondent no.3 reported and joined the seat of MD (General Medicine) at petitioner No.2 college on 20.12.2024 being the last date of reporting and joining the allotted seat in Round 2 of counselling. He further adds that the respondent no.3 did not resign seat allotted to him in the Round 2 of counselling for which the last date was 26.12.2024 till 06:00 p.m as per the MCC notice dated 17.12.2024 nor any resignation was tendered by respondent no.3 between 20.01.2025 to 22.01.2025, the extended window given for resigning the seat *vide* MCC notice dated 20.01.2025. He further submits that the very fact that the respondent no.3 did not fill fresh choices in Round 3 indicates that he retained his MD (General Medicine) seat allotted to him in Round 2 of counselling.

26. Referring to clauses 1.11, 2.20 and 2.21 of the Information Bulletin and Counselling Scheme for Academic Session 2024, Mr. Singhdev submits that there can be no offline resignation and the seats in respect of which there is no online resignation, such seats would remain vacant and will not be included in the next round of counselling.

27. He further contends that since the respondent no.3 had reported physically at the petitioner no.2 college on 20.12.2024 for the purpose of admission and verification of documents/certificates/degrees, the petitioner no.2 college ought to have retained the original



documents/certificates/degrees of the respondent no.3 to prevent seat blocking by him or alternatively the petitioner no.2 college ought to have insisted upon the respondent no.3 to tender his online resignation before 26.12.2024 (06:00 p.m) in terms of MCC notice dated 17.12.2024.

28. He draws attention of the Court to Annexure P-9, which is list of admitted students during Round 3 at petitioner no.2 college, to submit that the said list indicates that resignation letters were generated Online on the portal of MCC by the same medical college and accordingly, duly resigned/vacated seats were included in the subsequent counselling, therefore, the petitioner no.2 college cannot feign ignorance about the procedure of resignation.

29. He further contends that MD (General Medicine) seat was allotted to the respondent no.3 in round 2 when there was no reduction of percentile (it was 50th percentile at that time) and if the same is offered to any remaining candidate when the percentile has dropped to 5th percentile, the same would necessarily mean that all other more meritorious candidates who had duly participated in Round 3 and online stray vacancy round, would be deprived of counselling for admission to the said high merit seat.

30. He further contends that for the present Post Graduate Counselling, a total of 05 rounds have taken place and every endeavour has been made to fill all seats. The result of special stray vacancy round (5th round of counselling) was declared on 12.03.2025 and the successful candidates had to join the medical college by 20.03.2025, therefore, at this belated stage, there could neither be a fresh round of counselling nor a candidate could be allotted to petitioner no.2 college.



31. Mr. Singhdev has placed reliance on the following decisions: (i) ***Union of India and others vs. Mahendra Singh; 2022 SCC OnLine SC 909***, (ii) ***Sri Satya Sai University of Technology and Medical Sciences, Sehore vs. Union of India through Joint Director Medical Education – I Ministry of Health & Family Welfare, Department of Health and Family Welfare and Anr; 2023 SCC OnLine Del 4920*** and, (iii) ***Ruksana vs, Jawahar Lal Nehru University; 2023 SCC OnLine Del 2340***.

32. Ms. Avshreya Pratap Singh Rudy, the learned counsel for the respondent no.1/MCC and respondent no.2/UOI, besides adopting the submissions of Mr. Singhdev submits that prayer sought in the present petition is in the nature of seeking to fill vacant seats after the last date of admission and completion of the counselling, which if permitted, shall make a precedent of medical colleges seeking allotment of candidates so as to fill vacant seats at any point of time, purely on account of monetary benefits.

33. She submits that there are many candidates who have similarly resigned in an offline mode after joining the allotted seat but such seats could not be included in the seat matrix as they were not reported online.

34. She further submits that the petitioner no.2 college notified the respondent no.1 regarding the non-joining of respondent no.3 only on 08.02.2025, which was at a very belated stage and by that time, the result of Round 3 of counselling had already been declared on 24.01.2025 and the reporting and joining of the allotted seat in Round 3 had commenced with effect from 26.01.2025 and ended on 09.02.2025.

35. She further contends that since there is no option for upgradation after



Round 3 of counselling, therefore, the inclusion of the seat in question which is a high merit list would lead to merit violation, as the candidates higher in the merits list could not participate for the counselling for the seat in question.

36. In rejoinder, Mr. Dalal submits that the submission that the respondent no.3 had to resign before participating in Round 3 is misconceived in view of the provisional letter which was issued to the respondent no.3. To buttress his contention, he invites attention of the Court to the provisional admission letter to submit that since the respondent no.3 had expressed his willingness to participate in next round of counselling i.e. Round 3, therefore, there was no occasion for him to resign from his seat allotted to him during the Round 2 and the timeline for tendering his resignation was up till 09.02.2025, before which he had resigned offline.

37. I have heard Mr. Sunil Dalal, the learned Senior Counsel for the petitioners and Mr. T. Singhdev, the learned counsel for the respondent no.4/NMC, as well as, Ms. Avshreya Pratap Singh Rudy, the learned counsel for the respondent no.1/MCC and the respondent no.2/UOI and have perused the material on record.

38. In so far as the objection of Mr. Singhdev as to the territorial jurisdiction of this Court or this Court not being forum conveniens, is concerned, suffice it to say that since notice was issued in the matter, the pleadings are complete and the matter is ripe for final arguments and further regard being had to the urgency articulated in the present petition, the matter is being decided on merits, leaving the above objections open.

39. For deciding the controversy involved in the present case, at the



outset, it may be imperative to note the following timelines and other relevant dates as borne out from the record:

DATES		PARTICULARS
11.08.2024		NEET-PG was held for the academic year 2024-25
23.08.2024		Result declared
20.09.2024	to	Round 1 of All India Counselling by MCC of DGHS
27.11.2024		
04.12.2024	to	Round 2 of All India Counselling by MCC of DGHS
11.12.2024		
12.12.2024		Result of Round 2 of All India Counseling
13.12.2024	to	Reporting & joining of the allotted seats in Round 2
20.12.2024		
17.12.2024		MCC Notice informing candidates that they could resign from the allotted seats of Round 2 between 4:00 PM 17.12.2024 to 6:00 PM 26.12.2024.
20.12.2024		Last date of reporting & joining of the allotted seats
26.12.2024		Last date for resigning from seat allotted in Round 2 till 6:00 PM
06.01.2025		Notice issued by NBEMS informing candidates about reduction in qualifying percentile for participating in further rounds of counseling including Round 3 from 50 th percentile to 15 th percentile for the general category.
26.12.2024	to	Round 3 of All India Counseling held by MCC of DGHS
24.01.2025		
25.01.2025		Result of Round 3 of All India Counseling declared
26.01.2025	to	Reporting & joining of the allotted seats in Round 3.
09.02.2025		
20.01.2025		MCC Notice informing candidates that they could resign from the allotted seats through All India Counseling between 20.12.2024 to 12:00 Noon of 22.01.2025 and that such vacated seats shall be included in Round 3
05.02.2025		Respondent no. 3 through email informs petitioner no. 2 college that he will not be joining the MD (General Medicine) seat allotted to him in Round 2



2025:DHC:4402



08.02.2025		Petitioner no. 2 college informed MCC that respondent no. 3 had not submitted resignation from MD (General Medicine) seat allotted to him in Round 2 within the time provided by MCC
12.02.2025 18.02.2025	to	Online Stray Vacancy Round of All India Counseling by MCC of DGHS
19.02.2025		Result of Online Stray Vacancy Round of All India Counseling
20.02.2025 28.02.2025	to	Reporting & joining of the allotted seats in Online Stray Vacancy Round
12.02.2025		Petitioner no.2-medical college informed MCC that respondent no. 3 granted admission on the MD (General Medicine) seat allotted in Round 2 and that he has retained the said seat in Round 3
20.02.2025		Petitioner no. 2-college informed respondent no. 3 that he has neither surrendered nor joined the course on the MD (General Medicine) seat allotted to him in Round 2
20.02.2025		Respondent no. 3 through email informs petitioner no. 2 -college that he will not be joining the MD (General Medicine) seat allotted to him in Round-2.
20.02.2025		The aforesaid position is communicated to MCC by petitioner no.2.
25.02.2025		NBEMS Notice informing candidates about further reduction in qualifying percentile for participating in further rounds of counseling including the Special Stray Vacancy Round from 15 th percentile for the general category to 5 th percentile.
05.03.2025		MCC Notice informing candidates that a Special Stray Vacancy Round shall be carried out and only those candidates who are not holding / joined any seat in any of 4 previous round of counseling were eligible. Thus, candidates who had been allotted & joined any seat in the previous rounds of counseling were ineligible to participate in the Special Stray Vacancy Round.
06.03.2025 11.03.2025	to	Special Stray Vacancy Round of All India Counseling by MCC.



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08.03.2025	Petitioner no.2 – medical college had requested MCC for including the aforementioned seat in the Special Stray Vacancy Round.
12.03.2025	Result of Special Stray Vacancy Round of All India Counseling
13.03.2025 to 20.03.2025	Reporting & joining of the allotted seats in Online Stray Vacancy Round

40. A perusal of the Clauses 1.11, 2.20 and 2.21 of the Information Bulletin shows that there is no provision for offline admissions and resignations. The entire admission and counselling process is through the online portal of MCC alone and there is no human interface involved in the online process.

41. The said clauses further provides that there is no offline resignation and any such offline resignation will not be accepted nor the seat vacated due to offline resignation will be taken in the next round of counselling. The relevant Clauses 1.11, 2.20 and 2.21 are reproduced hereinbelow:

“1.11 No Offline admissions and no offline resignations- all admissions and resignation (if provided) will be made through online mode. Any admission or resignation taken in offline mode will not be accepted. Colleges taking offline admission or resignation may face the legal or any other consequences at their own level. The seat will be considered as vacant for the next round of counselling where offline admission is taken. The vacated seat due to offline resignation will not be taken in the next round of counselling.

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2.20 Only Qualified / eligible candidates are required to register on the MCC website (www.mcc.nic.in) to participate in the counselling process for allotment of seat. MCC does not allot any seat either on nomination basis / manually or on offline mode.



No Offline admissions and no offline resignations- all admissions and resignation (if provided) will be made through online mode. Any admission or resignation taken in offline mode will not be accepted. Colleges taking offline admission or resignation may face the legal action or any other consequences at their own level. The seat will be considered as vacant for the next round of counselling where offline admission is taken. The vacated seat due to offline resignation will not be taken in the next round of counselling.

2.21 Candidates should make sure that while taking admission/resignation in the allotted college their admission/resignation is generated through online mode i.e. through intra mcc portal by the college authorities. Any other letter of admission/resignation will not be accepted.”

(emphasis supplied)

42. Further under Chapter 10 dealing with frequently asked questions in respect of the counselling process, in answer to question 32, it has been clarified that the original documents/degrees/certificates of the candidates shall be retained by the concerned medical college in order to prevent seat blocking and prevention of multiple admissions by one candidate. The relevant FAQ 32 and its answer reads as under:

“Q. No. 32: At the time of admission will my original certificates be retained by the allotted college/institution?

Ans: Yes, all the participating colleges/institutions have been instructed to retain original certificates of admitted students in order to prevent blocking of seat and prevention of multiple admissions by one candidate and release them only on up-gradation of the seat or resignation by the candidate (during the specified timelines).”

43. As noted above the MCC had also issued notice dated 17.12.2024 informing candidates that they could resign from the allotted seats of



Round 2 between 4:00 PM 17.12.2024 to 6:00 PM 26.12.2024. The notice also clarified that candidates will have to report physically to the allotted college to resign the seat allotted in Round 2 and that the resignation letter must be generated Online through the MCC portal by the allotted college, failing which the resignation will be treated as null & void. The relevant excerpt from the notice dated 17.12.2024 reads thus:

*“...The candidates who desire to leave their Round-1 or Round-2 seat can do so **from 04:00 PM of 17.12.2024 upto 06:00 P.M of 26.12.2024.***

The candidates should take note of following instructions w.r.t Resignation:

- *Freshly allotted candidates of Round-2 who joined their seat but now want to resign can vacate their seat with forfeiture of security deposit within stipulated time of resignation.*
- *Candidates who got upgraded in Round-2, joined the upgraded seat but now want to resign from their seat can vacate their seat with forfeiture of security deposit within stipulated time of resignation.*
- *Candidates will have to report physically at the allotted college to resign their seat.*
- *Candidates are advised to ensure that their Resignation Letter is generated online (through portal provided by MCC) by the allotted college, failing which the resignation will be treated as ‘Null & Void’.*”

44. Vide notice dated 20.01.2025 MCC extended the time for resignation and informed the candidates that they could resign from the allotted seats through All India Counseling between 20.12.2024 to 12:00 Noon of 22.01.2025 and that such vacated seats shall be included in Round 3. The



relevant portion of the notice dated 20.01.2025 reads as under:

“It is for the information to all candidates that due to delayed counselling in some states and recent declaration of Round-2 result in Rajasthan, many requests are being received by MCC for extension of PG Counselling schedule. Hence, keeping in view the interest of candidates and since Round 3 is the last round of upgradation, the Schedule of PG Counselling 2024 is being extended with due approval of competent authority.

Candidates can check the extended PG Counselling Schedule 2024 for All India & State Quota on MCC website (www.mcc.nic.in).

Further, the Resignation Window is being re opened and will be available upto 12:00 Noon of 22nd Jan., 2025 so that candidates who have been allotted seats through states and want to resign their All India seat can do so within stipulated time with forfeiture of security deposit. The All India seats so vacated by candidates will be included in the seat matrix of Round 3 for allotment by MCC as per merit and choice.”

45. It is not in dispute that in Round 2 of the counselling, the respondent no.3 was allotted MD (General Medicine) seat at petitioner no.2 college and the petitioner admittedly, reported at petitioner no.2 college on 20.12.2024 i.e. on the last date stipulated for reporting and joining of the allotted seat in Round 2 counselling. Even perusal of the final list of allotment seat up to Round 3 (Annexure P-5) shows that the respondent no.3 did not report for Round 1, however, he reported for the Round 2 at petitioner no.2 college only on 20.12.2024.

46. It is further borne out from the said list (Annexure P-5) that the respondent no.3 did not fill up fresh choices for Round 3 counselling, which is suggestive of the fact that the respondent no.3 did not opt for upgradation



and retained the seat.

47. Further, originally the last date for resigning from the MD (General Medicine) seat allotted to the respondent no.3 during Round 2 counselling was 26.12.2024 till 06:00 p.m. The said date was subsequently extended till 22.01.2025 (12:00 noon) by notice dated 20.01.2025 issued by the MCC/respondent no.1. It is not the case of the petitioners that the respondent no.3 had resigned online from the seat allotted to him in Round 2 till 12 noon of 22.02.2025.

48. On the contrary, the case of the petitioners is that the respondent no.3 through email dated 05.02.2025 informed the petitioner no.2 college that he will not be joining the MD (General Medicine) seat allotted to him in Round 2. The petitioners have further admitted in the writ petition that the respondent no.3 had not submitted resignation from MD (General Medicine) seat allotted to him within the time provided by the MCC. In fact, the petitioner no.2 *vide* its letter dated 08.02.2025 written to MCC has stated that neither the seat of respondent no.3 was '*upgraded in the 3rd Round of Counselling nor he submitted resignation from the M.D. General Medicine seat within the time limit prescribed of MCC*'.

49. Since there is a clear admission of the petitioner no.2 college that there was no online resignation as is mandated by Clauses 1.11, 2.20 and 2.21 of the Information Bulletin, therefore, there was no occasion for inclusion of said seat in further rounds of counselling.

50. The contention of the petitioner that it is for the candidate to resign from the seat online, therefore, the medical college has no control over the said process and the college cannot be deprived from filling the seat when



the default cannot be ascribed to it, is misconceived. Once the respondent no.3 had reported physically at petitioner no.2 college on 20.12.2024, it was obligatory on part of the college to retain the original documents/certificates/degrees of the respondent no.3 as provided in 'answer' to 'questions 32' to FAQs under Chapter 10, or else the petitioner no.2 should have ensured that the respondent no.3 resigns from the seat through online process.

51. There is again no substance in the submission of Mr. Dalal that the respondent no.3 could not have resigned the seat without him being allotted a new seat allotted in Round 3. The reasons are three fold - firstly, the respondent no.3 did not fill fresh choice for Round 3 which means that he retained his MD (General Medicine) seat allotted to him in Round 2 of counselling.

52. Secondly, the respondent no.1/MCC *vide* notice dated 20.01.2025 had extended the time for resignation and thereby permitted candidates to resign from the seats allotted to them in Round 2 between 20.01.2025 to 22.01.2025 so that said seats could become available for Round 3. In terms of Clauses 1.11, 2.20 and 2.21 of the Information Bulletin read with MCC's notices dated 17.12.2024 and 20.01.2025, unless the candidates who were allotted seats in Round 2 had resigned from their respective seats within the stipulated time, the same could not have become available for counselling in Round 3.

53. Thirdly, in case participation in Round 3 is permitted without a candidate resigning from his seat allotted to him in Round 2, as sought to be contended by Mr. Dalal, the seat allotted in Round 2 would not be available



for filling in Round 3, which would entail never ending process of upgradation / resignation.

54. Another argument of Mr. Dalal that it was open to the respondent no.3 to join the seat allotted to him by 09.02.2025 is entirely erroneous and misconceived. To be noted, 09.02.2025 was the last date for joining/reporting on seats allotted in Round 3 whereas the seat allotted to the respondent no.3 in petitioner no.2 college was in Round 2 of the counselling for which the last date for reporting was 20.12.2024.

55. Insofar as email dated 05.02.2025 sent by the respondent no.3 to the petitioner no.2 college, and subsequent communication dated 08.02.2025 by the petitioner no.2 college to the respondent no.1/MCC, informing about submission of resignation by the respondent no.3 from MD (General Medicine) seat allotted to him in petitioner no.2 college, are concerned, no cognizance of the same could be taken, since the resignation from the seat as noted above could only be made online by the respondent no.3 through portal of MCC and any other manner of offline resignation through letters/email was not permitted in view of the mandate of Clauses 1.11, 2.20 and 2.21 of the Information Bulletin.

56. Also, to be borne in mind that the entire purpose of generating online resignation through the MCC portal is to ensure online single window transparent counselling system across the country for which real time information of resignation is crucial for maintaining the seat matrix so as to offer vacant seats to the remaining candidates for the subsequent round of counselling on the basis of merit.

57. If the purported resignation of respondent no.3 through offline is



accepted by the respondent no.1/MCC, the same will entail into candidates vacating/resigning from the allotted seats in the concerned medical college at their convenience, with no real time information of resignation and consequent vacant seats becoming available with the counselling authority/MCC. Further, such a course shall render the entire online process of counselling and resignation as nugatory.

58. The law is well settled that the conditions stipulated in the prospectus/Information Bulletin are guidelines for all concerned and everyone is required to follow the same in letter and spirit and not to act in its transgression¹. Further, it is equally settled that no mandamus can be issued directing the educational institutions to act contrary to their own procedure². Therefore, if a particular procedure for counselling / admission / resignation has been prescribed under the Information Bulletin, it is obligatory for all concerned to adhere to the same.

59. Reference in this regard may be had to the decision of the Hon'ble Supreme Court in ***Union of India and others vs. Mahendra Singh; 2022 SCC OnLine SC 909***, wherein the Hon'ble Supreme Court has observed as under:

“14. The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure in filling up the application form is prescribed, the application

¹ Varun Kumar Aggarwal v. UOI & Ors., 179 (2011) DLT 24 (DB)

² Maharishi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159



form should be filled up following that procedure alone. This was enunciated by Privy Council in the Nazir Ahmad v. King-Emperor, wherein it was held that “that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

(emphasis supplied)

60. Reference can also be profitably made to a decision of a Coordinate Bench in ***Sri Satya Sai University of Technology and Medical Sciences*** (supra), in which, after considering various judicial pronouncements of the Hon’ble Supreme Court, the Court summarised and emphasised the importance of adherence to the timelines of the admission process, in the following terms:

“98. In view of the aforesaid authoritative pronouncements of the Hon’ble Supreme Court and of this court, the following conclusions can be summarized:—

- (i) The time schedule prescribed by the NMC is sacrosanct and unimpeachable; and no violation thereto is permissible;*
- (ii) The time schedule needs to be strictly and religiously followed by all concerned including internal stages from the date of invitation of the application till the last activity in the concerned college;*
- (iii) Internal stages cannot be allowed to spillover onto the next stage and no overlapping of the stages is permissible;*
- (iv) No authority including NMC can dilute or tinker with the time schedule, once it is prescribed by the said authority;*
- (v) A strict time schedule, especially in the professional courses, ensures transparency and fairness and obliterates arbitrariness;*



(vi) It also applies similarly to all prospective applicants. Any dilution or modification thereto will create avoidable confusion and arbitrariness which may result in causing indifferent treatment with prospective applicants;

(vii) No mandamus can be issued to breach the time schedule once prescribed by NMC, for a particular applicant.

(viii) The decisions of central regulating authorities, normally should not be interfered with unless the same are found to be arbitrary, against the statute or shocking to the conscience of the court.”

61. In view of the above statement of law, no mandamus can be issued for another round of counselling. The decisions relied upon by the petitioners contain directions issued in peculiar facts of those cases and the petitioners cannot take advantage of the same.

62. There is another facet to the issue involved. The seat in question is a high merit general category seat in MD (General Medicine) which was allotted to respondent no. 3 in Round-2 of All India Counseling. The allocation of said high merit seat was on the basis of merit obtained by respondent no. 3 in NEET-PG-2024. As per the statutory regulations of NMC, a general category candidate in order to come within the zone of counseling for Round 1 and Round 2, mandatorily had to obtain a minimum of 50th percentile in NEET PG-2024. Subsequently, the NBEMS *vide* notice dated 06.01.2025 had reduced the minimum qualifying percentile for the general category from 50th percentile to 15th percentile, as qualifying threshold to participate in the Round 3 counselling and Online Stray Vacancy Round, which concluded on 25.01.2025 and 19.02.2025,



respectively. The relevant part of the NBEMS's notice dated 06.01.2025 reads as under:

“2. In accordance with the Ministry of Health & Family Welfare, Govt. of India letter No. U. 12021/05/2024-MEC dated 2nd January 2025, the minimum qualifying percentile for NEET-PG 2024 has been reduced as follows:

CATEGORY	MINIMUM QUALIFYING CRITERIA AS PER INFORMATION BULLETIN	REVISED MINIMUM QUALIFYING CRITERIA
<i>General/EWS</i>	<i>50th Percentile</i>	<i>15th Percentile</i>
<i>UR-PwBD</i>	<i>45th Percentile</i>	<i>10th Percentile</i>
<i>SC/ST/OBC (Including PwBD of SC/ST/OBC)</i>	<i>40th Percentile</i>	<i>10th Percentile</i>

3. Candidature is purely provisional subject to fulfilment of eligibility criteria as mentioned in the NEET-PG 2024 Information Bulletin.

4. It may be noted that there is no change in the NEET-PG 2024 Rank as published on 23.08.2024.”

63. Thereafter, the NBEMS vide notice dated 25.02.2025 had further reduced the minimum qualifying percentile for the general category from 15th percentile to 5th percentile, so as to qualify to participate in the Special Stray Vacancy Round which concluded on 12.03.2025. The relevant part of the NBEMS's notice dated 25.02.2025 reads as under:

“2. In continuation of NBEMS notice dated 06.01.2025 and pursuant to the directions of the Ministry of Health & Family Welfare, Govt. of India vide its letters No. U. 12021/05/2024-MEC dated 20th February 2025, the minimum qualifying percentile for NEET-PG 2024 have been reduced as follows:



CATEGORY	REVISED MINIMUM QUALIFYING CRITERIA FOR NEET-PG 2024
<i>General/EWS</i>	<i>5th Percentile</i>
<i>UR-PwBD</i>	
<i>SC/ST/OBC (Including PwBD of SC/ST/OBC)</i>	

3. *Candidature is purely provisional subject to fulfilment of eligibility criteria as prescribed in the NEET-PG 2024 Information Bulletin.*

4. *It may be noted that there is no change in the NEET-PG 2024 Rank and percentile score as published on 23.08.2024.”*

64. If a high merit seat in the general category which was allocated when there was no reduction of percentile from 50th percentile, is now offered to remaining candidates, when percentile has been reduced to 5th percentile, it would necessarily mean that all other more meritorious candidates who had duly participated in Round 3 and Online Stray Vacancy Round, would be deprived of counseling for admission on the said high merit seat and the same would be offered to a candidate possessing extremely lower merit and in the bargain merit would be a casualty. It needs to be specifically stated that it is in the larger interest and welfare of the student community to grant merit-based admissions in a transparent manner, for achieving excellence.

65. Notably, the result of the Special Stray Vacancy Round (5th round of counseling) was declared on 12.03.2025 and the successful candidates had to join the allotted medical college by 20.03.2025. Thus, at this belated stage neither there can be a fresh round of counseling for filling up of any vacant



seat in any subject in any medical college of the country, nor a candidate can be allotted to the petitioner no. 2 medical college for filling of any vacant seats. In *Meenakshi v. All India Institute of Medical Sciences*³, a Division Bench of this Court held that there has to be a finality to admissions; and the terms and conditions of the schedule of the admission process has to be adhered to.

66. The respondent no.1/MCC and the respondent no.2/UOI in their affidavit have stated that there are many similarly placed candidates as respondent no.3, who have resigned in an offline mode after joining the allotted seat and since there is no option for upgradation after Round 3, it was decided by the Competent Authority to not include any such seat again to the seat matrix as it could lead to merit violation.

67. For the aforesaid reasons, there is no merit in the petition. Accordingly, the same alongwith pending application is dismissed.

VIKAS MAHAJAN, J

APRIL 23, 2025/dss

³ 2021 SCC OnLine Del 2715