

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE V.G. ARUN

TUESDAY, THE 13<sup>TH</sup> DAY OF DECEMBER 2022 / 22ND AGRAHAYANA, 1944

WP(C) NO. 40010 OF 2022

**PETITIONER:**

GAURI SAJIT,  
AGED 18 YEARS  
S.V. NAGAR 110, NEAR S.V. LIBRARY  
PULIYATHUMUKKU, AYATHIL P.O.  
KOLLAM, PIN - 691021

BY ADVS.  
ARAVINDA KUMAR BABU T.K.  
SANDRA SUNNY  
ARUN KUMAR M.A

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT  
HEALTH AND FAMILY WELFARE DEPARTMENT, SECRETARIAT  
THIRUVANANTHAPURAM  
, PIN - 695001
- 2 THE DIRECTOR OF MEDICAL EDUCATION  
OFFICE OF THE DIRECTOR OF MEDICAL EDUCATION  
MEDICAL COLLEGE P.O.  
THIRUVANANTHAPURAM, PIN - 695011
- 3 THE COMMISSIONER FOR ENTRANCE COMMISSION  
OFFICE OF THE COMMISSIONER FOR ENTRANCE EXAMINATION  
5TH FLOOR, KSHB BUILDING  
SS KOVIL ROAD, SANTHI NAGAR  
THIRUVANANTHAPURAM, PIN - 695001
- 4 UNION OF INDIA  
DIRECTORATE GENERAL OF HEALTH SERVICES  
THE MEDICAL COUNSELING COMMITTEE  
THROUGH OFFICE OF ADG (ME)  
NIRMAN BHAVAN, CENTRAL SECRETARIAT

NEW DELHI, PIN - 110108

5 THE NATIONAL MEDICAL COMMISSION  
THROUGH ITS CHAIRPERSON  
DADA DEV MANDIR ROAD, DWARAKA  
NEW DELHI 110 077, PIN - 110077

**OTHER PRESENT:**

DSGI S. MANU; GP P.G. PRAMOD

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 13.12.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

**V.G.ARUN J.**

-----  
**W.P.(C) No.40010 of 2022**  
-----

Dated this the 13th day of December 2022

**JUDGMENT**

The petitioner appeared for NEET(UG) 2022 and secured a score of 595 with percentile 98.66591 and All India Rank 23154. In the State Medical Rank list prepared by the third respondent based on the ranking in NEET 2022, the petitioner secured rank 1677 with reservation benefit of Ezhava community. On the basis of the NEET and State Medical rank lists, two rounds of allotments have taken place and the Mop up allotment has started. The petitioner is aggrieved by the following clause in the guidelines for mop up counselling issued under Ext.P2 notification;

*' In the Mop-up Allotment, College/course transfer will be permitted to all students'.*

2. Learned counsel for the petitioner contends that the objectionable clause is against the provisions of the Medical Council of India Regulations on Graduate Medical Education, 1997 also Ext.P3 order of the Hon'ble Supreme Court, issued after taking into account Ext.P4 notice of the Directorate General of Health Services, Government of India. It is pointed out that as per

Graduate Medical Education Regulations, 1997 (Appendix F) it is evident that students who secured admission and joined in the first and second rounds of allotment cannot participate in the further counselling. In Ext.P4 notice it is specified that candidates who have joined up to round two of All India Quota or State Quota shall not be eligible to participate in the further rounds for All India Quota or for State Quota from the academic year 2022 - 23 onwards. By Ext.P3 order, the relevant portion of which is extracted here under, the Hon'ble Supreme Court has emphasized that the participation in the mop up counselling shall only be in the manner prescribed in Ext.P4 notice;

*"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 - 23."*

3. Referring to Clause 11.6.9 of the Prospectus for Admission to Professional Degree Courses, 2022 published by the 3rd respondent, it is contended that the guidelines and the conditions for mop-up counselling should be in conformity with the corresponding guidelines of the central councils concerned including NMC/MCC.

4. According to the learned Government Pleader what is proposed by the Clause under challenge is only transfer and not allotment. The objective of the Clause is to provide opportunity to more meritorious candidates to secure transfer to unfilled seats. It is contended that MCC guidelines is not strictly applicable for the admission process of the third respondent.

5. Having heard the learned counsel on either side and having carefully scrutinized the documents and being bound by the direction issued by the Hon'ble Supreme Court, I find considerable force in the arguments advanced by the learned counsel for the petitioner. As rightly pointed out, Medical Council of India Regulations on Graduate Medical Education, 1997 clearly indicates that, candidates who have joined for seats under the All India Quota and State Quota cannot appear for further counselling. This aspect has been highlighted in Ext.P4 notification issued by the Directorate General of Health Services also. After taking note of Ext.P4 notification, the Apex Court directed all State Counseling Authorities in the NEET-UG/PG to scrupulously comply with the directions from the academic year 2022 - 23 onwards. In such circumstances, the third respondent cannot contend that the candidates who have already joined during the first and second rounds of allotment are only provided with an opportunity to obtain transfer to the higher option exercised by them. For that also those candidates will have to be allowed to participate in the mop up allotment. In view of the Regulations, Ext.P4 notice and the direction in Ext. P3 order, such permission cannot be granted.

6. For the aforementioned reasons, the third respondent is

directed not to permit the students who have already secured admission and joined in the first and second round of allotment to participate in the mop up counselling.

The writ petition is disposed of with the above direction.

Sd/-

**V.G.ARUN, JUDGE**

dpk

**APPENDIX OF WP (C) 40010/2022**

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE CANDIDATE DATA SHEET WITH RESPECT TO THE PETITIONER
- EXHIBIT P2 THE TRUE COPY OF THE NOTIFICATION ISSUED BY THE 3RD RESPONDENT DATED 07.12.2022
- EXHIBIT P3 THE TRUE COPY OF THE ORDER IN CONTEMPT PETITION (CIVIL) NO 289 OF 2022 IN W.P.(C.)NO 223 OF 2022 HONOURABLE APEX COURT DATED 22.07.2022
- EXHIBIT P4 THE TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED 12.07.2022 TO ALL THE STATE AND COUNSELING AUTHORITIES DIRECTING THEM TO SCRUPULOUSLY FOLLOW THE CONDITIONS STIPULATED BY THE HONOURABLE APEX COURT
- EXHIBIT P5 THE TRUE COPY OF THE RELEVANT PAGE OF THE LAST RANK DETAILS OF THE 2ND ROUND OF ALLOTMENT TO MBBS AND BDS COURSE DATED 24.11.2022
- EXHIBIT P6 THE TRUE COPY OF THE NOTIFICATION IN RESPECT OF PG MEDICAL COURSE ALLOTMENT ISSUED BY THE 3RD RESPONDENT DATED 10.11.2022