



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 7848/2020

1. Dr. Neelam Saini D/o Shri R.c. Saini, Aged About 34 Years, R/o 324, Shanti Nagar, Gopalpura Bypass, Jaipur, Rajasthan.
2. Dr. Dharamveer Singh S/o Shri Jagdish Gurjar, Aged About 35 Years, R/o 29 Krishana Nagar Vistar, Kartarpura, Jaipur, Rajasthan.

----Petitioners

Versus

1. State Of Rajasthan, Through Its Principal Secretary, Department Of Medical And Health, Government Secretariat, Jaipur.

Chairman, Neet Pg Medical And Dental Admission / Counseling Board - 2018 And Principal And Controller, Sms Medical College And Attached Hospitals, Jaipur, Sms Medical College, Jln Marg, Jaipur.

3. Medical Council Of India, Through Its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.

----Respondents

Connected With

S.B. Civil Writ Petition No. 7849/2020

1. Dr. Mohit Mathur S/o Dr. Gopal Bihari Mathur, Aged About 36 Years, Resident Of In Front Of Post Office, 886, Pm226 Shahpura, Jaipur (Raj.).
2. Dr. Vinod Kumar Saini S/o Shri Sarvan Kumar Saini, Aged About 31 Years, Resident Of Jaitpura, Chomu, Jaipur (Raj.).
3. Dr. Dinesh Badiwal S/o Shri Jagdish Prasad Badiwal, Aged About 33 Years, R/o Naga Sirodea Ki Dhani, Jobner, District Jaipur (Raj.).
4. Dr. Siddharth Sharma S/o Shri Sushil Dutt Sharma, Aged About 29 Years, Resident Of Plot No. 4 Jai Chamunda Colony, Murlipura, Jaipur (Raj.).
5. Dr. Jitendra Kumar Yadav, S/o Bhairu Lal Yadav, Aged About 30 Years, R/o Manpura Maehri, The- Amer, Jaipur (Raj.).



6. Dr. Vikash Bhardwaj S/o Satya Narayan Sharma, Aged About 58 Years, R/o Hardeep Vihar, Jaipur (Raj).
7. Dr. Yogesh Kumar Saini S/o Nanagram Saini, Aged About 30 Years, R/o Amraka Ki Dhani, Jaisinghpura, Khor, Jaipur (Raj.).
8. Dr. Subrat Agarwal S/o Sh. Radhe Shyam Agarwal, Aged About 40 Years, R/o Plot No. 78 B, Indira Colony, Panipech, Jhotwara Road, Jaipur (Raj.).
9. Lokendra Singh S/o Sawai Singh Bika, Aged About 31 Years, R/o Vpo Chalkai, Churu, (Raj.).

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1. State Of Rajasthan, Through Its Principal Secretary, Department Of Medical And Health, Government Secretariat, Jaipur.

2. Chairman, Neet Pg Medical And Dental Admission/counselling Board- 2018 And Principal And Controller, Sms Medical College And Attached Hospitals, Jaipur, Sms Medical College, JIn Marg, Jaipur.

3. Medical Council Of India, Through Its Secretary, Pocket 14, Sector 8, Dwarka, New Delhi.

-----Respondents

For Petitioner(s)	:	Mr. Himanshu Jain, Adv. Mr. Ashwinee Kumar Jaiman, Adv.
For Respondent(s)	:	Mr. Angad Mirdha, Adv. (through Video Conferencing) Mr. Harshal Tholia, Adv. with Mr.Gaurav Bhardwaj for Dr. V.B. Sharma, AAG Mr. R.P. Meena, Joint Director, DMHS Dr. Sandeep Tandon, Chairman, Raj. NEET PG, 2020 Counselling Board

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

Judgment reserved on : **28th July, 2020**
Date of Pronouncement : **29th July, 2020**

**By the Court :**

1. The present order will dispose of these two writ petitions filed by the petitioners challenging the Notification dated 24th July, 2020 to the extent of not permitting the petitioners to participate in Mop-up round on the ground that they joined the course at the allotted colleges.

2. The petitions have also been filed for praying direction to permit the petitioners to participate in Mop-up round scheduled to be held in furtherance of the Notification dated 24th July, 2020.

3. The petitioners also seek direction to fill the seats reverted from first round of counselling on the basis of merit of the candidates whether they have joined the course or not, strictly on the basis of merit-cum-preference and accordingly, the petitioners may be given admission in the desired courses, as per their merit.

4. The facts in nutshell are that the petitioners are Medical Officers, appointed under **Rajasthan Medical and Health Service Rules, 1963 (for short 'the Rules of 1963')** and they all are 'in-service' candidates for the purpose of admission in PG course/examination conducted by the National Board of Examination known as National Eligibility Entrance Test-2020 (for short "NEET-2020").

5. The petitioners have submitted that they had fulfilled the eligibility conditions for applying for admission in PG course-2020



and they submitted their online application form after taking 'No Objection' from the Directorate, Medical and Health Services, Jaipur. The result of the examination was declared on 30th January, 2020.

6. The petitioners have submitted that while declaring the result, the cut-off scores for various categories was declared and under general/open category, the minimum eligibility criteria was 50% percentile and cut-off score was 366 marks.

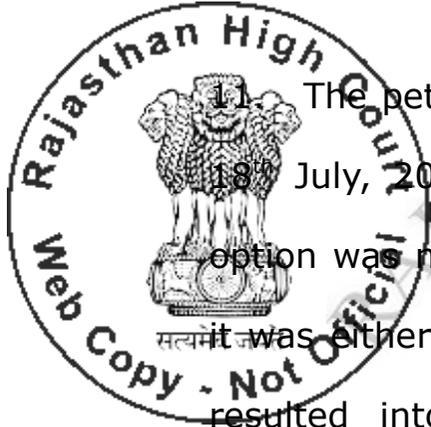
The petitioners have submitted that the Directorate, Medical and Health Services, Jaipur had issued an order dated 21st January, 2020, whereby the Chief Medical and Health Officers and other authorities, were directed to forward the application form of all the eligible 'in-service' candidates under 'in-service' category.

8. The petitioners have submitted that due to ongoing "Coronavirus" outbreak, the counselling programme was announced for the State of Rajasthan on 16th April, 2020 and the online choice was to be filled from 19th April, 2020 to 21st April, 2020.

9. The petitioners have submitted that processing of seat allotment (Online) by the Admission Board-2020, was to be from 25th April, 2020 to 26th April, 2020 and after declaration of result and generation of online allotment letters, reporting and document verification was to be done at the college from 27th April, 2020 to 3rd May, 2020.



10. The petitioners have submitted in the petitions that on 18th July, 2020, the respondents issued notification for second round of the counselling, which was to be commenced from 18th July, 2020 and in terms of Clause-11 of the Notification dated 18th July, 2020, physical reporting and document verification at the allotted colleges was to be done by 27th July, 2020.



11. The petitioners have submitted that in the Notification dated 18th July, 2020, the candidates had to report physically (online option was not available) and earlier in first round of counselling, it was either physical reporting or online reporting and as such it resulted into non-joining of the candidates to their allotted colleges, yet they were permitted to participate in second round of counselling and the seats occupied by these candidates were not shown in seat matrix of second round counselling and as such the petitioners, who could have participated against these seats, were deprived to participate.

12. The petitioners have further pleaded in the petitions that another important information/letter dated 21st July, 2020 was issued wherein the last date of resignation without forfeiture by joined candidates of round one (only for those who do not upgrade in round two) was extended upto 26th July, 2020 and the last date of physical reporting for the candidates allotted seats in round two of Rajasthan NEET Counselling, was extended upto 5:00 PM of 28th July, 2020.

13. The petitioners have submitted that a Notification dated 24th July, 2020 has been issued for Mop-up round – offline to various



PG Medical and Dental Courses and in the said Notification, it has been provided at the bottom (schedule for allotment process) that the candidates, who get allotment in round second either do not join or resign the colleges allotted to them, will not remain eligible for participation in Mop-up/residual allotments in Rajasthan State.

The relevant clause is quoted hereunder:-



“Candidates who get allotment in round 2 and either do not join or resign the college allotted to them will not remain eligible for participation in Mop-up/residual allotments in Rajasthan State.

Candidates allotted and joined a college through any other counselling including All India PG Counselling are not eligible to participate in Mop-up/residual allotments in Rajasthan State.”

14. The petitioners have contended that when they contacted the respondents to appear in Mop-up round, they have been told that they have already allotted the colleges in second round of counselling.

15. The petitioners have submitted that the First State Counselling held from 19th April, 2020 to 26th April, 2020 allowed the candidates, who were allotted the seats, to join by two methods i.e. physical and online. The petitioners have a grievance that online joining created serious problem, as the candidates who were allotted seat, did not join physically and occupy the seats and participated in second counselling and after being upgraded, they are leaving the seats allotted to them in first round of counselling and these seats were not made available during



second counselling and as such, the petitioners are entitled to participate in Mop-up round.

16. The petitioners have also pleaded that certain other State Governments/PG Boards considering the exceptional situation created by COVID-19, had permitted all the candidates to participate in Mop-up round, who had been allotted seats in second round of counselling.

17. Learned counsel for the petitioners submitted that this Court is required to consider as whether the seats, offered in first counselling and not upgraded in second counselling, can be straightway included for Mop-up, without seats being offered in second counselling.

18. Learned counsel for the petitioners have submitted that even the Instruction Booklet, published by the respondents, clearly provided that first round joining candidates, who have not been upgraded in the second round (offline) counselling at his merit point, may resign at the spot without forfeiture of registration fee, failing which, he will be considered as part of joined candidates for second round.

19. Learned counsel submitted that if a candidate is not upgraded during second counselling (which was to be held offline) at his merit point then he had to resign at the spot so that seat vacated by him, can be made available for the other candidate, who is next below in merit.



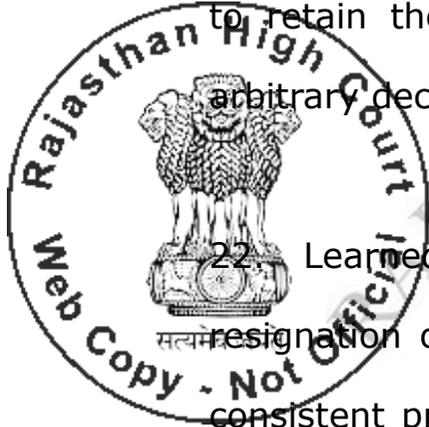
20. Learned counsel submitted that once the candidate is allowed to retain the seat even after completion of second round of counselling, then rights of the petitioners/candidates, next below in merit, is seriously prejudiced.

21. Learned counsel submitted that by permitting the candidates to retain the seat, till completion of second counselling, is an arbitrary decision and the same cannot be permitted by this Court.

22. Learned counsel further submitted that the practice of resignation of the candidates on the spot in the counselling was consistent practice of the respondents and for the first time, this practice has been breached, resulting into infringement of rights of the petitioners to get admission against that seat.

23. Learned counsel further submitted that on the one hand, second round of State Counselling concluded on 24th July, 2020 and the candidates, who did not upgrade during second counselling, were allowed to retain seat till 26th July, 2020 and on the other hand, seats will be now offered to lowest meritorious candidates, as the petitioners, who are more meritorious, have been excluded, as per the Notification dated 24th July, 2020.

24. Learned counsel further submitted that Mop-up counselling is held for the seats, which could not be filled even after the second round of counselling, but in the present case, the seats of counselling were not shown during second counselling and now offered for Mop-up and the candidates, who were much lower in





the merit, will be considered against such seats and such action is arbitrary, unreasonable and contrary to the instruction booklet.

25. Learned counsel further submitted that the Chairman, NEET PG Board has "structured discretion" aimed at controlling the method within certain boundaries and any decision taken by the Convener should not run contrary to the regulations.

26. Learned counsel further submitted that rule of merit cannot be compromised and merit cannot become casualty and merit should be only criterion for giving admission in PG Medical Course.

27. Learned counsel further submitted that it is due to inefficiency of the administration that the persons, who are lower in merit, will be benefited at the cost of more meritorious candidates and now in Mop-up round without including seats of second counselling, will result into unjust enrichment.

28. Learned counsel for the petitioners have placed reliance on the judgments reported in **2012 (4) Supreme 511 (Asha Versus Pt. B.D. Sharma University of Health Sciences & Ors.)**, **AIR 2020 SC 47 (S. Krishna Sradha Versus The State of Andhra Pradesh & Ors.)** and the judgment delivered by Patna High Court in the case of **Manoj Kumar & Anr. Versus State of Bihar & Ors.** reported in **2000 (2) BLJR 1098**.

29. Per contra, learned counsel for the respondents - Mr. Harshal Tholia has made following submissions:-



(a) That the State Authorities are bound to follow the Medical Council of India Guidelines and Instructions issued from time to time and the Gazette Notification dated 05.04.2018, issued by the Medical Council of India (MCI), has provided method of exercising choice during counselling to different students and if a candidate had joined either in second all India Counselling or the State second round counselling, such candidate becomes ineligible for further counselling.

(b) Learned counsel has submitted that due to COVID-19 situation, online counselling was done and as such, the spot resignation was not possible and as such, the respondents had no choice except to proceed further in the matter.

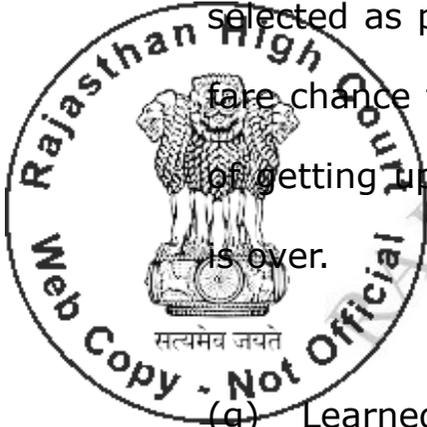
(c) Learned counsel submitted that the petitioners have participated in the counselling and they were aware about eligibility of the candidates and as such, after participating, the petitioners are estopped to challenge the process of counselling. Learned counsel submitted that the petitioners are ineligible to take part in the further counselling process, as they have already been allotted seats in second round of counselling.

(d) Learned counsels submitted that the MCI had also prepared a flow chart and the same pattern is being followed by the State Authorities and all the vacancies, which have become available after second round of counselling, are required to be filled up by way of Mop-up counselling.



(e) Learned counsel has further submitted that the petitioners are ineligible to take part in the further counselling process, as they have already been allotted seats in round two of the counselling.

(f) Learned counsel submitted that all the candidates are selected as per their merit and every eligible candidate was given fair chance to appear in round two of the counselling and chance of getting upgradation is only till the round two State counselling is over.



(g) Learned counsel submitted that vide Notification dated 24th July, 2020, two days time was given to the candidates to exit, if they did not get up-gradation in round two of the counselling.

(h) Learned counsel submitted that the schedule for holding the counselling is fixed by the Apex Court as well as by the Medical Council of India and such schedule is airtight and cannot be changed at this belated stage, when the date of Mop-up counselling has already been announced.

(i) Learned counsel for the respondents Mr. Harshal Tholia has placed reliance on the judgments reported in **(2003) 3 SCC 366 (Neelu Arora (Ms.) and Anr. Vs. Union of India and Ors.)**, **(2001) 8 SCC 355 (Arvind Kumar Kankane Vs. State of U.P. and Ors.)**, **2020 SCC Online SC 468 (Alapati Jyotsna and Ors. Vs. Union of India and Ors.)**.



30. I have heard learned counsel for the parties and scanned the matter carefully.

31. This Court finds that the allotment process (round two) to various P.G. Medical and Dental Courses was carried out '**Online**' due to pandemic COVID-19 situation and online choice and locking by the candidates was from 19th July, 2020 to 21st July, 2020 by



32. This Court further finds that process of seat allotment (Online) by admission board was to be shown by 22nd July, 2020 and declaration of the result and generation of online allotment letters

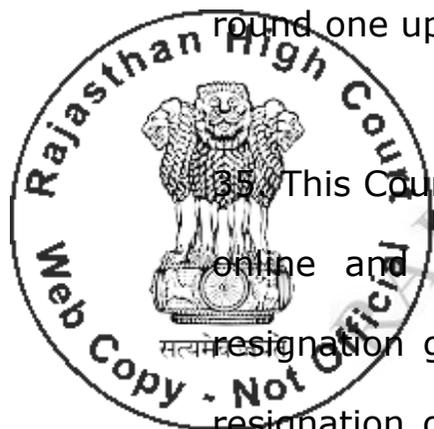
was, to take place on 23rd July, 2020. The last date for exit without forfeiture by joined candidates of round one who could not get upgraded in round two, was 24th July, 2020 by 5:00 PM and physical reporting with the documents etc. at the allotted College was from 24 July, 2020 to 27th July, 2020 by 02:00 PM.

33. This Court finds that an information/letter was circulated by the Chairman of the NEET, P.G. Board on 24th July, 2020 where the last date of resignation without forfeiture by the joined candidate of round one (only for those who could not upgraded in round two) was extended upto 26th July, 2020 by 5:00 PM. The last date for physical reporting of candidates allotted seats in round two in Rajasthan NEET PG, 2020 counselling was extended upto 5:00 PM of 28th July, 2020.

34. This Court finds that if the candidates who participated in second round of counselling, were to fill their choice upto 21st July,



2020 and declaration of result and generation of online allotment letter was 23rd July, 2020 and the last date for exit without forfeiture by the joined candidates of round one, who did not get upgradation in round two, was 24th July, 2020, yet the respondents issued letter/information on 24th July, 2020 that they extended the time for resignation by the joined candidates of round one upto 26th July, 2020.



35 This Court finds that the procedure which was adopted, was online and the candidates, who were required to give their resignation got extension upto 26th July, 2020. The possibility of resignation on the spot, as envisaged in the instructions booklet could not be carried out. It would be relevant to quote the relevant clause with respect to procedure to be followed during second round of counselling:-

“Forfeiture of fee/ Permissibility to students to exercise fresh choice during counseling

Forfeiture of fee / Permissibility to students to exercise fresh choice during counseling shall be in accordance with the following matrix :-

(Govt. of India Gazette notification no. MCI-18(1)/2018-Med./100818, dated 05.04.2018)

Round	Free exit	Exit with forfeiture of fees	Ineligible for further counseling	Amount of registration fee
State Round 1 (on-line)	Yes			
State Round 2 (off-line)		If not joined	If joined	Govt. Rs.25,000/- (Rs.12,500/- for SC/ST/OBC)



				Private Rs.2,00,000/-
State round	Mop-up		If joined	

1. xx xx xx
2. xx xx xx
3. A candidate allotted a seat in First Round and does not report/join the allotted college he would not be penalized (Registration Fee will not be forfeited) and shall be eligible for subsequent rounds.
4. First round joined candidate who has not been up-graded during second round (off-line) counseling at his merit point, may resign at the spot without forfeiture of Registration Fee, failing which he will be considered as part of joined candidates for second round and rules will apply accordingly.
5. A candidate allotted a seat in second round of counseling and does not report/join the allotted seat, his/her registration fee will be forfeited. Such candidate shall not be eligible to participate in subsequent round."



36. The perusal of the aforesaid instructions contained in booklet shows that the State round two counselling was to be carried out offline and the candidates of first round who were not upgraded during second round of counselling (offline) i.e. merit point was to resign at the spot without forfeiture of registration fee.

37. This Court finds that due to online counselling conducted by the respondents the situation had arisen where the candidates, who participated in the second round of State counselling, did not resign till they participate in the second round of counselling and were given chance to resign subsequently upto 26th July, 2020.



38. This Court finds substance in the submission of learned counsel for the petitioners that the exercise, which has been carried out by the respondents in second round of counselling, did not have the availability of seats on account of resignation of the joined candidates of round one and the same has resulted into availability of less number of seats of the candidates who participated in the second round of counselling like the petitioners.

39. This Court is further required to consider the eligibility of the candidates to participate in the Mop-up round as per notification dated 24th July, 2020 where candidates who have been allotted seats in round two have not been rendered eligible for participation in Mop-up/residual allotment.

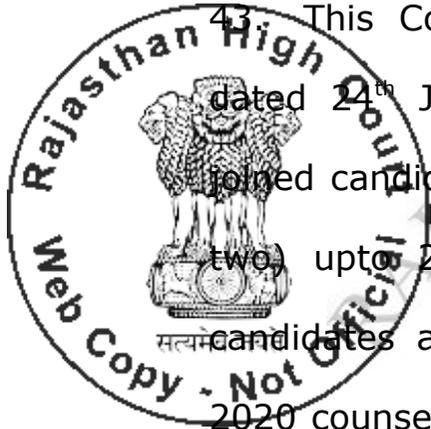
40. This Court finds that the instructions booklet of the P.G. Board makes a reference of the Gazette Notification of the Government of India dated 05th April, 2018 and in the State round two (offline), if candidate has joined, such persons became eligible for further counselling in the State Mop-up round.

41. This Court finds that the petitioners participated in State round two counselling (online) and as such whatever seat was allotted to them, they have joined on such seat and as such the respondents have made them ineligible for further counselling in the State Mop-up round.

42. This Court is also conscious of the fact that due to COVID-19, the respondents had to conduct round two of counselling



online and as such, the difficulty arose for maintaining the seat matrix or availability of the seat or resignation to be given by candidate on the spot, however, the care should have been taken to get correct position of seats and option of resignation to the candidates was also required.



43. This Court finds that the respondents issued information dated 24th July, 2020 by extending the date of resignation of joined candidates of round one (who were not upgraded in round two) upto 26th July, 2020 and the physical reporting for the candidates allotted seats in round two for Rajasthan NEET PG, 2020 counselling was extended upto 05:00 PM on 28th July, 2020.

The respondents have given time to both categories of the candidates by the said notification.

44. The issue before this Court is to consider as whether the petitioners can be given relief at this point of time as the seats, which are left on account of resignation of the candidates can be offered to the candidates, who were lower in merit, as alleged by the petitioners or the petitioners have preferential claim in Mop-up round.

45. This Court finds that the Apex Court time and again has held that the criteria for selection has to be merit alone and merit, fairness and transparency are the ethos of the process for admission to medical courses. The Rule of merit should not be defeated by inefficiency, inaccuracy or improper methods of admission. The Apex Court in the case of **Asha Vs. Pt. B.D. Sharma University of Health Sciences (supra)** has



categorically held that admission to medical colleges has to be on the basis of merit and if a candidate is not at fault and pursued his/her rights in expeditious manner, meritorious candidate should not be made to suffer.

46. This Court further finds that the Apex Court recently in the case of **S. Krishna Sradha vs. The State of Andhra Pradesh & Ors. (Supra)** has held that a student who is meritorious candidate and who has pursued his/her legal right expeditiously without delay, should not be denied relief of admission.

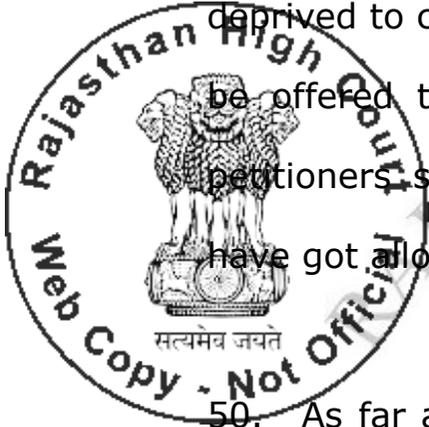


47. The submission of the learned counsel for the respondents that MCI Guidelines have been followed and flow chart, which is prepared, was also provided in the instructions booklet and the same has been followed by the State, suffice it to say that the instructions booklet had contained the State round two offline counselling and if the same has not happened, the petitioners cannot be blamed for the same.

48. The submission of learned counsel for the respondents that since the petitioners have participated and they cannot challenge the process of selection, this Court finds that the petitioners had participated in the counselling process, however, not following the instructions contained in the booklet or extending the date of resignation of the candidates, cannot affect rights of the petitioners. The Authorities are required to act in a particular manner and if they do not do the same, same cannot be allowed and if a candidate has acted or participated on a wrong and illegal criteria, he is not estopped to challenge the same.



49. The submission of learned counsel for the respondents that the petitioners have already got admission and they cannot be permitted to participate in the Mop-up round of counselling, this Court finds that if the respondents are allowed to fill the residuary and Mop-up round, conducted by them, the persons who were deprived to choose against the seat which had become vacant, will be offered to the candidates, who are lower in merit and the petitioners should not be denied only on the ground that they have got allotment in round two.



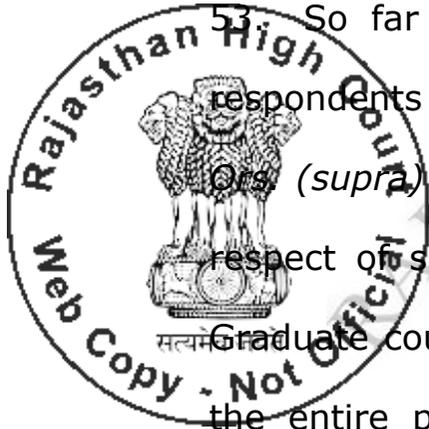
50. As far as reliance placed by the counsel for the respondents on the judgment in the case of Neelu Arora (Ms) and another (supra) is concerned, the Apex Court in the said judgment has laid down a law that third round of counselling is not permissible and the process of counselling should not become endless. The said judgment has no application in the presents facts of the case.

51. So far as the reliance placed by learned counsel for the respondents in the case of Arvind Kumar Kankane (supra) is concerned, the Apex Court has laid down that after first counselling, if subsequent counselling is held for allocation of remaining seats including those which fall vacant subsequent to first counselling, the same should be filled-in in order of merit amongst the waiting list candidates instead of putting the seat back for counselling for all the candidates.

52. In the humble opinion of this Court, the said judgment is in respect of giving chance to the candidates in subsequent



counselling, who have earlier participated in the counselling and the candidates, who have not participated in the counselling, at all, such persons cannot be given again right to participate in the counselling. The said judgment also has no application in the present facts of the case.



53. So far as the reliance placed by learned counsel for the respondents on the judgment in the case of *Alapati Jyotsna and Ors (supra)* is concerned, the issue before the Apex Court was in respect of single counselling for filling up the seats in the Post Graduate courses and the Apex Court has refused to interfere, as the entire process had been undertaken and many candidates were allotted various courses in the counselling. The Apex Court also found that common counselling or single online counselling would take place in future, as per the stand taken by the National Board of Examination.

54. In the humble opinion of this Court, since the Mop-up round is still to be conducted by the Authorities, the petitioners cannot be non-suited if there has been violation of merit and further, the entire exercise has not been concluded by the respondents.

55. This Court, in the present case, finds that due to non-availability of seats on account of non-tendering resignation in second round of counselling, the right of the petitioner has been affected.

56. This Court, however, at this juncture when second round of counselling is over, will not unsettle the settled position. This Court



is required to consider as what relief can be given to the petitioners and can they be permitted to participate in Mop-up round.

57. This Court finds that considering the time schedule and date of Mop-up round announced by the State Government to be held on 30th July, 2020, the petitioners are required to be permitted to participate in the Mop-up round and they cannot be rendered ineligible as per the condition mentioned in the Notification dated 24th July, 2020. This Court, however, will not disturb the admissions or allotment, which have already been granted after second round of State Counselling.



58. Accordingly, these writ petitions are allowed and the condition contained in the Notification dated 24th July, 2020 declaring the petitioners ineligible for participation in Mop-up/residuary allotments in P.G. seat, is declared arbitrary and the same is set aside. The respondents are directed to include the petitioners in Mop-up round and if the petitioners have requisite merit, their cases may be considered, as per their merit and preferences.

59. A copy of this order be separately placed in the connected petition.

(ASHOK KUMAR GAUR),J

Preeti Asopa/Himanshu/72-73