



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 6068/2022

Geetanjali Medical College And Hospital, Geetanjali Medicity,
Hiran Magari Extension, Nh-8 Bypass, Near Eklingpura Chouraha,
Udaipur, Rajasthan Through Its Authorized Signatory Sandeep
Rana

----Petitioner

Versus

1. The Union Of India, Through Its Secretary, Ministry Of Health And Family Welfare, Nirman Bhwan, New Delhi.
2. National Medical Commission, Pocket 14, Sector 8, Dwarka Phase-I, New Delhi Through Its President.
3. The Medical Assessment And Rating Board (Marb), National Medical Commission, Pocket 14, Sector 8, Dwarka Phase-I, New Delhi Through Its President.
4. Neet Ug/pg Admission Counseling Board Rajasthan 2021, Through Its Chairman, Government Dental College (Ruhs), College Of Dental Science, Jaipur.
5. The State Of Rajasthan, Through Principal Secretary, Medical Education Department, Government Of Rajasthan, Secretariat, Jaipur.
6. The Medical Counseling Committee, Directorate Of Medical Education (Mcc) Directorate General Of Health Services, Government Of India, New Delhi Through Its Director.

----Respondents

CONNECTED WITH

S.B. Civil Writ Petition No. 6069/2022

1. Ananta Charitable Educational Society, 53, V-Road, New Keshav Nagar, Udaipur (Rajasthan) Through Its Authorized Signatory Shri Nitin Sharma
2. Ananta Institute Of Medical Sciences And Research Centre, N.h. 8, Village Kaliwas, Tehsil Nathdwara, District Rajsamand (Rajasthan) Through Its Authorized Signatory Shri Nitin Sharma.

----Petitioners



Versus

1. The Union Of India, Through Its Secretary, Ministry Of Health And Family Welfare, Nirman Bhwan, New Delhi.
2. National Medical Commission, Through Its President, Pocket 14, Sector 8, Dwarka, Phase-I, New Delhi.
3. Medical Assessment And Rating Board, Through Its President, National Medical Commission, Pocket 14, Sector 8, Dwarka, Phase-I, New Delhi.
4. Rajasthan University Of Health Sciences, Jaipur Through Its Registrar.
5. Neet Pg Admission Counseling Board Rajasthan 2021, Through Its Chairman Cum Principle And Controller, Ruhs College Of Dental Science, Jaipur.

----Respondents

S.B. Civil Writ Petition No. 6349/2022

1. Pacific Institute Of Medical Sciences, Having Its Campus At Ambua Road, Village Umarda Udaipur, Rajasthan, Through Its Registrar, Devendra Jain
2. Ashish Agrawal

----Petitioners

Versus

1. Union Of India, Ministry Of Health And Family Welfare, Government Of India, Through Its Secretary, Nirman Bhawan, New Delhi-110001.
2. National Medical Commission, Through Its Secretary, Pocket-14, Sector-8, Dwarka, New Delhi-110077
3. Medical Assessment And Rating Board, Through Its President, National Medical Commission, Pocket-14, Sector-8, Dwarka, New Delhi-110077
4. The Chairman, State Neet Post-Graduate Medical And Dental Admission Cum Controlling Council Board-2021, Jaipur Through Its Principal And Controller, Sms Medical College And Attached Hospitals, Jaipur, Rajasthan.
5. State Of Rajasthan, Through The Secretary, Department



Of Higher Education Secretariat, Jaipur (Rajasthan).

----Respondents

S.B. Civil Writ Petition No. 6119/2022

Pacific Institute Of Medical Sciences, Through Its Registrar
Devendra Jain

----Petitioner

Versus

1. Union Of India, Ministry Of Health And Family Welfare,
Through Its Secretary, Nirman Bhawan, New Delhi-
110001.
2. National Medical Commission, Through Its Secretary,
Pocket-14, Sector-8, Dwarka, New Delhi-110077
3. Medical Assessment And Rating Board, Through Its
President, National Medical Commission, Pocket-14,
Sector-8, Dwarka, New Delhi-110077
4. The Chairman, State Neet Post-Graduate Medical And
Dental Admission Cum Controlling Council Board-2021,
Jaipur Through Its Principal And Controller, Sms
Medical College And Attached Hospitals, Jaipur,
Rajasthan.
5. Director General, Directorate Of Medical Education,
Govt Of Rajasthan, Room No.2024, Main Building,
Secretariat, Jaipur-302005.

----Respondents

For Petitioner(s) : Mr. Nidhesh Gupta, Sr. Advocate
Mr. Vikas Balia, Sr. Advocate
all assisted by
Mr. Akhilesh Rajpurohit
Mr. Hemant Dutt
Mr. Hardik Gautam
Mr. Harshit Vyas
Mr. Devesh A. Purohit
Mr. Shashank Saurav
Mr. Dilip Choudhary
Mr. Milap Chopra
Mr. Abhishek Mehta

For Respondent(s) : Mr. R.S. Saluja
Mr. Manish Vyas, AAG



Mr. Kailash Choudhary
Mr. Uttam Singh Rajpurohit for
Mr. Mukesh Rajpurohit, ASG
Mr. Mahendra Bishnoi

HON'BLE MR. JUSTICE VIJAY BISHNOI

Judgment / Order

03/06/2022



These stay petitions, filed along with their respective writ petitions, are being decided by this common order.

The petitioner-institutions have filed these writ petitions being aggrieved with the orders/letters dated 14.04.2022 and 18.04.2022 issued by the Medical Assessment and Rating Board (hereinafter to be referred as 'the MARB') to the National Medical Commission (hereinafter to be referred as 'the NMC') for withdrawal of letter of permission and cancellation of admission in undergraduate and postgraduate courses in the petitioner-institutions for the academic session 2021-22 with further recommendation for cancellation of recognition of the petitioner-institutions w.e.f. 14.04.2022 and 18.04.2022 respectively.

Facts of all the above writ petitions more or less are identical except the number of seats under the undergraduate (MBBS) and postgraduate courses for which the petitioner-institutions were permitted to grant admissions by the respondent No.2. For the sake of convenience, facts of S.B.Civil Writ Petition No.6068/2022 (hereinafter to be referred as 'Geetanjali Medical College and Hospital') are taken into consideration.

Brief facts of the above referred writ petition are that Geetanjali Medical College and Hospital was established in the



year 2007 as per the permission granted by the Erstwhile Medical Council of India (hereinafter to be referred as 'the MCI'). The Geetanjali Medical College and Hospital admitted 150 students of MBBS Course in the year 2008. Recognition was granted by the MCI under Section 11 of the Indian Medical Council Act, 1956 (hereinafter to be referred as 'the Act of 1956') for the above referred seats in due course of time and same is in currency up to year 2023. In the meanwhile, the Geetanjali Medical College and Hospital also applied for grant of permission to conduct P.G. Course (super speciality and broad speciality) and the same was also recognized by the MCI and as such 150 seats under the undergraduate course (MBBS) and 105 seats for postgraduate course were recognized by the MCI.

In the year 2018, the Geetanjali Medical College and Hospital applied for increase in intake of MBBS seats from 150 to 250 seats. The letter of permission for increasing 100 was granted to the Geetanjali Medical College and Hospital in 2019 and as such, the Geetanjali Medical College and Hospital admitted 250 students in MBBS Course in the academic session 2019-20. The Geetanjali Medical College and Hospital thereafter applied for increasing in intake of seats for PG Course for the academic session 2021-22, however, the respondent No.2 allowed to increase in the intake for few seats and not for all the seats as applied.

The Geetanjali Medical College and Hospital filed two writ petitions being S.B.Civil Writ Petition Nos. 855/2022 and 817/2022 and this Court while issuing notices to the respondent-NMC directed to allot 15 students of PG/MD Radio Diagnosis



Course and 24 students of PG/MD General Medicine Course for the academic year 2021-22 to the Geetanjali Medical College and Hospital provisionally. In view of above facts, the Geetanjali Medical College and Hospital was having the eligibility to admit 250 students in undergraduate course (MBBS) and 120 students in PG Courses.

On 24th and 25th February 2022, surprise inspection was carried out in the Geetanjali Medical College and Hospital by the assessors of the MARB. The assessment report was prepared on 25.02.2022. The MARB issued show cause notice to the Geetanjali Medical College and Hospital on 21.03.2022 and reply/explanation was filed by it on 05.04.2022.

After taking into consideration the reply of the Geetanjali Medical College and Hospital, the MARB vide order/letter dated 18.04.2022 withdrew the Letter of Permission/Renewal of Permission for increase in intake from 150 to 250 (additional 100) MBBS seats and stopped all admissions in the said course for the academic session 2021-2022. The respondent-MARB also withdrew the permission earlier granted to the Geetanjali Medical College and Hospital for increase of seats in postgraduate medicine course in various broad specialities and also stopped admissions on all postgraduate seats for the academic session 2021-22. The respondent-MARB also withdrew permission earlier granted for admitting students in super speciality medicine courses and also stopped admissions on all seats in super speciality course for the academic session 2021-22. The MARB further recommended to National Medical Commission



to cancel the recognition for the college including undergraduate, postgraduate-broad and super-speciality courses.

Assailing the validity of the impugned orders/letters, learned counsel for the petitioner-institutions have argued that as per Section 26 of the Act of 2019, the MARB is empowered to perform certain functions, however, it is not empowered to cancel the admissions of the students in various courses and is also not empowered to issue directions for stoppage of admissions.

Learned counsel for the petitioner-institutions have also argued that the whole exercise of surprise inspections carried out by the assessors of MARB in the petitioner-institutions suffers from malafide because the said inspections were carried out solely for the reason that the petitioner-institutions approached this Court by way of filing writ petitions for increasing in the seats in P.G. Course, which has wrongly been denied by the NMC.

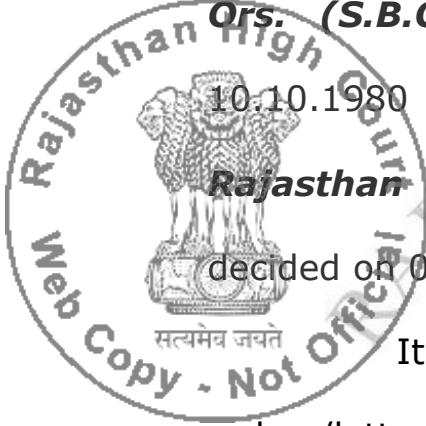
It is also submitted that as per Section 28 of the Act of 2019 and as per the Medical Council of India Establishment of Medical College Regulations, 1999, which are enforceable by virtue of Section 61 of the Act of 2019, the MARB is required to provide opportunity to the petitioner-institutions to rectify the deficiencies before passing the impugned orders/letters.

Learned counsel for the petitioner-institutions have also argued that as per clause (f) of Sub-Section (1) of Section 26 of the Act of 2019, the respondent-MARB can take measures such as issuing warning, imposition of monetary penalty, reducing intake or stoppage of admission and recommending to the Commission for withdrawal of recognition of an institution for failure to maintain minimum essential standards, however, before imposing



harsh penalty, restricting the admissions or recommending for withdrawal of recognition, the MARB is required to adopt the alternative method of imposing monetary penalty.

Learned counsel for the petitioner-institutions have placed reliance on decisions of this Court rendered in ***M/s Neel Kanth Chemical Works, Jodhpur Vs. State of Rajasthan & Ors. (S.B.Civil Writ Petition No.1241/1980)*** decided on 10.10.1980 and ***M/s Sojat Lime Company vs. State of Rajasthan & Ors. (S.B.Civil Writ Petition no.14717/2016)*** decided on 06.11.2017.



It is further argued that a bare perusal of the impugned orders/letters clearly demonstrates that the respondent-MARB has failed to appreciate the facts mentioned in the replies/explanations to the show cause notice and without even recording a finding that the facts disclosed by the petitioner-institutions, regarding the deficiencies pointed out, have been rejected, has straightway passed the impugned orders/letters. It is also argued that the assessors of MARB did not conduct the inspections as per the NMC Guidelines for assessment of academic session 2021-22.

Learned counsels for the petitioner-institutions have submitted that before passing of the impugned orders/letters, up to 12.04.2022 the petitioner-institutions already provided admissions upon all MBBS seats (permitted and recognized), however, only some of students have been admitted against permitted and recognized seats in PG Courses.

It is argued that though the last date for providing admission in the postgraduate course is declared as 07.05.2022 by the Central Government but as per the decision of Hon'ble



Supreme Court rendered in ***Priya Darshni Dental College and Hospital vs. Union of India*** reported in **(2011) 4 SCC 623** and in ***Royal Medical Trust and Ors. vs. Union of India (UOI) and Ors.*** reported in ***AIR 2015 SC 3300***, the Central Government is now statutorily empowered to modify the schedule for admissions in MBBS and postgraduate courses and as such this Court is also very well in its jurisdiction to modify the schedule in the admissions in the P.G. courses. It is also argued that the Hon'ble Supreme Court in ***Priya Gupta vs. State of Chattisgarh and Ors.*** reported in **(2012) 7 SCC 433** and ***Asha vs. PT. B.D.Sharma University of Health Sciences and Others*** reported in **(2012) 7 SCC 389** has also held that in exceptional cases, the time schedule for admissions can be relaxed. It is also argued that the Hon'ble Supreme Court in ***Index Medical College, Hospital and Research Centre vs. State of Madhya Pradesh & Ors.***, reported in **2021 SCC OnLine SC 318** has held that not filling up all the medical seats is not the solution to the problem and it may result in huge financial loss to educational institutions apart from being a national waste of resources.

It is submitted that the petitioner-institutions have invested heavily in establishing medical colleges and is also in requirement of funds for carrying out day-to-day activities and if the petitioner-institutions are not allowed to fill the remaining seats in P.G. courses during the pendency of the writ petitions, they will suffer huge loss.

Learned counsel for the petitioner-institutions have, therefore, argued that the stay petition be allowed and the respondents be directed to conduct a special counseling to



facilitate the petitioner-institutions to fill in the remaining seats in various P.G. courses.

Per contra, Mr R.S.Saluja counsel appearing for the respondent Nos.2 and 3 has vehemently opposed the stay petitions and argued that the petitioner-institutions are having statutory alternative remedy of filing appeal and second appeal under the provisions of the Act of 2019 and the writ petitions filed by the petitioners are not maintainable and, therefore, no interim direction can be issued to allow the petitioner-institutions to fill the vacant seats of P.G. courses.

It is further submitted that as per Section 26(1)(f) of the Act of 2019, the MARB is very well in its jurisdiction to direct for stoppage of admissions. It is also argued that the explanations/replies, submitted by the petitioner-institutions in response to the show cause notice, were taken into consideration by the MARB objectively and the same has been rejected by giving reasons and as such there is no illegality in the impugned orders/letters passed by the MARB.

Mr Saluja has further argued that the cutoff date for providing admissions in the postgraduate course was 07.05.2022 and the same cannot be extended for any reason, particularly at the request of the Medical Colleges.

It is submitted that the assessors of MARB, during surprise inspections, found that the petitioner-institutions failed to maintain the minimum standard regarding the faculties as well as the infrastructure and, therefore, no relief can be granted to them by way of issuing any interim direction.



Learned counsel for the respondents have placed reliance on the decision of Hon'ble Supreme Court in **Medical Council of India vs. Vedantaa Institute of Academic Excellence Pvt. Ltd. and Ors.** reported in **AIR 2018 SC 2642** and argued that the MARB is not under obligation to provide opportunity to a Medical College for rectifying the deficiencies or for conducting fresh inspection where it fails to maintain minimum standard as per the regulations in respect of faculties and infrastructure.

Learned counsel for the respondents have also submitted that the inspections were carried out in fair manner as per the guidelines issued by the NMC and there is no malafide on the part of the respondent No.3 in passing the impugned orders/letters.

Heard learned counsel for the rival parties and perused the material available on record.

Though arguments have been raised by the counsels for the parties against and in favour of the impugned orders/letters but at this stage, I do not propose to give any finding on merits except on the issues whether the MARB lacks authority to issue stoppage of admissions and cancellation of admissions, but considering that whether at this stage, the petitioner-institutions can be allowed to fill the remaining seats in the P.G. courses during the pendency of the writ petition, particularly after expiry of cutoff date fixed by the Central Government for admissions in P.G. courses.

This Court on 28.04.2022 passed an order as interim measure and protected the admissions of the students in the



petitioner-institutions for the session 2021-22 in various undergraduate and postgraduate courses and also issued a direction that students already admitted in the petitioner-institutions in respective courses shall be allowed to pursue their studies in the petitioner-institutions till next date.

So far as argument of the learned counsel for the petitioner-institutions to the fact that the respondent-MARB is not empowered for issuing direction for stoppage of admissions is concerned, it would be appropriate to refer to the provisions of clause (f) of Sub-Section (1) of Section 26 of the Act of 2019, which reads thus;

“take such measures, including issuing warning, imposition of monetary penalty, reducing intake or stoppage of admissions and recommending to the Commission for withdrawal of recognition, against a medical institution for failure to maintain the minimum essential standards specified by the Under-Graduate Medical Education Board or the Post-Graduate Medical Education Board, as the case may be, in accordance with the regulations made under this Act.”

The above provision clearly speaks that MARB can take measures including stoppage of admissions.

Recently, a Division Bench of Bombay High Court at Aurangabad Bench in ***Annasaheb Chudaman Patil Memorial Medical College vs. Medical Assessment and Rating Board (MARB) & Ors., Writ Petition No.1280/2022*** decided on 04.03.2022 has held that as MARB is lacking of authority to issue directions for stoppage of admissions, however, the judgment passed by the Bombay High Court at Aurangabad Bench has been



challenged by the NMC by way of SLP No.5623/2022 before the Hon'ble Supreme Court, wherein the following observations are made in the order dated 08.04.2022:

"*Prima facie*, at this stage, it appears that the finding of the High Court in regard to the lack of authority to issue a stoppage of admissions does not appear to be correct in view of the provisions of Section 26(1)(f) of the National Medical Commission Act 2019."

In such circumstances, this Court is prima facie of the opinion that the MARB is having jurisdiction to issue direction for stoppage of admissions.

So far as the cancellation of admissions already made is concerned, this Court vide order dated 28.04.2022 has already protected those admissions as Section 26(1)(f) of the Act of 2019 does not speak for cancellation of admissions already granted and, therefore, *prima facie* it appears that MARB lacks authority to issue cancellation of admissions.

It is not in dispute that the Central Government has passed the order dated 05.05.2022 and declared the last date for admission in the P.G. courses as 07.05.2022.

Now the question whether the petitioner-institutions can be permitted to fill up the remaining seats in the postgraduate courses, which could not be filled on account of passing of the impugned orders/letters.

It is true that the Hon'ble Supreme Court in ***Priya Darshni Dental College and Royal Medical Trust and Ors. vs. Union of India*** (supra), has observed that Central Government can amend the schedule for admission in the medical institutions but at the same time, the Hon'ble Supreme Court in



various pronouncements has clearly held that the time schedule for admission in the medical course should not be interfered with except in rarest of rare cases or in exceptional circumstances.

In **Priya Gupta vs. State of Chattisgarh and Ors.** (supra), the Hon'ble Supreme Court has indicated the disadvantages for not adhering time schedule and held as under"

"41. Inter alia, the disadvantages are

(1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in Muskan Dogra v. State of Punjab.

(2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.

(3) The delay in adherence to the schedule, delay in the commencement of courses, etc. encourage lowering of the standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions.

(4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have



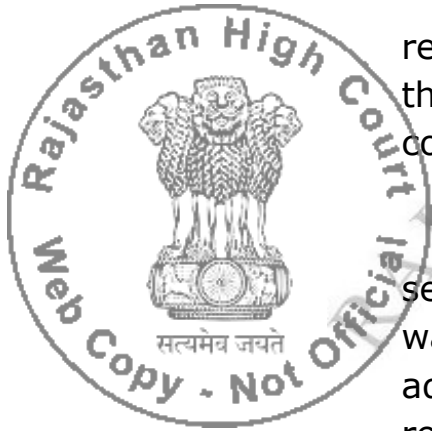


completed their course while litigation was pending in the court of competent jurisdiction.

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

(6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit."



In the same judgment, the Hon'ble Supreme Court has insisted upon the High Courts not to interfere in the time schedule. The relevant para No.78.4 reads as under :

"78.4 With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. We may refer the dictum of this Court in Medical Council of India v. Rajiv Gandhi University of Health Sciences in this regard."

Though the Hon'ble Supreme Court has relaxed the time schedule for admissions in some of the cases such as Asha's and Priya Gupta's cases (supra) but those were the cases of the students and not of medical colleges.



It is true that the Hon'ble Supreme Court in the case of ***Index Medical College, Hospital and Research Centre*** (supra), has observed that not filling up of all the medical seats is not solution to the problem and it may result in huge financial loss to the management of the educational institutions apart from being a national waste of resources but as the petitioner-institutions were found not meeting the minimum essential standards, as per impugned orders, it is not in the interest of any one to allow the petitioner-institutions to fill the remaining P.G. seats.



More over, the Hon'ble Supreme Court in this judgment has made above referred observations in relation to the undergraduate medical courses and not in relation to postgraduate medical courses and the same is evident from following observations made in the judgment:

"Upgradation and selection of subject of study is pertinent only to postgraduate medical course. In so far as undergraduate medical course is concerned, the upgradation is restricted only to a better college."

The Hon'ble Supreme Court in ***Medical Council of India vs. Kalinga Institute of Medical Sciences (KIMS) and Ors.***, reported in ***AIR 2016 SC 2294*** has clearly held that it is better to deny admission to a student, rather than have the sword of Damocles hanging over him or her. The relevant para is quoted hereunder:

"That apart, we are of opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25th September, 2015. There was no need for the High



Court to rush into an area that the MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved – what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.”



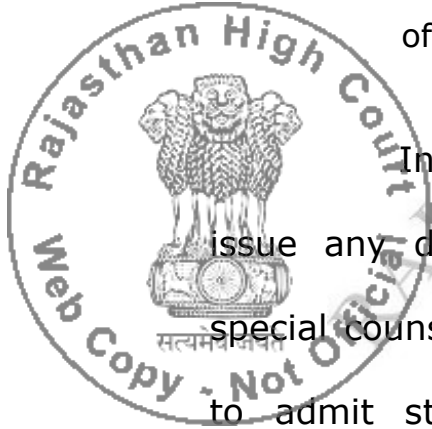
Recently, the Hon'ble Supreme Court in ***Shikhar & Anr. Vs. National Board of Examination & Ors. (Writ Petition (C) No.208 of 2022)*** decided on 05.04.2022 has refused to extend the cutoff date for completion of internship from 31st July 2022 on a petition filed by the aspirants of NEET-PG 2022.

Again, the Hon'ble Supreme Court recently in the case of ***Dr. R. Dinesh Kumar Reddy & Ors. Vs. Medical Counselling Committee (MCC) & Ors. (Writ Petition (Civil) No.341/2022)*** decided on 13.05.2022 has refused to postpone the NEET-PG 2022 examinations while dealing with the situation where cut-off date has not been followed due to Covid Pandemic while observing as under:

“Postponement of exams results in chaos and uncertainty. During the onslaught of the Covid



waves, postponements may have been granted by the administering authorities since we were confronted with an unprecedented human crisis. This should not become the norm. Doing so will disturb the sanctity of medical education. As the country gets back on the rails after the dislocation which was caused due to the Covid-19 pandemic, it is necessary that the decision which has been taken by the Union Ministry of Health and Family Welfare of adhering to the time schedule must be accepted.”



In view of the above discussion, I am not inclined to issue any direction to the concerned respondents to conduct special counseling for the petitioner-institutions to facilitate them to admit students on the remaining seats of P.G. courses.

However, the interim order passed by this Court protecting the admissions already granted to the students to various undergraduate or postgraduate courses in the petitioner-institutions for the academic session 2021-22 shall remain in currency and the students, already admitted, shall be allowed to pursue their study in respective petitioner-institutions till disposal of the writ petitions.

The stay petitions are disposed of .

List the writ petitions on 18.07.2022 at admission stage for final hearing.

[VIJAY BISHNOI],J.

m.asif/PS