



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

WRIT PETITION NO.12646 OF 2024

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Vedantaa Institute of Medical Science & Ors. .. Petitioners

Vs.

The State of Maharashtra & Ors. .. Respondents

...
Mr. V. M. Thorat with Mr. M. V. Thorat, Ms. Pooja Thorat, Mr. Amar Bodke, Ms. Trisha Choudhari, Advocates for the petitioners.

Mr. N. C. Walimbe, Additional Government Pleader with Mr. S. P. Kamble, Assistant Government Pleader for the respondent-State.

Mr. Ganesh K. Gole with Mr. Kunjan Makwana, Advocates for the respondent no.4-NMC.

Mr. Sameer Khedekar, Advocate for the respondent no.5.

...
**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

DATE : 25th OCTOBER, 2024.

P.C. :

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

2. The learned counsel for the petitioners by referring to Rule 16 of the Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission to the Full Time Professional

Undergraduate Medical and Dental Courses) Rules, 2016 (for short, “Rules of 2016”) submits that seats remaining vacant at the end of all CAP Rounds are permitted to be filled in by the Institution through Institution Level Round with the prior approval of the Competent Authority. Since Rule 16 entitles such vacant seats that remain at the conclusion of all CAP rounds to be filled in by the Institution after conducting an Institutional Level Round with the prior approval of the Competent Authority, Rule 11.1.9.1 which prohibits filling in of such vacancies through an Institutional round is liable to be struck down. The said prohibition is in view of Circular dated 24/07/2023 that has been issued by the fourth respondent, National Medical Commission-NMC. Referring to the said Circular, it is submitted that the NMC has no authority in law to impose such restriction as it has no power to regulate admissions. In that regard, he referred to Schedule-VII of the Constitution of India, Union List- Entry 66 and Concurrent List-Entry 25. He referred to the observations of the Supreme Court in paragraph 101 of the decision in *Modern Dental College and Research Centre and Others Vs. State of Madhya Pradesh and Others*, (2016) 7 SCC 353 to submit that in the matter of admission of students for undertaking medical education, the relevant entry was Entry 25 of the Concurrent List.

Referring to a similar situation that had arisen during academic year 2023-24 it was submitted that the State CET Cell on 26/09/2023 had permitted such vacant seats to be filled in at the Institutional Level. Though the NMC had proceeded to issue a notice dated 18/10/2023 stating therein that the notice dated 26/09/2023 issued by the State CET Cell was in violation of the Circular dated 24/07/2023, the admissions of students undertaken on the basis of notice dated 26/09/2023 were protected by the Supreme Court by passing an interim order. If at the end of all CAP rounds, some seats were vacant and were not permitted to be filled in, same would cause irreparable loss without any legal justification. The admissions to be undertaken at the Institution Level were on the basis of merit and through online process. It was thus prayed that the petitioners were entitled for interim relief.

3. This prayer was opposed by the learned counsel appearing for the respondent no.4-NMC. According to him, by virtue of the Circular dated 24/07/2023 such vacant seats could not be filled in by conducting Institutional Level Round. He referred to the affidavit in reply filed on behalf of the NMC and especially paragraph 112 thereof. He also referred to the decision in *Baharul Islam and Others Vs. Indian Medical Association and Others* (2023)

SCC OnLine SC 79 to submit that the contentions raised by the petitioners could not be accepted. As regards, the interim relief granted by the Supreme Court in the last academic year, it was submitted that it was the students who had approached the Supreme Court and not any Institution. He therefore submitted that no interim relief ought to be granted.

4. *Prima facie*, we find that in view of Entry 25 in the Concurrent List, the regulation of education including medical education could be undertaken by the Union as well as the State. This issue has been considered by the Supreme Court in *Modern Dental College and Research Centre (supra)* wherein it is held that in the matter of education including admission, the State Legislature has the necessary power by virtue of Entry 25 of the Concurrent List. It is pertinent to note that Rule 16 of the Rules of 2016 as framed by the State Legislature permits filling in of vacant seats after all CAP Rounds are over by an Institution through an Institutional Level Round. The State Legislature in view of Entry 25 of the Concurrent List was entitled to frame the said Rules. On the other hand, the Circular dated 24/07/2023 issued by the NMC is in the form of an Executive Instruction. The same cannot operate in the manner that would run counter to Rule 16 of the Rules of 2016 unless the primary legislation being

the National Medical Commission Act, 2019 is amended. In the academic year 2023-2024, the CET Cell had permitted such vacant seats to be filled in at the Institutional Level. It is true that a co-ordinate Bench to which one of us (A. S. Chandurkar, J) was a party in its judgment dated 10/11/2023 – Writ Petition No.7223 of 2023 (*Saniya Fatima Rahman d/o Mohd. Naeemur Rahman & Anr. Vs. The National Medical Commission & Ors.*) had held the communication dated 18/10/2023 issued by the Under Graduate Medical Education Board, New Delhi to be valid, which communication had disapproved the notice dated 26/09/2023 issued by the State CET Cell, the Circular dated 24/07/2023 issued by the NMC was not under challenge therein. In the present case, there is a specific challenge raised to the Circular dated 24/07/2023.

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

further course of action, list the writ petition on 29/10/2024 so as to enable the said respondents to place before the Court the steps taken by them in compliance with the aforesaid directions.

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

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]