

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF AUGUST, 2020

PRESENT

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

AND

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

W.P.NO.9234/2020 C/W W.P. NO.9239/2020 (EDN-AD)
& W.P. NO 9335/2020 (EDN-MED)

IN W.P.NO.9234/2020:

BETWEEN:

1. KARNATAKA PROFESSIONAL COLLEGES
FOUNDATION
NO.132, 2ND FLOOR, 17TH CROSS,
11TH MAIN MALLESWARAM,
BENGALURU - 560 055
REP. BY ITS SECRETARY
SHRI.R.V. GOVINDA RAO
AGED ABOUT 75 YEARS.
2. M.S. RAMAIAH MEDICAL COLLEGE
MSRIT POST, BANGALORE – 560 054
REPRESENTED BY ITS REGISTRAR
(ADMINISTRATION)
DR.T. HEMANT
S/O DR. T. SATYANARAYANA RAO
AGED ABOUT 46 YEARS
RESIDING AT BANGALORE.
3. DR. BHAVANI DEVI S
D/O N. SRINIVAS MURTHY

AGED ABOUT 25 YEARS
RESIDING AT #2452, 10TH MAIN ROAD
2ND STAGE, 'D' BLOCK,
RAJAJINAGAR, BANGALORE - 560 010
ADMITTED TO M.D. (RADIO DIAGNOSIS)
PETITIONER NO.2.

4. DR. SAHAS NITHYANAND
S/O N. NITHYANAND
AGED ABOUT 27 YEARS
RESIDING AT #15, YADU NIVAS
1ST MAIN ROAD, YADAVGIRI
MYSORE- 570 020, ADMITTED TO M.S
(ORTHOPAEDICS) IN PETITIONER NO.2.
5. DR. ASHWIN S. BHAT
S/O SHANKARANARAYANA BHAT
AGED ABOUT 27 YEARS
RESIDING AT NO.726,
'ADITHI' 23RD CROSS, K.R. ROAD,
BANASHANKARI 2ND STAGE
BANGALORE - 560 070, ADMITTED TO M.S.
(ORTHOPAEDICS) IN PETITIONER NO.2.
6. DR. SUDA TABITHA
D/O RAVINDRA REDDY
AGED ABOUT 25 YEARS
RESIDING AT 39/628-3, PATEL ROAD
ARVIND NAGAR, CUDDAPAH
ANDHRA PRADESH - 516 001,
ADMITTED TO M.S. (OPHTHALMOLOGY)
IN PETITIONER NO.2.
7. DR. KAVYA V.N
D/O V. NATARAJAN
AGED ABOUT 27 YEARS
RESIDING AT NO.270/B, 3RD 'B' CROSS
3RD STAGE, 2ND BLOCK,
BASAVESHWARNAGAR,

BANGALORE - 560 079,
ADMITTED TO M.S. (GENERAL SURGERY)
IN PETITIONER NO.2.

8. DR. SUJITH B
S/O BALAKRISHNAN
AGED ABOUT 25 YEARS
RESIDING AT NO. 39/39, KAVERI NAGAR
MELACHINDAMANI, TIRUCHIPPALLI
TEPPAKULAM, TAMIL NADU - 620 002
ADMITTED TO M.D. (RESPIRATORY MEDICINE)
IN PETITIONER NO.2.
9. DR. ERAM JAWAID
D/O JAWAID AKHTAR
AGED ABOUT 25 YEARS
RESIDING AT NO.55/B, 4TH CROSS
JUDICIAL LAYOUT, RMV 2ND STAGE
BANGALORE - 560 094, ADMITTED TO M.D.
(PAEDIATRICS) IN PETITIONER NO.2.
10. SHRIDEVI INSTITUTE OF MEDICAL SCIENCES
AND RESEARCH HOSPITAL
TUMKUR REPRESENTED BY ITS PRINCIPAL
DR. D.K. MAHABALARAJU PRINCIPAL
S/O KANAPPA
AGED ABOUT 66 YEARS
R/A TUMKUR.
11. DR. NINAD T.S
S/O SHASHIDHARA T.S.
AGED ABOUT 25 YEARS
RESIDING AT 'NINADA NILAYA CB NAGAR'
4TH CROSS, UPPARAHALLI
TUMKUR - 572 102,
ADMITTED TO M.D. (GENERAL MEDICINE)
IN PETITIONER NO.10.

12. DR. MANZOOR C.K
S/O KUNHAHAMED K.
AGED ABOUT 26 YEARS
RESIDING AT SAHAL MANZIL, ATHINHAL
P.O. MANIKOTH, KANHANGAD
KASARAGOD, KERALA - 671 316
ADMITTED TO M.D. (PAEDIATRICS)
IN PETITIONER NO.10.
13. DR. NAVANEETH. S
S/O SHIVAPRAKASH R
AGED AOBUT 30 YEARS
RESIDING AT NO.274, 39TH CROSS
19TH MAIN ROAD, 5TH BLOCK
HBR LAYOUT, BANGALORE – 560 043
ADMITTED TO M.D. (RADIO DIAGNOSIS)
IN PETITIONER NO.10.
14. BVVS SANGH'S
S. NIJALINGAPPA MEDICAL COLLEGE
NAVANAGAR – BAGALKOT – 587 103
REPRESENTED BY ITS PRINCIPAL
SRI. ASHOK A MALLAPUR
AGED ABOUT 61 YEARS
S/O SHIVALINAYYA MALLAPUR
R/A NAVANAGAR – BAGALKOT.
15. DR. KARTHIK KATTI
S/O RAVINDRANATH KATTI
SHRI. GURU KRUPA ANAND NAGAR
OPP. BLDE ENGINEERING COLLEGE
ASHRAM ROAD, VIJAYAPUR – 586 103
ADMITTED TO M.D. (RADIO DIAGNOSIS)
IN PETITIONER NO.14.
16. DR. BASAVESH
S/O DR. SHIVALINGAPPA B
AGED : MAJOR

R/A 2-13-206/06 COCA PETRA
BANGALOW, BYPASS ROAD
LINGSURU – 584 122,
DIST – RAICHURU
ADMITTED TO M.S. (GENERAL SURGERY)
IN PETTIONER NO.14.

17. DR. BHAVANI PATIL
D/O SHIVANAD PATIL
AGED : MAJOR
R/A INDI ROAD TALIKOTI CHAWL
APMC 1ST GATE, VIJAYAPUR
ADMITTED TO M.S. (OBG)
IN PETITIONER NO.14.
18. DR. SUNIL PATTANSHETTY
S/O SHARANABASAPPA PATANSHETTY
AGED : MAJOR
R/A AP – MALLA, TQ – SHARAPUR
DIST - YADAGIRI – 585 216
ADMITTED TO M.S. (GENERAL SURGERY)
IN PETITIONER NO.14.
19. DR. MADHU PRABHU KERUDI
D/O PRABHU KERUDI
AGED : MAJOR
C/O ADHYA MALAYA
NEAR HALAKATTI HOSPITAL
EXTENSION AREA
BAGALKOT – 587 102.
20. DR. NAMARTA
D/O TULASIDEVI HANCHATE
AGED : MAJOR
VIDYA NAGAR, TALIKOTI (RURAL)
VIJAYAPUR – 586 214
ADMITTED TO M.D. (PAEDIATRICS)
IN PETTIIONER NO.10.

21. JJM MEDICAL COLLEGE
POST BOX NO.301
DAVANGERE – 577 004
REPRESENTED BY ITS PRINCIPAL
DR. S.B. MURUGESH
AGED : MAJOR
R/A DAVANGERE – 577 004.
22. DR. AKSHATHA L
D/O L.V. LOKESH KUMAR
AGED : MAJOR
14 NEW KANTHARAJA URS ROAD
BASAWESHWARA NAGAR
MYSURU – 570 022.
23. DR. NAVYA RAJ
D/O LATE HEMANTH RAJ
AGED : MAJOR
MM #8/77, SHANKARACHARYA
2ND CROSS, VIDYANAGARA
HASSAN – 573 2020
ADMITTED TO M.S. (ORTHOPAEDICS)
IN PETITINER NO.21.
24. DR. ESHWAR S KASTURI
S/O KASTURI
AGED : MAJOR
#4201/67/2, SHRISHAILA NILAYA
14TH CROSS, NEAR CANARA BANK
1ST BLOCK, RAJAJINAGAR
BANGALORE – 560 010
ADMITTED TO M.D. (ANAESTHESIA)
IN PETITIONER NO.21.
25. DR. RAJATH V GOWRAV
S/O VISHWANATH H.S
AGED : MAJOR
#983, SRI RANGA,

IIND MAIN, 3RD CROSS,
VIDYARANYAPURAM,
MYSURU – 570 008
ADMITTED TO M.D. (ANAESHESIA)
IN PETITIONER NO.21.

26. DR. NARUBOINA BHAVANA
D/O NARUBOINA MAHAVARAO
AGED : MAJOR
BHAVANA NURSING HOME
2/20G-9, NEW B OYAPALEM
NEAR OLD BUS STAND
RAJAMPET – 516 115
ANDRAPRADESH, ADMITTED TO M.D
(RADIO DIAGNOSIS) IN PETITIONER NO.21.
27. DR. POORNASRI S NAYAK
D/O V.G. SREENIVASIAH
AGED : MAJOR
#82, SRI. NIKETHANA RAMARAO LAYOUT
KATTARIGUPPE, BSK 3RD STAGE
BENGALURU – 560 085,
ADMITTED TO M.D. (RADIO DIAGNOSIS)
IN PETITIONER NO.21.
28. K.V.G. MEDICAL COLLEGE AND HOSPITAL
KURUNJIBAG – 574327, SULLIA
DAKSHINA KANNADA
REPRESENTED BY ITS PRESIDENT
DR. K.V. CHIDANANDA
S/O K.M. VENKATRAMANA GOWDA
AGED ABOUT 64 YEARS
R/A SULLIA.
29. DR. AZEEM MERCHANT
S/O AMEEN MERCHANT
AGED ABOUT 31 YEARS
R/A 1401-02/6, VASANT LAWNS
POKHARAN ROAD NO.2,

NEAR JUPITER HOSPITAL,
MAJIWADA, APNA BAZAR,
MAHARASHTRA – 400 610
ADMITTED TO M.D. (RADIO DIAGNOSIS)
IN PETITIONER NO.28.

30. DR. ASHWIN SAGAR
S/O SHANTARAJ
R/A “JAYAVATHI HOUSE” 2ND MAIN
SANCHAYAGIRI, B.C. ROAD
P/O JODUMARGA, BANTWAL TALUK
DAKSHINA KANNADA – 574 219
ADMITTED TO M.S. (OPHTHALMOLOGY)
IN PETITIONER NO.28.
31. DR. ALEX DEVSIA
S/O K.C. DEVASIA
AGED ABOUT 27 YEARS
KOCHUPARAMBIL, CMC 14 WARD
CHERTHALA, KOKKATHAMANGALAM
ALAPPUZHA, KERALA – 688 539
ADMITTED TO M.D. (RADIO DIAGNOSIS)
IN PETITIONER NO.28.
32. DR. VISHNU VENUGOPAL
S/O V. VENUGOPAL
AGED ABOUT 26 YEARS
R/A BHARANI KALARCODE
SANATHANAPURAM ALAPPUZHA
KERALA – 688 003,
ADMITTED TO M.S. (GENERAL SURGERY)
IN PETITIONER NO.28.
33. DR. B.R. AMBEDKAR MEDICAL COLLEGE
KADUGONDANAHALLI, BENGALURU - 560 045
REPRESENTED BY ITS PRINCIPAL
DR. S.V. DIVAKAR
S/O SRI. VENKATASWAMY
AGED ABOUT 57 YEARS
R/A BANGALORE.

34. DR. ARJUN DAS
S/O BRAMHA DAS
AGED ABOUT 27 YEARS
PALLAVI HOUSE, EZHUMATTOR POST,
EZHUMATTOR, PATHANAMTHITTA
KERALA – 689 586, ADMITTED TO M.S.
(ORTHOPAEDICS) IN PETITIONER NO.33.

...PETITIONERS

(BY MADHUSUDHAN R. NAIK, SR. COUNSEL A/W
SMT. FARAH FATHIMA, ADVOCATE.
SRI SUPREET S, ADVOCATE FOR IMPEADING
APPLICANT IN I.A.NO.6/2020)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND
FAMILY WELFARE, VIKASA SOUDHA
BENGALURU - 560 001,
REPRESENTED BY ITS PRINCIPAL SECRETARY.
2. DIRECTOR OF MEDICAL EDUCATION
ANAND RAO CIRCLE,
BENGALURU - 560 009
3. KARNATAKA EXAMINATION AUTHORITY,
18TH CROSS SAMPIGE ROAD
MALLESHWARAM WEST
BENGALURU – 560 012
REPRESENTED BY ITS
EXECUTIVE DIRECTOR.

...RESPONDENTS

(BY SRI. DHYANCHINPPA, ADDL. ADVOCATE GENERAL
A/W SRI. VIKRAM HUILGOL, AGA FOR R-1 AND R-2;
SRI. N.K. RAMESH, ADVOCATE FOR R-3)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT IT IS IMPERMISSIBLE UNDER LAW FOR RESPONDENTS TO CONDUCT FRESH COUNSELLING FOR THE SEATS TO WHICH THE ADMISSIONS ARE CARRIED OUT BY THE MEMBERS OF PETITIONER NO.1 - ASSOCIATION UNDER THE ENABLING PROVISIONS OF CLAUSE 6D OF CONSENSUAL AGREEMENTS DATED: 22.04.2020 VIDE ANNEXURE - C AND C1 AND NOTIFICATION/COMMUNICATION DATED:28.07.2020 BY R-2 VIDE ANNEXURE-N.

IN W.P.9239/2020:

BETWEEN:

1. ASSOCIATION OF MINORITY PROFESSIONAL COLLEGES IN KARNATAKA
NO.2, CORNWELL ROAD
LANGFORD GARDENS BENGALURU - 560 025
REP. BY ITS SECRETARY
DR. MOHAN M.J.
2. VYEDEHI INSTITUTE OF MEDICAL SCIENCES AND RESEARCH INSTITUTE
NO.82, NALLURAHALLI, NEAR BMTC
18th DEPOT, WHITE FIELD
BENGALURU - 560 066
REP. BY ITS REPRESENTED BY ITS DEAN
DR. G. PRABHAKAR.
3. VYEDEHI INSTITUTE OF DENTAL SCIENCES AND RESEARCH INSTITUTE
NO.82, NALLURAHALLI, NEAR BMTC
18th DEPOT, WHITE FIELD
BENGALURU - 560 066
REP. BY ITS REPRESENTED BY ITS DEAN
DR. MOHAN THOMAS NAINAN.

- 4. MVJ MEDICAL COLLEGE
DANDUPALYA, NATIONAL HIGH WAY 4
KOLATHUR P.O, HOSKOTE
KARNATAKA – 562 114, REP. BY ITS PRINCIPAL
DR. B. RAVICHANDER.

5. A.J. INSTITUTE OF MEDICAL SCIENCES
NH 66, KUNTIKAN
MANGALORE, KARNATAKA – 575 004
REP BY ITS DEAN DR. ASHOK HEGDE.

6. NAVODAYA MEDICAL COLLEGE
MANTRALAYAM ROAD
NAVODAYA NAGAR
RAICHUR, KARNATAKA – 584 103
REPRESENTED BY ITS PRINCIPAL
DR. B. VIJAY CHANDRA.

7. MS. NARRA NAGALAKSHMI DEEPTHI
AGED 24 YEARS
D/O NARRA BALA VENKATA
RESIDING AT NO.4, 35/1
BAPATLA MAIN ROAD, OPP. SBI
PEDAMANIPADU VILLAGE
MANDAL GUNTUR – 522 235
ANDHRA PRADESH.

8. PALLAVI AHLAWAT
AGED 24 YEARS
D/O JITENDRA SINGH AHLAWAT
RESIDING AT C – 1293,
WARD NO.1, ANSAL CITY,
PANIPAT – 132 103, HARYANA.

9. SHREYA KHANDELWAL
AGED 24 YEARS
D/O MR. RAMESH KHANDELWAL
SANT LAHARI NAGAR,

RATNA BHADHA ROAD,
DHAMTHARI CHATTISGARH – 493 773.

10. MOHAMMED MEHFOOZ
AGED ABOUT 24 YEARS
S/O B.A. MOIDDEN
RESIDING AT 1-182(2), AYESHA GHAR
BEHIND POST MIJAR THODAR
MANGALORE – 574 227.

...PETITIONERS

(BY SRI. SHASHIKIRAN SHETTY, SR. COUNSEL A/W
SRI. ROHAN HOSMATH, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND
FAMILY WELFARE, VIKASA SOUDHA
BENGALURU – 560 001
REP BY ITS PRINCIPAL SECRETARY.
2. THE DEPARTMENT OF MEDICAL EDUCATION
ANAND RAO CIRCLE
BENGALURU – 560 001
REP BY ITS DIRECTOR.
3. KARNATAKA EXAMINATION AUTHORITY
18TH CROSS SAMPIGE ROAD
MALLESHWARAM
BENGALURU – 560 012
REPRESENTED BY ITS EXECUTIVE DIRECTOR.

...RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, ADDL.ADVOCATE GENERAL
A/W SRI. VIKRAM HUILGOL, AGA FOR R-1 AND R-2;
SRI. N.K. RAMESH, ADVOCATE FOR R-3)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT IT IS IMPERMISSIBLE UNDER LAW FOR RESPONDENTS TO CONDUCT FRESH COUNSELLING FOR THE SEATS TO WHICH THE ADMISSIONS ARE CARRIED OUT BY THE MEMBERS OF PETITIONERS ASSOCIATION UNDER THE ENABLING PROVISIONS OF CLAUSE 5D OF CONSENSUAL AGREEMENTS DATED: 22.04.2020 AND NOTIFICATION/COMMUNICATION DATED 28.07.2020 AT ANNEXURE -K ISSUED BY R-2 TO R-3.

IN W.P.9335/2020:

BETWEEN:

MISS. SAGARIKA KHONWALA
D/O MR. SUDHIL KHONWALA
AGED ABOUT 25 YEARS
R/AT FLAT NO- 503, NILGIRI
APARTMENT, VIJAY HERITAGE
4TH PHASE, KADMA, JAMSHEDPUR
JHARKHAND – 831 005.

...PETITIONER

(BY SRI. VIVEK REDDY, ADVOCATE FOR
SRI. SUBBA REDDY K.N, ADVOCATE)

AND:

1. STATE OF KARNATAKA
DEPARTMENT OF HEALTH AND
FAMILY WELFARE, REPRESENTED BY ITS
PRINCIPAL SECRETARY
OFFICE AT VIKASA SOUDA
BENGALURU – 560 001.
2. DIRECTOR OF MEDICAL EDUCATION
ANAND RAO CIRCLE
BENGALURU – 560 009.

3. KARNATAKA EXAMINATION AUTHORITY
18TH CROSS, SAMPIGE ROAD
MALLESHWARAM WEST
BENGALURU – 560 012
REPRESENTED BY ITS
EXECUTIVE DIRECTOR.
4. VYDEHI INSITUTE OF DENTAL SCIENCE
AND RESEARCH CENTRE, #82
NALLURAHALLI MAIN ROAD
NEAR BMTc 18 DEPOT,
VIJAYNAGAR NALLURAHALLI,
WHITEFIELD, BENGALURU – 560 066
REPRESENTED BY ITS PRINCIPAL.
5. DENTAL COUNCIL OF INDIA
AIWAN-E-GALIB MARG, KOTLA ROAD
TEMPLE LANE, OPP. MATHA SUNDARI
COLLEGE FOR WOMEN
NEW DELHI -110 002.
6. ASSOCIATION OF MINORITY PROFESSIONAL
COLLEGES, #2, CORNWELL ROAD,
LANGFORD GARDENS,
BENGALURU – 560 025
REP. BY ITS CHAIRMAN.

...RESPONDENTS

(BY SRI. DHYAN CHINNAPPA, ADDL.ADVOCATE GENERAL
A/WITH SRI. VIKRAM HUILGOL, AGA FOR R-1 TO 3;
SRI. SHASHIKIRAN SHETTY, SR.COUNSEL A/W
SRI. ROHAN HOSMATH, ADVOCATE FOR R-4 & 6;
SRI. G.S. BHAT, ADVOCATE FOR R-5)

THIS PETITION IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE R-4 TO ADMIT THE PETITIONER FOR MDS, ORAL SURGERY COURSE AS WHICH WAS ALLOTTED BY THE R-3. SET ASIDE THE IMPUGNED ENDORSEMENT DATED:07.08.2020 ISSUED BY THE R-4 IN REJECTING THE ADMISSION OF THE PETITIONER AND QUASH THE ORDER DATED VIDE ANNEX-A.

THESE PETITIONS COMING ON FOR FURTHER HEARING THIS DAY, **ARAVIND KUMAR J.**, MADE THE FOLLOWING:

ORDER

The prayers sought for in W.P.No.9234/2020 & 9239/2020 are one and the same. First petitioner in both the petitions is an Association representing its member colleges namely, Medical and Dental colleges. Other few petitioners are candidates who were admitted into stray vacancy after Mop-up round of Counselling. They have sought for a writ in the nature of certiorari for quashing the communication bearing No.DME/PS/120/2020-21 dated 01.08.2020 (Annexure-A & L), communication bearing No.DME/PGS/60/2020-21 dated 14.08.2020 (Annexure-A1 & B) respectively

issued by second respondent and notification dated 15.08.2020 (Annexure-B & A) respectively issued by third respondent whereunder the extended Mop-up round schedule – 2020 has been announced for conducting offline Counselling and they have sought for declaring that it is impermissible under law for respondents to conduct “fresh Counselling” for the seats to which admissions having already been carried out by the members of first petitioner – Association under the enabling provision of clause 6(d) of consensual agreement.

2. In these two writ petitions, short point that arises for consideration is:

“Whether the order passed by Hon’ble Apex Court in M.A.No.1282/2020 in W.P.(C) No.76/2005 empowers the respondents to allow fresh registration and thereby enable the respondents to conduct fresh

Mop-up round of Counselling in substitution to the Mop-up round already held as per the schedule for admission to Post Graduation Medical and Dental seats, 2020.”

3. Whereas, in W.P.No.9335/2020 the petitioner who was allotted a seat for the course of MDS Oral Surgery in fourth respondent – college is seeking for a direction to fourth respondent to admit her and for quashing the endorsement dated 07.08.2020 (Annexure-A) issued by the fourth respondent–college rejecting her request for being admitted to the MDS Oral Surgery course.

4. The facts in brief which has given rise to filing of these petitions can be crystallized as under:

4.1) In pursuance to the judgments of the Hon'ble Supreme Court in the case **TMA Pai Foundation** (reported in **2002(8) SCC 481**) and **P.A.Inamdar** (reported in **2005(6) SCC 537**), keeping in view the

principles laid down and the directions issued, the Government of Karnataka enacted the Act No.8/2006 – Karnataka Professional Educational Institution (Regulation of Admission and Determination of Fee) Act, 2006 (hereinafter referred to as ‘the Act’ for short). There was a consensual agreement of seat sharing and fixation of fee structure with certain Association, the presenting Member Colleges but the same was kept under abeyance till 2015 when an amendment Act came into force called the Karnataka Professional Educational Institution (Regulation of Admission and Determination of Fee) Amendment Act, 2015. Based on the judgments of the Hon’ble Supreme Court, the State Government and the petitioner-foundation entered into a consensual agreement PG Course for the academic year 2020-21 wherein as per clause-2(d) of General Clause and clause 6, the modalities of admission of counseling process is stipulated.

4.2) Hon'ble Apex Court in W.P.(C) No.76/2015 in the matter of **ASHISH RANJAN & OTHERS vs. UNION OF INDIA & OTHERS** by order dated 18.01.2016 had approved the "Time Schedule" furnished by the Medical Council of India (for short '**MCI**') relating to Under Graduate and Post Graduate Course admission. Hon'ble Apex Court by order dated 09.05.2017 (Annexure-F2) in the case of **DAR-US-SLAM EDUCATIONAL TRUST AND OTHERS vs. MEDICAL COUNCIL OF INDIA & OTHERS (W.P.(CIVIL) No.267/2017)** held that Counselling Authorities have to conduct physical Mop-up round of Counselling, after completion of two rounds of counselling. It was ordered that on completion of Counselling, the State Government should determine the number of seats that are still vacant and thereafter, should forward a list of candidates in the order of merit equaling to 10 times the number of vacant seats to the medical colleges so that in case of any stray vacancy

arise in any college, said seat can be filled up from the said list. For immediate reference, order passed by the Hon'ble Apex Court is extracted herein below:

“3. As per the judgment of this Hon'ble Court in the case of *Ashish Ranjan vs. Union of India & Ors.* [(2016) 11 SCC 225], there shall be only two rounds of common counselling each conducted by the DGHS/State Government or authority designated by the State Government for All India Quota (including Deemed University) and State Quota seats respectively.

7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.”

5. It would not be out of context to state that Hon'ble Apex Court in the matter of **ASSOCIATION OF PRIVATE MEDICAL AND DENTAL COLLEGES OF CHHATTISGARH vs STATE OF CHHATTISGARH** reported in **(2017) 8 SCC 627** clarified that said order dated 09.05.2017 does not relate to admission into Post Graduate courses and is confined to admission in Under Graduate courses.

6. Subsequently, MCI in exercise of power conferred by Section 33 of Indian Medical Council Act, 1956 has made the regulations known and called as "Postgraduate Medical Education Regulations, 2000". It came to be amended by notification No.MCI-18(1)/2017-Med/174626 dated 20.02.2018 (Annexure-G) whereunder the time schedule for admission to the Post Graduate Courses (Broad Speciality) from the Academic Year 2018-19 onwards came to be fixed. A plain reading of same would indicate two (2) rounds of Counselling has

been permitted thereunder and one Mop-up round. It also specifies that after the last date of joining stipulated thereunder being over, a list of candidates in the order of merit equaling to 10 times the number of vacant seats is to be forwarded to the medical colleges by the Counselling Authority for said stray – vacant seats including the unfilled seats of first and second round of Counselling to be filled up. It would also indicate that the entire process of admission is required to be completed or concluded on or before 31st May of the year.

7. Hon'ble Apex Court has repeatedly held that every person, officer or authority is required to follow the same, disobedience to the directions issued by the Apex Court with regard to the time schedule would result in prosecution under the provisions of Contempt of Courts Act. Hon'ble Apex Court in case of **PADMASHREE DR. D.Y.PATIL MEDICAL COLLEGE vs. MEDICAL COUNCIL OF**

INDIA AND ANOTHER reported in **AIR 2015 SC 3320** has

held:

“13. This Court in *Priya Gupta v. State of Chhattisgarh & Ors.* [(2012) 7 SCC 433] (AIR 2012 SC 2413) has laid down that every person, officer or authority who disobeys directions of this Court of adherence to the time schedule, shall be liable to be prosecuted under the provisions of the Contempt of Courts Act. Relevant portions of the directions issued by this Court in the said case are extracted hereunder :

“40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided

in the judgments of this Court and the Medical Council of India Regulations.

41. Inter alia, the disadvantages are:

x x x x x

(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.

42. The Medical and Dental Councils of India, the Governments and the universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time-frame declared by this Court and the Regulations. It has come to the notice of this Court that despite warnings having been issued by this Court and despite the observations made by this Court, that default and non-adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court.

x x x x x

45. The maxim *boni iudicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the abovestated principles.

x x x x x

47. All these directions shall be complied with by all concerned, including the Union of India, Medical Council of India, Dental Council of India, State Governments, universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall,

without fail, invite the following consequences and penal actions:

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such institution/State, etc.

47.2. The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

47.3. Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

x x x x x

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 the convenience of the Court. We may refer to the dictum of this Court in *Medical Council of India v. Rajiv Gandhi University of Health Sciences* [2004 (6) SCC 76], (AIR 2004 SC 2603), SCC para 14 in this regard.

78.5. We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of the judgments of this Court and the regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the authorities/ colleges concerned.”

8. In the light of COVID-19 pandemic situation prevalent in the country, a Miscellaneous Application came to be filed for extension of time in substitution to

the time fixed by the MCI under the Regulations. Hon'ble Apex Court extended the last date for admission from 31.05.2020 to 31.07.2020.

9. The State of Rajasthan filed an Interlocutory Application on 22.07.2020 before the Hon'ble Apex Court in **ASHISH RANJAN's** matter referred to supra, seeking extension of time for Counselling from 31.07.2020 to 31.08.2020. The copy of said application has been made available by the learned Additional Advocate General and same is perused by us. It would clearly indicate that on account of certain litigations with regard to implementation of reservation, Counselling process as stipulated under the MCI Regulation, which was also extended by the Hon'ble Apex Court up to 31.07.2020, could not be concluded on account of learned Single Judge directing fresh round of Counselling by order and judgment dated 15.06.2020. Said order was carried by the State of Rajasthan in Appeal, which resulted in

favourable order being passed by allowing the appeal and setting aside the judgment of learned Single Judge by order dated 16.07.2020 and thereby, it resulted in short time being available for conducting the Counselling process. Assigning this reason as well as the reason of COVID-19 pandemic, extension was sought for. The reason for extension as indicated in the application reads thus:

“5. The time is too short to conduct various rounds of Counselling till 31st of July, 2020. Due to pendency of litigation before the Hon’ble High Court, the Counselling could not take place. The COVID-19 pandemic is already creating difficulties in doing various rounds of Counselling for admission in Medical and Dental course in Rajasthan.

6. It is, therefore requested that the time line for Counselling may be extended till 31st August, 2020. It would both meet the interest of justice as well as interests of various stake holders including the students, who wish to take admission in Medical and Dental course in PG programme.

7. It would be relevant to mention that earlier this Hon’ble Court had extended the cut-off date from 31st May

2020 to 31st July 2020 with regard to prevalent difficult situations due to COVID-19 pandemic.”

10. Thus, above referred application discloses that State of Rajasthan had sought for extension of time on the grounds above referred. Hon’ble Apex Court considered the said application and by order dated 30.07.2020 extended the time for Counselling from 31.07.2020 to 31.08.2020 (Annexure-J). The said order reads:

“Heard the learned counsel appearing on behalf of the applicant.

We implead the State of Rajasthan. As prayed for by the learned counsel, given the current situation, time for Counselling for Rajasthan State NEET PG Medical and Dental Courses is extended from 31.07.2020 to 31.08.2020. **This will enure to the benefit of the entire country.**

Miscellaneous Application is allowed.”

(emphasis supplied by us)

11. Pursuant to the aforesaid order, the MCI caused a public notice on 30.07.2020 (Annexure-L) intimating all States/UTs Government / Counselling Authorities and concerned Medical colleges/Institutions that admission to Post Graduate Courses (Broad Speciality) has been extended from 31.07.2020 to 31.08.2020 for academic year 2020-21 only. The Government of India by notice dated 31.07.2020 (Annexure-M) notified the order of extension granted by the Hon'ble Apex Court. It was also stated therein that competent authority had decided to extend the time of reporting for stray vacancy round till 14.08.2020. Based on the aforesaid public notice, second respondent by communication dated 01.08.2020 (Annexure-A) has directed the third respondent to extend the last date of reporting for Mop-up round of allotted candidates to 10.08.2020 and further directed that portal for the vacant seats "unallotted in Mop-up round" admission by

colleges through names list through college portal should be enabled up to 10.08.2020. Said communication would also indicate that fresh registration and payment is permitted and extended the last date of reporting for Mop-up round to be available up to 07.08.2020 from 03.08.2020. Yet another communication came to be issued by second respondent to third respondent on 14.08.2020 (Annexure-A1) indicating that third respondent - Karnataka Examination Authority (for short '**KEA**') being empowered to conduct the extended Mop up round of Counselling due to extraordinary circumstances of COVID-19 pandemic. In furtherance of these two communications, notification dated 15.08.2020 (Annexure-B) came to be issued and it was ordered for conducting offline Mop-up round as per the schedule fixed thereunder.

12. Grievance of the first petitioner – association and its member medical colleges in these writ petitions is to the effect that third respondent had completed its first round of Counselling on 02.06.2020; second round of Counselling on 17.07.2020 and subsequent to completion of these two rounds of Counselling, third respondent notified and completed Mop-up round on 27.07.2020, wherein the last date and time for reporting was fixed as 28.07.2020 by 6.00 p.m. and second respondent had also addressed a communication dated 28.07.2020 (Annexure-N) to all the member institutions of first petitioner directing to fill the “stray vacancy seats” in respective institutions by 31.07.2020 by forwarding “list of eligible candidates” in the ratio of 1:10 and accordingly they have admitted the candidates including petitioners-9, 11 to 13, 15 to 20, 22 to 27 & 29 to 32 (in W.P.No.9234/2020) and petitioners – 7 to 10 (in W.P.No.9239/2020) and as such, conducting fresh

Counselling after completion of the period fixed if undertaken, it will un-seat the candidates who have been already admitted and thereby jeopardize their future.

13. Respondents-1 and 2 have appeared and through second respondent, statement of objections has been filed admitting the orders passed by the Hon'ble Apex Court. It is also contended that first round of Counselling for Post Graduate Medical and Dental seats was fixed on 01.05.2020 and results were announced on 07.05.2020; second round of Counselling was conducted and results were announced on 13.07.2020 vide Annexures-R1 and R2; Mop-up round commenced on 16.07.2020 and initially results were to be announced on 25.07.2020 but was postponed to 27.07.2020 and the last date for reporting was extended by a day from 28.07.2020 18:00 hrs to 29.07.2020 14:00 hrs in order to facilitate sufficient time for payment of tuition fees

and reporting of candidates vide Annexure-R3 and R4 respectively.

14. It is further contended that on 28.07.2020 (Annexure-R5) second respondent intimated that unfilled seats are being transferred along with the names of list of eligible candidates and it only reckons unfilled seats and not the seats which were allotted but where reporting time had been extended till 29.07.2020. It is also contended that as per the consensual agreement, second respondent had permitted the colleges to admit candidates only to the unfilled seats which were transferred to them through the portal and list of names that can be accessed are only those that are accessible through the college login in KEA website. Seats which had been allotted and for which candidates were to report by 29.07.2020 were never released and no college could seek to fill up the vacant seats at the KEA portal until the same was released. In view of the subsequent

events which took place, those seats were never released in KEA portal for enabling the colleges to fill any vacancy. It is also stated that seats can only to be filed at the KEA portal failing which, seats filled/admitted cannot be approved.

15. It is further contended that for the earlier years, Mop-up round was always a physical verification round and it ensured that it would never result in any seat blocking or any seat loss as the candidates would be required to be physically present, deposit their original documents, choose their seat, pay first year's fee and then collect the admission order so as to ensure that candidates would not go back on the seats allocated as the entire fee would be paid. However, due to COVID-19, online Mop-up round was held and concluded and it was found that despite extension of time to report, many candidates who had registered and chosen a seat, did not pay the fees and it could have been owing to seat

blocking that was resorted to and thereby Mop-up round was not proper and there was a need to do physical Mop-up round. Hence, the State felt that there was a need to conduct Counselling properly atleast by carrying out additional physical Mop-up round. Hence, the State is said to have written a letter to the Government of India requesting for extension of time so that there would be no loss of subsidized seats to meritorious candidates who would have been allotted and reported if these seats were allotted as they were next in merit. Hence, it is contended that Government took a decision to conduct extended Mop-up round for 161 seats only for the larger benefit of candidates and has contended that State is well within its bounds in terms of consensual agreement. It is also stated that State Government never permitted the colleges to admit candidates against these 161 unreported seats and as the seats were not released, question of colleges filling up those seats at KEA website

would not arise and any other method adopted is invalid and would be contrary to the terms stipulated under the consensual agreement. Hence, relying upon the extension of time granted by Hon'ble Apex Court in **ASHISH RANJAN's** case passed in W.P.No.76/2015, they have sought to defend the impugned communication and notification.

16. We have heard Sri M.R.Naik, Sri Shashikiran Shetty, Sri Vivek Reddy, learned Senior Advocates along with Smt Farah Fathima and Sri Rohan Hosmath appearing for petitioners, Sri Dhyan Chinnappa, learned Additional Advocate General along with Sri Vikram Huilgol, learned AGA appearing for respondents-1 and 2, Sri N.K.Ramesh, learned Advocate appearing for respondent-3 and Sri Supreet S, learned Advocate appearing for impleading applicant in I.A.NO.6/2020. Perused the records.

17. By reiterating the grounds urged in the writ petitions, learned Senior Advocates appearing for the parties contended that respondent having completed first and second round of Counselling, also conducted online Mop-up round Counselling as per the time schedule of MCI by 27.07.2020 and thereafter the list of unfilled vacant seats and unreported seats along with the list of eligible candidates were forwarded to the petitioner - colleges and on the receipt of the list on 29.07.2020 the members of the petitioner – Association conducted stray vacancy round and filled the seats by 30.07.2020. They would contend that the order passed by the Hon'ble Apex Court on 30.07.2020 never enabled the respondents to start afresh the Counselling which has already been concluded and it only enabled the last date of admission from 31.07.2020 to 31.08.2020. They also contend that under the impugned notifications, respondents are conducting and have now conducted the

extended rounds of Counselling despite the seats having been surrendered to the respective institutions to conduct the stray vacancy round. On the ground that such an exercise is impermissible and it would be contrary to the law laid down by Hon'ble Apex Court and it would also be in gross violation of clause 6(d) of the consensual agreement, the fresh Counselling which has since been done subsequent to the filing of the writ petitions be set aside. They would also contend that under the impugned notifications, the seats which were surrendered to the petitioner – Institutions are sought to be filled up depicting as being vacant and if the admission cards now issued and they are directed to get admitted to the petitioner colleges, it would result in the candidates who have been already admitted being unseated. Hence, they have prayed for allowing the writ petitions.

17.1) They would also contend that under the impugned notification, fresh registration has been permitted, though there was no dispute with regard to the fact that earlier registration being legal and valid. Hence, permitting registration and verification process along with other eligible candidates would deprive the candidates who have already been admitted by the petitioners.

18. Per contra, Sri Dhyan Chinnappa, learned Additional Advocate General appearing on behalf of respondents-1 and 2 and Sri N.K.Ramesh, learned Advocate appearing for respondent-3 would support the impugned notifications and contend that same is in consonance with the law laid down by Hon'ble Apex Court and right of respondents to conduct fresh Counselling is available under clause 6(b) of the consensual agreement and as such, they have prayed for

dismissal of the writ petitions by reiterating the grounds urged in the statement of objections.

19. Sri Vivek S Reddy, learned Senior Advocate appearing in W.P.No.9335/2020 has contended that petitioner who got registered for Mop-up round Counselling was allotted a seat on 27.07.2020 and had paid requisite deposit on 23.07.2020 itself. He would contend that petitioner approached the fourth respondent to which college she was granted admission was denied admission as the college authorities had filled up the said seat allotted to the petitioner under the Management quota. He would also contend that by virtue of order of the Hon'ble Apex Court dated 30.07.2020 extending the time for completion of admission process up to 31.08.2020, second respondent had extended the last date for reporting for Mop-up round allotted candidates up to 10.08.2020 (Annexure-J) and notification was also web hosted by the third

respondent on 04.08.2020 (Annexure-L) and as such, the petitioner has paid the entire amount of fees of Rs.14,15,500/- and yet by communication dated 07.08.2020 (Annexure-A), fourth respondent has rejected the admission of the petitioner. Hence, he prays for allowing the petition.

20. Sri Shashikiran Shetty, learned Senior Advocate appearing for fourth respondent has reiterated the contentions raised in W.P.No.9234/2020 and 9239/2020 to rebut the arguments of the petitioner and placing reliance on the contentions raised therein. He seeks for dismissal of the petition. He would also contend that on account of list of candidates forwarded by the second respondent in the ratio of 1:10, fourth respondent has admitted Ms.Kamini Sharma and if relief is granted to the petitioner, the candidate who has already been admitted would be unseated.

RE: DISCUSSION AND FINDING ON POINT
FORMULATED HEREIN ABOVE IN
W.P.Nos.9234/2020 and 9239/2020:

21. At the outset, we would like to clarify and state that every effort has to be made by all concerned to ensure that admissions are given on merit and after due publicity, without giving scope for any arbitrariness being adopted or favouritism being shown or admitting the candidates at the altar of sacrificing the merit. It would be apt and appropriate to note the observations made by the Hon'ble Apex Court in the case of **PRIYA GUPTA vs. STATE OF CHHATTISGARH & OTHERS** reported in **(2012)7 SCC 433** whereunder, it has been held:

“46.7. If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant

seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is *ex facie* arbitrary and casts the shadow of favouritism.

46.9. The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.”

22. The Government of Karnataka enacted Act No.8/2006 – Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fees) Act, 2006 in pursuance to the judgment of Hon'ble Apex Court in **T.M.A.PAI FOUNDATION & OTHERS vs. STATE OF KARNATAKA & OTHERS** reported in **(2002)8 SCC 481** and **P.A. INAMDAR & OTHERS vs. STATE OF MAHARASHTRA & OTHERS** reported in **(2005)6 SCC 537**. The said Act which was kept in abeyance for considerable time was enforced and implemented under the amended Act, 39/2015 i.e., the Karnataka Professional Educational Institutions (Regulation of Admission and Determination of Fees) (Amendment) Act, 2015 (for short '2015 Act'). Pursuant to the same, the State of Karnataka and first petitioner – Association have entered into a “**consensual agreement**” as required under Section 4A of 2015 Act,

insofar as the seat sharing, admission process and determination of fee structure for each or every academic year. Consensual agreement for Post Graduate courses for the academic year 2020-21 came to be entered into on 22.04.2020 (Annexure- C & C1) for Medical and Dental Sciences respectively.

23. Time schedule which is fixed by the MCI under the Regulations apparently cannot be modified, tinkered, varied or changed by any authority and the regulation which enabled the MCI to fix the time schedule has been approved by the Hon'ble Apex Court. The sanctity of time schedule has been explained by the Hon'ble Apex Court in **PRIYA GUPTA's** case whereunder it has been held that no authority can alter or tinker with the schedule fixed. It has been further held:

“40. The schedules prescribed have the force of law, inasmuch as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of

the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, university or the selection bodies constituted at the college level for allotment of seats by way of counselling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.”

24. In the instant case, the respondents undisputedly had completed first and second rounds of Counselling and had commenced the Mop-up round as per schedule (Annexure-R3) dated 16.07.2020. Under column No.9, the preparation of names list was to be published or announced on 25.07.2020 after 6.00 p.m. and this was extended up to 27.07.2020. Under column No.11 of the Schedule, the last date fixed for payment of fees and downloading of admission orders

was from 11.00 a.m. on 25.07.2020 to 27.07.2020 up to 5.00 p.m. The last date for reporting was extended from 28.07.2020 18:00 hrs to 29.07.2020 18:00 hrs. However, by communication dated 28.07.2020 (Annexure-N/R5) second respondent intimated the Principal/Registrar of all private medical and dental colleges in State of Karnataka that Mop-up round Counselling results had been announced on 27.07.2020 and the unfilled seats are being transferred along with names list of eligible candidates and as such, the respective colleges were requested to access the same through the college login in KEA website. It was also intimated that names list candidate, contact details would also be shared securely to all colleges by KEA. In fact, the petitioners on the basis of the said communication and list of vacant and unreported seats under Mop-up round of Counselling web hosted by third respondent, admissions are said to have been made by

taking umbrage under clause 6(d) of the consensual agreement. Hence, clause 6(d) of the agreement is extracted herein below:

“(d). It is further stipulated that, if any seats remain unfilled/vacant, at the end of ‘Mop Up round of counseling by the Governmental Agency, all those seats would be handed over to the respective institutions with a list of un-allotted candidates registered with the KEA in the ratio of 1:10, for further action by the concerned institutions. The mop up round of counselling will be completed as per the schedule prescribed by GOI, by providing sufficient time for Private Medial/Dental Institutions to fill up the unfilled seats. Any cancellation or surrender of seats after the mop-up round shall be made in person only to the Director, Directorate of Medical Education, Government of Karnataka provided that, in the event of Dental PG seats remaining vacant even after exhausting 1:10 list handed over to colleges, one more round of registration will be allowed on KEA portal till the last date of admission and the list of registered candidates will be forwarded to dental colleges.”

25. They have further contended that pursuant to the notification dated 27.07.2020, member institutions of the first petitioner - association have duly

notified on the web portal of KEA the vacant seats and have called for applications from eligible candidates for filling up of the same and third respondent on 30.07.2020 also notified at its web site the list of vacant and unreported seats after Mop-up round and upon transfer of unfilled seats and unreported seats allotted in Mop-up round of Counselling along with forwarded “name list of eligible candidates”, Petitioners sought for completion of admission process by 31.07.2020 and said admission having been completed, admitted candidates are attending the classes/clinical postings as per the revised calendar of events dated 03.08.2020 notified by RGUGHS. Hence, they have sought for writ petitions being allowed.

26. Whereas, respondents, as noticed herein above, have contended that on account of prevalent COVID-19, online Mop-up round was conducted and many candidates who had registered and chosen the

seat did not pay the fees and this may have been on account of seat blocking that was resorted to. Hence, it is contended that there was no proper Mop-up round conducted and therefore fresh Mop-up round is being conducted. Even according to third respondent, as per the schedule fixed under Annexure-R3, registration for Post Graduate Medical and Dental Mop-up round schedule was on line registration and provisional verified list was published on 20.07.2020 and aggrieved candidates were entitled to file objections up to 4.00 p.m. on 21.07.2020 and based on the same, final verified list was declared on 22.07.2020 at 2.00 p.m. upon which, the caution deposit was paid on 24.07.2020 by the candidates. It is thereafter, third respondent displayed at its portal the seat matrix at 4.00 p.m. and option entry was available from 5.00 p.m. on 21.07.2020 to 11.00 a.m. on 24.07.2020 newly registered and verified candidates were given the option from 4.00 p.m.

on 22.07.2020 to 11.00 a.m. on 24.07.2020. Accordingly, seat allotment result was made on 25.07.2020 at 5.00 p.m. and the entire list was web hosted on the portal on 25.07.2020.

27. It is an undisputed fact that 458 seats were allotted to the candidates in the Mop-up round. Out of them, 171 candidates did not report to the college within the last date of reporting. Only 10 candidates are said to have been able to download the admission cards after payment of fees and when they approached the respective colleges to which they have been issued admission cards, 3 candidates have been admitted and 7 candidates have been rejected by the respective colleges.

28. A plain reading of clause 6(b) of the consensual agreement which is pressed into service by respondents would indicate that counselling of the candidates should be conducted as per the calendar of

events prescribed by the regulating authorities and affiliated university respectively and in the event of a conflict/variation in the calendar of events published, calendar of events mandated by the apex bodies would prevail and apply.

29. In the above referred clause 6(b) it has been agreed upon that ordinarily, there would not be any extended round of counselling, but in case any directions are issued by Government of India for conducting such extended round, the State may conduct such number of extended rounds of counselling as prescribed for the purpose of admission to PG medical and dental courses.

30. The present *faux-pas* situation has arisen on account of communication dated 13.08.2020 from the Government of India to Government of Karnataka whereunder the State has been directed to proceed with

filling up of the vacant seats as per the prevailing rules and regulations of the said counselling authorities. This direction came to be issued on account of order passed by Hon'ble Apex Court in the case of **ASHISH RANJAN's** case referred to supra on 30.07.2020 as already noticed hereinabove. It would be necessary to extract the communication dated 13.08.2020 (Annexure-AB), it reads:

“This is with reference to your letter No.HFW (ME)/341/PRS 2020 dated 29.07.2020 on the subject mentioned above.

In this regard, it is informed that, vide Order dated 30.07.2020 in M.A.No.1282 of 2020 in Writ Petition No.76 of 2015 in the matter of Ashish Ranjan & Ors. v/s Union of India & Ors., the Hon'ble Supreme Court of India has held that *“as prayed for by the learned counsel, given the current situation, time for counselling for Rajasthan State NEET PG Medical and Dental courses is extended from 31.07.2020 to 31.08.2020. This will enure to the benefit of the entire country”*.

In view of the above, as the date of Counselling has been extended till 31st August, 2020 by the Hon'ble Supreme Court of India for the entire Country, **you**

may proceed with filling up of the vacant seats at your own end as per the prevailing rules and regulations of the State Counselling Authorities.”

(emphasis supplied by us)

However, prior to order that came to be passed by the Hon’ble Apex Court referred to supra and direction being issued by the Government of India, a communication emanated from the second respondent to all the medical colleges on 28.07.2020 (Annexure-N), the contents of which reads:

- (i) The unfilled seats are being transferred along with the names, list of eligible candidates. The colleges are requested to access the same through the KEA college login portal. The names, list of candidates, contact details will also be shared clearly to all the colleges by KEA.
- (ii) As discussed earlier the college authorities have to fill up vacant seats through KEA college login portal from

the names list only. Any violation may lead to non approval of admission.

The above referred list is obviously sent by the second respondent in compliance of the admission schedule prescribed by MCI (Annexure-G) and which came to be extended by the Apex Court at the first instance upto 31.07.2020 and thereafter upto 31.08.2020. Petitioner claims second respondent has forwarded the list of candidates in the order of merit equivalent to 10 times the number of vacant seats, based upon which they have admitted the candidates.

31. Thus, dispute or lis between the petitioners and the respondent revolves around the Mop-up round. According to the petitioners, Mop-up round which was required to be completed by 31.07.2020 as per the mandate of MCI, public notice dated 28.05.2020 (Annexure-H) had been completed on 27.07.2020 and last date for reporting was 28.07.2020 by 6.00 p.m. and

as such, communication had been sent by second respondent on 28.07.2020 (Annexure-N) intimating the member institutions of the first petitioner to fill the “stray vacancy seats” in the respective institutions by 31.07.2020 and second respondent had also forwarded “the list of eligible candidates” with 1:10 ratio. It has been contended by the petitioners that on the basis of list so published by the third respondent they have admitted the candidates.

32. The intimation of extending the last date for reporting has been extended by third respondent from 28.07.2020 before 5.30 p.m. to 29.07.2020 upto 2.00 p.m. vide Annexure-R4. In other words, the respondents have extended the date for “downloading” and “uploading of admission order” up to 2.00 p.m. on 29.07.2020 vide Annexure-R4. Though the learned Advocates appearing for the petitioners have vehemently contended that such extension is impermissible, in the light of law laid down

by Hon'ble Apex Court in **PRIYA GUPTA**'s case referred to supra, to which proposition there cannot be any doubt or dispute, the fact remains that extension was only within the time schedule fixed or in other words, such extension was within the outer limit fixed for concluding the admission process. Hence, the contention of the petitioners in this regard cannot be accepted.

33. Petitioners have very heavily relied upon the list (Annexure-P) web-hosted by the third respondent in its website to contend that on account of the last date fixed under the time schedule fixed for candidates reporting to the allotted colleges having come to an end coupled with the fact that list in the ratio of 1:10 having been web-hosted it gave a right to the petitioners both under the consensual agreement as well as the order passed by the Apex Court in **DAR-US-SLAM EDUCATIONAL TRUST AND OTHERS** referred to supra to admit the candidates and as such they have admitted

the candidates, is a submission which would appear attractive at the first blush, but not so on a deeper scrutiny, inasmuch as, the list which came to be web-hosted by the third respondent is relating to filling up of the unfilled seats and not the vacant seats. Insofar as, vacant seats are concerned, under the communication dated 28.07.2020 second respondent has categorically stated that college-authorities have to **'fill up the vacant seats through KEA-college log-in portal'**. As such the contentions raised by the petitioners in this regard cannot be accepted. Even though it is strenuously contended on behalf of petitioner-colleges that KEA web portal was open for sometime and later on blocked, the fact remains that candidates admitted by the petitioner-colleges is not through KEA web portal. In fact, we are perforced to observe that communication dated 28.07.2020 is ambiguous, which resulted in the petitioner-colleges interpreting as though it has

permitted them to fill-up all the seats namely, “unfilled seats” as well as “vacant seats” as per clause 6(d) of consensual agreement. It is on account of this confusion, which has been created by second respondent under its communication dated 28.07.2020, it has resulted in these writ petitions being filed by the colleges on account of admission having been made by them pursuant to the list (Annexure-P) web-hosted on the portal of third respondent. Even accepting for a moment the contention of petitioners that they were empowered under clause 6(d) of the consensual agreement, we cannot lose sight of the fact that under clause 6(d) it mandates that such admission should be through KEA web-portal. It is agreed by the parties in this regard as under:

“(d). It is further stipulated that, xxxx 1:10 list handed over to the colleges, one more round of registration would be allowed on KEA portal till the last date of admission and the list of registered candidates will be forwarded to Medical/Dental colleges.”

This would clearly indicate that admissions even if any, will have to be necessarily made through KEA web portal only and any admission made contrary to the same would be violative of Regulations and this fact has also been specifically indicated by second respondent in its communication dated 28.07.2020 (Annexure-N) and same is extracted herein below for immediate reference:

“As discussed earlier the college authorities have to fill up the vacant seats through the KEA college login portal from the names list only. Any violation may lead to non approval of admission.”

Hence, contention raised by the learned Advocates appearing for the petitioners that their admission made by them will have to prevail, cannot be accepted. In fact, the seats availability list (Annexure-P) relied upon by the petitioners to fill up the seats has been web-hosted on 30.07.2020 at 18:04:41 hours and on the same itself the Hon'ble Apex Court had passed an order extending the last date for admission from 31.07.2020 to 31.08.2020 for the Academic Year 2020-21 only and this fact was

also notified in the public domain by the Government of India vide Public Notice dated 30.07.2020 (Annexure-L).

34. This takes us to the next issue namely, as to whether the fresh Mop-up rounding counselling could have been commenced by the respondents in the background of order dated 30.07.2020 passed by the Hon'ble Apex Court in **ASHISH RANJAN's** case referred to supra, whereunder the Hon'ble Apex Court extended the time for counselling Rajasthan State NEET PG Medical and Dental courses upto 31.08.2020. As already noticed by us hereinabove (vide paragraph 9), the reason for extension sought for by the State of Rajasthan was on account of litigation pending and COVID-19 pandemic situation. In fact, in the application filed by the State of Rajasthan it emerges there from that counselling itself had not commenced. Be that as it may. The fact remains that Hon'ble Apex Court extended the "**time for counselling for Rajasthan**

State NEET PG Medical and Dental courses” upto 31.08.2020 and it was further held by the Apex court that such extension would “***enure to the benefit of the entire country***”. Based on this order, the MCI caused public notice dated 30.07.2020 (Annexure-L) and extended the last date for admission upto 31.08.2020. The second respondent by communication dated 29.07.2020 (Annexure-R6) addressed to MCI had already sought extension upto 31.08.2020 for conducting another round of offline Mop-up round of counselling. It would not be out of context to refer to the contents of the said communication whereunder the reason assigned by the State Government for seeking extension of time to complete the admission process for year Academic Year 2020-21 up to 31st August 2020, is on the ground that out of total 458 allotted, 171 candidates had not reported to the college within the last date and same was alarming as the seats belonged to highly subsidized fees

fixed by the State Government which were meant for poor and meritorious candidates. It was also contended that online process of counselling had resulted in preventing the surrender of seats and next meritorious candidates being deprived of the seat and thereby fairness and transparency in counselling was lacking. It is because of this precise reason, the Government of India by communication dated 13.08.2020 (Annexure-AB) had granted extension to the Government of Karnataka to complete the admission process by 31.08.2020 in the background of Hon'ble Apex Court in the interregnum by order dated 30.07.2020 in the matter of **ASHISH RANJAN's** case referred to supra having extended the time for counselling upto 31.08.2020. In fact, communication dated 13.08.2020 (Annexure-AB) the Government of India has clearly stated that State can proceed with filling up of vacant seats as per the prevailing rules and regulations of the State Counselling

Authorities. In the meanwhile, the Government of India by notice dated 31.07.2020 (Annexures-M and R7) had notified the extension up to 31.08.2020. Based on the said notice, second respondent by communication dated 01.08.2020 (Annexure-A and R8) extended the last date of reporting for Mop-up round allotted candidates up to 10.08.2020. However, in this process the second respondent has extended further registration by new candidates. Thus, incidental question that would arise is whether a fresh counselling from amongst the list of candidates is only to be held namely, the process should commence from the stage where it was stopped as on 30.07.2020 or the entire Mop-up round of counselling should be held afresh by permitting fresh registration?

35. Even according to the State Government, the basis on which they sought for extension under the communication dated 29.07.2020 (Annexure-R6) was on account of the total 458 seats allotted in the Mop-up

round 171 i.e., 37.11% candidates did not report to the college and as such it has been contended that it may be due to seat blocking that was resorted to. Government of Karnataka has never sought for conducting the Mop-up round counselling afresh. It is no doubt true that under clause 6(b) of the consensual agreement the State can conduct such number of extended rounds of counselling as prescribed for admission to PG Medical and Dental courses. There cannot be any dispute to the fact that under the amended Regulations dated 20.02.2018 (Annexure-G) two (2) rounds of counselling and one (1) Mop-up round of counselling is permitted. Now, under the guise of order of the Hon'ble Apex Court dated 30.07.2020 passed in **ASHISH RANJAN's** case the State is attempting to conduct fresh Mop-up round under the impugned communications and notifications. They are also relying upon the communication dated 13.08.2020 (Annexure-AB) to contend that Government

of India has permitted fresh counselling. A plain reading of the Hon'ble Apex Court order dated 30.07.2020 (Annexure-J) would clearly indicate that the time for counselling has been extended from 31.07.2020 to 31.08.2020 and the order of the Hon'ble Apex Court does not suggest or indicate that even in respect of the concluded rounds of counselling, fresh counselling can take place or where the counselling had stopped in the midst can be redone. In fact, the Central Government has permitted the State Government to proceed with the filling up of vacant seats as per the prevailing rules and regulations of the State Counselling Authorities. When there is no dispute that pursuant to time schedule fixed for the Mop-up round having been adhered to by the respondents and the last date for downloading/ uploading admission order having been extended upto 2.00 p.m. on 29.07.2020, by which process 458 seats were allotted and out of the said 458 seats, only 171

candidates having not reported to the college, would indicate that it is from this stage the State felt that the process of admission was flawed. Instead of commencing from the said stage, it has altogether commenced a fresh Mop-up round and said exercise being contrary to the extant regulations namely, 20.02.2018 (Annexure-G), it cannot be sustained.

36. It is also not in dispute that in the Mop-up round done at the first instance 171 candidates who were allotted seats, only 10 were able to download the admission cards and out of these 10 candidates, only 3 have been admitted by the colleges and 7 candidates have been denied admission by the colleges. In the physical counselling which was being done in previous years for the Mop-up round, it came to be substituted by online counselling due to the prevalent COVID-19 situation and candidates, who had paid the caution deposit of Rs.1 lakh, have not downloaded the admission

orders and got themselves admitted. In other words, on account of others not getting admitted, they have lost their seats namely, 161 candidates. It is because of this reason, they have not been permitted to participate in the fresh Mop-up round counselling.

37. Thus, the moot question that would arise for consideration would be as to how the seats which have been forfeited by these 161 candidates are to be filled up? In the communication dated 28.07.2020 the second respondent has clearly pointed out the college authorities will have to fill up vacant seats through KEA college login portal. Undisputedly, candidates who have been admitted by the petitioner-colleges are not through KEA college login portal. However, it is on the basis of the list of candidates furnished by KEA in the ratio of 1:10 candidates have been admitted by the petitioner-colleges. Thus, fault cannot be laid at the doors of petitioner-colleges also to this limited extent and at the

same time, the candidates interest also cannot be sacrificed. However, under the guise of they having already been admitted by the colleges, they cannot claim that their admissions are to be automatically accepted or regularized. This Court cannot grant its seal of approval. However, the relief can be moulded, which we have proposed to do in the foregoing paragraphs.

38. In the Mop-up round held at the first instance 458 candidates were allotted seats and out of them 171 did not report to the college within the last date of reporting. In fact, after the order passed by the Hon'ble Apex Court on 30.07.2020 these candidates namely, 171 candidates who were allotted seats in the Mop-up round were permitted to get admitted on or before 10.08.2020 by communication dated 01.08.2020 (Annexure-R8) and in the joint meeting of all the stake holders held on 03.08.2020 (Annexure-R9) this was agreed upon, which was well within the know-how of all

the petitioner-colleges, inasmuch as, the representative of COMED-K and AMPCK were also present at the said meeting. However, pursuant to the said extension only 10 candidates have approached the colleges along with the admission cards and only three (3) candidates were granted admission and seven (7) have been refused. Out of seven (7) candidates, only one (1) candidate has approached this court in W.P.No.9335/2020 seeking for a mandamus to direct the fourth respondent to admit the petitioner for MDS Oral Surgery and on account of extension of time granted for admission to those candidates who were allotted but could not get admitted, necessarily the benefit of extension granted by the respondent and accepted by the petitioner-colleges in the joint meeting, would enure to the benefit of the petitioner. The petitioner in W.P.No.9335/2020 who had been allotted a seat in the first Mop-up round for filling up stray vacancy on 28.07.2020 itself and she had

secured NEET rank of **13457** with a percentage score of 283 as against Ms.Kamini Sharma, who has been admitted by the fourth respondent who secured NEET rank of **13465**. Thus, even on merit the petitioner stands on a higher pedestal. Hence, she would be entitled to the relief sought for. The other six candidates who stand on the same footing as that of petitioner in W.P.No.9335/2020 though would be entitled to the relief, on account of their absence before this Court, relief is not being extended to them. However, the relief is moulded by directing the respondents to include their names in the comprehensive list for being considered and allotted stray vacancy seat.

39. Thus, out of remaining 161 seats available for the fresh Mop-up round, we have been informed only 133 seats have been filled up namely, 128 in Medical and 5 in Dental PG. Still 28 seats has remained vacant and by virtue of the consensual agreement, the seats

which has remained unfilled would revert back to the respective colleges for being filled up by them in accordance with the terms of consensual agreement. However, now the tussle or the dispute revolves around 133 seats, which is filled in the fresh Mop-up round as against the candidates who have been admitted by the petitioner-colleges between 27.07.2020 to 31.07.2020. We have already recorded a finding that petitioner-colleges could not have admitted the candidates upto 29.07.2020, inasmuch as, there was an extension of time granted for the candidates to get themselves admitted up to 29.07.2020 till 6.00 p.m.

40. There cannot be any dispute to the fact that less meritorious candidates cannot have an edge over the more meritorious candidates and if such exercise being undertaken, it would amount to illegality being perpetuated and the principle of “**might being right**” prevailing, which cannot be countenanced by the Court

of Law as held by the Hon'ble Apex Court in **PRIYA GUPTA's** case referred to herein supra. As such the allotment of seats amongst equals namely meritorious candidates will have to be worked out and this exercise will have to be undertaken by the respondents.

For the reasons aforesated, we dispose of the writ petitions as under:

ORDER

- (i) W.P.Nos.9234/2020 and 9239/2020 are allowed in part. To the extent of conducting Mop-up round of Counselling afresh namely, by providing fresh registration of candidates under the impugned communications bearing No.DME/PS/120/2020-21 dated 01.08.2020 (Annexure-A and L), communication dated 14.08.2020

bearing No.DME/PGS/60/2020-21 (Annexure-A1 and B), notification dated 15.08.2020 (Annexure-B and A) respectively, are quashed and it is further ordered that:

- (a) The respondents shall prepare a comprehensive list of meritorious candidates entitled for stray vacancy allotment from amongst the candidates who have participated in the fresh Mop-up round of counselling on the strength of candidates registered at the first instance only or in other words, excluding the candidates who have registered afresh pursuant to impugned communications / notification.

The representatives of first petitioner in these two petitions shall be entitled to participate and assist the respondents in preparation of above said comprehensive list by providing the details sought for by the respondents if any.

- (b) The candidates who have been admitted by the respondent-Medical and Dental colleges and who have either participated or not in the fresh Mop-up round counselling are also entitled to be included in the comprehensive list for being allotted stray vacancy seats.

- (c) It is also made clear that six candidates who had been issued with the admission cards by third respondent in the first Mop-up round and who could not get admitted to the colleges and who have paid the fees shall be included in the aforesaid comprehensive list for being considered and allotted stray vacancy seats.

- (d) If there is no dispute with regard to the candidates who have already been admitted by the colleges and who have also participated in the fresh Mop-up round Counselling (excluding newly registered candidates)

having been allotted the seats in the same streams sought for by them, to which they have already been admitted, their admissions shall not be disturbed.

- (e) The respondents would be at liberty to call for such details from the respective colleges for preparation of the comprehensive list if so required and they shall ensure that merit should be the sole criteria for allotment of stray vacancy seats.
- (f) The entire exercise shall be concluded by the respondents within the extended time fixed by the Hon'ble Apex Court i.e., on or before 31.08.2020.

- (ii) W.P.No.9335/2020 is allowed and endorsement dated 07.08.2020 (Annexure-A) issued by third respondent is quashed and a writ of mandamus issues to the fourth respondent to admit petitioner for MDS Oral Surgery course allotted by third respondent.
- (iii) I.A.No.6/2020 in W.P.No.9234/2020 filed by the impleading applicant stands dismissed.
- (iv) No order as to costs.

**SD/-
JUDGE**

**SD/-
JUDGE**

*sp/DR