



WP No. 12902 of 2022
C/W WP No. 12946 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 07TH DAY OF SEPTEMBER, 2022

PRESENT

THE HON'BLE MR. JUSTICE B.VEEERAPPA

AND

THE HON'BLE MRS. JUSTICE K.S.HEMALEKHA

WRIT PETITION No.12902 OF 2022 (EDN-MED ADM)

C/W

WRIT PETITION No.12946 OF 2022 (EDN-MED ADM)

IN WP No.12902/2022

BETWEEN:

1. SRI VENKATESHWARA DENTAL COLLEGE AND HOSPITAL,
KARIYAPPANAHALLI,
ANEKAL ROAD, BANNERGHATTA,
BANGALORE - 560083.
REPRESENTED BY ITS PRINCIPAL
DR. UMA DINESH.
2. MS. SREELEKSHMI SREEMUMAR,
AGED ABOUT 20 YEARS,
D/O SREEKUMAR T. G.,
C/O SRI VENKATESHWARA DENTAL
COLLEGE AND HOSPITAL
KARIYAPPANAHALI,
ANEKAL ROAD, BANNERGHATTA,
BANGALORE - 560083.
3. MS. ANJALI XAVIER,
AGED ABOUT 20 YEARS,

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MALATESH K C
Location: High
Court of Karnataka



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D/O P. R. XAVIER,
C/O SRI VENKATESHWARA DENTAL
COLLEGE AND HOSPITAL,
KARIYAPPANAHALLI, ANEKAL ROAD,
BANNERGHATTA,
BANGALORE - 560083.

...PETITIONERS

(BY SRI. KRISHNA T., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF HEALTH AND FAMILY
WELFARE MEDICAL EDUCATION,
M.S. BUILDING,
BANGALORE- 560001.
REPRESENTED BY ITS PRINCIPAL SECRETARY
2. THE DIRECTORATE OF MEDICAL EDUCATION (DME),
ANAND RAO CIRCLE,
BANGALORE - 560009.
REPRESENTED BY ITS DIRECTOR.
3. THE KARNATAKA EXAMINATION AUTHORITY;
18TH CROSS, SAMPIGE ROAD,
MALLESHWARAM, BANGALORE - 560012.
REPRESENTED BY ITS EXECUTIVE DIRECTOR
4. THE DENTAL COUNCIL OF INDIA,
J6MP+G22, AIWAN E-GALIB MARG,
KOTLA ROAD, TEMPLE LANE,
NEW DELHI - 110002.
REPRESENTED BY ITS PRESIDENT.
5. DIRECTORATE GENERAL OF HEALTH SERVICES
MINISTRY OF HEALTH AND FAMILY WELFARE,
J668+85M, NIRMAN BHAWAN,
MAULANA AZAD ROAD,
NEW DELHI - 110011.
REPRESENTED BY ITS
DIRECTOR GENERAL.



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6. THE KARNATAKA STATE DENTAL COUNCIL,
NO 143, 5TH MAIN ROAD,
CHAMARAJPET,
BANGALORE - 560018.
REPRESENTED BY ITS PRESIDENT.

7. THE RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCE,
4TH T BLOCK, JAYANAGAR,
BANGALORE - 560011.
REPRESENTED BY ITS REGISTRAR.

...RESPONDENTS

(BY SRI LAXMINARAYAN, ADDITIONAL GOVERNMENT
ADVOCATE FOR R1 & R2;
SRI N.K. RAMESH, ADVOCATE FOR R3;
SRI ADITYA BHAT, ADVOCATE FOR
SRI G.S.BHAT, ADVOCATE FOR R4;
SRI V.C.SUDEEP, CENTRAL GOVERNMENT STANDING COUNSEL
FOR R5;
SMT. SUMANA BALIGA, ADVOCATE FOR R6;
SRI ASHOK N. NAYAK, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
ISSUE A WRIT OF MANDAMUS, DIRECTING THE KARNATAKA
EXAMINATION AUTHORITY, RESPONDENT No-3 HEREIN, TO
OPEN THE WEBSITE/ PORTAL, TO FACILITATE PETITIONERS 2
AND 3 TO GET THEMSELVES REGISTERED IN THE WEBSITE/
PORTAL AND PERMIT PETITIONER No-1 INSTITUTION TO
ADMIT PETITIONERS 2 AND 3 FOR THE BDS COURSE FOR THE
ACADEMIC YEAR 2021-22 AND ETC.

IN WP No.12946/2022

BETWEEN:

1. KVG DENTAL COLLEGE AND HOSPITAL,
KURUNJIBAGH, VIDYANAGAR,
SULLIA - 574327.



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REPRESENTED BY ITS PRINCIPAL
DR. MOKSHA NAYAK.

2. MS. SHEETHAL P.,
AGED ABOUT 21 YEARS,
D/O ASHOKAN P,
C/O KVG DENTAL COLLEGE AND HOSPITAL,
KURUNJIBAGH, VIDYANAGAR,
SULLIA - 574327.
3. MS. SHIFINA O.,
AGED ABOUT 20 YEARS
D/O SALEEM O.,
C/O KVG DENTAL COLLEGE AND HOSPITAL,
KURUNJIBAGH VIDYANAGAR,
SULLIA - 574327.
4. MS. ASNIYA SHIRIN,
AGED ABOUT 20 YEARS,
D/O ABOOBACKER A. N.,
C/O KVG DENTAL COLLEGE AND HOSPITAL
KURUNJIBAGH, VIDYANAGAR,
SULLIA - 574327.
5. MS. A. AYISHATH SABEEHA,
AGED ABOUT 19 YEARS,
D/O A. ABBAS,
C/O KVG DENTAL COLLEGE AND HOSPITAL,
KURUNJIBAGH, VIDYANAGAR,
SULLIA - 574327.

...PETITIONERS

(BY SRI KRISHNA T., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
DEPARTMENT OF HEALTH AND FAMILY WELFARE
MEDICAL EDUCATION,
M.S .BUILDING,
BANGALORE- 560001.
REPRESENTED BY ITS PRINCIPAL SECRETARY.



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2. THE DIRECTORATE OF MEDICAL EDUCATION (DME),
ANAND RAO CIRCLE,
BANGALORE - 560009,
REPRESENTED BY ITS DIRECTOR
3. THE KARNATAKA EXAMINATION AUTHORITY,
18TH CROSS, SAMPIGE ROAD,
MALLESHWARAM,
BANGALORE - 560012.
REPRESENTED BY ITS EXECUTIVE DIRECTOR.
4. THE DENTAL COUNCIL OF INDIA,
J6MP G22, AIWAN E GALIB MARG,
KOTLA ROAD, TEMPLE LANE,
NEW DELHI - 110002.
REPRESENTED BY ITS PRESIDENT.
5. DIRECTORATE GENERAL OF HEALTH SERVICES,
MINISTRY OF HEALTH AND FAMILY WELFARE,
J668+85M, NIRMAN BHAWAN,
MAULANA AZAD ROAD,
NEW DELHI - 110011.
REPRESENTED BY ITS DIRECTOR GENERAL.
6. THE KARNATAKA STATE DENTAL COUNCIL,
NO. 143, 5TH MAIN ROAD, CHAMARAJPET,
BANGALORE - 560018.
REPRESENTED BY ITS PRESIDENT.
7. THE RAJIV GANDHI UNIVERSITY OF HEALTH
SCIENCES,
4TH T. BLOCK, JAYANAGAR,
BANGALORE - 560011.
REPRESENTED BY ITS REGISTRAR.

...RESPONDENTS

(BY SRI LAXMINARAYAN, ADDITIONAL GOVERNMENT
ADVOCATE FOR R1 & R2;
SRI N.K. RAMESH, ADVOCATE FOR R3;
SRI ADITYA BHAT, ADVOCATE FOR
SRI G.S.BHAT, ADVOCATE FOR R4;



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SRI V.C.SUDEEP, CENTRAL GOVERNMENT STANDING COUNSEL
FOR R5;
SMT. SUMANA BALIGA, ADVOCATE FOR R6;
SRI ASHOK N. NAYAK, ADVOCATE FOR R7)

THIS WRIT PETITION IS FILED UNDER SECTION 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS, DIRECTING THE KARNATAKA EXAMINATION AUTHORITY, RESPONDENT NO.3 HEREIN, TO OPEN THE WEBSITE/PORTAL, TO FACILITATE PETITIONERS 2 TO 5 TO GET THEMSELVES REGISTERED IN THE WEBSITE/PORTAL AND PERMIT PETITIONER NO.1 INSTITUTION TO ADMIT PETITIONERS-2 TO 5 FOR THE BDS COURSE FOR THE ACADEMIC YEAR 2021-22 AND ETC.

THESE WRIT PETITIONS, COMING ON FOR 'PRELIMINARY HEARING IN 'B' GROUP', THIS DAY, **B.VEERAPPA J.**, MADE THE FOLLOWING:

ORDER

Sri Venkateshwara Dental College and Hospital represented by its Principal along with two students who are said to be the aspirants of getting admission to BDS Course have filed W.P.No.12902/2022 for the following reliefs:

- (a) Issue a writ of mandamus, directing the Karnataka Examination Authority, respondent No.3 herein, to open the website/portal, to facilitate petitioners 2 and 3 to get themselves registered in the website/portal.



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(b) Permit petitioner No.1 Institution to admit petitioners 2 and 3 for the BDS course for the academic year 2021-22.

(c) Further direct respondent No.4 namely the Dental Council of India, to approve the admissions of petitioners 2 and 3 to BDS course, for the academic year 2021-22.

(d) Further direct Rajiv Gandhi University of health Sciences, respondent No.7 herein, to approve the admissions of petitioner No.2 and 3 to BDS course, for the academic year 2021-22.

KVG Dental College and Hospital represented by its Principal along with four students who are also said to be the aspirants of getting admission to BDS course have filed W.P.No.12946/2022 for the following reliefs:

(a) Issue a writ of mandamus, directing the Karnataka Examination Authority, respondent No.3 herein, to open the website/portal, to facilitate petitioners 2 to 5 to get themselves registered in the website/portal.

(b) Permit petitioner No.1 Institution to admit petitioners 2 to 5 for the BDS course for the academic year 2021-22.

(c) Further direct respondent No.4 namely the Dental Council of India, to approve the admissions of petitioners 2 to 5 to BDS course, for the academic year 2021-22.



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(d) Further direct Rajiv Gandhi University of health Sciences, respondent No.7 herein, to approve the admissions of petitioner No.2 to 5 to BDS course, for the academic year 2021-22.

2. Since common point for consideration is involved in these two writ petitions, both are clubbed together, heard and disposed off by this common Order.

I. FACTS OF THE CASE

3. The case of the petitioners is that, the petitioner No.1 College in W.P.No.12902/2022 is one of the oldest educational institution which was initially started by Nehru Smaraka Vidya Kendra and later taken over by Dr.Kurunji Venkataramana Gowda, popularly known as KVG, who was a Gandhian in his spirit and action. The petitioner No.1-college in W.P.No.12946/2022 is also an oldest educational Institution in Sullia Taluk, established by aforesaid Dr.Kurunji Venkataramana Gowda, and he was responsible for making Sullia Taluk as Vidya Kashi. The petitioner No.1-institutions obtained the requisite permission from the Government and affiliation from the respondents viz., The Dental Council of



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India-respondent No.4, Rajiv Gandhi University of Health Sciences-respondent No.7. The National Eligibility Entrance Test (NEET) is the qualifying test for MBBS and BDS programmes and it is conducted by the National Testing Agency (NTA). The procedure for admission to MBBS and BDS courses, is as follows:

"(a) After the pre-university examinations, the students intending to take up MBBS & BDS courses, have to appear for the NEET.

(b) The students who qualify in the NEET with the required ranking, will have to apply to the Karnataka Examination Authority (KEA) respondent No.3 and have to register themselves and the said registration of the students are done online.

(c) There will be three rounds of counselling for Admission to MBBS courses which includes the third and final MOP-UP counselling.

(d) There will be a gap of about 10 days to fill up any stray vacancies for MBBS courses.

(e) Thereafter, the next round of counselling will be for the students who wish to choose BDS courses and there will be three rounds of counselling including the stray vacancy round.



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(f) The students who intend to choose BDS courses have to follow the schedule notified by the Medical Counselling Committee (MCC), which is a wing of respondent No.5 and the said Committee is established pursuant to the directions issued by the Hon'ble Apex Court and the said Committee is responsible to conduct online counselling."

4. It is further case of the petitioners that for the academic year 2021-22, petitioner Nos.2 and 3 in W.P.No.12902/2022 and petitioner Nos.2 to 5 in W.P.No.12946/2022 (hereinafter called as petitioner-students) appeared for the NEET and were qualified in the said test. In terms of the schedule announced by the Medical Counselling Committee, vide Annexure-D, the schedule for MCC Mop-up round 2 counselling for BDS 2021 was as under:

EVENTS	DATES
Fresh Registration/payment	2 nd May to 3 rd May 2022
Choice filing and locking	2 nd May to 3 rd May 2022
Seat allotment processing	4 th May 2022
Results	5 th May 2022
Reporting at allotted college	6 th May to 9 th May 2022



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STRAY VACANCY ROUND

EVENTS	DATES
Seat allotment processing	10 th May 2022
Results	11 th May 2022
Reporting at allotted college	12 th May to 15 th May 2022

5. It is further contended that, as could be seen from the aforesaid schedule, the students who get qualified in the NEET, have to register with the Karnataka Examination Authority-respondent No.3, between 2nd May and 3rd May for Mop-up round 2 counselling for BDS 2021. Unfortunately, the website/portal of the Karnataka Examination Authority-respondent No.3 which facilitates the registration was not at all open due to the reasons best known to respondent No.3 and therefore, petitioner-students could not register themselves in terms of the schedule announced by the Medical Counselling Committee for Mop-up round 2 counselling for BDS 2021. As per the note issued by the Karnataka Examination Authority, the last date for admission to BDS i.e., Dental Courses for the academic year 2021-22 was 15.05.2022 and in view of the non availability of the website/portal of the Karnataka Examination



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Authority-respondent No.3 for registration, petitioner-students were deprived of getting admission to BDS course for the academic year 2021-22. It is further case of the petitioners that the permitted intake of students to petitioner No.1-college in W.P.No.12902/2022 was 40 and only 34 students were admitted and 6 seats are still vacant. In W.P.No.12946/2022, the petitioner No.1-institution has permitted intake of 100 students and only 96 students have been admitted and 4 seats are still vacant. Therefore, the petitioner No.1-institutions addressed a letter to the respondent No.3-Karnataka Examination Authority, on 12.05.2022, as per Annexure-G requesting the authority to permit the petitioner-students to register in the Karnataka Examination Authority website to facilitate their admission. However, since the respondent No.3 did not make their website/ portal available for the petitioner-students to register on 2nd and 3rd of May for Mop-up round 2 counselling for BDS 2021, they could not register and get the admission to the Dental course. Therefore, the petitioner No.1-institutions and the petitioner-students are before this Court for the relief sought for.



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6. The respondent No.1-State Government and respondent No.2-The Directorate of Medical Education, are represented by Sri Laxminarayan, learned Additional Government Advocate. The Dental Council of India-respondent No.4 is represented by Sri Aditya Bhat, learned counsel for Sri G.S.Bhat, learned counsel. The Directorate General of Health Sciences-respondent No.5 is represented by Sri V.C.Sudeep, Central Government Standing Counsel. The Karnataka State Dental Council-respondent No.6 is represented by Smt.Sumana Baliga, learned counsel and The Rajiv Gandhi University of Health Sciences-respondent No.7 is represented by Sri Ashok N.Nayak, learned counsel. The aforesaid respondents have not filed statement of objections. The Karnataka Examination Authority-respondent No.3 represented by Sri N.K.Ramesh, has filed the statement of objections.

II. STATEMENT OF OBJECTIONS FILED BY RESPONDENT NO.3-KARNATAKA EXAMINATION AUTHORITY

7. In the common statement of objections filed in both the writ petitions, the respondent No.3-Karnataka Examination Authority has contended that, these mischievous writ petitions



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at the behest of petitioners No.1-colleges to circumvent admission procedure which was concluded in May 2022 itself. The petitioners No.1-colleges in the writ petitions have no *locus standi* to seek prayer (i) as the registration process of the students has nothing to do with the individual college. In the scheme of the admission process, it is the students who have to get themselves registered with the Karnataka Examination Authority to participate in the counselling and the admission process. The petitioners have either not understood the process of admission or have deliberately distorting the facts to suit their convenience. The reference to Annexure-D, the time schedule for admission to Mop up round by MCC for All India quota seats has nothing to do with the time schedule fixed by respondent No.3 for admission to State quota seats. For the Academic Year 2021-22, respondent No.3 had opened the online registration process for eligible NEET qualified students from 13.12.2021 till 17.12.2021 which was extended till 22.12.2021 again extended till 27.12.2021 and yet again extended till 05.01.2022. During the said period, 15,534 students got registered with the Karnataka Examination



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Authority. Again, just before the commencement of the Mop up round, the registration was opened from 29.03.2022 to 31.03.2022 which was again extended till 2.00 pm on 01.04.2022 to enable the students to appear for Mop up round and also to include their names in the list of students who could get themselves admitted by the colleges in the stray vacancy round. During the said period, 1,513 students got themselves registered with the Karnataka Examination Authority. It is further contended that except Miss.O.Shifina-petitioner No.3 in W.P.No.12946/2022 none of the other petitioner-students availed the said opportunity to register themselves with the Karnataka Examination Authority. However, aforesaid Shifina also did not avail the opportunity of getting admitted to the college within the last date prescribed for admission and thus cannot be admitted at this juncture. The list of registered students who did not secure any seats in the counselling process was forwarded to the colleges on 09.04.2022. The last date prescribed for admission to the colleges was 09.04.2022 which was extended by MCC till 15.05.2022. The petitioner-students did not register themselves with the Karnataka



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Examination Authority at any point of time nor participated in the admission process. As per the procedure laid down, the colleges could give admission to only those students whose names were found in the list forwarded by the Karnataka Examination Authority. As the names of the petitioner-students (except aforementioned Shifina) were not included in the list forwarded to the colleges, they are not entitled to be admitted to the course. The petitioners No.1-colleges being aware of this procedure did not give admission within the last date prescribed. As an afterthought, at the behest of petitioners No.1-colleges, the petitioner-students joined hands to get illegal admission by filing the present writ petitions.

8. It is further contended that, it is well settled principle of law laid down by the Hon'ble Supreme Court that no admission could be made to professional courses after the last date fixed for admission. In the present cases, the petitioners have approached this Court on 27.06.2022, long after the last date prescribed for admission, that too, to reopen the registration process which cannot be countenanced. Therefore, sought to dismiss the writ petitions.



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9. We have heard the learned counsel for the parties to the lis.

III. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR THE PETITIONERS

10. Sri Krishna T, learned counsel for the petitioners contended with vehemence that, the date fixed by the Medical Counselling Committee for registration and payment was 02nd and 03rd March 2022. The website of the Karnataka Examination Authority never opened and thereby, the petitioner-students could not register or pay the fee and thereby, meritorious students have been deprived of their chance to study the professional course. It is further contended that, the Note dated 07.05.2022 issued by the Karnataka Examination Authority, vide Annexure-E, depicts that, as per the letters dated 28.04.2022 and 05.05.2022 written by the Ministry of Health and Family Welfare, Government of India and the Directorate of Medical Education, Government of Karnataka, respectively, 15.05.2022 is the last date fixed for admissions to Dental Courses for the year 2021. Accordingly, the Names List Portal was enabled in Karnataka Examination Authority website. In pursuance to the said Note



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and the schedule for MCC Mop-up round 2 counselling for BDS 2021, the Principal, Sri Venkateshwara Dental College- petitioner No.1 in W.P.No.12902/2022 addressed a letter dated 12.05.2022 to the Executive Director, Karnataka Examination Authority, as per Annexure-G, stating that, the registration and verification of documents in respect of some of the students who are qualified in NEET 2021 has not been done and such students approached their college for admission to BDS course for the Academic Year 2021-22, and therefore, requested to allow the said students to register with Karnataka Examination Authority and get the documents verified, so that they can make admission to the college for the academic year 2021-22, as the seats were still vacant, and if their request is considered immediately, it would be helpful to both the management as well as the students.

11. It is contended that inspite of the said letter dated 12.05.2022, the Karnataka Examination Authority has not permitted the students to get registered. The admission statement of the petitioner No.1 College in W.P.No.12902/2022, for the academic year 2021 depicts that,



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the total intake is 40 students and admissions done during the year 2021 is 34 and 6 seats are vacant. Similarly, the total intake of students in respect of petitioner No.1 College in W.P.No.12946/2022 for the academic year 2021-22 is 100, and admissions done is 96 and 4 seats are vacant. Therefore, the respondents have deprived the rights of petitioner-students to prosecute their studies in BDS course and thereby the students will lose one academic year.

12. It is further contended that all the petitioner-students are qualified in NEET and since the website/portal of the Karnataka Examination Authority was not made available to the petitioner-students to facilitate their registration in terms of the schedule issued by the MCC for mop-up round 2 counselling for BDS 2021, petitioners could not get admission in the petitioners No.1-colleges and thereby, for no fault of the petitioner-students, their educational career will be jeopardized.

13. It is further contended that the only reason for the petitioner- students for missing the schedule issued by the MCC is that the Karnataka Examination Authority did not open the



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website/portal facilitating the registration of students for mop-up round 2 counselling for BDS 2021. Thereby, petitioner-students could not register themselves with the Karnataka Examination Authority. Thereby, if the petitioners No.1-colleges are permitted to admit the petitioner-students, justice will be done. The College has acted like a parent to the students and approached this Court and therefore, sought to allow the writ petitions.

IV. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL FOR RESPONDENT No.3-KARNATAKA EXAMINATION AUTHORITY

14. Per contra, Sri N.K.Ramesh, learned counsel for the respondent No.3-Karnataka Examination Authority, referring to the common statement of objections filed in the above writ petitions, contended that, the schedule for Mop-up round 2 counselling for BDS 2021 is issued by Medical Counselling Committee for All India quota seats. For the academic year 2021-22, the Karnataka Examination Authority had opened the online registration process for eligible NEET qualified students from 13.12.2021 till 17.12.2021 which was extended till 22.12.2021 again extended till 27.12.2021 and yet again



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extended till 05.01.2022. During this period 15,534 students got registered with the Karnataka Examination Authority. Just prior to commencement of Mop up round, registration was open from 29.03.2022 to 31.03.2022 which was again extended till 2.00 pm on 01.04.2022 enabling the students to appear for Mop up round also, for inclusion of their names in the list of students who could get themselves admitted by the colleges in the stray vacancy round. During the said period 1,513 students got themselves registered with the Karnataka Examination Authority. It is further contended that petitioner No.3 in W.P.No.12946/2022 viz., Shifina.O, availed the opportunity to register with the Karnataka Examination Authority. But the said student did not avail the opportunity of getting admitted to the college within the last date prescribed for admission and therefore, now she cannot be permitted to get admission in the college. The last date prescribed for admission to the colleges was 09.04.2022 and the same was extended by Medical Counseling Committee till 15.05.2022. The petitioner-students did not participate in the admission process by registering themselves with Karnataka Examination



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Authority at any point of time. As per the procedure laid down, the colleges could give admission to only those students whose names were found in the list forwarded by the Karnataka Examination Authority. The colleges have no right to ask for registration or to open the website and it is only the students who are qualified in the NEET can ask for registration. Therefore, Annexure-G letter dated 12.05.2022 written by the petitioner No.1-college to the Karnataka Examination Authority requesting to allow the students to register in Karnataka Examination Authority, has to be ignored. Both the writ petitions are filed by the petitioner No.1-colleges along with students, in the form of Public Interest Litigation in education matter. Filing litigation by the colleges on behalf of the students is impermissible and therefore, sought to dismiss the writ petitions with costs.

15. In support of his contentions, learned counsel relied upon the dictum of the Hon'ble Supreme Court in the case of **Priya Gupta v. State of Chhattisgarh**, reported in **AIR 2012 SC 2413**.



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**V. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL
FOR RESPONDENT NO.4- THE DENTAL COUNCIL OF INDIA**

16. Sri Aditya Bhat, learned counsel for Sri G.S.Bhat, learned counsel for respondent No.4 contended that the schedule for MCC Mop up round 2 counselling for BDS 2021 vide Annexure-D was issued by respondent No.5-Directorate General of Health Services, Ministry of Health and Family Welfare, New Delhi and not by the Karnataka Examination Authority. In both the writ petitions, there are no pleadings by the students praying to permit them to register on the Karnataka Examination Authority website/portal and make payment. It is not the contention of any of the petitioner-students that on 02nd and 03rd May 2022, (the date fixed for Mop-up round) the website was not open. It is only the Institution, which has no right in this regard is alleging that the web site was not open. Thereby, the writ petitions filed by the institutions are not maintainable. The letter dated 12.05.2022 vide Annexure-G, is addressed by the petitioners No.1-colleges to the Karnataka Examination Authority and not by the petitioner-students, and therefore, it is of no consequence.



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17. It is further contended that the cause title to the writ petitions depicts that the petitioner-students are shown to be C/o petitioner No.1-colleges, inspite of the fact that they are not the students of the said colleges. The verifying affidavits filed in support of the memorandum of writ petitions depicts that the principal of the petitioner No.1-colleges has sworn to the affidavit and it is stated that the other petitioners have authorized him to swear to the affidavit. This clearly indicates that the petitioners have not come to the Court with clean hands and have suppressed the material facts. How the petitioner-students are given c/o address is not known. He further contended that the petitioner-students though got qualified in NEET, since they did not register with Karnataka Examination Authority within the time schedule, they are not entitled to any relief before this Court and therefore, sought to dismiss the writ petitions with costs.

**VI. ARGUMENTS ADVANCED BY THE LEARNED COUNSEL
FOR RESPONDENT NO.7- THE RAJIV GANDHI
UNIVERSITY OF HEALTH SCIENCE**

18. Sri Ashok N.Naik, learned counsel for respondent No.7 in both the writ petitions, while supporting the arguments of Sri



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N.K.Ramesh, learned counsel for Karnataka Examination Authority, contended that the classes for the academic year 2021-22 have already commenced during May 2022 and those students who get minimum 80% attendance will be eligible to take up the examinations and therefore, question of granting relief as prayed for, at this stage, would not arise, as the petitioner-students have not registered with Karnataka Examination Authority within the time stipulated. Therefore, sought to dismiss the Writ Petitions.

**VII. ARGUMENTS ADVANCED BY THE LEARNED
ADDITIONAL GOVERNMENT ADVOCATE**

19. Sri Laxminarayan, learned Additional Government Advocate contended that the writ petitions filed by the petitioner No.1-Colleges on behalf of the students is not maintainable, as absolutely there are no pleadings in the writ petitions with regard to the petitioner-students approaching the colleges seeking permission for registration with the Karnataka Examination Authority. In the absence of the same, petitioners No.1-colleges filing writ petitions along with the students is nothing but harassing the authorities, including the



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Government and therefore, sought to dismiss the writ petitions with costs.

VIII. POINTS FOR CONSIDERATION

20. In view of the aforesaid rival contentions urged by the learned counsel for the parties, the points that would arise for our consideration are:

(i) Whether the petitioner-students who have not registered with the Karnataka Examination Authority and the petitioners No.1-colleges are entitled to the writ of mandamus to the Karnataka Examination Authority directing to admit the petitioner-students to the BDS course for the Academic Year-2021-22?

(ii) Whether the petitioners have made out a case to direct the respondent No.4-Dental Council of India and respondent No.7-Rajiv Gandhi University of Health Sciences to approve admissions of petitioner-students to the BDS course for the Academic Year 2021-22, in the facts and circumstances of the present cases?

IX. CONSIDERATION

21. We have given our thoughtful consideration to the arguments advanced by the learned counsel for both the parties and perused the entire material on record, carefully.



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22. It is undisputed fact that petitioners No.1-institutions in both the writ petitions are two different colleges/institutions managed by a single Management and the petitioner-students who are said to be the aspirants to BDS course have filed the present writ petitions.

23. It is well settled that any person who approaches the Court for a writ of mandamus should first convince the Court as to what is the statutorily enforceable right available to him. A careful reading of the pleadings in the writ petitions make it clear that the petitioners have not made out any statutorily enforceable right to issue a writ in the nature of mandamus. In the absence of the same, petitioners are not entitled to any relief before this Court in exercise of powers under Articles 226 and 227 of the Constitution of India. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of **Mani Subrat Jain v. State of Haryana**, reported in **AIR 1977 SC 276**, wherein, at paragraph-9 it is held as under:

"9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right.



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There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England, 4th Edn., Vol. I, para 122; State of Haryana v. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed [(1976) 1 SCC 671 : (1976) 3 SCR 58] and Ferris : Extraordinary Legal Remedies, para 198.)"

24. It is the specific case of the petitioners that, though Annexure-D was issued by the Karnataka Examination Authority giving the schedule for MCC mop up round counseling for BDS 2021 fixing the date for fresh registration/payment as 02nd and 03rd May 2022 however, the website was not open. Thereby the students could not register themselves with the Karnataka Examination Authority. Therefore, on behalf of the students, the petitioners No.1/colleges made representation dated 12.05.2022 to the Karnataka Examination Authority



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requesting to open the website and permit the students to register with Karnataka Examination Authority.

25. In the statement of objections, the Karnataka Examination Authority has specifically contended that, for the Academic Year 2021-22 the website/portal was open for online registration process by the eligible NEET qualified students from 13.12.2021 till 17.12.2021 which was extended till 22.12.2021 again extended till 27.12.2021 and yet again extended till 05.01.2022. During this period, 15,534 students registered their names with the Karnataka Examination Authority. Again, just before the commencement of the Mop up round, the website/portal was opened from 29.03.2022 to 31.03.2022 which was again extended till 2 pm on 01.04.2022 to enable the students to appear for Mop up round and also to include their names in the list of students who could get themselves admitted by the colleges in the stray vacancy round. During the said period, 1,513 students got themselves registered with the Karnataka Examination Authority. It is further contended that except Shifina-petitioner No.3 in W.P.No.12946/2022 none of the other petitioner-students availed the said opportunity to



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register themselves with the Karnataka Examination Authority.

The above student obviously did not avail the opportunity of getting admitted to the college within the last date prescribed for admission and thus she cannot get admitted at this juncture.

26. Sri N.K.Ramesh, learned counsel for the Karnataka Examination Authority produced the Karnataka State e-information Bulletin, Admission to Medical and Dental courses for the year 2021 (Instructions and Guidelines for Verification of Documents, Online Seat Allotment Process). The calendar of events for registration and verification of documents prescribed in the Bulletin, reads as under:

CALENDAR OF EVENTS

Registration and Verification of Documents		
1.	Publication of Notification in the news papers and on the KEA Website	11-12-2021
2.	Hosting of Information Bulletin	13-12-2021 after 11.00 am
3.	Online Registration	from 2.00 pm on 13-12-2021 to 17-12-2021 upto 11.59 pm



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4.	Last date to pay the Registration fees	<u>18-12-2021 before 5.30 pm</u>
5.	Submission of Special Category Certificates (only by Karnataka candidates - NCC, Sports, Defence, Ex-defence, Scouts & Guides, CAPF, Ex-CAPF, AGL) Only at KEA, Bangalore.	17-12-2021 and 18-12-2021 (Those who have already submitted for UGCET-2021 need not submit once again)
6.	Medical Examination to Physically Disabled candidates - only for Karnataka candidates - including those who have already appeared for medical examination for UGCET-2021 should also compulsorily appear for UGNEET-2021 medical examination.	17-12-2021 and 18-12-2021 10.30 am to 2.00 pm (at KEA, Bangalore) Reporting Time: 10.00 am
7.	Verification of Documents - Karnataka candidates - Read the instructions in the following pages and also hosted separately in the KEA Website with regard to documents verification and follow the instructions.	20-12-2021 to 23-12-2021 (Rank wise schedule will be hosted on KEA Website on 17-12-2021)
8.	Marks entry and uploading of Marks card etc - <u>only by non- Karnataka candidates</u> - Read the instructions in the following pages and hosted separately in the KEA Website with regard to documents verification and follow the instructions.	15-12-2021 to 20-12-2021 (only after payment of fees)
9.	Kannada Language Test only for Horanadu and Gadinadu Kannadiga Candidates (only to newly registered candidates, those CET-2021 candidates who have already appeared for Kannada examination	18-12-2021 from 11.30 am to 12.30 pm (in Bangalore only)



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	on 30-08-2021 are not eligible to appear for Kannada Language Test once again)	
10.	Downloading of Verification Slip - Read the instructions in the following pages.	From 11.00 am on 28-12-2021 to 30-12-2021 8.00 pm

27. At this juncture, it is relevant to note that, in the statement of objections, the respondent No.3-Karnataka Examination Authority has categorically denied the assertion of the petitioners that date was fixed for fresh registration/ payment on 02nd and 03rd May 2022 as per Annexure-D, rather, specifically stated that for the Academic Year 2021-22, the online registration process for eligible NEET qualified students was open from 13.12.2021 till 17.12.2021, the same was extended till 22.12.2021 again extended till 27.12.2021 and yet again extended till 05.01.2022. During this period, 15,534 students got registered with the Karnataka Examination Authority. Again, just before the commencement of the Mop up round, the registration was opened from 29.03.2022 to 31.03.2022 which was again extended till 2.00 pm on 01.04.2022. The said categorical statement made by the



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Executive Director of Karnataka Examination Authority on oath is not denied by the petitioners by filing rejoinder.

28. Thereby, the contention of the learned counsel for the petitioners that the date was fixed by the Karnataka Examination Authority vide Annexure-D for registration/payment, is without any substance. It is also not in dispute that the Executive Director, Karnataka Examination Authority in the NOTE dated 07.05.2022 produced as per Annexure-E, specifically stated that, as per the letter dated 28.04.2022 from the Ministry of Health and Welfare, Government of India and letter dated 05.05.2022 from the Directorate of Medical Education, Government of Karnataka, 15.05.2022 is the last date for admission to Dental courses for the year 2021. It is further stated that, the Names List portal is enabled in the Karnataka Examination Authority website.

29. The petitioners have not denied the specific averments made at paragraph-4 of the statement of objections specifying the dates on which the online registration process was open for the eligible candidates to register with the Karnataka



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Examination Authority nor produced any contra documents to the effect that the Karnataka State e-Information Bulletin containing the calendar of events issued is not meant for registration to BDS course for the year 2021.

30. Though Sri Krishna T, learned counsel for petitioners contended that even before the last date fixed by the Medical Counselling Committee, the petitioner No.1-college by the letter dated 12.05.2022 brought to the notice of the respondent No.3-Karnataka Examination Authority regarding non opening of website/portal and requested to open the website and permit the students to register with Karnataka Examination Authority stating that the same will help both the Management and the students, it has to be noted that such permission cannot be granted and it cannot be lost sight that the petitioners No.1-colleges being the Management, are not the aggrieved parties to address letter to the respondent No.3 praying to open the website/portal. It is only the students who can seek such prayer, if they are so aggrieved. Only the students who are qualified in NEET can approach the respondent No.3. The representation made by the college has no consequence.



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31. It is very interesting to note that entire pleadings is silent about the grievance of the students and, the petitioners No.1- colleges filed the verifying affidavit in support of the pleadings in the writ petitions stating as under:

"I submit that I am the representing petitioner No.1 Institution and I know the facts of the case. The other petitioners have authorized me to swear to this affidavit."

32. In the cause title to W.P.No.12902/2022 the address of the petitioner-students is shown as c/o Sri Venkateshwara Dental College and Hospital, Kariyappanahalli, Anekal Road, Bannerghatta, Bengaluru-560 083 and in W.P.No.12946/2022, the address of the petitioner-students is shown as C/o KVG Dental College and Hospital, Kurunjibagh, Vidyanagar, Sullia- 574 327. We are bowled over as to how the students come under the 'care of' the college of which they are not the students at all. This clearly indicates, only with an intention to fill up the vacant seats, the petitioner No.1-colleges have adopted the indirect method of getting an order from the Court and therefore, have not approached the Court with clean hands. If the petitioner-students were really deprived of the



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seats to which they were eligible, they would have approached the Court, independently, by producing the documents showing the illegality, if any, committed by any of the respondents herein. But that is not the case in the present writ petitions. The colleges cannot step into the shoes of students and file the writ petitions.

33. A writ of mandamus sought by the petitioners No.1- colleges on behalf of the students who are not admitted into the college is not maintainable, as already held by us. Filing and contesting these types of litigation is nothing but wasting precious public time and that of this Court and is nothing but harassing the respondent-authorities unnecessarily, by driving them to the Court and making them to spend litigation expenses etc., Since the petitioners have not come to the Court with clean hands, they are not entitled to any relief before this Court in exercise of powers under Articles 226 and 227 of the Constitution of India.

34. At this stage, it is relevant to refer to the dictum of the Hon'ble Supreme Court in the case of **Priya Gupta v. State of**



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Chhattisgarh, reported in **AIR 2012 SC 2413**, wherein at paragraph-30, it is held as under:

30. 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. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned:



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(i) *The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.*

(ii) *The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.*

(iii) *After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counselling, in accordance with the Rules.*



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(iv) Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counselling to be conducted by the authority concerned and that college would have no right to make admissions in the current academic year against such seats.

(v) The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the State examination and there is a single medical college, then in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.

(vi) All admissions through any of the stated selection processes have to be effected only after due publicity and in



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consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counselling should be the final counselling, as this Court has already held in Neelu Arora v. Union of India [(2003) 3 SCC 366] and third counselling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

(vii) 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



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academic courses by 30th September of the academic year.

(viii) 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.

(ix) 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



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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.

35. The Hon'ble Supreme Court, in the case of *Dar-Us-Slam Educational Trust and others vs. Medical Council of India and others* passed in WP No.267/2017 dated 09.05.2017, wherein, at paragraph-7, it is held as under:

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.



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36. The Hon'ble Supreme Court, in the case of **Education Promotion Society for India v. Union of India**, reported in **(2019)7 SCC 38**, at paragraphs 6 and 7, held as under:

"6. In this case the petitioners want a general extension of time not on account of any particular difficulty faced by any individual college or university but generally on the ground that a large number of seats for the PG courses are lying vacant. It is stated that more than 1000 seats are lying vacant. In the affidavit filed by the UoI it is mentioned that as far as deemed universities are concerned there are 603 seats lying vacant. However, it is important to note that out of 603 seats lying vacant only 31 are in clinical subjects and the vast majority (572) that is almost 95% of the seats are lying vacant in non-clinical subjects. There is no material on record to show as to what is the situation with regard to the remaining 400-500 seats. This Court however can take judicial notice of the fact that every year large number of non-clinical seats remain vacant because many graduate doctors do not want to do post graduation in non-clinical subjects. Merely because the seats are lying vacant, in our view, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. The schedule



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must be followed. If we permit violation of schedule and grant extension, we shall be opening a pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to time schedule will be defeated.

7. We may note that in the schedule prescribed, there are three rounds of counselling, the first round, the second round and the mop-up round. The mop-up round was to be completed by 31-5-2019 and if some seats remain vacant even after the mop-up round it cannot be helped. Extension cannot be granted just because some seats are lying vacant without there being any other justification."

37. The contention of Sri Krishna, learned counsel for the petitioners that Sri Venkateshwara Dental College and Hospital i.e., petitioner No.1 in W.P.No.12902/2022, the total intake for the academic year 2021 is 40 and the admissions done is 34 and still 6 seats are vacant and that KVG Dental College and Hospital-petitioner No.1 in W.P.No.12946/2022, the total intake for the academic year 2021 is 100 and the admission done is 96 and still 4 seats are vacant, is of no consequence. That is how the colleges have approached the Court to get an order to fill up the vacant post and thus, the exercise of the Colleges is



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for its personal benefit and not for the benefit of the students. Thereby, the petitioners have not made out any case to grant the relief sought for in the present writ petitions.

38. The Hon'ble Supreme Court in the case of **S. Krishna Sradha v. State of A.P.**, reported in **(2020) 17 SCC 465**, rendered by three Judges, at paragraph 9(ii) held as under:

"9(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time i.e. within one month from 30th September i.e. cut-off date and under no



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circumstances, the Court shall order any admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled."

X. CONCLUSION

39. For the reasons stated above, the first point raised for consideration is answered in the negative holding that the petitioners have not made out any ground to direct the Karnataka Examination Authority to admit the petitioner-students to petitioners No.1-college to the BDS course for the Academic Year 2021-22. Accordingly, the 2nd point is also answered in the negative holding that the petitioners have not made out a case to direct the respondent No.4-Dental Council



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of India and respondent No.7-Rajiv Gandhi University of Health Sciences to approve admissions of petitioner-students to the BDS course for the Academic Year 2021-22.

40. It is relevant to state at this stage that, because of petitioners No.1-college the petitioner-students approached the Court believing that they get the relief before this Court and they will get admission in the college. Thereby, the precious time of the petitioner-students has been wasted. So also, the petitioners have wasted the Court time for more than half a day, depriving the other genuine litigants. The experience of this Court is that in recent years there has emerged a trend of filing speculative litigations before various Courts of law, not just in the Court of first instance, but also in the High Court as well as before the Hon'ble Supreme Court. It is the duty of the Courts to ensure that such litigations shall be weeded out at the first instance rather than allowing to be festered and thereby coming in the way of genuine litigants seeking justice treating the Court as "Temple of Justice" and to protect precious public & judicial time of the court. Therefore, the



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petitioners No.1-colleges are liable to pay cost for wasting precious Court time.

41. In view of the above, we pass the following:

XI. ORDER/RESULT

(i) The Writ petitions are hereby ***dismissed*** as devoid of merits with costs of ₹2,00,000/- (Rupees two lakhs), i.e., ₹1,00,000/- (Rupees one lakh) payable by Sri Venkateshwara Dental College and Hospital-petitioner No.1 in W.P.No.12902/2022 and ₹1,00,000/- (Rupees one lakh) payable by KVG Dental College & Hospital-petitioner No.1 in W.P.No.12946/2022.

(ii) The costs of ₹2,00,000/- (Rupees two lakhs) (as stated supra) shall be deposited with the Advocates' Association, Bengaluru, within a period of one month from the date of receipt of certified copy of this Order, failing which the Registry is directed to post the matter before the Court for



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implementation of the order with regard to
payment of costs.

(iii) Registry is directed to communicate a copy of
this Order to the Secretary, Advocates' Association,
Bengaluru, for information.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

kcm