



2024:KER:93461

WP(C) NO. 30673 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

WEDNESDAY, THE 11TH DAY OF DECEMBER 2024 / 20TH AGRAHAYANA,

1946

WP(C) NO. 30673 OF 2024

PETITIONERS:

- 1 DR. THAHIYA THASLEEM V S
AGED 26 YEARS
D/O V.K.SIDHIK, VADAKKETHOLAKKARA HOUSE,
KUNJATTUKARA, EDATHALA P.O, ALUVA, ERNAKULAM
DISTRICT, PIN - 683561
- 2 DR. RIYA ELIZABETH GEORGE
AGED 26 YEARS
D/O GEORGE BOBY T.J, THUNDIYATH HOUSE, ARANMULA
P.O, PATHANAMTHITTA DISTRICT, PIN - 689533

BY ADVS.
AYSHA YOUSEFF
V.K.SIDHIQUE
SAJITHA SIDHIK
AKHEELA FARZANA
ANJALA FARHATH V.S.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY, DEPARTMENT OF
HEALTH AND FAMILY WELFARE, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001



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- 2 THE DIRECTOR OF HEALTH SERVICES
VANCHIYOOR P.O, THIRUVANATHAPURAM, PIN - 695035
- 3 THE DIRECTOR OF MEDICAL EDUCATION KERALA
DIRECTORATE OF MEDICAL EDUCATION, MEDICAL COLLEGE
P.O, THIRUVANANTHAPURAM, PIN - 695011
- 4 KERALA STATE MEDICAL COUNCILS
REPRESENTED BY ITS REGISTRAR, COMBINED COUNCIL
BUILDINGS, RED CROSS ROAD, THIRUVANANTHAPURAM, PIN
- 695035
- 5 NATIONAL MEDICAL COMMISSION
REPRESENTED BY ITS CHAIRMAN, POCKET 14, SECTOR 8,
DWARAKA, PHASE – 1, NEW DELHI, PIN - 110077
- 6 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF
HEALTH AND FAMILY WELFARE, CENTRAL SECRETARIAT, NEW
DELHI, PIN - 110001
- 7 SECRETARY TO GOVERNMENT
MINISTRY OF EXTERNAL AFFAIRS, CENTRAL SECRETARIAT,
NEW DELHI, PIN - 110001
- 8 ODESSA NATIONAL MEDICAL UNIVERSITY
VALIKHOVSKIY LANE, 2. ODESSA, UKRAINE. +38(066)681-
23-54, INTONMU@GMAIL.COM, PIN - 65082

OTHER PRESENT:

SR GP SMT DEEPA NARAYANAN .
SC SRI VIVEK MENON .SRI K S PRENJITH KUMAR .
DSGI SRI T C KRISHNA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 11.12.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**“C.R”****C.S.DIAS,J.**

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W.P(C)No.30673 of 2024

Dated this the 11th day of December, 2024**ORDER**

The writ petition is filed, inter alia, to quash Note 3 in Exts. P5 and P5(a) certificates and declare that the petitioners have to undergo the Compulsory Rotating Medical Internship only for one year as per Ext.P4 regulation.

2. The petitioners have averred in the writ petition that they had undergone a Master of Medicine course at the Odessa National Medical University, Ukraine, equivalent to the MBBS course in India. The petitioners did their six-year graduation programme from June 2016 to May 2022. The petitioners had completed their curriculum in full, with 360 ECTS credits, including practical training. After completing the



course, the petitioners appeared for the screening test conducted by the National Medical Commission (5th respondent) and passed the Foreign Medical Graduate Examination in December 2022. As per Regulation 5 of Ext.P5 National Medical Commission (Compulsory Rotating Medical Internship) Regulations, 2021 ('Regulation', for brevity) promulgated by the 5th respondent, the Compulsory Rotating Medical Internship ('CRMI', for short) shall not be less than 12 months and has to be completed within two years. Schedule 2 under Regulation 4 requires that a candidate undergoes an internship at par with Indian Medical Graduates if they desire to seek Permanent Registration to practise medicine in India. The registration of such candidates is provided under the National Medical Commission Act. As far as the States are concerned, the registration is relegated to the State Medical Commission. In the State of Kerala, Section 24 of the Kerala Medical Practitioners Act provides for the registration of medical practitioners.



As per Schedule 1 read with Regulation 5 of the Regulation, the overall duration of CRMI shall not be less than 12 months but shall be completed within two years. The Kerala State Medical Commission has provided provisional registration to the petitioners as per Exts.P5 and P5(a) certificates, valid for two years from the date of registration. However, in Note 3 of the said certificates, it is stipulated that the petitioners have to undergo the CRMI for two years. When a statutory provision stipulates only one year, the same cannot be changed by an executive decision. The above stipulation in Note 3 is arbitrary, oppressive and discriminatory and is in violation of Articles 14, 19 and 21 of the Constitution of India. The petitioners and similarly situated Foreign Medical Graduates have submitted various representations to the respondents to clarify the matter and to exempt them from undergoing the CRMI for two years. Pursuant to the said representations, the 5th respondent has issued Ext.P8 public notice stating



that the students who have sufficiently compensated classes in physical onsite in lieu of online classes and have subsequently passed examinations equivalent to MBBS have to undergo only one-year CRMI. The petitioners have attended theory classes, practical training and examinations in the physical mode at their university. They have completed all their examinations. Additionally, in states like Rajasthan, Haryana, Tamil Nadu, and Telangana, similarly situated candidates are permitted to apply for permanent registration upon completion of a one-year CRMI. So, the insistence of the 4th respondent for the two-year CRMI is untenable. Hence, the writ petition.

3. The 4th respondent has filed a counter affidavit refuting the contentions in the writ petition. It is contended that due to the COVID-19 pandemic, the student community had to undergo their studies through online mode. Several Foreign Medical Graduates ('FMGs', in short) had returned to India and pursued the



course through online mode. They also wrote their examinations online. Taking into consideration the said situation, the 5th respondent issued Ext.R4(a) public notice stating that in view of the directions of the Honourable Supreme Court in SLP No.2536-37 of 2022, the foreign medical students have to undergo CRMI for a period of two years to make up for the clinical training which they could not physically attend during their undergraduate medicine course in the foreign institutions. The foreign medical graduates would be eligible for permanent registration only after completing the two-year CRMI. The petitioners had issued Exts. R4(b) and R4(c) letters to the 4th respondent via e-mail stating that they had studied in the offline mode in their university during the pandemic. Considering the above representations, the petitioners were issued Ext.P5 series Provisional Registration Certificates with a specific condition by way of Note 3. Subsequently, the 5th respondent issued Ext.R4(d) Circular, inter alia, stating



that if a student had undergone online classes during the final year due to the COVID-19 pandemic or the Ukraine war, they must undergo the two-year CRMI. It is evident from Exts.R4(b) and R4(c) communications that the petitioners had undergone their studies through online mode during the COVID-19 pandemic and the war. The issue of whether the petitioners had returned to India during the pandemic or the war is irrelevant since the petitioners' university has confirmed that they underwent the online mode of study. In the said background, the 4th respondent has imposed the stipulation in Ext.P5 series certificates. Hence, the writ petition may be dismissed.

4. The learned Standing Counsel for the 5th respondent has filed a statement inter alia, contending that in **National Medical Commission v. Pooja Thandu Naresh and Ors** [2022 KHC 6477], the Honourable Supreme Court has held that without practical training, there cannot be any Doctor, who can take care of the



citizens of the Country. ⁹ The 5th respondent has formulated Ext.R5(a) Circular stipulating that online study of medical education (theory along with practical) is not a valid mode of study. It is expressly clarified that foreign medical graduates who have undergone their last year of study for medical qualification and returned to India due to the COVID-19 pandemic or the war must qualify for the FMG examination and undergo CRMI for two years. Annexures R5(b) to R5(d) clarificatory Circulars have also been issued. The petitioners' physical presence in Ukraine was immaterial. If they have undergone classes through the online mode, they have to undergo CRMI for two years. However, a student can be exempted from the two-year CRMI if he has adequately compensated the online classes by attending classes offline as stipulated in Annexure R5(c). However, the petitioners have not produced any documents to substantiate that they had attended classes in the offline mode. Hence, the writ petition may



be dismissed.

5. The petitioners have filed a reply affidavit to the counter affidavit filed by the 4th respondent. The petitioners have contended that they completed their course in January 2022. After that, they were on study leave for their final examination. Even though the war started in Ukraine, the petitioners stayed back and attended their examinations. On 4.3.2022, they were airlifted to India. While in India, they attended the complex profession-oriental final exam and the complex practice qualification exam online on 22.5.2022. Even during the pandemic, they had not returned to India, which is evident from Ext.P7 series passports. The public notice issued by the 5th respondent, pursuant to the orders of the Hon'ble Supreme Court, does not apply to the petitioners. The petitioners completed their course in January 2022 and got 360 ECTS credits. The petitioners' university informed the fourth respondent that the petitioners studied offline during the pandemic and their



education took place in a mixed format. The statement that the petitioners studied remotely from 24.2.2022 to 30.6.2022 is a general perception and does not apply to them because their education was completed by the end of January 2022. Note 3 in Ext.P5 series certificates is incorporated on a misunderstanding of the factual situation. The condition to undergo two years of CRMI is arbitrary and unfair. Hence, the writ petition may be allowed.

6. Heard; Sri. Muhammed Youseff, the learned Senior Counsel appearing for the petitioners, Sri.Reghu Raj, the learned Senior Counsel appearing for the 4th respondent, the learned Standing Counsel appearing for the 5th respondent, the learned Deputy Solicitor General of India and the learned Government Pleader.

7. The learned Senior Counsel for the petitioners and the 4th respondent and the Standing Counsel for the 5th respondent reiterated the contentions in their respective pleadings. The learned Counsel appearing for



the 5th respondent placed strong reliance on the decision in **Pooja Thandu Naresh's case**(supra).

8. The short point is whether the stipulation in Note 3 of Ext.P5 series certificates that petitioners must undergo two years of CRMI to secure permanent registration is arbitrary and oppressive.

9. The Honourable Supreme Court, while considering a matter of almost an identical nature in **Pooja Thandu Naresh's case** (supra), made the following observations:

“25. Therefore, we direct the appellant

“i) to frame a scheme as a one-time measure within two months to allow the student and such similarly situated students who have not actually completed clinical training to undergo clinical training in India in the medical colleges which may be identified by the appellant for a limited duration as may be specified by the appellant, on such charges which the appellant determines.

ii) It shall be open to the appellant to test the candidates in the scheme so framed in the manner within next one month, which it considers appropriate as to satisfy that such students are sufficiently trained to be provisionally registered to complete internship for 12 months.”

10. The 5th respondent, the competent statutory



authority, has promulgated the Regulations and issued Annexures R5 (a) to R5(d) Circulars based on the directions of the Honourable Supreme Court.

11. It is apposite to refer to the relevant clauses of Annexure R5(a) Circular dated 9.5.2023, which reads as follows:

“Applicability of NMC Public Notice dated 28.07.2022 on FMGs:

(viii) In pursuance of order dated 29.04.2022 passed by the Hon'ble Supreme Court of India in SLP No. 2536-37 of 2022, NMC issued public notice dated 28.7.2022 informing that Indian students who were in the last year of their undergraduate medicine course but due to COVID-19, Russia-Ukraine war etc. had to leave their foreign medical institute and return to India and have subsequently completed their studies as also have been granted certificate of completion of course/degree by their respective institute on or before 30th June, 2022 shall be permitted to appear in Foreign Medical Graduate Examination.

(ix) The provision of two years' internship, referred in Public Notice dated 28.07.2022, is applicable only to those Foreign Medical Graduates who were in their last year of their study of medical qualification and returned to India due to COVID-19 or Russia-Ukraine War etc. After successful completion of the medical qualification, such FMGs are required to qualify FMG Examination and subsequently undergo Compulsory Rotating Medical Internship (CRMI) for a period of two years (schedule of 12 months to be repeated) in hospital attached to medical college only.

All FMGs (Except covered in point (viii) and (ix)



above) are required to to supplement their online theory subjects/classes by offline practical and clinical training and thereafter shall acquire a valid medical qualification which is registrable in that country where it is being acquired. After qualifying FMG Examination, FMG shall undergo Compulsory Rotating Medical Internship (CRMI) for a period of one year in accordance with CRMI Regulations 2021.

(emphasis given)

12. Subsequently, Annexures R5(b) and R5(c) Public notices were also issued. Annexure R5(c) public notice dated 7.6.2024, reads thus:

“PUBLIC NOTICE

This is in continuation to the Circular No. U.15024/01/2022- UGMEB dated 9th May 2023, uploaded by UGMEB regarding the conduct of internships for Foreign Medical Graduates (FMGs) which pertains to the provision of supplementing online classes with offline mode as mentioned in clause (x) of point 3 on page 3 of the above circular.

2 It has been observed that many FMGs are maliciously obtaining compensatory certificates from their parent universities for the online classes carried by them. The medical profession deals with precious human life, therefore the life of Indian citizens cannot be put at stake of poorly trained medical professionals. The UGMEB has decided that henceforth, Certificate regarding the compensation/supplementation of online theory subjects/classes with offline practical and clinical training shall not be accepted.

3. FMGs who have attended their classes online for any duration during their course completion are required to qualify the FMG Examination and subsequently undergo a Compulsory Rotating Medical Internship (CRMI) for a period of two/three years (a schedule of 12 months to be repeated) as mentioned in the Circular dated 9.5.2023 and as per the public notice uploaded on 7th December 2023.

4. This public notice is effective from the date of its



publication.

(emphasis given)

13. The petitioners' principal contentions are that they attended the theory classes, practical training and examinations in physical mode, except for the examination conducted by the Ministry of Health, Ukraine, which is apparent in Exts.P9 and P9(a) certificates. In many States, foreign medical graduates are permitted to apply for permanent registration after completing one year of CRMI. Therefore, the stipulation in Note 3 of Ext.P5 series certificates is illegal and arbitrary.

14. On the contrary, the respondents have contended that the petitioners have not produced any material to establish that they have adequately compensated the online classes by attending classes offline.

15. In the Public Notice published by the 5th respondent, based on the directions of the Honourable



Supreme Court, there are two categories of students, namely the students who left their universities, returned to India, and attended the classes through the online mode due to (i) the COVID-19 pandemic and (ii) the Russia-Ukraine War.

16. Exts.P9 series certificates show that the petitioners completed their graduation in June 2022, and their course was from 2016 to 2022. Therefore, the last year of their course was one year before June 2022. Although the petitioners have contended that they did not return to India during the COVID-19 pandemic, there is no material to show that they attended classes during the pandemic period from June 2021 to June 2022 in the offline mode, which is germane. Ext.P9 certificates do not show that the petitioners had subsequently attended classes in the offline mode. Moreover, the Scrutiny Committee of the 4th respondent scrutinised Exts.R4 (b) and R4(c) communications and issued Ext.P5 series provisional registration certificates by incorporating Note



3. Thus, whether the petitioners had undergone offline mode of classes or subsequently got the online classes adequately compensated, etc., are disputed questions that cannot be adjudicated in a writ petition.

17. It is also contextual to recollect the observations in **Pooja Thandu Naresh's case** (supra), which reads as follows:

“19. Therefore, without practical training, there cannot be any Doctor who is expected to take care of the citizens of the country. Hence, the decision of the appellant not to grant provisional registration cannot be said to be arbitrary.

20. The argument that certain students have been granted provisional registration will not confer any right with the student to claim provisional registration so as to undergo the internship. There cannot be any equality in illegality. Reference may be made to a judgment of this Court reported as *Chandigarh Administration v. Jagjit Singh*(1995) 1 SCC 745].

21. The argument that if a student has a right, then such right can be enforced independent of the order passed by the courts is not tenable. Qualifying in the Screening Regulations is no proof of the clinical experience, if any, gained by the students. The Screening examination is based upon Optical Mark Reader (OMR) answers and has no correlation with any practical training. We do not find that in terms of the Screening Regulations, the students are entitled to the provisional registration.

22. However, the fact remains that the students were permitted to undergo medical course abroad and that they have completed their curriculum according to the certificate granted by such Foreign Institute. Therefore, such national resource cannot be permitted to be wasted



which will affect the life of young students, who had taken admission in the foreign Institutes as part of their career prospects. Therefore, the services of the students should be used to augment health infrastructure in the country. Thus, it would be necessary that the students undergo actual clinical training of such duration and at such institutes which are identified by the appellant and on such terms and conditions, including the charges for imparting such training, as may be notified by the appellant.

23. We are unable to agree with the High Court that instead of three months of clinical training in China, two months training would be sufficient for provisional registration apart from the 12 months of internship. The Courts are not expert in deciding an academic curriculum or the requirement of the clinical training which may be required to be satisfied by the students.”

18. It is well settled in a host of judicial pronouncements that the Courts should refrain from substituting the wisdom of the Experts in academic matters.

19. In **Chancellor and Another v. Dr. Bijayananda Kar and Others** [(1994) 1 SCC 169], the Honourable Supreme Court observed as under:

“9. This Court has repeatedly held that the decisions of the academic authorities should not ordinarily be interfered with by the courts. Whether a candidate fulfils the requisite qualifications or not is a matter which should be entirely left to be decided by the academic bodies and the concerned selection committees which invariably consist of experts on the subjects relevant to the selection.”



20. It would be relevant to refer to another judgment of the Honourable Supreme Court in **All India Council for Technical Education v. Surinder Kumar Dhawan and Others** [2009 SCC OnLine SC 378], where it was held thus:

“16. The courts are neither equipped nor have the academic or technical background to substitute themselves in place of statutory professional technical bodies and take decisions in academic matters involving standards and quality of technical education. If the courts start entertaining petitions from individual institutions or students to permit courses of their choice, either for their convenience or to alleviate hardship or to provide better opportunities, or because they think that one course is equal to another, without realising the repercussions on the field of technical education in general, it will lead to chaos in education and deterioration in standards of education.

17. The role of statutory expert bodies on education and the role of courts are well defined by a simple rule. If it is a question of educational policy or an issue involving academic matter, the courts keep their hands off. If any provision of law or principle of law has to be interpreted, applied or enforced, with reference to or connected with education, the courts will step in. In *J.P. Kulshrestha (Dr.) v. Allahabad University* [(1980) 3 SCC 418 : 1980 SCC (L&S) 436] this Court observed: (SCC pp. 424 & 426, paras 11 & 17)

“11. ... Judges must not rush in where even educationists fear to tread. ...

17. ... While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.”

21. In **Maharashtra State Board of Secondary**



and Higher Secondary Education and Another v. Paritosh Bhupeshkumar Sheth and Others [(1984) 4 SCC 27], the Honourable Supreme Court held that Courts should be extremely reluctant to substitute their views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by Professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and that it will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature.

On an evaluation of the facts, the materials and the law, especially on finding that there are no materials to substantiate that the petitioners had undergone their last year of study during the COVID-19 pandemic in the offline mode, I do not find any valid ground to hold that Note 3 in Ext.P5 series is arbitrary or oppressive. The stipulation has been incorporated in the larger public interest to ensure that foreign medical graduates are



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granted permanent registration only after getting adequate practical training as they were unable to attend classes due to the pandemic or the war. This Court does not find any illegality in the condition incorporated in Note 3. In fact, there is a reasonable nexus between the condition and the object sought to be achieved. The writ petition is devoid of any merits. Consequentially, the writ petition is dismissed.

SD/-

C.S.DIAS, JUDGE



APPENDIX OF WP(C) 30673/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE GRADUATION CERTIFICATE DATED 25-06-2022 ISSUED TO THE 1ST PETITIONER
- Exhibit P1(a) TRUE COPY OF THE SUPPLEMENT CERTIFICATE DATED 25- 06-2022 WHICH SHOWS PROGRAM DETAILS, INDIVIDUAL CREDITS/MARKS OBTAINED ETC.
- Exhibit P2 TRUE COPY OF THE GRADUATION CERTIFICATE DATED 25-06-2022 ISSUED TO THE 2ND PETITIONER
- Exhibit P2(a) TRUE COPY OF THE SUPPLEMENT CERTIFICATE DATED 25-06-2022 WHICH SHOWS PROGRAM DETAILS, INDIVIDUAL CREDITS/MARKS OBTAINED ETC BY THE 2ND PETITIONER
- Exhibit P3 TRUE COPY OF THE FMGE PASS CERTIFICATE DATED 03-04-2023 ISSUED TO THE LST PETITIONER BY THE NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES
- Exhibit P3(a) TRUE COPY OF THE FMGE PASS CERTIFICATE DATED 25-03-2023 ISSUED TO THE 2ND PETITIONER BY THE NATIONAL BOARD OF EXAMINATIONS IN MEDICAL SCIENCES
- Exhibit P4 TRUE COPY OF THE RELEVANT PAGES OF THE NOTIFICATION DATED 18-11-2021 ISSUED BY THE NATIONAL MEDICAL COMMISSION
- Exhibit P5 TRUE COPY OF THE PROVISIONAL REGISTRATION CERTIFICATE DATED 01-09-2023 ISSUED TO THE 1ST PETITIONER BY THE 4TH RESPONDENT
- Exhibit P5(a) TRUE COPY OF THE PROVISIONAL REGISTRATION CERTIFICATE DATED 05-09-2023 ISSUED TO THE 2ND PETITIONER BY THE 4TH RESPONDENT
- Exhibit P6 TRUE COPY OF THE ALLOTMENT ORDER FOR



INTERNSHIP DATED 19.09.2023

- Exhibit P7 TRUE COPY OF THE PASSPORT OF THE 1ST PETITIONER
- Exhibit P7(a) TRUE COPY OF THE PASSPORT OF THE 2ND PETITIONER
- Exhibit P8 TRUE COPY OF THE PUBLIC NOTICE DATED 19-06-2024 PUBLISHED BY THE 5TH RESPONDENT
- Exhibit P9 TRUE COPY OF THE ACADEMIC CURRICULUM CERTIFICATE DATED 25-06-2022 ISSUED TO THE 1ST PETITIONER
- Exhibit P9(a) TRUE COPY OF THE ACADEMIC CURRICULUM CERTIFICATE DATED 25-06-2022 ISSUED TO THE 2ND PETITIONER
- Exhibit P10 TRUE PHOTOCOPY OF THE REPRESENTATION DATED 10-07-2024 SUBMITTED BY THE 1ST PETITIONER BEFORE THE 4TH RESPONDENT
- Exhibit P10(a) TRUE PHOTOCOPY OF THE REPRESENTATION DATED 10-07-2024 SUBMITTED BY THE 2ND PETITIONER BEFORE THE 4TH RESPONDENT
- Exhibit P11 TRUE COPY OF THE LETTER DATED 23-04-2024 SUBMITTED BY THE GUJARAT MEDICAL COUNCIL BEFORE THE 5TH RESPONDENT, NATIONAL MEDICAL COMMISSION
- Exhibit P12 TRUE PHOTOCOPY OF THE CIRCULAR DATED 04-03-2022 ISSUED BY THE 5TH RESPONDENT

RESPONDENT ANNEXURES

- Annexure R5(a) A true copy of Circular No. U-15024/01/2022-UGMEB dated 09.05.2023 issued by the 5th respondent
- Annexure R5(c) A true copy of Public Notice No. U-15024/15/2024-UGMEB dated 07.06.2024 issued by the 5th respondent



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Annexure R5(d) A true copy of Public Notice No. U-
15024/15/2024-UGMEB dated 19.06.2024
issued by the 5th respondent

Annexure R5(b) A true copy of Public Notice No. U-
15024/9/2023-UGMEB dated 07.12.2023
issued by the 5th respondent