REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). OF 2022
(Arising out of SLP(C) No(s).3507-3508 of 2020)

BOARD OF GOVERNORS IN SUPERSESSION OF MEDICAL COUNCIL OF INDIA ...APPELLANT(S)

VERSUS

DR. PRIYAMBADA SHARMA & OTHERS ... RESPONDENT(S)

WITH

CIVIL APPEAL NO(s). OF 2022
(Arising out of SLP(C) No(s).24800 of 2019)

CIVIL APPEAL NO(s). OF 2022
(Arising out of SLP(C) No(s).24021 of 2019)

CIVIL APPEAL NO(s). OF 2022
(Arising out of SLP(C) No(s).24023 of 2019)

CIVIL APPEAL NO(s). OF 2022
(Arising out of SLP(C) No(s).24020 of 2019)

CIVIL APPEAL NO(s). OF 2022

(Arising out of SLP(C) No(s).27463 of 2019)

CIVIL APPEAL NO(s). OF 2022

(Arising out of SLP(C) No(s).26970 of 2019)

CIVIL APPEAL NO(s). OF 2022

(Arising out of SLP(C) No(s).7077 of 2021)

CIVIL APPEAL NO(s). OF 2022

(Arising out of SLP(C) No(s).7111 of 2021)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The Board of Governors of Medical Council of India (now, "The National Medical Commission") has filed these appeals assailing the judgment of the High Court of Calcutta directing respondent no.2-West Bengal University of Health Sciences to admit the respondent-candidates initially by interim orders dated 04th June 2019, 16th July, 2019 and 30th July, 2019 passed by the learned Single Judge of the High Court of Calcutta granting provisional admission pursuant to interim orders to the student-applicants in

post-graduate medical courses beyond the cut-off date in complete ignorance of their placement in the order of merit in post-graduate medical courses, which were later disposed of by an Order dated 4th November, 2019 on the premise that since the respondent-students have undergone six months of post-graduate medical course, their provisional admission stand regularized and later directed to be treated as a regular post-graduate student.

3. Facts have been noticed from Civil Appeal @ SLP(C) Nos.3507-3508 of 2020 and Civil Appeal @ SLP(C) No.27463 of 2019.

4. It is not disputed that the respondent-students are MBBS Doctors and appeared in NEET (PG)-2019 entrance examination seeking admission in State quota seats in post-graduate medical courses in medical colleges of the State of West Bengal for the academic year 2019-2020.

5. The result of NEET-PG was declared by the National Board of Education (NBE) on 31st January, 2019. The minimum cut-off qualifying marks for NEET examination are as follows:-

1) Unreserved category - 50th percentile – 340/1200 marks
2) Reserved category(SC/ST/OBC)-40th percentile – 292/1200 marks

3) PwD – 45th percentile – 317/1200 marks

The NEET marks and the rank of the respondent-students are as under:-

1) Priyambada Sharma-NEET Score:386/1200; NEET Rank:57960
2) Priti Dhara - NEET Score:386/1200; NEET Rank:57948
3) Alankret Dhillon - NEET Score:387/1200; NEET Rank:57581
4) Anirban Bose - NEET Score:318/1200; NEET Rank:78437
5) Mohd. Asif Kabir - NEET Score:341/1200; NEET Rank:71142
6) Kaustav De - NEET Score:626/1200; NEET Rank:24442
7) Sujan Kr. Ghosh - NEET Score:403/1200; NEET Rank:53324
8) Pushpak Ghose - NEET Score:626/1200; NEET Rank:12177
9) Sanjib Kr. Choudhary - NEET Score:319/1200; NEET Rank:78012

6. The admission schedule for the academic year 2018-19 onwards for post-graduate courses as provided in the Medical Council of India Postgraduate Medical Education Regulations, 2000(hereinafter being referred to as the "Regulations 2000") amended upto May, 2018 is as follows:-

In the above Appendix the time schedule with regard to Broad Speciality has been substituted with the following in terms of

Notification published in the Gazette of India on 20.02.2018 and 05.04.2018.

Admission schedule from the academic year 2018-19 onwards for Postgraduate courses (broad speciality):-

S.No	Schedule for Admission	Central Counselling		State Counselling
		All India Quota	Deemed + Central Institute	
1	Conduct of Exam	By 10th January		
2	Declaration of result	By end of January		
3	1st Round of Counselling	12th March-24th March	12th March – 24th March	25th March – 5th April
4	Last Date of joining	3rd April	3rd April	12th April
5	2nd Round of Counselling	6th April – 12th April	6th April – 12th April	15th April – 26th April
6	Last date of joining	22nd April	22nd April	3rd May
7	Mop up Round		12th May – 22nd May	4th May – 8th May
8	Last date of joining		26th May	12th May
9	Forwarding the list of students in order of merit equalling to ten times the number of vacant seats to the Medical Colleges by the Counselling Authority		27th May	13th May
10	Last date of joining		31st May	18th May

Note:

1. All India Quota Seats remaining vacant after last date for joining i.e. 10th May will be deemed to be converted into State Quota.
2. Institute/College/Courses permitted after 28th February will not be considered for admission/allotment of seats for current academic year.

3. **In any circumstances, last date for admission/joining will not be extended after 31st May.**
4. For the purpose of ensuring faithful obedience to the above time-schedule, Saturday, Sunday or Holidays (except National Holiday) shall be treated as working day.
5. The following Matrix shall be applicable with regard to permissibility to students to exercise fresh choice during counselling:-

Round	Free Exit	Exit with forfeiture of fees	Ineligible for further counselling	Amount of registration fee
AIQ I/ Deemed				
AIQ II/ Deemed		If not joined	If joined	Government -Rs.25,000 (half for SC/ST/OBC) Deemed – Rs.2,00,000
State Quota I				
State Quota II		If not joined	If joined	Government -Rs.25,000 (half for SC/ST/OBC) Private – Rs.2,00,000
State Quota Mop-Up				
Deemed Mop-Up				

7. The admission schedule has to be rigidly followed in admission to the post-graduate courses and Note 3 appended thereto clearly stipulates that, in any circumstances, last date for admission/joining will not be extended beyond 31st May and no

deviation from the admission schedule is permissible and this schedule has been fixed by this Court pursuant to the judgment in ***Mridul Dhar(Minor) and Another vs. Union of India and Others***[1] followed in ***Priya Gupta vs. State of Chhattisgarh and Others***[2] and ***Ashish Ranjan and Others vs. Union of India and Others***[3]***.***

8. It will be relevant to note that this Court in ***Mridul Dhar(Minor) and Another (supra)*** noted that there was no consistency in fixing the time schedule for admissions to medical courses and there were much irregularities in maintaining a prescribed schedule which has been exploited by medical colleges by admitting undeserved students and that was affecting the academic session. This Court intervened in the matter and fixed the time schedule for admission to the medical colleges including post-graduate admissions and accordingly, the schedule was notified by the Medical Council of India and direction was given for strict adherence of rules which was later reiterated in ***Priya Gupta (supra)*** followed by ***Ashish Ranjan and Others(supra).***

---

1 (2005) 2 SCC 65
2 (2012) 7 SCC 433
3 (2016) 11 SCC 225

9. This Court specifically gave its approval to the admission schedule which has been prescribed under the broucher of Medical Council of India (now, The National Medical Commission) for the academic year 2018-19 onwards for the post-graduate medical courses which the Commission has to strictly follow and no deviation is permissible in any circumstances and accordingly last date for admission/joining will not be extended after 31st May.

10. It reveals from the record that after the admission/counselling process was over on 31st May, 2019, approximately 153 seats remained vacant in State Quota of the post-graduate medical seats for the academic year 2019-20 and the respondent-students have failed in their attempt after participating in the last counselling in securing admission to post-graduate medical seat in any of the specialty because of their much lower rank in the order of merit.

11. At this stage, the respondent Dr. Priyambada Sharma and others filed their writ petitions before the High Court under Article 226 of the Constitution with the grievance that although the final round of counselling on 31st May, 2019 is over, the post-graduate seats for academic session 2019-20 are still available/lying vacant

and at least against the vacant seats, they may be considered for admission in the post-graduate medical course.

12. The learned Single Judge by interim orders dated 04th June, 2019, 16th July, 2019 and 30th July, 2019 in a batch of writ petitions directed the appellant to grant provisional admissions to the students in post-graduate medical courses by ignoring the cut-off date i.e. 31st May and also ignoring the principle of merit and these interim orders were later made absolute by order dated 04th November, 2019 on the premise that the students have joined post-graduate medical courses and have undergone training/education for six months or more and accordingly, such admissions are regularized and each of them who have joined post-graduate medical course shall be treated as normal post-graduate student.

13. These orders became a subject matter of challenge in special leave petitions before this Court and the interim orders and also the final order dated 04th November, 2019 passed by the High Court were stayed by this Court in the respective special leave petitions. It is informed that so far as respondent Dr. Priyambada Sharma is concerned, she has not continued her studies since September,

2019. At the same time, in Civil Appeal @ SLP(C) No.27463 of 2019, respondent-students were allowed to pursue the course by the University despite the stay order granted by this Court.

14. Learned counsel for the appellant submits that the High Court has committed manifest error in directing the provisional admissions in this batch of appeals in post-graduate medical courses in the academic year 2019-20 beyond 31st May and that apart, the admission could not have been made on the principle of first-cum-first-serve regardless of their placement in the order of merit which is the touchstone for admissions to the post-graduate medical courses. Such orders passed by the High Court are not legally sustainable and deserve to be set aside.

15. Learned counsel for the appellant further submits that merely because some of the students have been allowed to be continued on provisional basis in post-graduate medical courses despite the stay order passed by this Court, no sympathy can be claimed by them and such misplaced sympathy indeed will lay down a bad precedent and submits that all such interim orders and the provisional admissions made of the respective respondents students in post-

graduate medical courses for the academic year 2019-20 deserve to be quashed and set aside.

16. Learned counsel for the appellant further submits that in numerous cases, petitions have been filed in this Court seeking extension of time either on account of some particular exigency faced by any individual college or university but generally on the ground that large number of seats for post-graduate courses either remained unfilled or are lying vacant and this Court has declined such request with the direction that time schedule must be strictly adhered to.

17. On the other hand, learned counsel for the respondents submits that either of the respondent-student was not at fault and only because of the interim orders passed by the High Court in the first instance, the University could not conduct the second round of counselling within the time schedule and pursuant to the order of the Division Bench dated 30th May 2019, the second round of counselling was held on 31st May, 2019 and on the same day, admissions to post-graduate medical courses were closed. Only to meet out the aforesaid difficulty, interim orders were passed by the

High Court in the interest of justice. In the first instance, the respondent-students are deprived from participating in a fair manner in the second round of counselling which was held on 31st May, 2019 and that was the reason for which the respondents approached the High Court by filing the writ petitions and taking the legitimate grievance of the students, interim orders were passed granting provisional admissions to post-graduate medical courses without disturbing the admissions already made and the students have become the victims of delay in holding the second round of counselling for the academic year 2019-20.

18. Learned counsel for the respondents further submits that the students were not at fault and any intervention made by the High Court while passing the interim orders in the first instance interfering the admission process duly notified, in no manner, could be attributed to the students but ultimately down the line, it is the students who suffer and at least such of the students who have completed their course or are at the verge of completing the course, be permitted to complete the course and to appear in the examination and if that is not being permitted in the given facts and

circumstances, they will only lose three precious years of their life and neither the appellant nor anyone else is going to be benefitted.

19. We have heard learned counsel for the parties and with their assistance perused the material available on record.

20. That so far as the time schedule prescribed by the Medical Council of India in its Regulations, 2000 of which reference has been made for the academic year 2019-20 for admission to the post-graduate medical courses is concerned, it has to be strictly followed and that, in any circumstance, is not to be deviated. Last date for admissions to the post-graduate medical course will not be extended after 31st May and the schedule has been prescribed in compliance of the judgments of this Court of which reference has been made in ***Mridul Dhar(Minor) and Another(supra)*** followed by this Court in ***Priya Gupta (supra)*** and ***Ashish Ranjan and Others(supra)*** and this Court has consistently held that the schedule for admission to the post-graduate medical courses must be followed strictly leaving no discretion to any authority to permit admissions over the cut-off date under schedule for admission to post-graduate medical courses i.e. 31st May.

21. That even when the complaints are made to this Court that large number of seats are lying vacant seeking extension of time to fill those unfilled undergraduate/post-graduate seats of medical courses, this Court always declined such requests and directed that schedule must be strictly adhered to.

22. This Court in ***Education Promotion Society for India and Another vs. Union of India and Others***[4] 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 postgraduation 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 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."

4 (2019) 7 SCC 38

23. Further, this Court in ***Dr. Astha Goel and Others vs. Medical Counselling Committee and Others***[5] held as under:-

> **"23.** Applying the law laid down by this Court in the aforesaid two decisions to the facts of the case on hand and when the Medical Counselling Committee and the Union of India have to adhere to the time schedule for completing the admission process and when the current admission of NEET-PG-2021 is already behind time schedule and ever after conducting eight to nine rounds of counselling, still some seats, which are mainly non-clinical courses seats have remained vacant and thereafter when a conscious decision is taken by the Union Government/the Medical Counselling Committee, not to conduct a further Special Stray Round of counselling, it cannot be said that the same is arbitrary. The decision of the Union Government and the Medical Counselling Committee not to have Special Stray Round of counselling is in the interest of Medical Education and Public Health. There cannot be any compromise with the merits and/or quality of Medical Education, which may ultimately affect the Public Health.
>
> **26.** At the cost of repetition, it is observed and held that even after eight to nine rounds of counselling, out of 40,000 seats, 1456 seats have remained vacant, out of which approximately, more than 1100 seats are non-clinical seats, which every year remain vacant, of which the judicial notice has been taken by this Court in the case of *Education Promotion Society for India* (supra)."

24. In the given facts and circumstances, in our considered view, the interim orders passed by the High Court granting provisional admissions in the post-graduate medical courses in the months of June and July, 2019 by orders dated 04th June, 2019, 16th July,

5 2022 SCC OnLine SC 734

2019 and 30th July, 2019 which were later made absolute by an order dated 04th November, 2019 are not legally sustainable.

25. The feeble submission made by the respondents' counsel that a sympathetic view may be taken on the premise that they have been allowed to continue in their respective post-graduate medical courses for quite some time or few of them have completed the course in the interregnum despite the order of stay granted by this Court and the reliance placed on the judgment of this Court in ***Medical Council of India vs. Ritwik & Others***[6]**,** in our view, may not be of any assistance for the reason that it was a case where the student was selected in the counselling in the first year MBBS course but was not granted admission due to his inability to pay the fee before the last date i.e. 31st August, 2018 and he was allowed to continue and pursue the course by interim order passed by this Court. In the given peculiar facts and circumstances, his admission was approved under the order of this Court. As far as the cases of present respondents are concerned, they have participated in the second round of counselling but failed to get any

6 2021 SCC OnLine SC 3280

seat in the post-graduate medical course because of lower rank in order of merit and by interim orders passed by the High Court, provisional admissions were granted to them ignoring the principle of merit which cannot be countenanced by this Court.

26. In our considered view, no sympathy can be shown to such students who have not only entered/admitted after 31st May of the year but their admissions were completely in contravention to the Regulations, 2000 and provisional admissions were granted by the High Court ignoring the principle of merit which is the sole touchstone for admission to the post-graduate courses based on the NEET examination, 2019 where admissions are made strictly in the order of merit-cum-preference and despite the stay order passed by this Court, if they are allowed to continue in post-graduate medical courses, the same would be completely illegal and such contemptuous action on the part of the authorities, cannot be approved by this Court.

27. Consequently, the appeals succeed and are accordingly allowed. The impugned orders passed by the High Court in the respective appeals are hereby quashed and set aside. No costs.

28. Pending application(s), if any, shall stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(C.T. RAVIKUMAR)

NEW DELHI;
OCTOBER 17, 2022