

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No.31309 of 2023

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Heard Mr. Raghu Gurram, learned counsel for the petitioner; Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India representing respondent No.1; Ms. K.Mahalakshmi, learned Assistant Government Pleader for Health, Medical and Family Welfare Department representing respondent No.2; Ms. Gorantla Sri Ranga Poojitha, learned Standing Counsel for respondent No.3- National Medical Commission; and Mr. G. Ravi, learned counsel representing Mr. A. Prabhakar Rao, learned Standing Counsel for respondent No.4- Kaloji Narayana Rao University of Health Sciences (hereinafter referred to as the "University").

2. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the validity of the notification dated 07.11.2023, issued by the National Medical

Commission (briefly 'the Commission' hereinafter), by which, the Commission has not approved the admissions made by the medical institutions to the vacant seats of MBBS course and has directed that counselling for the vacant seats of MBBS course shall be filled up as per the fresh extension of counselling, in the light of the order dated 30.10.2023, passed by the Supreme Court in M.A.Diary.No.45004 of 2023 and M.A.Nos.2166 of 2023 in the case of **Ashish Ranjan and others v. Union of India and others.**

3. Facts giving rise to filing of this petition briefly stated are that the petitioner is a candidate, who was admitted on 30.09.2023 by respondent No.5- Apollo Institute of Medical Sciences & Research, through an offline mode. The Supreme Court by an order dated 30.10.2023, issued a direction to conduct a Special Stray Vacancy Round for admission to MBBS UG course. In compliance of the aforesaid order issued by the Supreme Court, the National Medical Commission issued a notification dated 07.11.2023 by which, the unfilled seats were

directed to be filled up through special round of counselling. In the aforesaid factual backdrop, this petition has been filed.

4. Learned counsel for the petitioner submits that the petitioner was admitted in accordance with G.O.Ms.No.117 Health, Medical and Family Welfare (C1) Department dated 20.07.2017, which permits the institution to fill up the seats after all rounds of counselling are held. It is further submitted that the petitioner has been admitted to MBBS course in accordance with the Telangana State Unaided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007 (briefly 'the 2007 Rules' hereinafter) and the interest of the student has to be protected.

5. On the other hand, learned Standing Counsel for the National Medical Commission has submitted that the aforesaid G.O.Ms.No.117 dated 20.07.2017 is contrary to Regulation 5A of the Medical Council of India Regulations on Graduate Medical Education, 1997 (briefly 'the Regulations' hereinafter),

and also contrary to the decision of the Supreme Court. In support of his submission, reliance has been placed on the decision of the Supreme Court in **Medical Council of India v. State of Karnataka and others**¹.

6. We have considered the submissions made on both sides and have perused the record.

7. Admittedly, the direction has been issued by the National Medical Commission in the light of the order dated 30.10.2023 passed by the Supreme Court in **Ashish Ranjan's** case (supra). G.O.Ms.No.117 dated 20.07.2017, which permits the institution to fill up the vacant seats is contrary to Regulation 5A of the Regulations, which governs admission to MBBS course. The aforesaid Regulation provided that a common counselling in respect of All India Quota seats shall be held by the designating authority and the remaining seats shall be filled up by the State Government. The Regulations framed by the Medical Council of India prevail over the 2007 Rules, which

¹ (1998) 6 SCC 131

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have been framed by the State Government. Thus, the admission of the petitioner to MBBS course is not in accordance with law. Even otherwise, the special round of counselling has been held in pursuance of the directions issued by the Supreme Court. It is also not in dispute that the petitioner has participated in the special round of counselling and has been allotted a seat on 10.11.2023.

8. For the aforementioned reasons, we do not find any merit in the Writ Petition and the same is, hereby, dismissed.

As a sequel, miscellaneous applications pending, if any, in this writ petition, shall stand closed.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

Date: 14.11.2023

Lur/Myk