

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

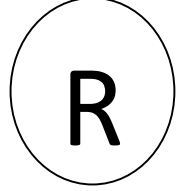
DATED THIS THE 7TH DAY OF NOVEMBER, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA



WRIT PETITION NO.21912 OF 2023 (EDN-RES)

BETWEEN :

1. SYED ADIL BILAL
S/O SYED NIZAMUDDIN
AGED ABOUT 18 YEARS
R/AT NO.9, F003
ETA THE GARDENS APARTMENT
MAGADI ROAD
BANGALORE-560 023.
2. POORNAV SENTHIL
S/O SENTHIL KUMAR
AGED ABOUT 18 YEARS
R/AT B107, DIVYASREE
77 PLACE APARTMENTS
YEMLUR MAIN ROAD
BANGALORE-560 037.
3. SAADHANA .M
D/O A. MOHAN
AGED ABOUT 18 YEARS
R/AT NO.237, 4TH MAIN
1ST STAGE, 6TH PHASE
WOC ROAD
BENGALURU-560 010.

...PETITIONERS

(BY SHRI. UDAYA HOLLA, SENIOR ADVOCATE FOR
SHRI. VIVEK HOLLA, ADVOCATE)

AND :

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS
PRINCIPAL SECRETARY
TO GOVERNMENT
HIGHER EDUCATION DEPARTMENT
VIKASA SOUDHA
BENGALURU-560 001.
2. KARNATAKA EXAMINATION AUTHORITY
REPRESENTED BY ITS EXECUTIVE DIRECTOR
SAMPIGE ROAD, 18TH CROSS
MALLESHWARAM
BENGALURU-560 012.
3. M.S. RAMAIAH MEDICAL COLLEGE
M.S. RAMAIAH NAGAR
MATHIKERE
BANGALORE-560 054.
REP. BY ITS PRINCIPAL
4. MR. YUVRAJ SHYAM JALAN
M.S. RAMAIAH MEDICAL COLLEGE
M.S. RAMAIAH NAGAR
MATHIKERE
BANGALORE-560 054.
5. MR. SANJAY GOWDA .H.P
NO.84, 5TH CROSS
ANJANANAGAR
MUDDANAPALYA
BANGALORE-560 091.
6. NATIONAL MEDICAL COMMISSION
(ERSTWHILE MEDICAL COUNCIL OF INDIA)
POCKET 14, SECTOR 8
DWARKA
NEW DELHI-110 007.

REPRESENTED BY ITS
SECRETARY.

[AMENDED VIDE ORDER
DATED 03.10.2023]

...RESPONDENTS

(BY SHRI. SUDEV HEGDE, AGA FOR R1;
SHRI. RAMESH N.K., ADVOCATE FOR R2;
SHRI. MADHUSUDHAN R. NAIK, SENIOR ADVOCATE FOR
SHRI. SURAJ NAIK, ADVOCATE FOR R3;
SHRI. NIKHIL KURGOD, ADVOCATE FOR R4;
SHRI. KHETTY .N, ADVOCATE FOR R6)

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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION QUASHING THE LIST OF SELECTED CANDIDATES IN 4TH ROUND OF COUNSELING (ANNEXURE-B), ISSUE APPROPRIATE WRIT ORDER OR DIRECTION DIRECTING KEA, SECOND RESPONDENT HEREIN, TO HOLD FRESH ROUND OF COUNSELING, ISSUE A WRIT OF MANDAMUS OR ANY OTHER WRIT, ORDER OR DIRECTION DIRECTING M.S. RAMAIAH MEDICAL COLLEGE THIRD RESPONDENT HEREIN, NOT TO ADMIT FOURTH AND FIFTH RESPONDENT HEREIN AND GRANT SUCH OTHER AND FURTHER RELIEFS AS ARE JUST INCLUDING THE COSTS OF THIS PETITION.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.11.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S. DINESH KUMAR, J.**, PRONOUNCED THE FOLLOWING:-

ORDER

This writ petition is filed with following prayers:

- (i) Issue a writ of mandamus or any other writ, order or direction quashing the list of selected candidates in 4th round of counselling (Annexure-B);

- (ii) Issue appropriate writ order or direction directing KEA¹, second respondent herein, to hold fresh round of counselling;
- (iii) Issue a writ of mandamus or any other writ, order or direction directing M.S. Ramaiah Medical College, third respondent herein, not to admit fourth and fifth respondent herein;
- (iv) Grant such other and further reliefs as are just including the costs of this petition.

2. Heard Shri. Udaya Holla, learned Senior Advocate for the petitioners, Shri. N.K. Ramesh, learned Advocate for KEA, Shri. Madhusudhan Naik, learned Senior Advocate for third respondent – Medical College, Shri. Khetty for NMC² and Shri. Sudev Hegde, learned AGA for the State.

3. Though this petition is listed for completion of service on 5th respondent, Shri. N.K. Ramesh has moved I.A. No.4/2023 in the forenoon session, with a prayer to modify the interim order granted on 14.10.2023 and to permit the KEA to withdraw the seats allotted to the petitioners on the basis of the interim order

¹ Karnataka Examination Authority

² National Medical Commission

and to include them in the seat matrix for the second stray vacancy round counselling commencing on 07.11.2023.

4. Shri. Holla has filed objections to I.A. No.4/2023 in the afternoon session. In view of the urgency pleaded on both sides, this petition is taken up for final disposal.

5. Brief facts of the case are, petitioners have participated in the first round of counselling for allotment of seats for first year MBBS. They were allotted seats in different Medical Colleges, but they did not choose to take those seats. Subsequently, they participated in the second and mop-up rounds of counselling, but were not successful in getting seats.

6. KEA issued a Notification dated 22.09.2023 offering un-allotted Medical seats after mop-up round in the 1st stray vacancy round to such candidates, who have not been allotted a Medical seat earlier.

7. Petitioners approached this Court by presenting the above writ petition on 21.09.2023, contending *inter alia* that though they were eligible for allotment of seats, candidates securing lesser marks in UGNEET -2023, have been selected in the

1st stray vacancy round; that the last date for reporting was 30.09.2023 and the candidates allotted in the stray vacancy round had not reported in the respective Colleges. Petitioners have assailed the candidature of respondents No.4 and 5 on the ground that they have obtained lesser marks than the petitioners and they could not have been allotted seats in M.S. Ramaiah Medical College, which was opted by the petitioners. It is averred that 4th and 6th respondents (candidates at Sl. Nos.76 and 78) had secured All India Ranking of 2,11,159 and 2,16,221; whereas, the 1st and 2nd petitioners' All India Rankings are 1,98,878 and 1,78,329 respectively.

8. Petitioners have moved this writ petition with the principal contention that allotment of seats by the KEA to the less meritorious candidates is in violation of Articles 14 and 21 of the Constitution of India.

9. This Court, on 14.10.2023 has passed the following interim order:

"11. In that view of the matter and in peculiar facts and circumstances narrated supra and delay being only few days delay after 30.09.2023, this Court is of the considered view that the petitioners have made out prima facie case for grant

of interim relief and for the reasons recorded supra and keeping in mind the ratio laid down by the Hon'ble Supreme Court referred supra, we pass the following interim order:

(1) The respondent No.2 is directed to allot the petitioners to the respondent No.3 - College for 1st year MBBS course for the present academic year.

(2) The respondent No.3 - College is directed to admit the petitioners to the present academic year by permitting them to attend the class.

(3) The admission of the petitioners shall be subject to the result of this writ petition and the petitioners shall not claim any equity.

(4) The University and the respondent No.6 - NMC shall not approve the admission of the petitioners without the leave of the Court.

(5) The respondents are permitted to file objections within a period of four weeks."

10. Shri. Holla, learned Senior Advocate submitted that petitioners' All India Ranking is higher than the ranks obtained by the 4th and 5th respondents. Petitioners have been admitted in M.S. Ramaiah Medical College pursuant to the aforementioned interim order and their admissions are valid. The sum and substance of Shri. Holla's argument is that, KEA could not have

prevented the petitioners from participating in stray vacancy round on the ground that the petitioners were allotted seats in earlier round.

11. Shri. Ramesh for the KEA, sought to justify KEA's action, contending that petitioners were allotted seats in the first round. They did not choose to pursue their courses in the Colleges allotted to them in the first round. The NMC, vide Circular No.N-P018(20)/5/2023-PGMEB-NMC/044351 dated 24.07.2023 has requested the State Counselling Agencies to make necessary arrangements for conducting the Counselling in the 'Online Mode' for all rounds including the stray vacancies in Private Medical colleges from the academic year 2023-24. Accordingly, the first stray round counselling was conducted. As a policy, the candidates who were allotted seats in the earlier rounds were not permitted to participate in the stray vacancy round. This policy has been uniformly applied to all candidates.

12. Shri. Khetty submitted that pursuant to the directions issued by the Apex Court in *Ashish Ranjan and others Vs. Union of India and Others*³ the 2nd special stray counselling has been

³ Order dated 30.10.2023 on

scheduled and the time for admission has been extended. Petitioners have been admitted based on the interim order. The last date for completion of admission process was 30.09.2023. Petitioners have approached this Court on 29.09.2023. In the light of the Apex Court's directions to conduct the special stray vacancy round counselling, the petitioners shall have opportunity to seek for a seat of their choice in the said round. He argued that petitioners' admission process has been completed sometime in mid October, 2023 after the cut-off date of 30.09.2023. Therefore, petitioners' admission is contrary to law.

13. Sri. Madhusudhan Naik, learned Senior Advocate for the Medical College argued in support of the petitioners.

14. We have carefully considered rival contentions and perused the records.

15. Undisputed facts of the case are, petitioners were allotted seats in the first round of Counselling. They did not complete the admission process, but opted to seek a seat in a college of their choice in the subsequent rounds of Counselling. Their grievance is that they were not permitted to attend the first

stray vacancy counselling. Pursuant to the interim order passed by this Court, they have been directly admitted in M.S. Ramaiah Medical College.

16. The last date for completion of admissions was 30.09.2023. It was submitted at the Bar that, hitherto, after the mop-up round, the unfilled seats in Private Medical Colleges were being filled up by sending a list of Candidates in the ratio of 1:10 to the Private Medical Colleges and they were permitted to make the admissions. The NMC, vide Circular dated 24.07.2023 has barred any College/Institution from conducting any Counselling including the stray vacancy round. The Counselling for all Private Medical Colleges has been assigned to the State Counselling Agencies, the KEA in Karnataka. Accordingly, KEA has conducted the 1st stray vacancy round. Admittedly, it has not permitted such of those candidates, who have exercised the choices 1 & 2 mentioned in the Brochure to participate in the stray vacancy round. The said choices read as follows:

*"The candidate here has 4 choices after the allotment.
The choices are as below:-*

Choice 1: *I am 100% satisfied with the allotted seat and am willing to report to the allotted college; therefore*

I should not be considered for further allotment of seats in any subsequent round for any college / discipline. I will pay the prescribed fees for the seat allotted by downloading the e-Challan or NEFT/RTGS/IMPS Challan or through online payment gateway as per the procedure detailed in the KEA Website, deposit the original documents, and later on I will download the admission order and report to the college. Immediately afterwards, I will login to my Option Entry Log-In-Id and I will report to KEA that I have joined the College.

Further the College Authority will have to login to their College Login-ID and report that the respective candidate has joined the College. If a candidate fails to report back to KEA that he/she has joined, then seat will be cancelled even though they might have physically joined.

Further any candidate who has paid the fees and obtained the Admission Order and fails to report to the College on or before the last date and time specified by KEA in the Admission Order, for such candidates no extension of time will be given and the allotment made in his/her favour shall be treated as Cancelled and he/she has no claim further on such allotment and they will not be considered for allotment of seats in the subsequent round. Such seats shall revert back to the pool and fee paid by them will be forfeited.

Implication: Not eligible to participate in the subsequent rounds.

Important: Before opting this choice candidate is advised to make sure that he/she cannot come back to Option Entry Process in UGNEET-2023/UGCET-2023.

Choice2: I am Satisfied with the allotted seat but wish to participate in the next round. **Such candidates will pay the prescribed fees by downloading the Challan / allotted details from the KEA website for the seat confirmed or allotted in the first round** and deposit the original documents. If higher options get allotted then earlier allotted seat gets cancelled automatically OR if higher options seats are not allotted then earlier allotted seat shall remain in candidates favour

Implication: Eligible to participate in the subsequent round keeping the seat allotted on hold. However, if a seat in the higher options gets allotted the candidate loses his old seat. There is no choice between the earlier allotted and newly allotted seat. Candidate has to compulsorily join the selected college allotted in the second Round seat allotment without giving any reasons /excuses.

NOTE: *Consequential vacancies that arise after their turn cannot be claimed.*

Important: *Fresh options will be permitted only when the new college / courses which are included in the seat matrix after the allotment of first round only for that newly added college/course."*

17. It was strongly urged by both Shri. Holla and Shri. Madhusudhan Naik that as per the Brochure issued by the KEA, candidates who would exercise options 1 & 2 would not be barred from attending the stray vacancy round. However, the 'Rules of the Game' have been changed by the KEA by issuing a note on 22.09.2023 (Annexure-A) stating that the seats would be offered in the first stray vacancy round to the candidates, who have not been allotted a medical seat in the earlier rounds of counselling. They also urged that 'allotment', as interpreted by this Court in *Hitashree Y.L. Vs. KEA*⁴, means, an allotment, which would culminate in completion of all formalities including payment of fees.

⁴ Order dated 19.09.2023 in W.P. No.20894/2023

18. In any event, the fact remains that KEA has not permitted any candidate, who has been allotted a seat in the 1st, 2nd and mop-up rounds to participate in the 1st stray vacancy round. But, this condition has been uniformly applied.

19. In the Notification⁵ dated 03.11.2023, issued by the KEA, 6 vacancies have been shown in the M.S. Ramaiah Medical College. It is mentioned that 3 seats out of 6 are subject to orders of the Court.

20. Shri. Holla took exception to the said Notification, urging that it borders on contempt of the interim order passed by this Court because, the seats filled up by the petitioners could not have been shown as 'available' in the seat matrix.

21. The KEA has adopted an uniform policy not to permit the petitioners and similarly situated persons from participating in the 1st stray vacancy round. Thus, the candidates who participated in earlier rounds and obtained a seat form a class/category by themselves.

⁵ No.ED/KEA/SPL/SVR/UG-NEET/2023

22. It is also not in dispute that the last date for completion of the admission process was 30.09.2023. Petitioners have approached this Court on 29.09.2023, but the aforementioned interim order has been passed on 14.10.2023, pursuant to which, petitioners have been admitted in the college. Thus, reckoned from the last date namely, the September 30, 2023, petitioners' admissions, but for the interim orders, are illegal. The Hon'ble Supreme Court of India in *Ashish Ranjan's case*, vide order dated 30.10.2023, has directed for a special stray vacancy round counselling and that is scheduled today.

23. Petitioners who fall in the category/class of persons, who were allotted seats in the earlier rounds, chose to abandon the same to participate in subsequent rounds. We may record that in the case of similarly situated candidates (in W.Ps.No.24508/2023, 24510/2023 and 24522/2023), by interim order dated 06.11.2023, we have directed the KEA to permit them to participate in the 2nd stray vacancy round. In view of our interim order, petitioners' admission cannot be sustained for more than one reason:

- Firstly, because, their admission pursuant to interim order would result in violation of Article 14 of the Constitution of India, as similarly situated candidates will have to undergo counselling in the special stray vacancy, pursuant to the orders passed by the Apex Court in *Ashish Ranjan*;
- Secondly, because, though petitioners' admission is pursuant to the interim order passed by this Court (dated 14.10.2023), the same are beyond the cut-off date i.e., 30.09.2023 fixed by the NMC;
- Thirdly because, pursuant to order dated 30.10.2023 in *Ashish Ranjan's case*, petitioners shall have opportunity available to similarly situated persons to participate in the special second stray vacancy counselling.

24. Petitioners have placed reliance on the following authorities;

- (i) *Minor A. Periakaruppan Vs. State of T.N. and Others*⁶
- (ii) *Rameshwar and Others Vs. Jot Ram and Others*⁷
- (iii) *S. Krishna Sradha Vs. State of Andhra Pradesh and Others*⁸

⁶ AIR 1971 SC 2303 – para32

⁷ (1976) 1 SCC 194– paras No.6 & 7

⁸ (2020) 17 SCC 465 – paras No.12 & 13

and urged that petitioners have approached this Court before 30.09.2023 and got admitted on the basis of interim order passed by this Court and therefore, their admission should not be disturbed.

25. We may record that, perhaps the above argument could be worthy of any consideration in the absence of directions by the Apex Court dated 30.10.2023 in *Ashish Ranjan* directing to hold a special stray round counselling. Compliance of that direction mandates the KEA to hold a special stray vacancy round which is scheduled today. Admittedly there are several candidates similarly situated and we have passed interim order in those writ petitions⁹ and directed the KEA to permit the writ petitioners therein and all other similarly situated candidates to participate in the stray vacancy round. We have also directed the KEA to issue an online notification in consonance with the interim orders. Therefore, it would be wholly unjust to sustain petitioners' admission in view of the 2nd stray vacancy round scheduled today in which petitioners can also participate.

⁹ WP No.24508/2023, 24510/2023 and 24522/2023
- Interim orders dated 06.11.2023.

26. Consequently, the authorities cited above do not lend any support to petitioners' case in view of subsequent directions of the Apex Court in *Ashish Ranjan*. The only option for the petitioners is to seek for a seat of their choice in the special counselling for stray seats, if they so desire.

27. The first prayer in this writ petition is to quash the selection of respondents No.4 and 5. The ground urged in support of this prayer (i.e. ground 11) is that they have secured less marks. This ground is untenable because petitioners, based on their merit had obtained seats in different colleges but voluntarily gave them up. They were not permitted to participate in the 1st stray round as a matter of policy which is applied uniformly in the case of all candidates similarly situated.

28. The second prayer is for a direction to KEA to hold fresh counselling. This prayer is based on the ground that the first stray round counselling is illegal. We have held that KEA has adopted an uniform policy and it is not disputed. Therefore, this prayer is merit less.

29. The third prayer is a consequential prayer seeking a direction against the 3rd respondent college not to admit 4th and 5th respondents and therefore does not merit any consideration.

30. In the light of the facts and discussion recorded hereinabove, this petition, being devoid of merit must fail and petitioners' admissions pursuant to the interim order of this Court are unsustainable in law.

31. In the result, the following:

ORDER

- (i) Writ petition is ***dismissed***;
- (ii) Petitioners' admission in 3rd respondent Medical College are not sustainable in view of the directions in *Ashish Ranjan*;
- (iii) The three seats held by the petitioners shall be allotted by the KEA in the special stray round in accordance with law.
- (iv) KEA is directed to permit the petitioners to participate in the special stray vacancy round commencing today;

- (v) The M.S. Ramaiah Medical College (respondent No.3) is directed to refund the entire fee paid by the petitioners forthwith.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SPS