

HIGH COURT OF ANDHRA PRADESH**MAIN CASE No: W.P.No.33391 of 2022****PROCEEDING SHEET**

Sl. No	DATE	ORDER	OFFICE NOTE
06	28.10.2022	<p><u>AVSS,J & DVR,J</u></p> <p><u>I.A.No.3 of 2022</u></p> <p>Heard.</p> <p>Having regard to the reasons mentioned in the accompanying affidavit and taking into account the submissions made by the learned counsel, this application is allowed.</p> <p>Office to carry out the necessary amendment.</p> <p><u>I.A.Nos.1, 2 and 4 of 2022</u></p> <p>First petitioner is an Educational Society and the second petitioner is a Medical College.</p> <p>Challenge in the main Writ Petition is to the proceedings bearing NMC-23 (1)(105)/2022-Med./PG/048050-51, dated 25.10.2022, of the National Medical Commission and the petitioners herein are also seeking a declaration that the action of the second respondent-University, in failing to allot the next meritorious candidate in the vacant seat in MS-Obstetrics and Gynecology</p>	

	<p>(OBY) to the second petitioner-college, is illegal, arbitrary, unconstitutional and violative of Articles 14, 19 (1) (g) and 47 of the Constitution of India.</p> <p>One Dr.Palem Teja Sree filed W.P.No.13299 of 2022 before this Court, assailing the action of the second respondent-University in denying seat to her in M.D. Dermatology, Venereology and Leprosy (DVL) in the vacancy in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada. In the said Writ Petition, petitioner in the present Writ Petition was arrayed as fourth respondent.</p> <p>This Court, <i>vide</i> order, dated 04.08.2022, allowed W.P.No.13299 of 2022, setting aside the letter, dated 30.04.2022, of the second respondent-University and, consequently, directed the University to allot a seat in M.D. Dermatology, Venereology and Leprosy (DVL) in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada. As a consequence of the aforesaid order, second respondent-University issued re-allotment order to the said Dr.Palem Teja Sree in PG course in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada on 03.09.2022 and also directed the second petitioner-college to</p>	
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	<p>relieve her and transfer the certificates and fee paid by her to Dr.Pinnamaneni Sidhartha Medical College, Vijayawada.</p> <p>According to the writ petitioner, in compliance of the aforesaid allotment order, second petitioner herein had taken action and second respondent-University issued a relieving order on 05.09.2022 and, thereafter, the said Dr.Palem Teja Sree left the second petitioner-college and joined in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada.</p> <p>As a result of the above situation, the seat in the second petitioner-college, in which Dr.Palem Teja Sree joined earlier, has fallen vacant.</p> <p>In the above background, petitioner-college addressed a letter bearing No.11/PG/2021-2022/Admsn/ASRAMS, dated 06.09.2022, requesting the second respondent-University to issue an allotment order to an eligible candidate against the vacant seat. Subsequently, petitioner herein filed W.P.No.29744 of 2022 before this Court and, <i>vide</i> order, dated 14.09.2022, the said Writ Petition came to be disposed of, directing the second respondent-University to verify the</p>	
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	<p>representation, dated 06.09.2022, submitted by the petitioner, and to pass appropriate orders/take appropriate action, strictly in accordance with law, preferably within a period of two weeks from the said date. Thereafter, <i>vide</i> proceedings No.1238/EA2/PG/2021, dated 27.09.2022, second respondent-University informed the second petitioner-college that the University addressed a letter to the National Medical Commission, seeking clarification on filling up of the vacant MS (Obst/Gynec) S-2 (NRI) seat for the academic year, 2021-2022.</p> <p>The present Writ Petition came to be instituted on 12.10.2022. Pending the Writ Petition, the National Medical Commission-third respondent herein <i>vide</i> the impugned proceedings, dated 25.10.2022, declined to accept the request of the petitioner.</p> <p>According to the learned counsel for the petitioners, Sri N.Ashwani Kumar, the order passed by the third respondent, dated 25.10.2022, is highly illegal, arbitrary and violative of Article 14 of the Constitution of India and contrary to the judgments of the Hon'ble Apex Court and this Court. In elaboration, it is further contended that for no</p>	
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	<p>fault on the part of the petitioners herein, a valuable seat cannot be denied.</p> <p>On the contrary, strongly supporting the impugned order, dated 25.10.2022, it is contended by the learned counsel for the third respondent that, since the cut off date for PG admissions already came to an end, as long back as on 07.05.2022, petitioner is not entitled to any relief from this Court under Article 226 of the Constitution of India. Learned Standing Counsel for the second respondent-University has concurred with the stand taken by the third respondent.</p> <p>It is absolutely not in controversy that one Dr.Palem Teja Sree initially joined in the petitioner-college and, subsequently, when she sought allotment of a seat in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada, the second respondent-University declined to accept the said request and issued a letter, dated 30.04.2022, to the said effect. Writ Petition No.13299 of 2022 filed by Dr.Palem Teja Sree came to be allowed by this Court <i>vide</i> order, dated 04.08.2022. Obviously, in compliance of the said order, the second respondent-University relieved Dr.Palem Teja Sree from the second</p>	
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	<p>petitioner-college and permitted her to join in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada and further directed transfer of certificates and fee also. It is not in dispute that the second petitioner-college complied with the said directions and relieved the said Dr.Palem Teja Sree, who joined later in Dr.Pinnamaneni Sidhartha Medical College, Vijayawada.</p> <p>This Court, in the above background, is of the <i>prima facie</i> opinion that for no fault on the part of the second petitioner-college, the subject seat has fallen vacant.</p> <p>In this context, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in <i>Index Medical College, Hospital and Research Centre v. State of Madhya Pradesh and others</i>¹. In the said decision, the Hon'ble Apex court, at paragraph No.26, held as under:</p> <p><i>“26. The right to admit students which is a part of the management's right to occupation under Article 19 (1) (g) of the Constitution of India stands defeated by Rule 12 (8) (a) as it prevents them from filling up all the seats in medical courses. Upgradation and selection of subject of study is pertinent only to postgraduate medical</i></p>	
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¹ 2021 SCC Online SC 318

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² (2020) 17 SCC 465

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		<p>petitioners) for the course of MS in Obstetrics and Gynecology (Obgy) in PG course in the second petitioner-college. However, this arrangement shall be subject to the outcome of the Writ Petition.</p> <p>Post the Writ Petition after six weeks.</p> <p style="text-align: right;"><u> </u> AVSS,J</p> <p style="text-align: right;"><u> </u> DVR,J</p> <p><u>Note:</u> <i>Furnish C.C. of the order within four days.</i> <i>B/o</i> <i>Tsy</i></p>	
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