

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 106/2023

KEVIN JOY & ORS.

Petitioner(s)

VERSUS

THE GOVERNMENT OF INDIA & ORS.

Respondent(s)

**(IA No. 24065/2023 - GRANT OF INTERIM RELIEF
IA No. 36607/2023 - INTERVENTION/IMPLEADMENT
IA No. 30252/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 24063/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)**

WITH

**W.P.(C) No. 193/2023 (X)
(FOR STAY APPLICATION ON IA 34882/2023
FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA
35732/2023, IA No. 35732/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES, IA No. 34882/2023 - STAY APPLICATION)**

**W.P.(C) No. 264/2023 (X)
(FOR INTERVENTION APPLICATION ON IA 46514/2023
IA No. 46514/2023 - INTERVENTION APPLICATION)**

**W.P.(C) No. 312/2023 (X)
(FOR EX-PARTE STAY ON IA 46898/2023, IA No. 46898/2023 - EX-PARTE
STAY)**

**W.P.(C) No. 385/2023 (X)
(FOR ADMISSION and IA No.59945/2023-EX-PARTE STAY
IA No. 59945/2023 - EX-PARTE STAY)**

Date : 13-04-2023 These matters were called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE ARAVIND KUMAR**

**For Petitioner(s) Mr. Devadatt Kamat, Sr. Adv.
Mr. Lzafeer Ahmad B. F., AOR
Ms. Purvi Mathur, Adv.
Mr. Kushagra Sharma, Adv.
Mr. Javedur Rahman, Adv.
Mr. Mudassir, Adv.**

Mr. Vishnu Sharma A.S., AOR

Ms. Purvi Mathur, Adv.
Mr. Kushagra Sharma, Adv.

Ms. Rashmi Nandakumar, AOR

For Respondent(s)

Ms. Aishwarya Bhati, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Dr. Arun Kumar Yadav, Adv.
Mr. B K Satija, Adv.
Mr. Shagun Thakur, Adv.
Ms. Ameyavikramathanvi, Adv.

Mr. Dama Seshadri Naidu, Sr. Adv.
Mr. Pai Amit, AOR
Mr. Siddharth Chapalgaonkar, Adv.
Ms. Sneha Botwe, Adv.
Mr. Abhiyudaya Vats, Adv.

Mr. Gaurav Sharma, AOR
Mr. Prateek Bhatia, Adv.
Mr. Dhawal Mohan, Adv.
Mr. Paranjay Thripathi, Adv.

Ms. Swati Ghildiyal, AOR
Ms. Devyani Bhatt, Adv.

**UPON hearing the counsel the Court made the following
O R D E R**

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1. In the present case, the petitioners were permitted to resign from the seats and their resignations were accepted. After their resignation, the seats have also been filled up.
2. In that view of the matter, by way of interim order, we direct all the concerned colleges to return the original documents/papers of the petitioners. Insofar as the refund of fees is concerned, we will take a call and consider the matter subsequently.
3. The present petition depicts a very sorry picture that 1003 precious super specialty seats are going to waste, inasmuch as nobody could be admitted on the said seats.
4. On the one hand, we find that there is always a shortage of Super Specialty Doctors and on the other hand these precious seats remain unfilled.
5. Therefore, we have requested the learned Additional Solicitor

General of India to impress upon the concerned authorities to find out a solution for this problem.

6. Smt. Aishwarya Bhati, learned Additional Solicitor General of India, submits that the Union of India proposes to appoint a Committee under the Chairmanship of Director General of Health Services, consisting of all the stakeholders including the representatives of the States and the private medical colleges so that a solution could be found out for such a problem.

7. The process of admission for the next academic session will start in the month of July, 2023. We, therefore, request the learned Additional Solicitor General of India to impress upon the said proposed committee to come out with a solution, prior to the commencement of the next academic session.

8. The Union of India is permitted to file their status report in this regard before the next date of hearing.

9. List this petition and rest of the matters of this batch on 04.07.2023.

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1. This petition arises out of peculiar facts.

2. Two students were admitted for Doctorate of National Board (DrNB) in the Department of Nephrology in the petitioner-institution. However, they resigned from their respective seats.

3. A communication with regard to such resignation was communicated to the National Board of Examinations in Medical Sciences (NBEMS) on 20.01.2023.

4. The mop-up round was subsequently conducted between 12.02.2023 and 16.02.2023. However, the said seats were not included in the mop-up round.

5. Being aggrieved thereby, the present petition is filed.

6. Shri Devadatt Kamat, learned senior counsel appearing on behalf of the petitioner, submits that apart from the students pursuing their studies for DrNB, the services of such students are required as Doctors in the Department of Nephrology. He submits

that the shortage of two doctors in the Department of Nephrology is also likely to affect the smooth functioning of the petitioner-institution.

7. Smt. Aishwarya Bhati, learned Additional Solicitor General of India, on the contrary, submits that there was a specific direction to the institution that they should not permit the students to resign from their seats. It is submitted that in spite of that direction, the petitioner-institution has permitted the students to resign from the seats and they cannot be permitted to take advantage of that. She further submits that unless this Court directs the resignation to be accepted and the seats be included in the mop-up round, the same could not have been offered by the Medical Counselling Committee (for short, 'MCC').

8. We find that the present petition arises out of peculiar facts. It is not as if that the petitioner has permitted the students concerned to resign from their seats, it will be relevant to refer to the following part of the communication dated 20.01.2023, addressed to the National Board of Examinations in Medical Sciences:-

"Request thereby stern action should be taken against these candidates by both, disqualifying them for in the next examination as well as procuring bond amount which should be exemplary. This will deter others from doing similar repetition in future.

Therefore NBEMS is requested to please include two (02) vacant seats in next Super Specialty counseling round for department of Nephrology for Jaslok Hospital and Research Centre, Mumbai against above mentioned DrNB trainees."

9. It can thus clearly be seen that the petitioner has itself requested that a stern action should be taken against the candidates concerned.

10. Though we find that the learned Additional Solicitor General of India is right in contending that unless this Court directs that seats to be included under the mop-up round, the MCC could not do so; equally, there is no fault on the part of the Petitioner inasmuch as they had informed the National Board of Examination in

Medical Sciences (NBEMS) about the resignation of 2 students much before the commencement of the mop-up round.

11. In the peculiar fact and circumstances of this case, without it being treated as a precedent, we are inclined to issue directions in exercise of our powers under Article 142 of the Constitution of India.

12. The main reason that weighs with us is that the students for the DrNB Course, apart from pursuing their career as student, are also required to treat the patients in the hospital.

13. In the fact and circumstances of the present case and without being treated as a precedent, we direct MCC to recommend two students to the petitioner-Jaslok Hospital and Research Centre from the Department of Nephrology from the waiting list, as per the merit.

14. We clarify that in the event, if the MCC finds that special mop-up round is required to be conducted for recommending the admission, the MCC will be entitled to do so.

15. With the above observations and directions, the writ petition is disposed of.

16. Pending application(s), including application for intervention shall stand disposed of.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)