

# Dr. Atharv Tungatkar vs The Medical Consulting Committee on 10 June, 2022

**Author: M.R. Shah**

**Bench: Aniruddha Bose, M.R. Shah**

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 409 OF 2022

Dr. Astha Goel and Ors. ...Appellant(s)

Versus

The Medical Counselling Committee & Ors. ...Respondent(s)

WITH

WRIT PETITION (C) NO. 393 OF 2022

Dr. Atharv Tungatkar and Ors. ...Appellant(s)

Versus

The Medical Consulting Committee & Ors. ...Respondent(s)

WITH

SPECIAL LEAVE PETITION (C) NO. 10395 OF 2022

Dr. Nikhil Arora ...Appellant(s)

Versus

Union of India & Ors. ...Respondent(s)

AND

SPECIAL LEAVE PETITION (C) NO. 10539 OF 2022

Dr. Khundongbam Chetan ...Appellant(s)  
Signature Not Verified

Digitally signed by  
Jayant Kumar Arora  
Date: 2022.06.10

14:55:20 IST

Versus

Reason:

Union of India & Ors.

...Respondent(s)

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ORDER

M.R. SHAH, J.

1. As common question of law and facts arise in this group of writ petitions/special leave petitions, they are being disposed of by this common order.

2. For the sake of convenience, Writ Petition (C) No.409 of 2022- Dr. Astha Goel and Ors. Vs. The Medical Counselling Committee & Ors. is treated as the lead matter. By way of this writ petition being Writ Petition No. 409 of 2022 under Article 32 of the Constitution of India, the seven petitioners have prayed for the following reliefs:-

“a) Issue an Appropriate Writ, Order or Direction, in the nature of a Writ of Mandamus, under Article 32 of the Constitution to direct Respondent No. 1 to provide the exact number of vacant seats after the conduct of stray vacancy round of AIQ;

b) Issue an Appropriate Writ, Order or Direction, in the nature of a Writ of Mandamus, under Article 32 of the Constitution to direct Respondent No. 1 to conduct a Special Stray Round of counselling to allow the candidates to participate for the vacant seats which are available after the conduct of stray vacancy round of AIQ;

xxxxxxx”

3. In Writ Petition (C) No. 393 of 2022, one additional prayer is made to issue an appropriate writ, direction or order directing the respondent Nos. 1 and 2 – The Medical Consulting Committee and the Union of India to revert the Medical P.G. seats remaining vacant after the AIQ stray vacancy round as regards the admissions conducted pursuant to NEET-PG-2021 examination to the State Quotas, for being allotted through State Mop-Up Rounds.

4. The petitioners of Special Leave Petition (C) No. 10395 of 2022 and Special Leave Petition (C) No. 10539 of 2022 approached the respective High Courts for the very reliefs, which are now sought in the aforesaid writ petitions, namely directing the respondents to conduct a Special Stray Round of counselling so as to allow them to participate for the vacant seats, which are available after the conduct of stray vacancy round of AIQ. By the impugned orders, the respective High Courts have

dismissed the writ petitions, hence the original writ petitioners have preferred the present special leave petitions.

5. The dispute is with respect to the admissions for NEET-PG-2021. Around 40,000 seats were available for NEET-PG examination, which included the clinical as well as non-clinical seats. 92,000 candidates/ doctors were initially eligible for examination for the said seats. However, subsequently, the percentage was lowered by communication dated 12.05.2022 and another 25,000 candidates became eligible. 5.1 The NEET-PG examination was conducted on 11.09.2021. The result was declared on 28.09.2021. As per the earlier counselling scheme, there were two rounds of counselling for All India Seats as well as State Quotas seats respectively. However, as per the modified counselling scheme, counselling is to be carried in four rounds and no seats were to be reverted to States. These four rounds were AIQ Round 1, AIQ Round 2, AIQ Mop-up Round and AIQ Stray Vacancy Round. 5.2 That for NEET-PG-2021, Round 1 was held on 12.01.2022, Round 2 was held on 05.02.2022, Mop-Up Round was held on 14.04.2022 and final Stray Round started on 28.04.2022 and ended on 07.05.2022. At the end of the four rounds of counselling, each for All India Quota and State Quotas (in all eight rounds of counselling) and thereafter one another round of counselling was conducted, and still approximately 1456 seats remain vacant.

5.3 The respective petitioners, who earlier participated in all the counsellings and could not get the admissions have now approached this Court by way of present writ petitions/special leave petitions praying for Special Stray Round of counselling with respect to the remaining 1456 seats remained vacant and to allow them to participate for the vacant seats, which are available after the conduct of the Stray vacancy round of AIQ.

6. Ms. Rachna Shrivastava, learned Senior Advocate has appeared on behalf of the writ petitioners of Writ Petition (C) No. 409 of 2022; Shri A.D.N. Rao, learned Senior Advocate has appeared on behalf of the petitioner in Special Leave Petition (C) No. 10395 of 2022; Shri Avijit Mani Tripathi, learned counsel has appeared on behalf of the petitioner in Special Leave Petition (C) No. 10539 of 2022 and Shri Kunal Cheema, learned counsel has appeared on behalf of the writ petitioner in Writ Petition (C) No.393 of 2022. Shri Balbir Singh, learned Additional Solicitor General has appeared on behalf of the Union of India and Shri Gaurav Sharma, learned counsel has appeared on behalf of the Medical Counselling Committee as well as the National Board of Examinations.

7. Learned Senior Advocates/counsel appearing on behalf of the respective petitioners have made following submissions in support of their prayer to direct the respondents to conduct a Special Stray Round of counselling with respect to the seats which have remained vacant:-

- (i) Total 1456 seats have remained vacant for NEET-PG-2021, wastage of 1456 seats still hamper the interest of both colleges and the candidates;
- (ii) The respective petitioners – candidates are ready to get admission on any of the seats remained vacant;

(iii) Due to abrupt addition of additional seats in NEET-PG-2021, an additional round of counselling for 146 seats was conducted pursuant to the order passed by this Court. Apart from this, the Mop-Up round was cancelled and was directed to be reconducted. Therefore, the point of four counselling cannot be brought when due to severe glitches additional rounds were already conducted;

(iv) Out of 1456 seats remaining vacant, there are many seats, which are clinical seats also. Therefore, it is not correct to say that the seats, which have remained vacant are of Paramedical courses;

(v) The seats which have remained vacant have remained vacant due to the non-joining, resignation and the candidates not reported. It is submitted that therefore, it was the duty cast upon the respondents to fill up the posts remained vacant due to the aforesaid grounds from and amongst the remaining candidates;

(vi) It is the duty of the Medical Counselling Committee to have conducted an additional round keeping in view the large number of seats (1456) remaining vacant;

(vii) Closing of the software before filling of those seats itself is not justifiable. Even if the software is closed, looking at the gravity and urgency, a mechanism can be developed to fill in the vacant seats;

(viii) That the submission on behalf of the Medical Counselling Committee and the Union of India that the respective candidates have already been refunded the amount cannot be a ground not to conduct an additional round of counselling;

(ix) The candidates for NEET-PG-2021 and 2022 are different.

Many candidates, who participated in the counselling for NEET-PG-2021 did not even register for NEET-PG-2022 with a hope that they will get a seat in the counselling.

Registration for NEET-PG-2022 has already been closed on 25.03.2022, giving no room to the candidates for NEET-PG- 2021 to appear for the NEET-PG-2022;

(x) The candidates cannot be replaced for NEET-PG-2021 and NEET-PG-2022, 1456 seats can only be open for a merit- based competition for NEET-PG-2021;

(xi) If the candidates like the petitioners are given the admissions on the seats remaining vacant now, it may not affect their education. Even the classes of NEET-PG-2021 started even much before the first counselling batch started. That thereafter and after the courses started, there are three Mop-

Up Rounds conducted and the students are given admissions and the last admission was given on 07.05.2022. The students, who are given admissions now will be able to complete their full studies.

Making above submissions, it is urged and prayed to direct the respondents to conduct a Special Stray Round of counselling as a one-time measure and as a special case.

8. Present petitions/special leave petitions are vehemently opposed by Shri Balbir Singh, learned ASG appearing on behalf of the Union of India and Shri Gaurav Sharma, learned counsel appearing on behalf of the Medical Counselling Committee. A counter is filed on behalf of the respondent Nos. 1 and 3 – Union of India/ Director General of Health Services.

8.1 It is vehemently submitted by Shri Balbir Singh, learned ASG that in the present case, the dispute is with respect to the NEET-PG-2021 seats. It is submitted that in the present case, four rounds of counselling each for All India Quota and State's Quotas have been carried out and out of 40,000 seats only 1456 seats have remained vacant after in all nine rounds of counselling. It is submitted that out of 1456 seats remaining vacant, approximately, 1100 seats are with respect to non-clinical courses and the remaining seats are with respect to the private colleges and with respect to the clinical courses. It is submitted that all those seats have remained vacant, which usually remain vacant every year as they are no takers and/or they can be said to be rejected seats. It is submitted that all those seats remain vacant every year and, in many cases, they are not opted by the concerned candidate as nobody like to opt for non-clinical courses and even with respect to some of the clinical courses, as there is a high fee in the private colleges, they are no takers and therefore, some of the seats are remaining vacant every year. It is submitted that therefore even after one additional round of counselling is carried out as requested by the petitioners, in that case also the seats are bound to remain vacant. It is submitted that there cannot be endless exercise of conducting counselling one after another till all the seats are filled in. It is submitted that after the nine rounds of counselling when some of the seats have remained vacant and considering the fact that the PG courses (clinical) is three-years course, out of which, for whatever reason, more than one year had gone and there cannot be any compromise so far as the Medical Education is concerned and considering the fact that the admission process for NEET-PG-2022 has already begun and the counselling for NEET-PG- 2022 is to begin/start in July, 2022, a conscious decision has been taken not to conduct one another Special Stray Round of counselling. 8.2 It is further submitted on behalf of the Union of India and the Medical Counselling Committee that the last round of counselling ended on 07.05.2022. That thereafter, the entire software mechanism has been closed and the security deposit has also been refunded to the eligible candidates. It is submitted that a significant proportion of seats, which remain vacant are in non-clinical courses and these are no taker seats, which seats generally remain vacant. It is submitted that every year, some number of seats remain vacant. It is submitted that the identical question came to be considered by this Court in the case of Education Promotion Society for India and Anr. Vs. Union of India and Ors., (2019) 7 SCC 38. It is submitted that before this Hon'ble Court, the petitioners prayed for general extension of time and prayed for additional Mop-Up Round of counselling on the ground that a large number of seats for PG courses were lying vacant. It is submitted that in the said decision after taking note 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, it is observed that merely because the seats are lying vacant is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. It is submitted that in the aforesaid decision, it is observed that the schedule must be followed and if the violation of schedule is permitted and extension is granted, it will be opening a

pandora's box and the whole purpose of fixing a time schedule and laying down a regime which strictly adheres to the time schedule will be defeated. 8.3 Shri Gaurav Sharma, learned counsel appearing on behalf of the Medical Counselling Committee and the National Board of Examinations has also relied upon the earlier decision of this Court in the case of Supreet Batra and Ors. Vs. Union of India and Ors., (2003) 3 SCC 370 in support of his submission that even if some seats remained vacant, the students cannot be admitted mid-term. 8.4 Making above submission, it is prayed to dismiss the present writ petitions/special leave petitions.

9. Heard the learned counsel appearing for the respective parties at length.

10. At the outset, it is required to be noted that in the present case, the dispute is with respect to the NEET-PG-2021 and the time schedule for the approved counselling has been fixed pursuant to the direction issued by this Court and/or approved by this Court. Ordinarily, the first round of counselling in PG courses begins in the month of March of every academic year and subsequently the academic session begins from the month of May of every academic year. However, NEET-PG-2021 examination was delayed due to the third wave of COVID-19 pandemic and various litigations across the nation implementing the 27% OBC reservation in AIQ seats.

10.1 At this stage, it is required to be noted that as per the earlier counselling policy, only two rounds of counselling were being held for All India Quota seats and State Quotas. The modified scheme of counselling for Academic Year 2021-2022 and onwards was submitted before this Court in Special Leave Petition (C) No.10487 of 2021 and this Court approved the same. As per the modified scheme of counselling, this time four rounds of counselling have been undertaken for All India Quota seats as well as States' Quotas each. That thereafter one another round of counselling was conducted pursuant to the subsequent order passed by this Court, as approximately 146 seats were added. The NEET-PG-2021 counselling commenced on 12.01.2022 and after completion of the four rounds of counselling for All India Quota seats and State Quotas (in all eight rounds of counselling), out of 40,000 seats, 1456 seats have remained vacant. It appears that out of 1456 seats approximately more than 1100 seats are with respect to the non-clinical courses and the remaining are with respect to the clinical courses and all the seats are with respect to the private institutions. The respective petitioners are claiming admission on the remaining vacant seats and have prayed to direct the respondents to conduct a Special Stray Round of counselling. The main submission on behalf of the petitioners, as noted hereinabove, is that as large number of seats have remained vacant, the same be filled in by conducting additional/Special Stray Round of counselling for the seats remaining vacant, which are mostly non-clinical courses, which remained even after eight or nine rounds of counselling. The students cannot still pray for admission on those seats remaining vacant after approximately one year of academic session and remaining vacant after eight or nine rounds of counselling.

10.2 At this stage, the decisions of this Court in the case of Supreet Batra and Ors. (supra) and Education Promotion Society for India and Anr. (supra) are required to be referred to.

In the case of Supreet Batra and Ors. (supra), it is observed and held that even if some seats remain vacant, the students cannot be admitted mid-term. In paragraph 7, it is observed and held as

under:-

“7. When a detailed scheme has been framed through orders of this Court and the manner in which it has to be worked out is also indicated therein, we do not think that if in a particular year there is any shortfall or a certain number of seats are not filled up, the same should be done by adopting one more round of counselling because there is no scope for the third round of counselling under the Scheme. It would not be advisable to go on altering the Scheme as and when seats are vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out of about 1600 seats, if 200 seats are not filled up for various reasons and such not-

filled-up seats were much less in the earlier years, we do not think it should result in the third round of counselling. If that process is to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until all the seats under the all-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. We have taken identical view in the decision in *Neelu Arora v. Union of India* [(2003) 3 SCC 366] and connected matters disposed of on 24-1- 2003. Moreover, this Court in *Medical Council of India v. Madhu Singh* [(2002) 7 SCC 258] has taken the view that there is no scope for admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year. If these aspects are borne in mind, we do not think any reliefs as sought for by the petitioners can be granted under these petitions. These writ petitions shall stand dismissed.” 10.3 In the case of *Education Promotion Society for India and Anr.* (supra), the writ petitioners like the petitioners in the present case prayed for extension of time schedule and prayed for the additional counselling. This Court negated the same. This Court also took the note 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. Thereafter, it is observed and held that merely because the seats are lying vacant, is not a ground to grant extension of time and grant further opportunity to fill up vacant seats. It is observed that the schedule must be followed. While holding so, it is observed in paragraph 6 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.” 10.4 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. 10.5 The process of admission and that too in the medical education cannot be endless. It must end at a particular point of time. The time schedule has to be adhered to, otherwise, ultimately, it may affect the medical education and the public health.

10.6 Apart from the fact that after closure of the last round of counselling on 07.05.2022, the entire software mechanism has been closed and the security deposit is refunded to the eligible candidates, it is to be noted that the admission process for NEET-PG-2022 has already begun, the results for the NEET-PG-2022 has been announced on 01.06.2022 and as per the time schedule, the counselling process is going to start in July, 2022. Therefore, if one additional Special Stray Round of counselling is conducted now, as prayed, in that case, it may affect the admission process for NEET-PG-2022.

10.7 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 and Anr. (supra)

11. In view of the above and for the reasons stated above, the petitioners are not entitled to any relief of writ of Mandamus directing the respondents to conduct a Special Stray Round of counselling for filling up the remaining vacant seats of NEET-PG-2021. Granting of such relief now may affect the medical education and ultimately the public health as observed hereinabove.

12. Under the circumstances, both these writ petitions and the special leave petitions deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there



shall be no order as to costs.

..... J .  
[M.R. SHAH]

NEW DELHI;  
JUNE 10, 2022.

..... J .  
[ANIRUDDHA BOSE]