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ASHISH RANJAN AND ORS.

v.

UNION OF INDIA AND OTHERS

(I.A. Nos. 45538, 45540 and 45542 of 2017)

B

PEOPLE'S UNIVERSITY ...APPLICANT

with

(I.A. Nos. 45855, 45856 and 45859 of 2017)

MALWANCHAL UNIVERSITY INDORE ...APPLICANT

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in

(Writ Petition (Civil) No. 76 of 2015)

JUNE 09, 2017

[ASHOK BHUSHAN AND DEEPAK GUPTA, JJ.]

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Education/ Educational Institutions:

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Admission to Medical Colleges – Counselling for admission in Post-Graduate Courses – Applications seeking extension of time for completing the counselling in accordance with the order of this Court dated 09.05.2017 such that unfilled seats in the Applicants' Units be filled up – Submissions by the State that the first and second counsellings were completed within time, MOP-up counselling was also conducted and completed on 31.05.2017 and admissions have been completed and some seats could not be filled up because no student opted for those seats, thus, no ground to grant any extension of time beyond 31.05.2017 – Held: Order dated 09.05.2017 is confined to admission to Under-Graduate Courses only and not related to PG Courses – In order dated 09.05.2017, the State Government was directed to determine the number of seats that are still vacant and thereafter, to forward a list of students in order of merit, equalling to ten times the number of vacant seats to the Medical College such that in case of any stray vacancy arising in any College, the said seat may be filled up from the said list – In admission to the PG Courses both merit and preference of candidates are looked into – Had the Court by issuance of direction in order dated 09.05.2017 intended the sending of ten times the number of vacancies

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of each PG Courses, there would have been further elaboration pertaining to discipline and drawing of inter se merit – Furthermore, when the order dated 09.05.2017 is itself not applicable to PG Courses, the Government Circular dated 26.05.2017 issued in misconception that order dated 09.05.2017 is applicable to PG Courses, is also not effective – Thus, the applications are unfounded and applicants not entitled to any relief.

CIVIL ORIGINAL JURISDICTION: I.A. Nos. 45538, 45540 and 45542 of 2017

WITH

I.A. Nos. 45855, 45856 and 45859 of 2017 in Writ Petition (Civil) No. 76 of 2015.

Under Article 32 of the Constitution of India.

Venkateswara Rao Anumolu, Adv. for the Petitioners.

S. S. Shamsbery, AAG, Ajit Sinha, Salman Khurshid, Sr. Advs., Ajay Sharma, Ms. Rekha Pandey, R. K. Rathore, G. S. Makker, Ravi Kant, Ranjay Kumar Pandey, Amit Sharma, Ms. Ruchi Kohli, Advs. for the Respondents.

The Order of the Court was delivered by

ASHOK BHUSHAN, J. 1. These applications have been filed by two private Universities, namely, People's University and Malwanchal University Indore. In both the applications Applicants have made identical prayers which are to the following effect:

"In view of the above it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Allow the present application for intervention;*
- b) Permit the applicant to intervene in the present Petition; and*
- c) Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."*

2. The case of the Applicants is that the State of Madhya Pradesh conducted counselling for admission in Postgraduate Medical Courses

A as per schedule dated 03.05.2017. It is stated that there was delay in holding first and second counselling. Two counsellings were completed, first between 11.05.2017 to 20.05.2017 and second between 23.05.2017 to 29.05.2017.

B 3. Reliance has been placed by the Applicants on order dated 09.05.2017 passed in Writ Petition (C) No.267 of 2017 and the circular dated 26th May, 2017 issued by the Government of India, Ministry of Health and Welfare consequent to the aforesaid order of this Court dated 09.05.2017. It is contended that there was an order of Madhya Pradesh High Court in Writ Petition No.7900 of 2017 dated 29.05.2017. Before the High Court the State Government has submitted that counselling will be completed on 31.05.2017 as per directions of this Court.

C 4. Learned counsel submits that as per order dated 09.05.2017 for manual admission process after ascertainment of the number of seats vacant, only 30 minutes time was left between 11.30 PM and 12 PM on 31.05.2017. It is further stated that revised schedule which was published on 30.05.2017 does not indicate that the compliance of the order of this Court dated 09.05.2017 was ensured. It was further contended that no list of the students as contemplated by order dated 09.05.2017 was provided by the State, consequently 17 seats in Peoples College of Medical Sciences and Research Centre, 10 seats in Peoples College of Dental Sciences and Research Centre and 12 seats in Peoples Dental Academy could not be filled. It is useful to refer to the averments made in paragraph 10 of the People's University Application to the following effect:

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"10. That after the aforesaid order, dated 29.05.2017, passed in W.P. No. 7900/2017, the State Government issued the order, dated 29.05.2017, prescribing inter alia that as per the circular, dated 26.05.2017 issued by the Ministry of Health and Family Welfare, the seats would be filled up on 31.05.2017 after 7 PM. However, the aforesaid schedule was further revised on 30.05.2017 and now only 30 minutes time i.e. 11:30 PM to 12 PM on 31.05.2017 is given to the applicant and other colleges to fill up the vacant seats as per the notification dated 26.05.2017.

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As directed, the representatives of the applicant were present at the scheduled time but no list of student was given and the State of M.P. has not only violated this Hon.Court's order, dated 09.05.2017 passed in W.P.(C)No.267/2017 read with

circular, dated 26.05.2017 issued by the Ministry of Health and Family Welfare but the order, dated 29.05.2017 passed by the Hon. High Court of M.P. in W.P. No.7900/2017 as well. As the consequences were inevitable, following seats are still lying vacant:

S.NO.	NAME OF CONSTITUENT UNIT	NUMBER OF VACANT SEATS
1.	Peoples College of Medical Sciences and Research Centre	17 seats
2.	Peoples College of Dental Sciences and Research Centre	10 seats
3.	Peoples Dental Academy	12 seats

5. In the application filed on behalf of Malwanchal University Indore also similar averments were made and it is further stated that in the Constituent Unit of the University that is Peoples College of Medical Sciences and Research Centre, 17 seats could not be filled up.

6. Learned counsel for the Applicants on the aforesaid premise prayed that the time for completing the counselling in accordance with the order dated 09.05.2017 be extended so that unfilled seats in the Applicants' Units be filled up.

7. Learned counsel for State of Madhya Pradesh refuted the submissions made by the learned counsel for the Applicants. It is contended that the first and second counsellings were completed within time. Mop-up counselling was also conducted and completed on 31st May, 2017 and admissions have been completed. Some seats could not be filled up because no student opted for those seats. It is submitted that there is absolutely no ground to grant any extension of time beyond 31st May, 2017 as prayed by the Applicants.

8. Shri Gaurav Sharma, learned counsel appearing for the Medical Council of India submits that order dated 09.05.2017 passed in Writ Petition (C) No.267 of 2017 relied on by the Applicants does not relate

A to admission in PG Courses. He submits that order dated 09.05.2017
 was issued with regard to admission in MBBS Courses. Hence, very
 basis of the Application is unfounded. Shri Gaurav Sharma has referred
 to order dated 03.05.2017 passed in Writ Petition(C) No.261 and 292 of
 2017, and other Writ Petitions which, according to him, clearly mentioned
 B that matter was further directed to be listed on 4th May, 2017 for
 considering the procedure for admission in Under-Graduate Courses.
 He submits that order dated 09.05.2017 has to be confined to admission
 to the MBBS Courses only and not relating to Postgraduate Courses.

C 9. We have considered the submissions of the parties and perused
 the records.

10. The very basis of the Applications filed by both the Universities,
 is the order dated 09.05.2017 passed by this Court in Writ Petition(C)
 No.267 of 2017 and other Writ Petitions reliance has been placed by the
 learned counsel on the direction No.7 which is to the following effect:

D *“7. In order to ascertain the number of seats that still remain
 vacant after the counselling the State Government or the
 authority designated by the State Government shall conduct
 manual counselling for allotment of students. After the
 completion counselling, the State Government shall determine
 E the number of seats that are still vacant and thereafter shall
 forward a list of students in order of merit, equaling to ten
 times the number of vacant seats to the medical college so
 that in case of any stray vacancy arising in any college the
 said seat may be filled up from the said list.”*

F 11. Applicants have also relied on circular issued by the Government
 of India, Ministry of Health and Family Welfare dated 26.05.2017 which
 is to the following effect:

*“Sub: Counseling for admission in PG Course in Medical
 Colleges – regarding*

Sir /Madam

G *In continuation to this Ministry's letter of even number dated
 11.05.2017 on the subject mentioned, I am directed to
 reproduce para-7 of the order of Hon'ble Supreme Court
 passed on 09.05.2017 in WP© No. 267/2017 in the matter of
 H DAR-US-Slam Educational Trust V/s Medical Council of India:*

"In order to ascertain the number of seats that still remain vacant after the counseling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equalling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list."

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2. In view of the above, all the State/UT Governments are requested to conduct mop-up round of counseling first. After the completion of mop-up counseling, the number of seats that are still vacant may be determined and list of students in order of merit, equalling to ten times the number of vacant seats shall then be forwarded to the medical colleges concerned. In any case, last date of admission i.e. 31.05.2017 will remain unchanged.

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Yours sincerely,

Sd/-

(D. V. K. Rao)

Under Secretary to the Government of India

Tele: 011-2306 2959"

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12. One of the issues which has been raised in these Applications is with regard to the applicability of the order dated 09.05.2017 with regard to the Postgraduate Courses.

13. Shri Gaurav Sharma has referred to order dated 03.05.2017 passed in Writ Petition (C) No.261 of 2017 and other Writ Petitions where this Court after hearing learned counsel for the parties has passed the following directions:

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"Having heard learned counsel for the parties and keeping in view our earlier order passed in W.P.(C) No.270 of 2017 on 27th March, 2017, it is directed as under:-

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(a) The concerned States which have been arrayed as respondents herein, shall carry out the counseling and the authorized representatives of the colleges who are the

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A *petitioners herein, shall remain present at the time of counseling.*

B *(b) When the counseling commences, the authorized representatives who have been directed to remain personally present, may assist the counseling authorities for allocation of students to their colleges from amongst the minorities on the basis of their merits.*

(c) The decision taken in the counseling committee shall be implemented by the colleges so that harmony is maintained.

C *(d) The representatives of the colleges shall identify the status of minority, but what will ultimately prevail is that the candidate belonging to minority candidate must fit into the compartment of merits. To clarify, if a student is meritorious and belongs to the minority community, he shall have priority in admission.*

D *(e) The 70% of the seats shall be filled up from amongst the minority students and balance shall be filled up by the general category. In case, there are inadequate students meeting the criteria, that is, minority status and merit, then the same shall be filled up on consent from other categories.*

E *The aforesaid order covers filling up of posts in the post graduate courses. As there is dual prayer in these writ petitions, which also relate to under graduate courses, let the writ petitions be listed on 4th May, 2017, only for the said relief."*

F 14. A perusal of the aforesaid order indicates that the next date that is 4th May, 2017 was fixed for consideration of relief pertaining to Under-Graduate Courses. Shri.Sharma submits that the matter could not be heard on 04.05.2017 on which date it was adjourned to 08.05.2017 and ultimately order was passed on 09.05.2017. A perusal of the direction
G Nos.8, 9 and 10 indicate that the directions pertain to admission of the students belonging to minority community which directions have been quoted below:

H *"8. In the applications submitted by the students belonging to the minority community they should confirm their minority status as well as the fact that they fulfill other conditions which*

may be prescribed by the minority institutions. Accordingly, the DGHS as well as the State Government shall prepare a separate list of minority students seeking admissions in the respective minority institutions in order of merit. The competent authorities of the College present during counselling shall check/verify the minority status of the candidate. This arrangement is only meant for the State Quota.

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9. During the common counselling conducted by the State Government, the representatives of the medical colleges particularly representative of minority institutions should be a part of the admission/counselling committee as the case may be.

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10. Common counselling conducted by the DGHS/State Government will not in any manner affect the rights of minority institutions to admit students of their respective minority community. The minority quota seats, if any, in institutions run by minorities will be filled up by minority students only. Therefore, the rights of minority institutions are fully protected.”

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15. A perusal of directions issued on 03.05.2017 clearly indicate that with regard to admission of candidates belonging to minority community several directions were already issued with regard to the admission in Post-graduate courses as per order dated 03.05.2017. When this Court has already issued an order ensuring students of minority community be admitted after proper verification on 03.05.2017 itself, there was no occasion to issue further directions on the same subject on 09.05.2017, if both the orders relate to Post-graduate admissions. This clearly gives support to the submission made by the learned counsel of Medical Counsel of India that order dated 09.05.2017 confines to admission to Under-Graduate Courses.

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16. In order dated 03.05.2017 following was specifically mentioned:

“ The aforesaid order covers filling up of posts in the post graduate courses. As there is dual prayer in these writ petitions, which also relate to under graduate courses, let the writ petitions be listed on 4th May, 2017, only for the said relief.”

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A 17. Above order dated 03.05.2017 clearly indicates that matter
 was to be further listed on 04.05.2017 for considering the relief relating
 to Under-Graduate Courses. On 4th May, 2017 matter could not be taken
 up and adjourned to 08.05.2017 and ultimately order was issued on
 09.05.2017. Thus, order dated 09.05.2017 has been reproduced above
 in reference to above paragraph. The above paragraph of order dated
 B 03.05.2017 clearly supports the contention of Shri Sharma that order
 dated 09.05.2017 relates to admission of Under-Graduate.

18. The order passed by this Court on 27th April, 2017 in Writ
 Petition (C) No.270 of 2017 when read with order of this Court dated
 09.05.2017 passed in Writ Petition (C) Nos.267, 292, 270 of 2017 also
 C leads to the same conclusion. Order dated 27th April, 2017 in Writ
 Petition(C)No.270 of 2017 also contains various directions for academic
 year 2017-2018 in reference to Post-graduate admissions. In Writ Petition
 (C) No.270 of 2017 following order was passed:

“W.P.(C) No.270/2017

D *Heard Mr. Sunil Gupta, learned senior counsel along
 with Mr. Romy Chacko, learned counsel for the petitioners
 and Mr. Vikas Singh, learned senior counsel along with Mr.
 Gaurav Sharma, learned counsel for the respondents.*

E *As stated on the earlier occasion, memoranda have been
 filed by both the parties indicating solutions. The solutions
 that have been arrived at after due deliberation for the present
 academic year i.e. 2017-2018 are as follows:-*

F *(i) The authorized representatives of the colleges, who are
 petitioners herein, shall remain present at the time of
 counseling. We have used the word ‘counseling’ as Mr. Gupta,
 learned senior counsel has submitted that the first counseling
 has not yet been done in respect of these colleges. Mr. Vikas
 Singh, learned senior counsel would submit that when there
 is a common counseling, the question of holding counseling
 for four institutions does not arise. Be that as it may, that
 G need not be adverted to at the present.*

*(ii) The second counseling is going to take place on 11th
 May, 2017. On that day, the authorized representative of the
 petitioner-colleges shall remain present and students shall be*

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allocated to their colleges on the basis of merits. Needless to say, the counseling shall be done by the State or any university or authority that has been nominated by the State. A

(iii) At the time of counseling, the candidates who are inclined to take admission in these colleges shall furnish an undertaking that they will do service in the Mission Hospitals connected with the present colleges after completion of the post-graduate course for a period WP(C) 261/17 7 of one year. B

(iv) The aforesaid prescription shall only be applicable to the minority students admitted by the petitioner-colleges on the basis of the common counseling. The representative of the colleges shall identify the status of minority, but what will ultimately prevail is that the minority candidate must fit into the compartment of merits. To clarify, if a student is meritorious and belongs to the minority community, he shall have the priority in admission. C
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(v) The decision taken in the counseling committee shall be implemented by the colleges so that harmony is maintained.

The present order shall apply only to the post graduate admissions. E

As far as the issue regarding under-graduate course is concerned, Mr. Vikas Singh, prays for three days time to come up with set up of solutions.

Let the matter be listed for the said purpose on 4 th May, 2017. F

19. Writ Petition (C) No.270 of 2017 along with other Writ Petitions were listed on 4th May, 2017, as directed on which date matter was adjourned to 8th May, 2017. Ultimately, order dated 9th May, 2017 was passed in Writ Petition (C) Nos.267, 292, 270, 227 and 258 of 2017. It has already been referred to above. Order dated 27th April, 2017 as extracted above specifically mentioned: G

“....The present order shall apply only to the postgraduate admissions.

As far as the issue regarding under-graduate course is H

A *concerned, Mr. Vikas Singh, prays for three days time to come up with set up of solutions.*

Let the matter be listed for the said purpose on 4th May, 2017.”

B 20. Thus, 4th May, 2017 which was fixed and ultimately when order dated 9th May, 2017 was passed same was only in reference to Under-Graduate Course.

C 21. There is one more reason for coming up to the aforesaid conclusion. In order dated 09.05.2017, the State Government has been directed to determine the number of seats that are still vacant and thereafter is to forward a list of students in order of merit, equalling to ten times the number of vacant seats to the Medical College so that in case of any stray vacancy arising in any College the said seat may be filled up from the said list. In admission to the Post-graduate Courses both merit and preference of candidates are looked into. Had the Court vide direction No.7 of the order dated 09.05.2017 intended the sending of ten times the number of vacancies of each Post-graduate Courses, there would have been further elaboration pertaining to discipline and drawing of *inter se* merit.

D 22. We are, thus, of the considered view that order dated 09.05.2017 does not relate to admission into Post-graduate Courses and is confined to admission in Under-Graduate Courses as noted above.

E 23. Coming to circular issued by the Government of India, Ministry of Health and Family Welfare dated 26th May, 2017, the said circular has been issued on the strength of the order of this Court dated 09.05.2017 in Writ Petition (C) No.267 of 2017. It appears that the said circular has been issued by Government of India, Ministry of Health and Family Welfare in misconception that order dated 09.05.2017 is applicable to the admission to the Post-graduate Courses. When the order dated 09.05.2017 is itself not applicable to Post-graduate Courses, circular dated 26.05.2017 is not effective.

F 24. We are, thus, of the view that very basis of the Applications filed by the Applicants is unfounded and Applicants are not entitled to any relief in these Applications. All the IAs are rejected.