

HGRJ & KSMJ:

20.06.2017

Order on I.A.No.3/2017

1. This application is filed by respondent no.3-State of Karnataka to recall the interim order dated 30.05.2017 passed in these petitions to the extent it also directed admission of vacant seats through the Common Counselling Authority provided under Regulation 9A of the Postgraduate Medical Education Regulations, 2000 (*'the Regulations'*).

2. We have heard Sri Madhusudhan R.Naik, learned Advocate General for respondent no.3-State of Karnataka, Sri Sridhar Prabhu, learned counsel for the petitioners, Sri N.Khetty, learned counsel for respondent no.1-Medical Council of India and Sri K.Shashi Kiran Shetty, learned Senior Counsel for the applicants in I.A.Nos.4 & 5/2017.

3. The learned Advocate General, by referring to several decisions and orders of the Hon'ble Supreme Court, submitted that the interim order dated 30.05.2017 passed in these petitions to the extent it directed admission of vacant seats through the Common Counselling Authority provided under Regulation 9A of *the Regulations* requires to be recalled.

4. It is relevant to extract the interim order dated 30.05.2017 which is sought to be recalled in this application-IA No.3/2017:

" 30.05.2017

1. In these writ petitions, the grievance of the petitioners *inter alia* is that the admissions made to Postgraduate Medical Courses under the *NRI/Management quota* are contrary to law.

The matter requires consideration.

2. Sri N.Khetty, learned Standing Counsel takes notice for respondent No.1. Sri N.K.Ramesh, learned Standing Counsel takes notice for respondent No.2.

3. At the request of learned Counsel appearing for the petitioners, notice to respondent No.4 is dispensed with.

4. Respondent Nos.1 to 3 are given two weeks' time to file statement of objections.

5. In view of what is stated by a Seven Judge Bench of the Supreme Court at Para 131 in *P.A.Inamdar v. State of Maharashtra* [(2005)6 SCC 537], respondent No.2-Karnataka Examinations Authority and respondent No.3-State of Karnataka, while making allotment of seats under Regulation 9A of the Postgraduate Medical Education Regulations, 2000 ('the Regulations') for the academic year 2017-2018, shall not permit '*NRI quota*' in excess of fifteen percent and further it shall be confined only to the children of NRIs or their wards. We may add that this direction has been given by this Court on 27.04.2017 in WP Nos.17999-18002/2017, a copy of the said order is produced as Annexure-P to these writ petitions. This is only a reiteration.

6. Having regard to the grievance of the petitioners, we direct that all admissions made to Postgraduate Medical Courses in Karnataka for the academic year 2017-2018 under the *NRI/Management quota* shall be subject to the result of these writ petitions.

7. Regulation 9A of the Regulations is mandatory, and hence, under no circumstance it shall be defeated. Therefore, under no circumstance, Postgraduate Medical Colleges in Karnataka shall admit any student to any Postgraduate Medical Course contrary to Regulation 9A of the Regulations. Any admission made contrary to Regulation 9A is void. Even if seats fall vacant in any category for any reason, such seats shall be filled only through the Common Counselling Authority provided under Regulation 9A. No vacant seats shall be filled without the said seats being allotted by the Common Counselling Authority. Any *term* in any *consensual agreement* to the contrary is void as it is violative of Regulation 9A.

8. This order shall be complied by all the Medical and Dental colleges in Karnataka and all the authorities concerned. Every college, officer or authority who disobeys or fails to strictly comply with this order shall be liable for action under the provisions of the Contempt of Courts Act. Liberty is granted to any interested party to take out contempt proceedings before this Court.

9. Sri N.K.Ramesh, learned Standing Counsel appearing for respondent No.2-Karnataka Examinations

Authority who is present in Court, is directed to communicate this order to the *Karnataka Examinations Authority* forthwith and the *Karnataka Examinations Authority* shall in turn communicate this order to all the Postgraduate Medical Colleges in Karnataka.”

(Underlining supplied)

5. We have gone through the decisions and the orders of the Hon'ble Supreme Court referred to by the learned Advocate General. Nowhere it is stated that vacant Postgraduate medical seats in Karnataka may be filled without following Regulation 9A of *the Regulations*.

6. In the order dated 30.05.2017 extracted above, all this Court has said was to follow the law laid down by a Seven Judge Bench of the Hon'ble Supreme Court in *P.A.Inamdar v. State of Maharashtra* [(2005)6 SCC 537] with regard to '*NRI quota*', and to follow Regulation 9A of *the Regulations* in the matter of admissions to Postgraduate medical courses in Karnataka. No exception is provided to Regulation 9A in *the Regulations*. Hence, we find no legal ground to recall the order dated 30.05.2017. However, we state that Regulation 9A has no application to Postgraduate dental courses. I.A.No.3/2017 is accordingly dismissed.

Objections to I.A.Nos.4 & 5/2017, if any, in a week's time.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

hkh.