IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL, 2024

BEFORE

THE HON'BLE MR JUSTICE RAVI V HOSMANI

WRIT PETITION NO. 13375 OF 2023 (EDN-RES)

C/W

WRIT PETITION NO. 14602 OF 2023

WRIT PETITION NO. 14605 OF 2023

WRIT PETITION NO. 16745 OF 2023

WRIT PETITION NO. 16995 OF 2023

WRIT PETITION NO. 17047 OF 2023

IN W.P.No.13375/2023:
BETWEEN:

1 . MR. ANEESH. S.M,
S/O MR P.R. SRINIVASA,
AGED ABOUT 20 YEARS,
R/A NO.56, SAPTHAGIRI
SATYANARAYANA LAYOUT
2ND STAGE JC NAGAR,
MAHALAKSHMIPURAM,
BENGALURU - 560 086.

Vide Court Order dt.25.01.2024 W.P. insofar as petitioner no.1 is dismissed as withdrawn.

2 . MS. AARUSHI SHARMA,
D/O AJAY KUMAR SHARMA,
AGED ABOUT 21 YEARS,
R/A A-11/303, FLORIDA ESTATE,
KESHAV NAGAR, MUNDHWA,
PUNE - 411 036.

3 . MS. AARYA MANSUKHANI,
D/O NARESH MANSUKHANI,
AGED ABOUT 20 YEARS,
B-39 3RD FLOOR JUNGPURA EX
JUNPUR S.O., SOUTH DELHI,
DELHI - 110 014.

CHANDRASHEKAR LAXMAN KATTIMANI
Digitally signed by CHANDRASHEKAR LAXMAN KATTIMANI
Location: HIGH COURT OF KARNATAKA DHARWAD BENCH

4 . MS. AISHWARYA PATIL,
D/O SIDDALINGAPPA PATIL,
AGED ABOUT 21 YEARS,
1-11-118/3/7-B,
OPP. LITTLE ANGEL SCHOOL,
RAICHUR - 584 101.

5 . MR. MALLAREDDY PATIL,
S/O BHEEMARAYA GOUDA,
AGED ABOUT 23 YEARS,
KHB COLONY,
VENKATESHWARA NAGAR,
OPP TO LIC OFFICE,
YADGIR - 585 201.

6 . MR. VARUN KUMAR M.,
S/O CHINNA MARENNA M.,
AGED ABOUT 22 YEARS,
NO.28, 3RD CROSS EAST,
VIDYA NAGAR, BELLARY - 583 104.

…PETITIONERS

[BY SRI P.P. HEGDE, SR. COUNSEL FOR
SRI DEEKSHITH CHANDAN M.C., ADVOCATE]

AND:

1. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES,
4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041,
REP. BY ITS VICE CHANCELLOR.

2. THE REGISTRAR,
RAJIV GANDHI UNIVERSITY OF
HEALTH SCIENCES , 4TH 'T' BLOCK,
JAYANAGAR, BENGALURU - 560 041.

3. NATIONAL MEDICAL COMMISSION,
POCKET - 14, SECTOR 8,
DWARAKA PHASE – 1,
NEW DELHI - 110 077,
BY ITS SECRETARY.

4. SAPTHAGIRI INSTITUTE OF
MEDICAL SCIENCES
AND RESEARCH CENTRE,

NO.15, HESARGHATTA ROAD,
NAVY LAYOUT, CHIKKABANAVARA,
BENGALURU - 560 090,
BY ITS DEAN / PRINCIPAL.

5. VYDEHI INSTITUTE OF MEDICAL SCIENCES
AND RESEARCH CENTRE, NO.82,
NALLURAHALLI MAIN ROAD,
NEAR BMTC, 18TH DEPOT, WHITEFIELD,
BENGALURU - 560 066,
BY ITS DEAN / PRINCIPAL.

6. NAVODAYA MEDICAL COLLEGE HOSPITAL
AND RESEARCH CENTRE,
MANTRALAYAM ROAD,
NOVADAYA NAGAR,
RAICHUR - 584 103,
BY ITS DEAN / PRINCIPAL.

…RESPONDENTS

[BY SRI SACHIN B.S., ADVOCATE FOR R1 & R2;
SRI N. KETTY, ADVOCATE FOR R3;
SRI RAVISHANKAR S.S., ADVOCATE FOR R4;
SRI V.N. KUMAR, ADVOCATE FOR R5; R6 - SERVED]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE DIRECTION IN THE NATURE OF MANDAMUS TO THE RESPONDENT TO SEND THE ANSWER SCRIPTS TO THE THIRD VALUATOR FOR REVALUATION AND ANNOUNCE THE RESULTS BY CONSIDERING THE AVERAGE OF BEST OF TWO MARKS AS AWARDED BY THE THREE EXAMINERS IN VIEW OF THE JUDGMENTS OF THIS HON'BLE COURT IN W.P.NO.200852/2019 PRODUCED AS ANNEXURE-F AND IN W.P.NO.7774/2022 PRODUCED AS ANNEXURE-G.

IN W.P.No.14602/2023:
BETWEEN:

VINDHYA BHAT,
AGED 23 YEARS,
D/O THRIVIKRAMA BHAT,
R/AT NO.68, LAKSHMITHIRTHA NODSAL,
PADUBIDRI, UDUPI.

…PETITIONER

[BY SRI P.P. HEGDE, SR. COUNSEL FOR
SMT. VINITHA P.C., ADVOCATE]

AND:

1. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES,
4TH 'T' BLOCK EAST, PATTABHIRAMA NAGAR,
JAYANAGAR, BENGALURU - 560 041,
REP. BY ITS VICE CHANCELLOR.

2. REGISTRAR EVALUATION,
RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES ,
4TH 'T' BLOCK EAST, PATTABHIRAMA NAGAR,
JAYANAGAR, BENGALURU - 560 041.

3. SRINIVAS INSTITUTE OF MEDICAL SCIENCES AND
RESEARCH CENRE,
MUKKA, SURATHKAL,
SURATHKARL – 2474884.
REP. BY ITS PRINCIPAL.

4. CHIEF SUPERINTENDENT,
RAJIV GANDHI SCIENCES EXAMINATION,
THE INSTITUTE OF MEDICAL SCIENCES,
MUKKA, MANGALORE – 574 146.

5. NATIONAL MEDICAL COMMISSION,
POCKET - 14, SECTOR 8,
DWARAKA PHASE – 1
NEW DELHI - 110 077,
BY ITS SECRETARY.

R5 IS DELETED AS PER
COURT ORDER DTD: 25.01.2024

…RESPONDENTS

[BY SRI GIRISH KUMAR R., ADVOCATE FOR R1, R2 & R4;
R3 – SERVED; R5 DELETED AS PER C/O DTD: 25.01.2024]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-2 UNIVERSITY TO REEVALUATE THE ANSWER SHEET AT ANNX-J PHARMACOLOGY TP I AND ANNX-K PHARMACOLOGY TP II OF PETITIONER OF MBBS (RS4) EXAMINATION CONDUCTED DURING MAY 2022 AND ANNOUNCED THE RESULT WITHIN A SPECIFIED PERIOD AND TO QUASH ANNX-S THE IMPUGNED

ORDINANCE/NOTIFICATION GOVERNING ASSESSMENT PROGRAM FOR THEORY PAPER ASSESSMENT OF ALL UNDER GRADUATE HEALTH SCIENCE COURSES OF UNIVERSITY DATED 05.09.2022 WITH A BEARING NUMBER RGU/AUTH/24TH CON/SYND/04/2022-2023 PASSED BY THE 2ND RESPONDENT AND ETC.

IN W.P.No.14605/2023:
BETWEEN:

SMRITI N.,
AGED 23 YEARS,
D/O NATARAJ K.S.,
R/AT NO.64/1, IVRI ROAD, BEHIND CRPF,
YELAHANKA, BANGLAORE – 560 064.

…PETITIONER

[BY SRI P.P. HEGDE, SR. COUNSEL FOR
SMT. VINITHA P.C., ADVOCATE]

AND:

1. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES,
4TH 'T' BLOCK EAST, PATTABHIRAMA NAGAR,
JAYANAGAR, BENGALURU - 560 041,
REP. BY ITS VICE CHANCELLOR.

2. REGISTRAR EVALUATION,
RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES ,
4TH 'T' BLOCK EAST, PATTABHIRAMA NAGAR,
JAYANAGAR, BENGALURU - 560 041.

3. SRINIVAS INSTITUTE OF MEDICAL SCIENCES AND
RESEARCH CENRE,
MUKKA, SURATHKAL,
SURATHKARL – 2474884.
REP. BY ITS PRINCIPAL.

4. CHIEF SUPERINTENDENT,
RAJIV GANDHI SCIENCES EXAMINATION,
THE INSTITUTE OF MEDICAL SCIENCES,
MUKKA, MANGALORE – 574 146.

5. NATIONAL MEDICAL COMMISSION,
POCKET - 14, SECTOR 8,

DWARAKA PHASE – 1
NEW DELHI - 110 077,
BY ITS SECRETARY.

R5 IS DELETED AS PER
COURT ORDER DTD: 25.01.2024

…RESPONDENTS

[BY SRI GIRISH KUMAR R., ADVOCATE FOR R1, R2 & R4;
R3 - SERVED
R5 DELETED AS PER COURT ORDER DTD: 25.01.2024]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE R-2 UNIVERSITY TO REEVALUATE THE ANSWER SHEET AT ANNX-J PATHOLOGY TP I AND ANNX-K PATHOLOGY TP II OF PETITIONER OF MBBS (RS4) EXAMINATION CONDUCTED DURING MAY 2022 AND ANNOUNCED THE RESULT WITHIN A SPECIFIED PERIOD AND TO QUASH ANNX-S THE IMPUGNED ORDINANCE/NOTIFICATION GOVERNING ASSESSMENT PROGRAM FOR THEORY PAPER ASSESSMENT OF ALL UNDER GRADUATE HEALTH SCIENCE COURSES OF UNIVERSITY DATED 05.09.2022 WITH A BEARING NUMBER RGU/AUTH/24TH CON/SYND/04/2022-2023 PASSED BY THE 2ND RESPONDENT AND ETC.

IN W.P.No.16745/2023:
BETWEEN:

MS. POOJITHA J. ANGADI,
D/O JEETENDRA ANGADI,
AGED 20 YEARS,
RGUHS REG.NO.21M8366,
STUDYING AT G.R. MEDICAL COLLEGE,
HOSPITAL & RESEARCH CENTER,
PADU, VIA PADUMALE NEERUMARGA,
MANGALURU – 575 029.

…PETITIONER

[BY SRI NISHANTH A.V., ADVOCATE]

AND:

1. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES,
4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041,
REP. BY ITS VICE CHANCELLOR.

2. THE REGISTRAR,
RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES ,

4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041.

3. NATIONAL MEDICAL COMMISSION,
POCKET - 14, SECTOR 8,
DWARAKA PHASE – 1
NEW DELHI - 110 077,
BY ITS SECRETARY.

4. G.R. MEDICAL COLLEGE,
HOSPITAL & RESEARCH CENTER,
PADU, VIA PADUMALE NEERUMARGA,
MANGALURU – 575 029.
REP. BY ITS PRINCIPAL.

…RESPONDENTS

[BY SMT.FARAH FATHIMA, ADVOCATE FOR R1 & R2;
SRI N. KHETTY, ADVOCATE FOR R3; R4 - SERVED]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECTION IN THE NATURE OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, SETTING ASIDE THE ORDINANCE/NOTIFICATION GOVERNING CENTRAL ASSESSMENT PROGRAMME (CAP) FOR THEORY PAPER ASSESSMENT OF ALL UNDER GRADUATE HEALTH SCIENCE COURSES OF UNIVERSITY DATED 05.09.2022 WITH NO.RGU/AUTH/24TH CON/SYND/04/2022-2023 PASSED BY THE 2ND RESPONDENT VIDE ANNX-F AND ETC.

IN W.P.No.16995/2023:
BETWEEN:

MS. H.N. SHIVANI AGATHYA,
D/O H.K. NATESH,
AGE 20 YEARS,
RGUHS REG. NO.21M7520,
STUDYING AT
SAPTHAGIRI INSTITUTE OF MEDICAL
SCIENCES & RESEARCH CENTRE,
NO.15, HESARGHATTA ROAD,
NAVY LAYOUT, CHIKKASANDRA,
CHIKKABANAVARA,
BENGALURU – 560 090.

…PETITIONER

[BY SRI NISHANTH A.V., ADVOCATE]

AND:

1. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES,
   4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041,
   REP. BY ITS VICE CHANCELLOR.

2. THE REGISTRAR,
   RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES ,
   4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041.

3. NATIONAL MEDICAL COMMISSION,
   POCKET - 14, SECTOR 8,
   DWARAKA PHASE – 1
   NEW DELHI - 110 077,
   BY ITS SECRETARY.

4. SAPTHAGIRI INSTITUTE OF MEDICAL SCIENCES &
   RESEARCH CENTER,
   NO.15, HESARGHATTA ROAD,
   NAVY LAYOUT, CHIKKASANDRA,
   CHIKKABANAVARA, BENGALURU – 560 090.
   REP. BY ITS PRINCIPAL.

…RESPONDENTS

[BY SRI SANTOSH S. NAGARALE, ADVOCATE FOR R1 & R2;
SRI N. KHETTY, ADVOCATE FOR R3; R4 - SERVED]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SETTING ASIDE THE ORDINANCE/NOTIFICATION GOVERNING CENTRAL ASSESSMENT PROGRAMME (CAP) FOR THEORY PAPER ASSESSMENT OF ALL UNDER GRADUATE HEALTH SCIENCE COURSES OF UNIVERSITY DATED 05.09.2022 WITH NO.RGU/AUTH/24TH CON/SYND/04/2022-2023 PASSED BY THE 2ND RESPONDENT VIDE ANNX-F AND ETC.

IN W.P.No.17047/2023:
BETWEEN:

1 . MR. KUSH TRIPATHI,
S/O DR. PANKAJ TRIPATHI,
AGED ABOUT 22 YEARS,
UNI. REG. NO.21M7131,
R/O FLAT NO.2, SRI BALAJI ENCLAVE,
MAITHRI LAYOUT, KADUGODI MAIN ROAD,
BEGALURU – 560 067.

Vide Court Order dt.25.01.2024
W.P. insofar as petitioner no.1 is
Dismissed as withdrawn.

2 . MR. NARPAT KUMAR,
S/O BABU LAL,
AGE 24 YEARS,
R/O BOYS HOSTEL,
SHRI ATAL BIHARI VAJPAYEE MEDICAL COLLEGE &
RESEARCH INSTITUTE,
NO.1, LADY CURZON ROAD, SHIVAJINAGAR,
BENGALURU – 560 001.

Vide Court Order dt.25.01.2024
W.P. insofar as petitioner no.2 is
Dismissed as withdrawn.

3 . MR. VINITKUMAR,
S/O VISHWARADHYA,
AGE 21 YEARS,
R/O BOYS HOSTEL,
NAVODAYA MEDICAL COLLEGE HOSPTIAL &
RESEARCH CENTER,
MANTRALAYAM ROAD, NAVODAYA NAGAR,
RAICHUR – 584 103.

…PETITIONERS

[BY SRI ABHISHEK MALIPATIL, ADVOCATE]

AND:

1. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES,
4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041,
REP. BY ITS VICE CHANCELLOR.

2. THE REGISTRAR,
RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES ,
4TH 'T' BLOCK, JAYANAGAR, BENGALURU - 560 041.

3. NATIONAL MEDICAL COMMISSION,
POCKET - 14, SECTOR 8,

DWARAKA PHASE – 1,
NEW DELHI - 110 077,
BY ITS SECRETARY.

4. VYDEHI INSTITUTE OF MEDICAL SCIENCES AND RESEARCH,
NO.82, NALLURAHALLI MAIN ROAD,
WHITEFIELD, VIJAYANAGAR, NALLURHALLI,
BENGALURU - 560 066,
BY ITS DEAN / PRINCIPAL.

5. SHRI ATAL BIHARI VAJPAYEE MEDICAL COLLEGE AND RESEARCH INSTITUTE,
NO.1, LADY CURZON ROAD, SHIVAJINAGAR,
BENGLARU – 560 001.
BY ITS DEAN / PRINCIPAL.

6. NAVODAYA MEDICAL COLLEGE HOSPITAL AND RESEARCH CENTRE,
MANTRALAYAM ROAD,
NOVADAYA NAGAR,
RAICHUR - 584 103,
BY ITS DEAN / PRINCIPAL.

…RESPONDENTS

[BY SMT.FARAH FATHIMA, ADVOCATE FOR R1 & R2;
SRI N. KETTY, ADVOCATE FOR R3;
SRI V.N. KUMAR, ADVOCATE FOR R4; R5 AND R6 - SERVED]

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDINANCE/NOTIFICATION GOVERNING CENTRAL ASSESSMENT PROGRAMME (CAP) FOR THEORY PAPER ASSESSMENT OF ALL UNDER GRADUATE HEALTH SCIENCE COURSES OF UNIVERSITY DATED 05.09.2022 WITH NO.RGU/AUTH/24TH CON/SYND/04/2022-2023 PASSED BY THE 2ND RESPONDENT VIDE ANNX-F AND DIRECT THE RESPONDENT UNIVERSITY TO CONDUCT FRESH VALUAITON OF THE FAILED SUBJECTS OF THE MMBS (RS4) EXAMINATIONS OF FEBRUARY 2023 AND MAY 2023 UNDERTAKEN BY THE PETITIONERS BY SUBJECTING THE ANSWER SCRIPTS TO TWO VALUATIONS AND TO CONDUCT 3RD VALUATION ON THERE BEING A DIFFERENCE OF 15 PERCENT MARKS BETWEEN THE EXAMINERS AND

TO ANNOUNCE THE RESULTS AFRESH WITHOUT ANY DELAY AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.01.2024, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

ORDER

All these writ petitions seek following common reliefs:

(i) Issue a writ or order or direction in the nature of certiorari or any other appropriate writ, quashing the impugned Ordinance/Notification Governing Central Assessment Programme (CAP) for Theory Paper Assessment of All Under Graduate Health Science Courses of University dated 05/09/2022 bearing No.RGU/AUTH/24th Con/Synd/04/2022-23 passed by Respondent University vide Annexure-F;

(ii) Issue a writ or order or direction in the nature of mandamus directing the Respondent University to conduct fresh valuation of the failed subjects of the MBBS (RS4) Examinations of April 2023 undertaken by the petitioners by subjecting the answer scripts to two valuations and to conduct 3rd valuation on there being a difference of 15% marks between the examiners; and to announce the results afresh without any delay; and

(iii) Issue a writ or order or direction in the nature of mandamus or any other direction declaring that the petitioners be admitted for the academic year 2021-22 under the Medical Council of India – Regulations on Graduate Medical Education (Amended), 2019, cannot be precluded from progressing to Phase II MBBS Course of study and to continue the course of study along with the respective regular batch regardless of the results of the Phase I Examinations already undertaken by the petitioners; subject to other provision of the regulations and etc.

(In W.P.no.14602/2023, prayer (iii) is omitted)

2. Sri P.P. Hegde, learned Senior Counsel appearing for Smt.Vinitha P.C. and Sri Abhishek Malipatil, Sri Nishanth A.V. and Sri Deekshith Chandan M.C., learned counsel for petitioners, at outset submitted, in view of issuance of notification dated 13.06.2023 promulgating ***Ordinance / Notification Governing Central Assessment Programme (CAP) for Theory Paper Assessment of All Under Graduate Health Science Courses of University*** by way of amendment with effect from 01.09.2022 ('**Amended CAP-2022**' for short), prayer (iii) was not pressed.

3. It was submitted petitioners were admitted to MBBS Course in different Medical Colleges affiliated to Rajiv Gandhi University of Health Sciences (hereinafter '**RGUHS**'), after academic year 2019-2020 and presently studying in I-Phase (RS4 Scheme). It was submitted, National Medical Commission, ('NMC' for short and earlier Medical Council of India i.e. 'MCI') issued notification on 04.11.2019 promulgating ***Regulations on Graduate Medical Education, 1997*** ('**GME**' for short).

4. It was submitted by notification dated 01.02.2021, RGUHS had framed ***Ordinance Governing Central Assessment Programme (CAP) for Theory Paper Assessment of MBBS Course*** (‘**CAP-2021**’ for short) to govern valuation and declaration of results of graduate MBBS Examinations. Said Regulations provided for *general valuation* by two examiners and *deviation valuation* by third examiner and declaration of results on basis of average of total marks awarded by two examiners in general valuation or average of best two total marks awarded by three examiners, in case of deviation valuation.

5. It was submitted, validity of CAP-2021 was questioned before this Court in W.P.no.13626/2021 (**Ms.Sahana Kalasagond and Ors. v. Rajiv Gandhi University of Health Sciences**), and by order dated 07.10.2021, CAP-2021 was set-aside on ground of non-application of mind and non-compliance with Section 35 (3) of Rajiv Gandhi University of Health Sciences Act, 1994 (‘**RGUHS Act**’ for short). In said order, this Court issued specific directions that before framing new

Regulations, RGUHS was to place them before Academic Council and act according to its advice and until then RGUHS was directed to follow Ordinance promulgated on 15.06.2012, which was as follows:

> ***"4. PROCEDURE FOR MULTIPLE VALUATION:***
>
> *(i) All the answer-papers which are subjected for double valuation, wherein the* ***difference in award of marks between TWO valuations is ≥ 15%****, shall be referred to THIRD examiner appointed by Vice-Chancellor chosen from an approved panel.*
>
> *(ii) All the answer-papers which are subjected for four valuations, wherein the* ***difference in award of marks between FOUR valuations is ≥ 15%****, shall be referred to FIFTH examiner appointed by Vice-Chancellor chosen from an approved panel.*
>
> *(iii) The average of BEST OF TWO OUT OF THREE VALUATION marks or the average of BEST OF FOUR OUT OF FIVE VALUATION MARKS as the case may be shall be considered for the final computation of the results.*
>
> *(iv) The marks awarded and the results declared after considering this notification shall be final and under no circumstances further valuation shall be entertained."*

6. It was submitted, though RGUHS placed subject-matter of framing new Regulations governing conduct and standards of examination before Academic Council Committee, on 20.04.2022, it resolved to adopt procedure followed in

neighbouring States, without discussion of pros and cons and propriety of importing Regulations without examining suitability. It was submitted, even when said matter was placed before, Syndicate of RGUHS, it accepted proposal of Academic Council without application of mind. Thus, regulations framed by Maharastra University of Health Sciences were imported and promulgated on 05.09.2022 as ***Ordinance/Notification Governing Central Assessment Programme (CAP) for Theory Paper Assessment of All Under Graduate Health Science Courses of University*** with effect from 01.09.2022 ('**CAP-2022**' for short). It was submitted, as per CAP-2022, *general valuation* was to be by first eligible examiner of *respective faculty* and *revaluation* by second eligible examiner with highest total marks amongst two valuations being taken for declaration of results.

7. But, CAP-2022, suffered from many irregularities and illegalities. *Firstly*, it was issued without application of mind, as it did not take note of directions issued by this Court in **Sahana Kalasagond**'s case (supra); *secondly*, unlike as contended

validity of CAP-2022 was not tested nor upheld; *thirdly*, valuation by only evaluators, unlike by 2 + 1 evaluators under CAP-2021 would be illegal and minutes of Syndicate Meeting held on 02.09.2022 and 05.09.2022, drawn on 07.09.2022 indicated taking decision to supply scientific information and documents including information from University to various authorities for preparation of new Ordinance, contrary to records which showed mechanic adoption of regulations from Maharastra University of Health Sciences. It was submitted, impugned Regulations were contrary to directions issued by Division Bench of this Court in **Rajiv Gandhi University of Health Sciences and Anr. v. Mr.Samarth S.S and Ors.** (W.A.no.1208/2022 & W.A.no.1214/2022, W.A.no.1215/2022 disposed of on 11.01.2023). It was submitted that impugned Regulations do not indicate that directions issued in **Sahana Kalasagond**'s case (supra) were followed. Hence, same were liable to be quashed.

8. Sri Abhishek Malipatil, learned counsel relying upon decision of this Court in **Dr.Prashanth P. Mannur and Ors. v.**

Rajiv Gandhi University of Health Sciences and Ors. (W.P.nos.25680-682/2009 and connected matters disposed of on 05.10.2009), submitted, it was necessary for University to show that consultation of Academic Council was 'effective', especially, in case of departure from earlier procedure. And records it has to be established that all material based on which such departure was proposed, were placed before Academic Council for its consideration.

9. Even decisions in **Sidanth Shenava v. Rajiv Gandhi University of Health Sciences** (W.P.no.7774/2022 disposed of on 28.04.2022) and in **Ms.Niharika S. v. Rajiv Gandhi University of Health Sciences and Anr**. (W.P.no.9166/2022 disposed of on 05.05.2022), were relied on for proposition that there should be third valuation in case difference between marks awarded by two evaluators was more than 15%. On above grounds, learned counsel sought for allowing writ petitions.

10. On other hand, Sri B.S. Sachin and Smt.Farah Fathima, learned counsel appearing for RGUHS, at outset submitted, Regulation 7.7 of GME Regulations provided not more than four attempts to a candidate for passing I-Professional MBBS Examination. It was submitted, petitioners no.4 to 6 namely Ms.Aishwarya Patil, Mr.Mallareddy Patil and Mr.Varun Kumar M. in W.P.no.13375/2023 had already exhausted four attempts, by failing in April 2023 Examinations. Moreover, CAP-2022 was framed prior to April, 2023 Examinations and all candidates including petitioners had appeared for said Examinations without demure and therefore estopped from challenging validity of Regulations in pursuance of which Examinations were held. It was submitted, petitioners were failed students in April, 2023 Examination, which was a small percentage of total number of students, who had appeared for examinations and interference with Regulations at this stage would lead to enormous confusion and consequence hardship.

11. Relying upon decision in **Sri Venkatesh and Anr. v. State of Karnataka (Revenue Department) and Ors.**, (W.P.no.11112/2021 disposed of on 21.07.2023), wherein it has held even erroneous decision would operate as *res-judicata* against subsequent challenge to drive home his contention that this Court in **S.S.Samarth**'s case (supra), had held that CAP-2022 was promulgated after due deliberation by Academic Council, with effect from 01.09.2022 and could not be applied retrospectively.

12. It was submitted, decision in **Sahana Kalasagond**'s case (supra) was in *rem* and apply to all students. Consequently, as held by High Court of Madras in **Union of India v. Satish Kumar Ranjan** (W.P.no.239/2016 disposed of on 21.09.2016), decision in rem would attract principle of *res-judicata.*

13. It was submitted, impugned Regulations were framed by expert academicians and would therefore be immune from review by this Court, relying upon ratio in **All Indian Council**

for Technical Education v. Surinder Kumar Dhawan & Ors., reported in **2009 (11) SCC 726**.

14. Reliance was also placed on decision in **Moazam Shah Khan and Ors. v. Vice-Chancellor, Rajiv Gandhi University of Health Sciences and Ors.**, reported in **ILR 2002 KAR 1146**, to contend that Section 35 of RGUHS Act requires consultation of Academic Council, not 'concurrence'.

15. Smt.Farah Fathima, learned counsel submitted that prayers sought in present petitions were in respect of February and May, 2023 Examinations, whereas subsequently, petitioners had appeared in November, 2023 Examinations without demure and had chosen to retain results of such Examinations even when they were conducted by following impugned Regulations. Therefore, petitions were liable to be dismissed on ground of acquiescence and estoppel.

16. Narrating history of examination regulations framed by RGUHS and litigation about them, she submitted present Regulations were framed by following directions issued in

Sahana Kalasagond's case (supra) and results of April, 2023 Examinations were announced in terms of method of evaluation and computation of results, wherein petitioners have passed/failed in some subjects. Since reliefs sought were only in respect of failed subjects, petitioners were guilty of blowing hot and cold in same breath. Hence, no interference was warranted and sought dismissal of writ petitions.

17. Heard learned counsel and perused writ petition record.

18. From above, it is seen that petitioners challenge against CAP-2022 is mainly on ground of non-application of mind by failing to adhere to directions issued in **Sahana Kalasagond**'s case (supra). It is also challenged on ground of lack of effective consultation and proper consideration by Academic Council insofar as need to depart from earlier procedure, relying on ratio in **Dr.Prashanth Mannur**'s case (supra) and against withdrawal of right to seek challenge evaluation being contrary to ratio in **Sidanth Shenav** and **Ms.Niharika**'s cases (supra).

19. While respondents urge preliminary contention about maintainability of writ petition on ground of acquiescence and estoppel against all petitioners since petitioners appeared in examinations held by following impugned Regulations, without demure and choosing to retain benefit of results insofar as subjects in which petitioners had passed and challenging results only insofar as failed subjects. And insofar as petitioners no.4 to 6 in W.P.no.13375/2023 by contending that they had already exhausted maximum of four attempts provided for passing exams. It is also contended that this Court had observed about framing of Regulations after due consultation in **S.S.Samarth**'s case (supra) and urging ground of *res-judicata* in view of said observations, by relying upon ratio in **Venkatesh** and **Satish Kumar Ranjan**'s cases (supra).

20. It is also contended, framing of Regulations governing conduct of exams and standards of education was by experts in field was immune from judicial review by High Court, relying upon ratio in **Surinder Kumar Dhavan**'s case (supra) and contending that consultation under Section 35 of RGUHS

could not mean concurrence as held in **Moazam Shah Khan**'s case (supra). It is also contended, Regulations were framed by following directions in **Sahana Kalasagond**'s case (supra).

21. In view of above, following questions would require consideration:

i. Whether writ petitions are liable for dismissal on ground of acquiescence and estoppel or due to exhaustion of maximum number of attempts provided for passing exams?

ii. Whether Cap-2022 is liable to be quashed on ground of non-application of mind or lack of effective consultation and thereby in violation of Section 35 of RGUHS Act?

iii. Whether withdrawal of right of challenge valuation, by RGUHS calls for interference?

22. Insofar as preliminary objections about maintainability of writ petition by petitioners no.4 to 6 in W.P.no.13375/2023, perusal of their examination history sheets produced as Annexures-R1 to R3 respectively, would reveal that their appearance in April, 2023 Examination was by availing fourth attempt. Since petitioners are questioning very basis on which April, 2023 Examinations were conducted, and are seeking for challenge valuation etc. present petition would not be barred.

23. Insofar as acquiescence and estoppel, admittedly impugned Regulations namely CAP-2022 was brought into force by notification dated 05.09.2022. Therefore, February and April, 2023 Examinations conducted by RGUHS were by following said Regulations. It is not in dispute that petitioners appeared in said Examinations unconditionally.

24. Hon'ble Supreme Court in **Om Prakash Shukla v. Akhilesh Kumar Shukla** reported in **1986 Supp. SCC 285,** has held principles of estoppel would apply even to students who appear for Examinations conducted as per Rules/Regulations formulated prior to date of commencement of Exams. Said ratio is reiterated/followed in case of tests/written exams conducted for selection for employment, in **Madras Institute of Development Studies v. K. Sivasubramaniyan** reported in **(2016) 1 SCC 454; Ashok Kumar v. State of Bihar** reported in **(2017) 4 SCC 357**; and **Taniya Malik v. High Court of Delhi**, reported in **(2018) 14 SCC 129** etc.

25. Indisputably, in prayer (ii), petitioners are seeking for fresh valuation in subjects they were declared failed in April, 2023 Examinations by subjecting answer scripts to two valuations and to conduct third valuation if difference is more than 15% marks between two examiners and to announce results. It is not in dispute that said contentions are urged only after appearing for Examinations without demur and restricting relief *only in respect of failed subjects*; while retaining benefit in respect of passed subjects, which would be blowing hot and cold in same breath and impermissible.

26. In **Prashant Mannur**'s (supra) case, prayer for providing deviation valuation along with challenge of Ordinance dated 09.02.2009, framed by RGUHS was considered. Main contention was lack of effective consultation/consideration by Academic Council. Learned Single Judge, upheld contentions, after finding lack of material to show Academic Council had appraised itself of existing position and need for change in method. It was observed, University cannot go on changing method without applying its mind i.e. without examining ills,

evil and other negative aspects in existing system and device changeover having vision for future, taking note of drastic consequences that ensue. Earlier decision in **Moazam Shah Khan**'s case (supra) was also noted.

27. In instant case, CAP-2021 framed by RGUHS was set aside by this Court in **Sahana Kalasagond**'s case (supra). In **S.S.Samarth**'s case (supra), Division Bench of this Court, while considering legality of order passed by learned Single Judge in W.P.no.16352/2022 and connected matters seeking for direction to RGUHS to apply CAP-2022 even to May, 2022 Examinations for RS-4 Scheme students, took note of stipulation in notification that CAP-2022 would apply with effect from 01.09.2022 and order passed by another Single Judge in W.P.no.14605/2022 (**Sahana Shivanagouda Marigoudar v. RGUHS and Anr.**, disposed of on 06.09.2022), allowed appeal and dismissed writ petitions.

28. Further, neither in **Sidanth Shenava** nor in **Niharika**'s cases (supra) there was independent examination of right to seek deviation valuation. Directions issued therein

were in view of legal position entailing upon decision in **Sahana Kalasagond**'s case (supra), RGUHS was directed to follow 15.06.2012 Ordinance for valuation, challenge valuation and declaration of results.

29. In W.P.no.11688/2023 (**V.Vamshi Krishna v. RGUHS and Anr.**, disposed of on 13.10.2023), learned Single Judge of this Court examined specific challenge against CAP-2022, by students who had appeared in May, 2022 MBBS Examinations and prayer for providing challenge valuation in case of difference of marks awarded between two evaluators was more than 15%. Invalidity of CAP-2022 on ground of non-effective consultation was also considered, but writ petitions were dismissed by upholding validity of CAP-2022.

30. Hence, decision in **V.Vamshi Krishna**'s case (supra) would squarely cover questions (ii) and (iii). Indeed, earlier decision in **Dr.Prashant Mannur**'s case (supra) was not brought to notice of Court in **Vamshi Krishna**'s case (supra), but validity of CAP-2022 was upheld on ground that scope of judicial review in academic matters would be extremely limited,

referring to series of decisions of Hon'ble Supreme Court. Division Bench of this Court in **New Krishna Bhavan, Malleswaram, Bangalore-3 v. Commercial Tax Officer, No. IV Circle (Addl.) Bangalore**, reported in **1959 SCC OnLine Kar. 130**, held in case of conflict between decisions of equal bench strength, later decision would prevail. In view of above discussion, *questions (i) to (iii) are answered in negative*.

Consequently, writ petitions are dismissed.

Sd/-
JUDGE

GRD/-

RVHJ:
18.04.2024

ORDER

After pronouncement of order in above writ petitions, it was submitted that petitioners herein have appeared for MBBS Examination held during January, 2024 and passed Phase-I of Course.

If it is so, dismissal of present writ petitions would not come in way of petitioners retaining said result, if they are otherwise entitled to, in accordance with law.

This order be treated as part and parcel of final order.

Sd/-
JUDGE

Vmb/-