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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 26.09.2023	Delivered on 09.11.2023
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CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS JUSTICE R.KALAIMATHI

W.A.Nos.835 to 839, 841, 843 to 846, 849 to 853,
857, 861, 863, 864, 869, 870, 871, 873, 881, 882,
884 to 892, 901, 1119, 1031, 1030, 1133, 1134,
1135, 1137 and 1438 of 2021
and all connected Miscellaneous Petitions

W.A.No.835 of 2021:

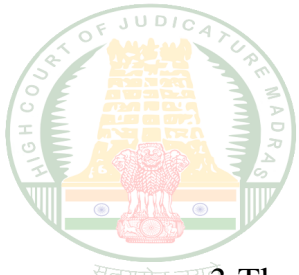
Dr.Dhanush C M L

... Appellant

Vs.

1.The National Medical Commission (NMC),
(Formerly known as Medical Council of India),
Represented by its Joint Secretary,
Pocket – 14, Sector – 8, Dwarka,
New Delhi – 110 077.

2.The Secretary (Health),
Health and Family Welfare Services Department,
Government of Puducherry, Secretariat,
Goubert Avenue, Puducherry – 605 001.



3. The Director,
Directorate of Health and Family Welfare Services (DHFWS),
Victor Samuel Street, Puducherry – 605 001.

4. The Convenor,
Centralised Admission Committee (CENTAC),
PEC Campus, ECR Road,
Pillaichavadi, Puducherry – 605 014.

5. Aarupadai Veedu Medical College & Hospital,
represented by its Dean,
Pondy – Cuddalore Main Road,
Kirumampakkam, Puducherry – 607 402.

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the Common Order dated 07.10.2020 in W.P.No.21255 of 2019 along with a batch of Writ Petitions.

For Appellant : Mr.L.Swaminathan

For Respondents : Ms.Shubaranjani Ananth for R1

Mr.R.Sreedhar, Additional Government Pleader
(Puducherry) for R2 to R4

Mr.P.Wilson, Senior Counsel
for Mr.Richardson Wilson for R5



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COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

These Writ Appeals have been filed by the Post Graduate Medical students and the Institutions challenging the order of the writ Court dated 07.10.2020 made in various writ petitions.

2. The challenge in the writ petitions was to the order of the National Medical Commission (Formerly known as Medical Council of India) discharging 34 Post Graduate medical students on various dates on similar grounds. The orders of discharge made by the National Medical Commission were on the ground that the students were neither sponsored by the Centralized Admission Committee (CENTAC), Puducherry, nor had they applied for admission through CENTAC. The writ Court had rejected the challenge and upheld the orders of discharge leading to the students and the Institutions coming up with these appeals.



WEB COPY **The background facts are as follows:-**

3. The Government of India had introduced the National Level Eligibility cum Entrance Test (NEET) for Post Graduate Medical Admission in the year 2017. Qualified MBBS Doctors were required to clear the said examination, in order to be eligible for admission in Post Graduate Medical Courses. Since there were some doubts regarding the process of admission that is to be carried out, the Hon'ble Supreme Court had to intervene and prescribe the modus of admission for these Post Graduate Medical Courses. By an order dated **04.05.2017** made in ***Education Promotion Society of India and others Vs. Union of India and others***, the Hon'ble Supreme Court issued the following directions in respect of admission to Post Graduate Medical courses in Deemed to be Universities:-

Having heard learned counsel for the parties, it is directed as follows:-

(i) Common counseling for admission to post graduate medicine courses in deemed universities shall be conducted by the State Government or the authority designated by the State Government.

(ii) In cases where the deemed university has



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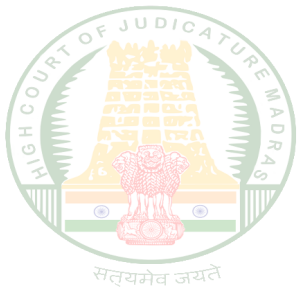


accepted applications from the candidates, the same shall be forwarded to the State Government or authority designated by the State Government. The State Government or the authority designated by the State Government shall include the names of the candidates who had applied to the deemed universities and prepare a common list of students in order of merit. However, the application of those students who have already taken admission in any post graduate medicine course in any medical college shall not be considered by the State Government.

(iii) During the common counseling conducted by State Government the representatives of the deemed universities, including representatives of those deemed universities who are also minority institutions, should be a part of the admission/counseling committee, as the case may be.

(iv) The students who secure admission in post graduate medicine courses, at the time of common counseling itself, should be made to deposit with the admission/counseling committee, the demand draft towards the tuition fees payable to the concerned deemed university. The admission/counseling committee shall forthwith forward the demand draft to the respective deemed universities.

(v) In institutions run by minorities, the seats reserved for minorities, if any, will be filled up by minority



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students in order of merit, as a result of which, rights of minority institutions are fully protected. In the event of any seat in a minority institution is not filled up by a minority student, then the said seat shall be filled up by the General category student in order of merit.

(vi) Any deemed university, which has got the applications, as indicated earlier, can send them to the Common Counseling Committee of the respective States. That apart, the deemed universities are entitled to receive applications till 8 th May, 2017, and send them by e-mail to the aforesaid authorities latest by 7 p.m. on that day.

4. Again in ***Dar-us-Slam Educational Trust and others Vs. Medical Council of India and others [W.P.(C)No.267 of 2017]***, the Hon'ble Supreme Court confirmed that there shall be a common counselling for all India quota seats to be conducted by the Directorate General of Health Services (DGHS), Government of India and the counselling conducted by the DGHS will also include Deemed to be Universities as they have an all India character. It was further directed that the common counselling for State quota seats in Government as well as private colleges including minority Institutions affiliated to State Universities shall be conducted by



the State Government or the Authority designated by the State Government.

There was also a further direction to the effect that after the completion of counselling, the designated Authority shall forward a list of students in the order of merit equalling to 10 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.

5. There was however a clarification issued by the Hon'ble Supreme Court on 09.06.2017 after completion of the counselling that the directions contained in the order dated 09.05.2017 referred to *supra* would not apply to Post Graduate seats. This is referred to only for completion of narration since that may not have an effect as the entire counselling process was completed by 31.05.2017 as directed by the Hon'ble Supreme Court. The time lines were also prescribed and the counselling was directed to commence on 11th May 2017 and it was directed to be completed by 31st May 2017. It was made clear that no further extension of the last date of admission will be granted under any circumstances.



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6. While things stood thus, as far as the Puducherry Union Territory was concerned, there was no fee fixation done for Post Graduate courses till the year 2017 and the Institutes were given a free hand in respect of fees. However, on 14.05.2017 the fee fixation Committee of the Puducherry Government fixed the fee for Post Graduate Courses at Rs.3,00,000/- per year for the Government quota and Rs.13,00,000/- per year for the Management quota. The fixation was done only for the three self-financing colleges excluding the colleges run by Deemed to be Universities. Subsequently, by an order dated 24.05.2017, the fee fixation Committee revised the fees payable at Rs.5,50,000/- per year for Government quota and Rs.14,00,000/- per year for the Management quota. As far as the Deemed to be Universities are concerned, the situation was nebulous, however, it will be covered by the directions issued by the Hon'ble Supreme Court in *Education Promotion Society of India and others Vs. Union of India and others* on 04.05.2017. Therefore, as far as the Deemed to be Universities are concerned, it would be the duty of the designated Authority which conducts counselling on behalf of the State



Government to collect the fees in advance from the students and thereafter allot seats.

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7. There are seven Institutions in Puducherry offering Post Graduate Medical education they are,

- 1.Pondicherry Institute of Medical Sciences and Research.
- 2.Sri Manakula Vinayagar Medical College and Hospital.
- 3.Sri Venkateswara Medical College and Research Centre.

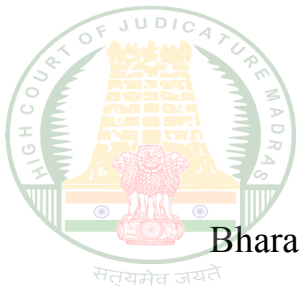
The above three are self-financing private medical colleges affiliated to the Central University, Puducherry. Apart from the above there are four other Medical Colleges run by Deemed to be Universities they are

- 1.Arupadai Veedu Medical College.
- 2.Vinayaga Mission Medical College at Karaikal

The above two are Institutions affiliated to Vinayaga Mission Deemed to be University.

3.Mahatma Gandhi Medical College and Research Centre affiliated to Balaji Vidhyapeeth, a Deemed to be University.

4.Sri Lakshmi Narayana Institute of Medical Science affiliated to



Bharat University, a deemed to be University.

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8. The first round of counselling to the Post Graduate medical seats to all these seven Institutions was held on 4th, 11th and 12th of May 2017. The second round of counselling was held on 18th and 19th of May 2017. The mop-up counselling was held on 29th and 30th of May 2017. After the mop-up counselling that was held on 29th and 30th of May 2017 there were some vacancies in all the Colleges. Therefore, the CENTAC made a public announcement on 30.05.2017 inviting candidates to attend the counselling for the 71 seats at the CENTAC office. However, it was found that the candidates who were sponsored by CENTAC were not admitted and totally different candidates were admitted by six out of seven medical colleges excluding Sri Lakshmi Narayana Institute of Medical Sciences. When the above irregular admissions were brought to the notice of the National Medical Commission, the National Medical Commission after enquiry discharged those candidates who were admitted irregularly, paving way for various writ petitions by the candidates and the Institutions.



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9. For and on behalf of the students, sponsored by CENTAC, who were denied admissions, a writ petition in W.P.No.31921 of 2017 was filed seeking a writ of mandamus directing the respondents to immediately discharge all illegally admitted students and to allow the petitioners to join the Post Graduate medical courses in the respondent colleges for the next academic year 2018-2019, though they were duly selected for the academic year 2017-2018 through NEET based centralised counselling conducted by the Government of Puducherry. The petitioners in the writ petition are those candidates who, according to them, were illegally denied admission by the Medical colleges concerned though they were sponsored by the CENTAC. There were in all 28 petitioners in WP.No.31921 of 2017 who claimed that they have been denied admission by these Colleges for extraneous reasons and hence they should be given seats in the following academic year.

10. It will be pertinent to point out at this juncture that Mr.V.B.R.Menon an Advocate practising in this Court had filed a writ petition in public interest in W.P.No.14232 of 2017 seeking a declaration



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that the fee payable for admission to Post Graduate Medical and Dental courses in self-financing colleges and Deemed to be Universities in Puducherry shall be as fixed by the Puducherry Fee Committee and consequently direct the respondents to finally fix the fees for admission in accordance with law and procedure laid down by the Hon'ble Supreme Court of India.

11. A Division Bench of this Court by an interim order dated 16.06.2017 directed the Deemed to be Universities to admit students provisionally selected by the CENTAC subject to the condition that they deposit a sum of Rs.10,00,000/- at the time of admission towards annual fee for admission with CENTAC and a further condition that if the fees determined by the Fee Committee that may be constituted by the University Grants Commission for Universities is higher, they shall pay the differential amount. The time for admission was extended up to 5 p.m. on 19.06.2017, for non-clinical courses, it was however clarified that fee fixed by the fee fixation Committee should be paid. We are now informed that the issue relating to fee fixation for the Deemed to be Universities is now pending



before the Hon'ble Supreme Court. The year 2017 being the first year in which there was a NEET conducted for Post Graduate Medical courses, there were certain amendments made to the Rules relating to Post Graduate Medical Education. Admissions to Post Graduate medical education is governed by the Post-Graduate Medical Education Regulations, 2000. Regulation 9 of the Regulations prescribed the procedure for selection of candidates for Post Graduate medical courses. There was a direction to conduct NEET by the National Board of Examinations. Clause VI of Regulation 9 provided that 50% of the seats in non-governmental medical colleges and Institutions shall be filled up by the State Government or the Authority appointed by them and the remaining 50% of the seats shall be filled up by the concerned medical colleges.

12. While this was the position in the year 2016, in the year 2019 Rule 9-A was introduced to the Post Graduate Medical Education Regulations, 2000 with effect from 11.03.2017, which reads as follows:

9-A. Common Counselling.-- (1) There shall be a common counselling for admission to all Postgraduate Courses (Diploma/ MD/ MS/ DM/ M.Ch.) in all Medical



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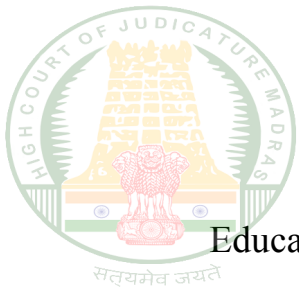


Educational Institutions on the basis of merit list of the National Eligibility-cum-Entrance Test.

(2) The designated authority for counselling for the 50% All India Quota seats of the contributing States shall be conducted by the Directorate General of Health Services. Such counselling as per the existing scheme shall be only for Diploma and MD/MS courses.

(3) The counselling for all Postgraduate Courses (Diploma/ MD/ MS/ DM/ M.Ch.) in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government University, Deemed University, Trust, Society or a Company/ Minority Institutions/ Corporations shall be conducted by the State Government. Such common counselling shall be under the over-all superintendence, direction and control of the State Government.

13. Therefore, the entire admission process for Post Graduate medical education was subject to Regulation 9-A extracted above. For the year 2017-2018 it was made incumbent upon every State Government to conduct a common counselling for all Institutions, be it a Medical



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Education Institution established by the Central Government or the State Government University or a Deemed to be University or a Trust or Company or a Minority Institution. Therefore, as per the judgment of the Hon'ble Supreme Court in *Education Promotion Society of India and others Vs. Union of India and others* dated 04.05.2017 Deemed to be Universities were also required to admit students sponsored by the State Agency viz., CENTAC in the case on hand. A duty was also cast upon the CENTAC to collect the fees payable to the Deemed to be Universities by the candidates who were allotted to them. Subsequently, the Post Graduate Medical Education Regulations was amended with effect from 31.07.2017 investing the power to conduct counselling for Deemed to be Universities with the Director General of Health Services (DGHS), Government of India.

14. Yet another writ petition was filed by Mr.V.B.R.Menon seeking a declaration that the admissions made by the Institutes in Puducherry in contravention of Regulation 9-A of the Regulations are illegal or null and void and for a direction to conduct an enquiry to weed out the illegal admissions. That writ petition came to be disposed of by a



Division Bench of this Court on 12.02.2018 with an observation that since the Supreme Court was ceased with the matter, this Court cannot launch upon an enquiry into the appropriateness of the fees charged by the Deemed to be Universities and therefore, the writ petition was closed with liberty to the concerned students to seek reopening after the Hon'ble Supreme Court decides the issue finally.

15. Though a Committee was constituted by the University Grants Commission to fix the fee payable to Deemed to be Universities for Post Graduate medical education, that was challenged by the ***Education Promotion Society of India and others Vs. Union of India and others*** before the Hon'ble Supreme Court in W.P.(Civil)No.949 of 2018 and the Hon'ble Supreme Court had granted an order of *stauts quo*, which is said to be in force even today. We are not concerned with the fixation of fee and the other aspects in these writ appeals. The only issue that is to be decided is as to whether the orders of discharge passed by the National Medical Commission should be sustained or not?



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16. Pursuant to complaints having been made regarding irregular admissions in atleast six out of seven Institutes in the Puducherry region, the National Medical Commission (MCI) after issuing a notice to the Colleges concerned discharged the students from various colleges. The reasons for discharge are almost similar in all the cases. As far as the Centralized Admission Committee is concerned, it has filed a report before the writ Court on the process that was adopted for admission to Post Graduate medical seats. The report gives us a complete picture of the happenings during the counselling. The report of the CENTAC is as follows:

8. The report submitted by CENTAC on the admission of candidates to the PG Medical Courses for the year 2017-18 gives the full picture of the entire exercise undertaken by CENTAC and a gist of the same is extracted hereunder:

. The Central Admission Committee (CENTAC) Puducherry is duty bound only to admit candidates as per NEET merit in their respective category.

. The Directorate of Health and Family Welfare Services, Government of Puducherry obtains seats from the



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different institutions and lays down the policy for the manner of admission and the manner of treatment of State and Management Quota seats.

· The Department then allots seats to CENTAC and it can only fill seats according to the said merit list and reservation particulars.

In the above -mentioned academic year, the application status was as follows:

<i>Category</i>	<i>No. of Seats Available</i>	<i>No. of Applicants</i>
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<i>MD/MS for the State Quota of Puducherry</i>	<i>162</i>	<i>267</i>
		<i>PG Medical (Degree and Diploma)</i>

<i>MD/MS for the All India Quota (Management Quota)</i>	<i>156</i>	<i>1827</i>
		<i>PG Medical (Degree and Diploma)</i>

<i>PG Dental from the Union Territory of Puducherry</i>	<i>26</i>	<i>50</i>
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PG Dental - All India

General Category

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· NEET-PG Merit list for Puducherry candidates was prepared after verification of Caste, Nationality, Nativity/ Residence Certificates by a Committee of Revenue Officials at the CENTAC Office followed by field enquiries. A merit list for All India Quota candidates was prepared. Both the lists were displayed on the CENTAC website.

· Seat Matrix was prepared following the Roster system, as instructed by the Health Secretariat, Government of Puducherry in order to adopt the reservation policies of the State Government. The same was approved by the Committee Members of CENTAC vide. Minutes of Meeting dt. 28.04.2017 and this seat matrix was displayed on the CENTAC website.

First Round Counselling

· On 04.05.2017, the first round of Counselling commenced based on the merit list displayed on the CENTAC website. 41 Government Quota seats were claimed. Some of the candidates who were allotted the seats raised issues regarding the fee structure. It was however, informed to them that the CENTAC was solely for the purpose of allotting seats



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based on the mandate of the Health Department and that any other matter would fall beyond the purview of its role.

Post completion of the first round of counselling for MD/ MS Courses, the Convenor, CENTAC received a letter with reference to the order of the Hon'ble Supreme Court of India in W.P. (C) No. 244 of 2017. The summary of the said order is as follows:

* *All PG Medical Seats in Deemed Universities are to be filled up only on All India basis i.e. there would be no State Quota.*

* *The State Government was asked to conduct common counselling for admission to PG Courses in Deemed Universities along with those of the other colleges.*

* *As per instructions of the Ministry of Health and Family Welfare, Government of India, in its letter dt. 05.12.2016, common counselling for admission to PG courses in Deemed Universities was to be conducted for all seats in the same manner as private institutions. i.e. Management and Government Quota seats respectively.*

* *The representatives of Deemed Universities and Minority Institutions should also be a part of the Counselling Committee.*

* *The candidates should be made to deposit the tuition fees payable to the concerned Deemed University at the*



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time of common counselling itself.

* *08.05.2017 was set as the last date for receipt of the applications by the Deemed Universities. These applications were to be sent to the Counselling Authorities on the very same day by 7.00 p.m.*

* *Counselling was to commence from 11.05.2017.*

* *The seats in Minority Institutions were to be filled-up by minority candidates and in the event of any seat in Minority Institutions not being filled, the same could be filled by candidates not belonging to the minority.*

However, the order was not available until 06.05.2017. On seeking an advice from the Law Department, it advised that communication by an interested party cannot be the basis for any action and that the original order must be awaited. Therefore, the counselling schedules on 05.05.2017 was postponed.

·The CENTAC received several representations from Deemed Universities stating that seats in the said universities must be filled up on All India basis only in accordance with the order of the Hon'ble Supreme Court of India in W.P. (C) No. 244 of 2017. Minority Institutions also claimed that, owing to their status, their seats cannot be taken by the Government.

·The 2nd day of the first round of counselling



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initially scheduled on 05.05.2017 and postponed was rescheduled to be held on 11.05.2017. After considering various regulatory provisions and administrative instructions and giving sufficient notice to the candidates, CENTAC decided to go ahead with the Counselling for the Government Quota seats and recommenced the Counselling scheduled on 11.05.2017, at the end of which 86 Government Quota seats remained unclaimed.

· Upon information received by CENTAC, that PG Diploma seats had not been included in the common Counselling, inputs were provided to Health Department. The Health Department, in turn, on 16.05.2017, sent the seat matrix of PG Diploma seats including both Government and Management Quotas to CENTAC.

· On 18.05.2017, CENTAC conducted Counselling for these PG Diploma Seats. 3 out of 14 seats were filled up at the end of this round.

Second Round Counselling

· On 19.05.2017, the second round of counselling commenced after giving sufficient notice to the candidates. It was conducted for both MD/MS and PG Diploma Seats combined. Allotment of seats were made to 91 candidates. 71 PG seats under the Government Quota remained vacant at the



end of this round.

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Status after first and second rounds of counselling

· At the end of the first and second rounds of counselling, 86 and 71 Government Quota seats remained vacant respectively, unlike other States.

· Despite the issuance of Notification dt. 24.05.2017, by the Fees Committee, fixing interim fees and the same being displayed on CENTAC's website, candidates continued to agitate on the non-fixtured fee structure. The CENTAC asserted in reply that the same was beyond its purview and was within the scope of the Health Department's role.

Mop-Up Round of Counselling

On 11.05.2017, the Health Department, Govt. of India, issued instructions to the effect that mop-up rounds of counselling were to be conducted in order to ensure that no PG Medical seat remains vacant.

On 25.05.2017, CENTAC addressed a note to the Health Department seeking clarification as to whether at the end of the mop-up round of counselling, State Quota seats were to be converted into Management Quota seats.

On 26.05.2017, CENTAC received instructions



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stating that the Central Government in consultation with the Medical Council of India decided to reduce the percentile cut-off by 7.5 points thereby, setting the minimum percentile for eligibility at 42.5 for General Category Candidates and at 32.5 for Reserved Category. The Convenor was asked to make necessary arrangements. Instructions were given to make necessary arrangements for allowing candidates as per revised qualifying marks to attend the counselling and for admission of candidates in mop-up counselling be done with the revised merit list and the seats be filled-up on All India India basis.

· On 27-05-2017, The Under-Secretary, Health Secretariat, Government of Puducherry through a letter, asked the Convenor, CENTAC to first conduct mop-up round of counselling. After completion of the same, vacant seats were to be determined and list of candidates in order of merit, equaling 10 times the number of vacant seats were to be forwarded to medical colleges concerned.

· During the mop-up counselling on 29.05.2017 & 30.05.2017, 143 seats under PG Degree courses, 18 seats under Diploma Category and 7 seats in PG Dental courses were filled up respectively. Admission was purely based on the NEET rank/ score.

· 7 candidates belonging to the UT of Puducherry had attended the mop-up counselling on 29-05-2017, and 3 of



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them had availed the seats. This was after the percentile for eligibility was brought down.

· On 30.05.2017, the Hon'ble Lieutenant Governor visited the CENTAC Office and issued an order to conduct the mop-up counselling for State Quota that day between 9.00 a.m. and 1.30 p.m. rescinding the earlier allotment for any diverted Government Quota seats. The vacancy of about 71 seats in various non-clinical courses as on 30.05.2017 at 12.00 p.m. was also displayed on the CENTAC website. The Secretary of Department of Health issued a press note highlighting the apparent improvement in the functioning of the CENTAC post the visit of the Hon'ble Lt. Governor.

· During the counselling, the same 267 candidates were called but only 20 turned-up. Out of 10 newly eligible candidates (due to lowering of cut-off), 7 availed seats in Deemed Universities. Further, out of another 6 newly eligible candidates, 5 availed seats in Deemed Universities. The residence status of these newly eligible candidates could not be verified due to paucity of time. Out of 4 candidates who availed seats under self-financing colleges during mop-up on 31.05.2017, 3 had attended previous counselling. At the end of this round of counselling, a vacancy of 45 State Quota seats was handed over to the Director General of Health Services as per Hon'ble Lt. Governor. The list of Selected Candidates was



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sent to all the concerned colleges and the Medical Council of India.

· The management of institutions were asked to admit all candidates as per the Merit List forwarded by Government with strict adherence to official fee structure as per Fees Committee of Puducherry (Government and Management Quotas) and complete admission process on or before 31.05.2017.

17. A perusal of the above report shows that at the end of the first round of counselling that was held on 04.05.2017 and 11.05.2017, 86 Government quota seats remained unclaimed. The second round of counselling for Post Graduate courses commenced on 19.05.2017 and at the end of the second round 71 Post Graduate seats under the Government quota remained vacant. It is between these two stages, the Hon'ble Supreme Court on 09.05.2017 passed an order in W.P.(Civil) No.267 of 2017 introducing the concept of mop-up and stray counselling. There was also a reduction of the cut-off percentile and when the same was applied, the number of qualified candidates increased from 1827 to 1861. The merit list based on the reduced cut-off was prepared on 29.05.2017 and a mop-up



counselling was conducted on the same day. Thereafter, a separate merit list containing the names of 1718 candidates were made available for filling up the stray vacancies.

18. As we have already adverted to, these six Institutions refused to admit students who were allotted by the CENTAC, on the receipt of fee fixed by the Fee Committee, they claimed excess fee and hence the writ petition in W.P.No.14232 of 2017 already referred to came to be filed and an interim order directing payment of Rs.10,00,000/- was made by a Division Bench of this Court. The complaints that were made by several students prompted the Central Bureau of Investigation to take up the investigation regarding the alleged scam that had taken place in Post Graduate medical admission in Puducherry during the year 2017-2018 and an FIR was also filed by the Central Bureau of Investigation and the proceedings are stated to be pending, while this Court has quashed the FIR in respect of some of the Institutions. The 28 students who are petitioners in W.P.No.31921 of 2017 had moved the Hon'ble Supreme Court seeking admission and their writ petition was dismissed by the Hon'ble Supreme Court since the



admission process was over and liberty was reserved to them to approach

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19. Pursuant to the said order of the Hon'ble Supreme Court W.P.No.31921 of 2017 has been filed. The Public Interest Litigation filed in W.P.No.17325 of 2017 by the students who were denied admissions came to be dismissed, as already stated, on the ground that the fee fixation is subject matter of the writ petition pending before the Hon'ble Supreme Court. The National Medical Commission took up the issue of illegal admissions and discharged those students who according to it were admitted illegally.

20. The writ Court upon examination of the entire circumstances under which the admissions were made found that the admissions made were in complete violation of Regulation 9-A. The writ Court also found that the Institutions have played with numbers and created vacancies in an intelligent manner to suit their requirements. The writ Court found a design in the manner in which these illegal admissions were made and concluded that there is no cause to interfere with the orders of the National Medical



Commission discharging these candidates.

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21. The learned Judge while dealing with the claims of the admitted candidates and the Institutions had tabulated the number of candidates admitted by each of the Institutions along with the rank obtained by them in the NEET and found that out of 65 candidates only names of 19 candidates were reflected in the merit list prepared by CENTAC. After carrying out that exercise, the learned Judge had examined each and every case individually college wise and has come to the conclusion that the candidates who were discharged were admitted unilaterally without being sponsored by CENTAC.

22. There were three categories of candidates who were part of this illegal admission process. The first category are total foreigners, that is, those candidates who had not at all registered with the CENTAC. The second category of candidates allotted to college 'A' did not join, but, were admitted in college 'B'. The third category are candidates who were allotted to a particular discipline or non-clinical courses admitted in another

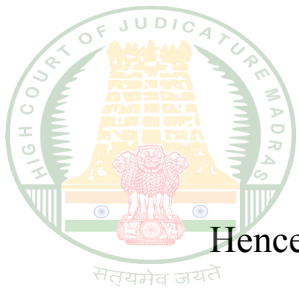


discipline/ clinical courses in the same or another college.

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23. As per the Regulations, if a candidate allotted to a particular Institution does not join, the Institution is required to send a list of vacancies and seek further allotment from CENTAC. It is not open to a Institute to admit the candidates on its own. Therefore, the claim that since there were vacancies, the candidates who had secured the qualifying marks in the NEET examination could be admitted without reference to CENTAC cannot be accepted, according to the learned single Judge.

24. As regards the second category of candidates, whose names were found in the merit list prepared by the CENTAC, but were not allotted to any Institute, it was the contention of the candidates and the Institutes before the writ Court that they were asked to go and join the Institutions wherever there were vacancies, by the CENTAC on 31.05.2017. This claim has been specifically denied by the CENTAC and the candidates admitted by the Institutions on 31.05.2017 were not provided with provisional allotment orders by the CENTAC and therefore their admissions are illegal.



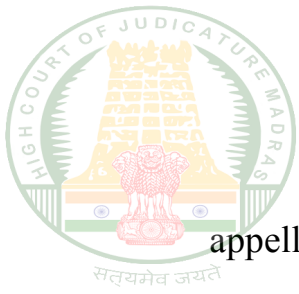
Hence, the claim of the Institutions was rejected by the learned Judge.

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25. As regards the first category viz., those persons whose names were not even found in the CENTAC list their admission was completely illegal and hence these admissions could not also be regularized. The learned Judge examined the admissions on each category basis and concluded that the admissions are not legal and hence the discharge orders should be sustained.

26. Adverting to the claim of the students who were not admitted, the learned Judge found that though the denial of admissions to those students is illegal, they cannot be allowed to join in the subsequent years. The learned Judge however imposed penalty on the colleges and required them to pay costs to the Cancer Institute at Adyar, Chennai. Aggrieved by the rejection of their prayer for damages for illegal denial of admission, 15 out of 28 students have come up with the appeal in W.A.No.1438 of 2021.

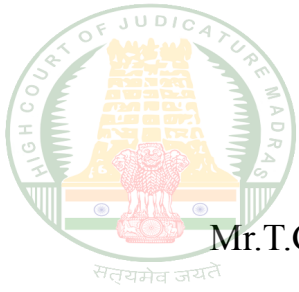
27. We have heard Mr.L.Swaminathan, learned counsel for the



W.A.Nos.835 of 2021 etc., batch

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appellants in W.A.Nos.835 to 839, 841 and 843 of 2021, Mr.V.Karthic, Senior Counsel for Mr.L.Swaminathan, learned counsel for the appellants in W.A.Nos.844 to 846, 849 to 853, 857, 861, 863, 864, 869, 870, 871 and 873 of 2021, Mr.Vijay Narayan, learned Senior Counsel Assisted by Mr.L.Swaminathan for the appellants in W.A.Nos.881, 882, 884 to 892 of 2021, Mr.N.Krishnakumar, learned counsel for the appellant in W.A.No.901 of 2021, Mr.R.Sreedhar, Additional Government Pleader (Puducherry) for the appellant in W.A.No.1119 of 2021, Mr.V.B.R.Menon, learned counsel for the appellant in W.A.No.1438 of 2021, Mr.T.V.Lakshmanan, learned counsel for the appellant in W.A.No.1031 of 2021 and 5th respondent in W.A.No.901 of 2021, for 4th respondent in W.A.No.1119 of 2021, Mr.D.Ravichander, learned counsel for the appellants in W.A.Nos.1130, 1133, 1134, 1135 and 1137 of 2021, Ms.Shubaranjani Ananth, learned counsel for the National Medical Commission (NMC), Mr.R.Sreedhar, learned Additional Government Pleader (Puducherry) appearing for the Puducherry Government and the Centralized Admission Committee, Mr.P.Wilson, learned Senior Counsel for Mr.Richardson Wilson, learned counsel for 5th respondent in W.A.Nos.835 to 839, 841 and 843 of 2021,



W.A.Nos.835 of 2021 etc., batch

Mr.T.Gowthaman, learned Senior Counsel for Mr.U.Gokulakrishnan for the 5th respondent in W.A.Nos.844 to 846, 849 to 853, 857, 861, 863, 864, 869, 870, 871 and 873 of 2021, 881, 882, 884 to 892 of 2021, Ms.Karpagapriya, learned counsel appearing for the respondents 9 to 11 in W.A.No.1438 of 2021, Mr.K.Suresh, learned counsel for Bharat Institute of Higher Education and Research and Mr.Rabu Manohar, Senior Central Government Standing Counsel for the 6th respondent in W.A.No.1031 of 2021 and respondents 6 and 7 in W.A.No.1133 of 2021.

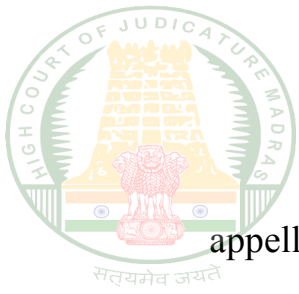
28. All the learned counsel appearing for Institutions would vehemently contend that in respect of some of the students a Division Bench of this Court had allowed some of the writ appeals filed by the Institutions and set aside the impugned orders of discharge imposing a penalty of Rs.5,00,000/- on the Institution and payment of Rs.10,00,000/- to the Puducherry Advocate Welfare fund Scheme within a period of two weeks. We are however informed that though such orders were passed in some of the appeals, the National Medical Commission has preferred Special Leave Petitions against those orders and the Hon'ble Supreme Court has granted



leave and issued notice to the respondents. Therefore, according to the learned counsel for the National Medical Commission those orders having stemmed out of compromise arrived at between the litigating parties cannot form the basis for allowing these appeals also. Moreover, since the matter is subjudice before the Hon'ble Supreme Court those orders cannot be relied upon by the appellants.

29. The learned counsel for the appellants would further contend that since it was the first year of admission being made to Post Graduate medical courses by a common counselling and various orders were passed by the Hon'ble Supreme Court during the process of counselling there was some confusion regarding the manner in which admissions have to be carried out. The delay on the part of the fee fixation Committee in fixing the fees also contributed to the confusion. The revision of the fee by the fee fixation Committee when the counselling process was going on was also another factor which added to the confusion.

30. Heavy reliance is placed by the learned counsel for the



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appellants viz., the colleges and the students whose admissions have been cancelled on the press note issued by the CENTAC on 30.05.2017 inviting the candidates to take part in the counselling for the vacant seats on 31.05.2017. The learned counsel for the colleges would also contend that the CENTAC had forwarded a list of 1718 candidates who had qualified in the NEET and had allowed the colleges to admit the students who have qualified in the NEET in the vacant seats that are available with them. Therefore, at the end of the counselling on 31.05.2017, the colleges were allowed to admit students in the vacant seats that were available if they are qualified in the NEET. It is also the contention of the learned counsel for the colleges and the admitted students that the intervention of the then Lieutenant Governor Puducherry in the admission process also added to the confusion.

31. The counsel for the appellants would also point out that the CENTAC had forwarded two lists one containing 166 names for the 45 State Quota Seats and the other containing 1718 names for the 49 Management Quota Seats and had permitted the Colleges to fill up the



vacancies from and out of the candidates found in the said two lists.

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32. Considerable reliance is placed by the learned counsel for the appellants on the communication dated 31.05.2017 bearing Reference No.27209/H5/Health/2016-17 issued by the Under Secretary to Government (Health), Government of Puducherry, addressed to all the self financing Colleges and Deemed to be Universities in this Regard. The said communication reads as follows:

2.As per the directions of the Ministry vide letter cited above,

"In order to ascertain the number of seats that still remains vacant after the counselling, the State Government or the authority designated by the State Government shall conduct a manual counselling for allotment of students. After the complete of the counselling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward the list of students in the order of merit equaling to 10 times the number of vacant seats to the Medical Colleges so that in case of any stray vacancy arising in any Colleges, the said seat may be filled up from the said list."



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3.The CENTAC which had conducted the counseling has now submitted a vacancy list of seats available in all the Colleges. A total number of 94 seats are available in the seven Medical Colleges, 45 seats under State quota and 49 seats under management quota. The list is enclosed.

4.A list of 166 candidates against Government quota and a list of 1718 candidates against management quota are enclosed. The Institutions are directed to admit the students against the vacancies of the seats available in their respective Colleges under State quota as well as management quota from the above list in the order of merit and furnish a compliance report immediately.

5.Any violation of the above directions will be viewed very seriously.

33. A list of 1827 candidates is stated to have been annexed to the said letter. According to the learned counsel for the appellants in view of the above communication, they, the institutes believed that they are at liberty to admit students, who had applied for Post Graduate Courses in the Institution situate in the Union Territory of Puducherry and who had cleared the NEET could be admitted to Post Graduate Courses.



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34. Mr.D.Ravichander, learned counsel appearing for one of the appellants would contend that the publication dated 30.05.2017 issued by CENTAC inviting all the candidates, who are eligible for admissions to Post Graduate Courses viz., those candidates, who have cleared the NEET to attend counselling on 31.05.2017 would show that the institutes were free to admit those students whose names were found in the list of applicants, who had applied for PG Medical Courses in the Union Territory of Puducherry.

35. Inviting our attention to Regulation 9 of the Post-Graduate Medical Education Regulations, 2000, the learned counsel would contend that it is open to the State Authority to issue directions for admission and the publication made by the CENTAC should be taken as an open invitation to all the students, who are qualified to approach the Colleges wherever there are vacancies and to get admitted.

36. Contending contra Mr.R.Sreedhar, learned Additional Government Pleader (Puducherry) appearing for the Puducherry



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Government and the Centralized Admission Committee would submit that the colleges ought not to have admitted students who were not sponsored by CENTAC. According to him, only students who have been provisionally allotted to the colleges should have been admitted. Admission of those students who had no provisional allotment by the CENTAC was illegal. In reply to the claim that the press note enabled the colleges to admit students of their choice Mr.R.Sreedhar would submit that the press note is only a invitation to the students to join the counselling on 31st May 2017, that would not enable the colleges to admit students on their own without they being sponsored by CENTAC.

37. He would also add that a perusal of the list of admitted candidates sent by the CENTAC to the National Medical Commission would show that the 28 candidates who were denied admission and who were the petitioners in W.P.No.31921 of 2017 were shown as admitted candidates in various Institutions by the CENTAC on 31.05.2017. This according to Mr.R.Sreedhar, learned Additional Government Pleader (Puducherry) would show that the Institutions have not reported the fact that



W.A.Nos.835 of 2021 etc., batch

they have not admitted the candidates sponsored by CENTAC to the

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CENTAC to enable it to allot other candidates to the said seat. After having

denied admission to those students, the Institutions have admitted students

of their choice on 31.05.2017 by creating a vacancy. Relying upon the list

of students from each college, the learned Additional Government Pleader

would submit that these Institutions are guilty of suppression of

information.

38. Mr.V.B.R.Menon, learned counsel appearing for the appellants in W.A.No.1438 of 2021 would vehemently contend that once it is found that the petitioners in W.P.No.31921 of 2017 have been allotted to various Institutions and they have been denied admission illegally, they are entitled to compensation atleast. Reliance is placed by Mr.V.B.R.Menon, learned counsel on our judgment in *Dr.P.Sidharthan Vs. Government of Puducherry in W.A.No.861 and 862 of 2017 dated 27.09.2023*, wherein, we had after concluding that the appellant therein was denied a seat illegally, directed the college as well as the CENTAC to pay damages to the candidate. Mr.V.B.R.Menon, learned counsel would also add that these



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discharged students had filed an affidavit before this Court to the effect that they will not claim equity on the ground that they have completed the course and their degrees should be protected when the writ petitions are finally heard by this Court, even at the time when these writ petitions were admitted and the interim orders were granted. Therefore, according to Mr.V.B.R.Menon, learned counsel, while the order of the learned Single Judge upholding the orders of discharge should be upheld the Universities and the CENTAC should be made liable to pay compensation for the illegal refusal to admit the appellants in W.A.No.438 of 2021.

39. Ms.Shubaranjani Ananth, learned Standing Counsel appearing for the Medical Council of India (MCI) would contend that as a governing body MCI has got the power to take action if irregularities are brought to its notice. She would submit that admissions done by these colleges on 31.05.2017 are in complete violation of Rule 9-A of the Post Graduate Regulations and therefore they cannot be regularized. She would also rely upon various decisions of the Hon'ble Supreme Court in support of her submission that illegal admissions cannot be relied upon. She would also



W.A.Nos.835 of 2021 etc., batch

invite our attention to the orders of the Hon'ble Supreme Court made in Cont.P.(Civil) No.584 of 2016 in *State of Madhya Pradesh Vs. Jainarayan*

Chouksey and others reported in (2016) 9 SCC 412 to contend that the admissions made outside the composite process done by a State or its authorized agency will stand cancelled. She would also rely upon the judgement of the Hon'ble Supreme Court in *Abdul Ahad and others Vs. Union of India and others* reported in 2021 SCC OnLine SC 627, wherein, the Hon'ble Supreme Court had held that an irregular admission cannot be regularized and there cannot be any sympathy to such students who had entered through the back door. While confirming the orders of MCI discharging the students who were not admitted through CENTAC process, the Hon'ble supreme Court held that sympathy cannot be a ground to regularize such illegalities.

40. We have considered the submissions of the learned counsel for the parties.

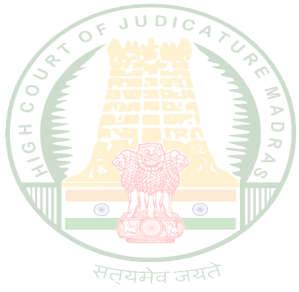


WEB COPY 41. The following questions emerge for determination in these

Appeals:

(i).After the introduction of Regulation 9-A of the Post-Graduate Medical Education Regulation, whether a Private Medical Institution has any right to admit a student, though a student who has qualified in the National Level Eligibility cum Entrance Test;

*(ii).In the teeth of the orders of the Hon'ble Supreme Court, particularly in **State of Madhya Pradesh v. Jainarayan Chouksey and others** reported in (2016) 9 SCC 412, made in Contempt Petition (C) No.584 of 2016 dated 22.09.2016 and the judgment of the Hon'ble Supreme Court in **Abdul Ahad and others v. Union of India and Others**, reported in 2021 SCC Online SC 627, could this Court approve the action of the Colleges admitting students in violation of Regulation 9-A of the Post-Graduate Medical Education Regulation? and*



(iii) Whether the appellants in WA No.1438 of 2021

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viz. the students, who were nominated by the CENTAC and were denied admission are entitled to be compensated and if so, what would be the quantum of compensation and who should pay the compensation.

42. We had required the Additional Government Pleader (Puducherry), to produce the records of the CENTAC, the Government Pleader expressed his inability, inasmuch as the records were in the custody of the Criminal Court as the prosecution launched by CBI in respect of some of the Institutes was pending. We had therefore, directed the Chief Judicial Magistrate, Puducherry to forward the records available with Criminal Court to this Court so as to enable us to have first hand knowledge of how things have gone about. We have perused the records.

Point No.1 & 2:

43. No doubt, being the first year in which common counselling was introduced for Admissions to Post Graduate courses in Medical



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Colleges, there was some confusion regarding the procedure that is to be adopted in filling up Post Graduate seats in Medical Colleges. The officials of the CENTAC, we find were not abreast of the regulations fully and they were left groping in the dark. Aspirants were actually scavenging for seats. Even though the Hon'ble Supreme Court intervened in an attempt to put things on track, there were several road blocks faced by the State Authorities, who were to implement the directions of the Hon'ble Supreme Court issued from time to time as well as the students. Regulation 9-A of the Post-Graduate Medical Education Regulation, was introduced with effect from 10.03.2017.

43.1. We find from the records that have been placed before us, the DGHS had written to all the States and Union Territories even on the very same day viz. 10.03.2017 informing them that Regulation 9-A has been introduced and therefore, it would be the responsibility of the respective State Governments and the Union Territories to conduct the common counselling for all Post Graduate admissions. The comprehensive language of Regulation 9-A of the Post-Graduate Medical Education Regulation, was



also pointed out in those communications. Thereafter, the Hon'ble Supreme

WEB COURT by its order dated 04.05.2017 made in *Education Promotion Society of India and others v. Union of India*, had given directions, which have been extracted *supra*, regarding conduct of counselling since Deemed to be Universities claimed an exemption from being made subject matter of the common counselling that is to be conducted by the State Authorities on the ground that they had an All India Character.

43.2. Thereafter, the Hon'ble Supreme Court by its order dated 09.05.2017 made in *Dar-Us-Salam Educational Trust and others vs. Medical Council of India and others*, rolled out the procedure that is to be followed in the counselling. In and by the said order, the Hon'ble Supreme Court prescribed the procedure for payment of Fees as well as the manner in which counselling should be conducted. The interests of Minority Institutions were also taken care of by the Hon'ble Supreme Court. There was no further direction issued either by the DGHS or by the Hon'ble Supreme Court with regard to conduct of counselling.



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43.3. It should be pointed out at this juncture subsequently by its order dated 09.06.2017, the Hon'ble Supreme Court made in *Association of Private Medical and Dental Colleges of Chhattisgarh vs. State of Chhattisgarh* clarified that the direction regarding forwarding of 1:10 candidates after the mop-up counselling found in Clause 7 of the order dated 09.05.2017 cannot be made applicable to admissions for Post Graduate seats and it is confined only to admission for Under Graduate Courses. However, as on 31.05.2017 when the counselling was completed, it was Regulation 9-A, the order of the Hon'ble Supreme Court in *Education Promotion Society of India* dated 04.05.2017 with reference to Deemed to be Universities and the order of the Hon'ble Supreme Court in *Dar-Us-Salam Educational Trust*, dated 09.05.2017 which alone covered the procedure for admissions by common counselling. The subsequent clarification may not and will not give a license to the Institutions to admit students in violation of Regulation 9-A of the Post-Graduate Medical Education Regulation, which mandates that all admission shall be made only through the Agency authorized by the State Government.



WEB COPY 43.4. As far as the Deemed to be Universities are concerned, there was a dispute regarding the Fees Structure and the same was clarified by subsequent orders/judgments of this Court. Let us first deal with the reliance placed by the learned counsel for the appellants on the announcement made by CENTAC on 30.05.2017, which according to them would entail them to admit students, who were qualified in the NEET. The announcement dated 30.05.2017 reads as follows:

“AN ANNOUNCEMENT

***ANY ELIGIBLE NEET CANDIDATE CAN ATTEND
COUNSELLING ON 31.05.2017, WEDNESDAY WITH
COMPLETE SET OF DOCUMENTS FROM 9.00 AM. TO
1.00 PM.***

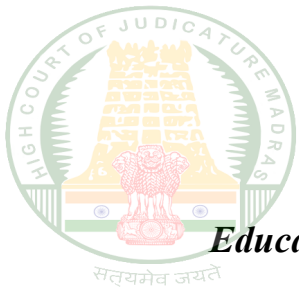
***SEVENTY ONE (71) SEATS ARE STILL
AVAILABLE UNDER GOVT. QUOTA FOR PG-
MEDICAL COURSES.”***

43.5. This announcement is only an invitation to the candidates who



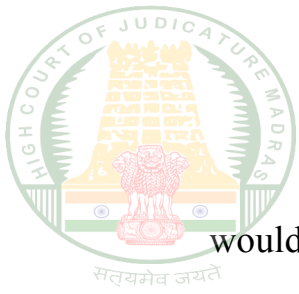
had qualified in the NEET to appear for counselling on 31.05.2017 at the CENTAC office between 9 a.m. and 1.00 p.m. While it is the claim of the Colleges that no counselling was held on that date and candidates were directed to the respective Colleges where there are vacancies to go and *purchase* their seats from the Colleges. The said claim is vehemently denied by the learned Government Pleader and Mr.V.B.R.Menon appearing for the candidates, who were denied admissions illegally. This announcement by no stretch of imagination could be treated as a license issued by CENTAC to the Colleges to admit students who were not sponsored/provisionally allotted by it.

43.6. The next communication that is relied upon is one dated 31.05.2017 which had been extracted earlier, the same is not by the CENTAC, it is issued by the Under Secretary to Government (Health), Government of Puducherry. This is the communication which actually created the mischief. The directions issued by the Under Secretary to Government (Health), Government of Puducherry runs counter to the directions issued by the Hon'ble Supreme Court in *Dar-Us-Salam*



WEB COPY *Educational Trust*, as well as the directions issued by the Ministry of Health and Family Welfare, Government of India, which has been referred to in the said communication itself. This communication, in our opinion, is *per se* illegal and the same cannot in any manner legalise the illegal admissions made by the Colleges. We are of the considered opinion that this particular communication dated 31.05.2017 which bears the signature of the Under Secretary to Government (Health), Government of Puducherry, has been issued with ulterior object of enabling the Colleges to sell the Post Graduate Medical seats. We are afraid that we cannot approve the action of the Colleges in admitting all and sundry based on the above communication.

43.7. The learned Single Judge has rightly pointed out that the communication cannot legalise the illegality and it is against the orders of the Hon'ble Supreme Court. We do not see any reason to differ from the conclusion of the learned Judge to the effect that the Under Secretary to Government (Health), Government of Puducherry, had no authority to issue such communication and this communication will not validate the otherwise illegal admissions. No doubt, the learned counsel appearing for the Colleges



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would rely upon various judgments to support their contention that since the students have now finished their studies and have also been successful in the examinations, they should not be disturbed. We do not think those judgments would lend a helping hand to the appellants, inasmuch as their admissions have been made in violation of the Regulation 9-A of the Post-Graduate Medical Education Regulation, and the orders of the Hon'ble Supreme Court.

43.8. More than that we find a design and a comprehensive master plan evolved by these Colleges in active collaboration with the officials of the Government of Puducherry and CENTAC to maneuver all check points put up by the Hon'ble Supreme Court in its effort to regulate admissions to Medical Courses. As rightly pointed out by Hon'ble Mr.Justice N.Anand Venkatesh in the prelude in paragraph 27 of the judgment under Appeal, Medical Education is being monitored very closely by the Hon'ble Supreme Court and the Hon'ble Supreme Court has been making humongous efforts to ensure that merit and merit alone is made the basis for Medical Admissions, particularly Post Graduate Medical Admissions.



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43.9. The argument that the seats will go waste and the infrastructure that is created would go waste cannot at all be accepted, since its better that the seat goes waste instead of a non-meritorious candidate taking it for consideration. After all Medical Profession deals with life of people and any compromise on merit would have a delirious effect. No doubt, all these discharged students viz., the appellants before us have completed their Post Graduation, thanks to the interim orders passed by this Court, of course on their filing an affidavit that they would not claim equity, if they are to fail in the Writ petitions. The Institutes as well as the students now seek to invoke sympathy factor to contend that once the meritorious students, who have denied the seats, are compensated their qualification can be recognised by setting aside the discharge orders.

43.10. We are afraid that such a compromise would be putting a premium on illegality. There is no shade of a doubt in our mind that the admission of all these discharged candidates is illegal. As we had pointed out earlier, there are four categories of illegal admissions. They are



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1. Candidates who are admitted to non-clinical courses and moved to clinical courses by refusing admission to candidates who were sponsored by CENTAC;
2. Candidates allotted to a particular discipline in “A” College admitted in another discipline in the same College or moved to “B” College;
3. Candidates allotted to “A” College not joining admitted in College “B”; and
4. Complete foreigners viz. those who have not registered with CENTAC at all.

43.11. We hasten to add that all admissions in any of the above four categories are illegal admissions and none of them can be condoned.

The *modus operandi* adopted by these Colleges is as follows:

(i) Admission is denied to a student who is allotted by CENTAC either under the Government quota or under the Management quota on some pretext or the other.

(ii) the number of vacancies are not brought to the



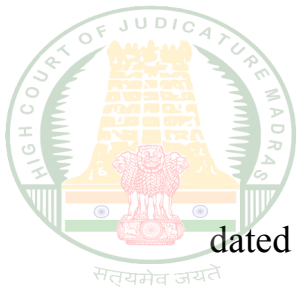
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knowledge of CENTAC to be included in the second or mop-up or stray counselling;

(iii)The seats are kept vacant till 31.05.2017;

(iv)On 31.05.2017 making use of the illegal letter signed by the Under Secretary to Government (Health), Government of Puducherry, these seats are sold to outsiders in total disregard of the provisional allotments made by CENTAC.

43.12. The learned Single Judge, while deciding the Writ Petition filed by the students, who were unjustly denied admissions viz. WP No.31921 of 2017 had reached a conclusion that all the 28 petitioners in the said Writ Petition were denied admission unjustly by the Colleges to which they were allotted. The claim of the Colleges that there was no counselling held on 31.05.2017 and all the students, who approached the CENTAC, were required to go to the Colleges and purchase their seats, according to their financial ability, falls to ground from the fact that at least 12 out of the 28 petitioners in WP No.31921 of 2017 have produced the allotment orders



dated 31.05.2017 issued by CENTAC. It is also seen from the press note issued by CENTAC on 31.05.2017 that 26 seats were allotted in the counselling conducted for 71 vacancies and the remaining 45 seats were surrendered to DGHS, in the teeth of the Press Note issued by the convener of CENTAC on 31.05.2017, the Under Secretary to Government (Health), Government of Puducherry, had no Authority to issue the letter dated 31.05.2017 authorising the illegal admissions.

43.13. We have already extracted Regulation 9-A of the Post-Graduate Medical Education Regulations. It provides no room for any admission by an Institution without the allotment being made by the State Recognised Agency. Therefore, the contention of the Colleges that they were authorised by the Government of Puducherry to admit students from and out of the two lists cannot be accepted. The action of the Under Secretary to Government (Health), Government of Puducherry, in issuing the communication dated 31.05.2017 extracted *supra* is beyond his powers and is against the Regulations and the Orders of the Hon'ble Supreme Court governing the issue. If the seats fall vacant, they must be surrendered to the



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DGHS, there cannot be any admission by any of the Colleges either from and out of the NEET qualified candidates or otherwise. This position of law being clear, the admissions made in contravention of the above will have to necessarily be set aside and they have been rightly set aside by the National Medical Commission. It is rather gratifying to note that the Regulatory Body viz. the National Medical Commission has acted swiftly at least in these cases of illegal admissions and issued discharge orders within six to eight months of the admissions being made.

43.14. We must also point out that the Hon'ble Supreme Court has recognised the right of the Medical Council of India, now known as National Medical Commission, to supervise qualifications or eligibility standards for admission to Medical Institutions as early as in 1979 in *State of Kerala v. Kumari T.P. Roshana and Another*, reported in *1979 (1) SCC 572*. Again in *Dr.Jagadish Saran and Others v. Union of India*, reported in *1980 (2) SCC 768*, the Hon'ble Supreme Court had pointed out that the Regulatory Body viz. the National Medical Commission cannot be a silent



spectator, it must initiate steps to make Indian Medical Education a

meaningful asset to the Nation's healing and hospital resources, while doing

so, the Hon'ble Supreme Court observed as follows:

“55. The Indian Medical Council is the statutory body at the national level whose functional obligations include setting standards for as well as regulation and coordination of medical education. What with a growing number of universities with divergent settings, standards and goals and a motley crowd of students with diverse academic and social backgrounds and ambitions, the prescription and invigilation of flexible yet principled norms regulating the entrance into medical courses and training of medical graduates at various levels of specialization are a demanding and dynamic task. The IMA cannot be a silent spectator or a static instrument but must initiate, activist fashion, steps to make Indian medical education a meaning asset to the nation's healing and hospital resources and a discipline with broad uniformity and assured standard. The Central Government, witness to a deteriorating situation, cannot but act



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to negate the confusing trend of fall in quality and conflict among universities.”

43.15. A feeble attempt was made by some of the counsel to the effect that the Regulations viz. the Post Graduate Medical Education Regulations are only guidelines and they do not have a statutory force. The Hon'ble Supreme Court has dealt with the concept of Regulation in ***Central Power Distribution Co. and others vs. Central Electricity Regulatory Commission and another***, reported in **2007 (8) SCC 197**. The Hon'ble Supreme Court explained the scope of the term Regulation and held that the power to regulate would also include the power to enforce. The Hon'ble Supreme Court referred to the earlier judgment in ***K.Ramanathan vs. State of Tamil Nadu***, reported in **1985 (2) SCC 116**, in support of its conclusions. Therefore, in view of the above, we do not think we can sustain the submission of the learned counsel on the scope of the word '*regulation*'. Useful reference can also be made to the judgment of the Hon'ble Supreme Court in ***Indu Bhushan Bose vs. Rama Sundari Debi***, reported in **(1969) 2 SCC 289**, where the Hon'ble Supreme Court again dealt with the scope of



the word *regulation* appearing in Entry 3 of List I of the 7th Schedule which reads as follows:

“Regulation of house accommodation”

and held that the power to direct and regulate will include the power to monitor the entire aspect of housing.

43.16. Ms. Shubharanjani Ananth, learned Standing Counsel appearing for National Medical Commission would also draw our attention to judgment of the Hon’ble Supreme Court in *Modern Dental College and Research Centre and others vs. State of Madhya Pradesh*, reported in *(2016) 7 SCC 353*, wherein the Hon’ble Supreme Court had clarified that the Private Medical Colleges have no right to admit students on their own. After referring to the judgments in *P.A. Inamdar vs. State of Maharashtra*, reported in *(2005) 6 SCC 537* and *T.M.A. Pai Foundation vs. State of Karnataka*, reported in *(2002) 8 SCC 481*, the Hon’ble Supreme Court in *Modern Dental College* had observed as follows:

“48. The matter was then considered by a larger Bench of seven Judges in P.A. Inamdar [P.A. Inamdar v.



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State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] .

It was held that the two committees for monitoring admission procedure and determining fee structure as per the judgment in Islamic Academy of Education [Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 : 2 SCEC 339] were permissible as regulatory measures aimed at protecting the student community as a whole as also the minority themselves in maintaining required standards of professional education on non-exploitative terms. This did not violate Article 30(1) or Article 19(1)(g). It was observed that: (P.A. Inamdar case [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , SCC p. 607, para 145)

“145. ... Unless the admission procedure and fixation of fees is regulated and controlled at the initial stage, the evil of unfair practice of granting admission on available seats guided by the paying capacity of the candidates would be impossible to curb.”

(emphasis supplied)

On this ground, suggestion of the institutions to achieve the purpose for which committees had been set up by post-audit checks after the institutions adopted their own admission procedure and fee structure, was rejected. The committees were, thus, allowed to continue for regulating



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the admissions and the fee structure until a suitable legislation or regulations were framed by the States. It was left to the Central Government and the State Governments to come out with a detailed well-thought out legislation setting up a suitable mechanism for regulating admission procedure and fee structure. Para 68 in T.M.A. Pai Foundation case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] was explained by stating that observations permitting the management to reserve certain seats was meant for poorer and backward sections as per local needs. It did not mean to ignore the merit. It was also held that CET could be held, otherwise merit becomes casualty. There is, thus, no bar to CET being held by a State agency when the law so provides.

49. Thus, the contention raised on behalf of the appellants that the private medical colleges had absolute right to make admissions or to fix fee is not consistent with the earlier decisions of this Court. Neither merit could be compromised in admissions to professional institutions nor capitation fee could be permitted. To achieve these objects it is open to the State to introduce regulatory measures. We are unable to accept the submission that the State could intervene

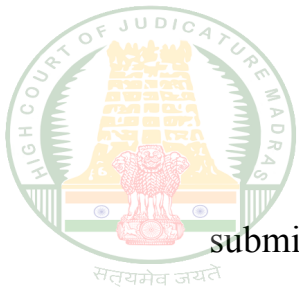


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only after proving that merit was compromised or capitation fee was being charged. As observed in the earlier decisions of this Court, post-audit measures would not meet the regulatory requirements. Control was required at the initial stage itself. Therefore, our answer to the first question is that though “occupation” is a fundamental right, which gives right to the educational institutions to admit the students and also fix the fee, at the same time, scope of such rights has been discussed and limitations imposed thereupon by the aforesaid judgments themselves explaining the nature of limitations on these rights.

43.17. This position was reiterated again by the Hon’ble Supreme Court in *Education Promotion Society of India* and *Dar-Us-Salam Educational Trust*, where it has issued directions for Post Graduate Medical Admissions. We are therefore unable to accept the contentions of the learned counsel for the appellants that the admissions having been made pursuant to a license granted by the Under Secretary to Government (Health), Government of Puducherry, should be held to be valid. This



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submission is made forgetting the fact that 28 students, who were found eligible by the CENTAC, the State Authorised Agency, were denied admission and those seats were also filled up utilising the illegal letter that was procured from the Under Secretary to Government (Health), Government of Puducherry, who had no authority to issue such letter.

43.18. We have seen the records of the CENTAC which were summoned by us from the Criminal Court, this particular letter dated 31.05.2017 is not a part of those records. Even in the Report of the CENTAC, which forms part of the records of the CENTAC that has been called for by us, it is seen that there is no reference to the letter dated 31.05.2017. On the other hand, we find from the papers produced by the appellants in WA Nos.841, 843 etc of 2021 that the very same Under Secretary to Government (Health), Government of Puducherry, in the same reference number has written to the Colleges and the said communication reads as follows:

“As per the directions of Government of India, common counseling has been conducted by CENTAC for filling up of 50% of Government Quota seats and



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50% of Management Quota seats in Private/Deemed to be University Medical/Dental Colleges in the U.T. of Puducherry.

2. The list of students selected/allotted P.G./Diploma seats in various discipline through common counseling conducted by CENTAC on today 31.05.2017 for admitting in the Private-Self financing colleges/Deemed to be University Medical/Dental College is forwarded for admitting them in your college.

3. It is also further, stated that, the litigation in the Hon'ble High Court, Chennai is only on the fee structure and not on the admission of the students in the Private/Deemed to be University Medical/Dental Colleges as per merit. Hence, all the Colleges are hereby directed to admit all the candidates as per the merit list (enclosed) allotted by CENTAC under Government Quota as well as Management Quota without fail.

4. As far as fee is concerned, the management of the institutions other than Deemed to be Universities are directed to strictly collect only the official fees as recommended by the Fee Committee in its order dated 24.05.2017 which is subject to revision.



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5. *Your grievances, if any can be raised before Hon'ble Fee Committee at a later date."*

43.19. A reading of the above communication shows that a list of students allotted through the common counselling conducted by CENTAC on 31.05.2017 for admission in Private Self-Financing Colleges/Deemed to be Universities in the Union Territory of Puducherry, was forwarded to all the Colleges. It is the contention of the CENTAC and Mr.V.B.R.Menon, that none of those students were admitted by the Institutes. Once the Hon'ble Supreme Court has made it very clear that the Institutes cannot admit any student by themselves, these admissions whether they are from and out of the list of students forwarded by the Under Secretary to Government (Health), Government of Puducherry, does not really matter. Once there is no formal allotment by CENTAC, the admissions become automatically illegal. What shocks us more than the illegality in the admissions is the denial of seats to properly sponsored candidates by the Colleges.



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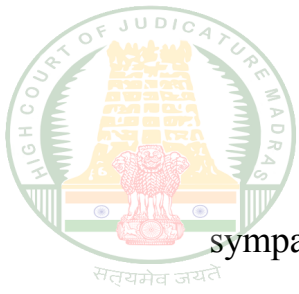
43.20. We find that the show cause notice has been issued by CENTAC to the Colleges on 31.05.2017 asking for an explanation as to why their Essentiality Certificate should not be suspended for the irregularity in admission. We are not informed of any further action having been taken either by the CENTAC or by the Government of Puducherry. Of course, it is contended on behalf of the Institutions that students were illegally admitted to two of the Institutions viz. Sri Manakula Vinayagar Medical College and Hospital and Pondicherry Institute of Medical Science have been let off in view of the orders passed in the Writ Appeals filed by the Institutes in WA Nos.796 and 808 of 2021 dated 29.07.2021.

43.21. This argument cannot hold water since it is stated that the Appeals filed by the National Medical Commission challenging these orders are pending before the Hon'ble Supreme Court in SLP Civil No.9789 of 2022. Moreover, the Division Bench while passing orders in WA Nos.796 and 808 of 2021 has relied upon the judgment of the Hon'ble Supreme Court, wherein candidates who were admitted irregularly to MBBS Courses



were allowed to take their Graduation. We also find that the orders were passed, as a result of a compromise arrived at between the contesting parties. We do not think that the same could form the basis to regularise the other illegal admissions also.

43.22. Of course the fact that these students, who have been discharged, have completed their course and also acquired the knowledge, we cannot take back the knowledge acquired by them. It is on this point the argument based on sympathy often succeeds and we end up in legalizing illegalities. A beginning has to be made to end this practice and we find that such a beginning has been made by the Hon'ble Supreme Court in *Abdul Ahad and others v. Union of India and others*, reported in *2021 SCC online SC 627* and wherein the Hon'ble Supreme Court has pointed out that such sympathy would be misplaced sympathy. Even in *Guru Nanak Dev University v. Perminder Kr. Bansal and others*, reported in *(1993) 4 SCC 40*, the Hon'ble Supreme Court had pointed out that sympathy cannot be a factor and the Court should not embarrass academic authorities by legalising illegal actions. While dealing with the contention relating to



sympathy, the Hon'ble Supreme Court observed as follows:

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32.The facts in the present case are somewhat similar with the facts, which fell for consideration in the case of Mahatma Gandhi University v. GIS Jose.

33.In the said case, the admissions were given for M.Sc. Computer Science course in violation of admission rules. The High Court had directed to declare the withheld result of such students. Reversing the judgment of the High Court, this Court observed thus:

“10.The misplaced sympathies should not have been shown in total breach of the rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in CBSE v. Sheena Peethambaran [(2003) 7 SCC 719]. In para 6 of the judgment, this Court observed as follows : (SCC p. 724){Emphasis Supplied}

“6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules



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stare straight into the face of the plea of sympathy and concessions, against the legal provisions.”

11. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal.”

34. It will further be relevant to refer to the following observations of this Court in the case of National Council for Teacher Education v.Venus Public Education Society.

“3. It is to be clearly stated that an institution that is engaged or interested in getting involved in imparting a course for training has to obey the command of law in letter and spirit. There cannot be any deviation. But, unfortunately, some of the institutions flagrantly violate the norms with adamantine audacity and seek indulgence of the court either in the name of mercy or sympathy for the students or financial constraint of the institution or they have been inappropriately treated by the statutory regulatory bodies. None of these grounds justify deviation. The case at hand graphically depicts deviations but the High Court, putting the blame on the statutory authority has granted relief to the respondent institution which is impermissible.”

35. In the backdrop of this legal position laid down



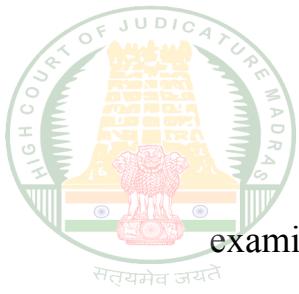
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in various judgments of this Court, it will not be possible to consider the cases of the review petitioners sympathetically. The Notification issued by the State of Uttar Pradesh on the basis of the law laid down by this Court clearly provided that the admissions were to be done only through the centralized admission process. Glocal Medical College in contravention of the said Notification conducted private counselling, which was not at all permissible in law. The students cannot be said to be ignorant about the Notification issued by the State of Uttar Pradesh.

36. In such a situation, no sympathies can be shown to such students who have entered through backdoor. Apart from that, MCI vide order dated 27.1.2017 had discharged the said students, who were not admitted through centralized admission process. It is pertinent to note that 25 students admitted in the same college, who were admitted through the centralized admission process, were very much absorbed by the DGME in other colleges. As such, the contention of the review petitioners that they came to know about the discharge order dated 27.1.2017 issued by MCI only when they had filed a petition in the High Court in 2019 does not stand to reason.

43.23. The Hon'ble Supreme Court also pointed out that grant of interim orders permitting the students to either continue or to appear for



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examination cannot be a ground to sustain the illegal admission. It will be useful to refer to the judgment of the Division Bench of this Court in ***Sri Venkateshwara Medical College Hospital and Research Centre vs. Medical Council of India, made in WA Nos.494 and 500 of 2020 dated 13.08.2020***, wherein the Division Bench clearly spelt out that Private Medical Colleges have no right to admit students on their own. Paragraphs 61 to 65 of the said judgment read as follows:

“61. We have considered the submissions raised and we find that on a reading of paragraphs (4) and (7) of the order in the case of Dar-Us-Slam Educational Trust (supra), the only option left after the Mopping Up phase is to take admissions from a list sent by the designated authority in order of merit, which has to be in the ratio of 1:10, keeping in view the number of vacancies. No Institution has been granted any further liberty to undertake admissions if a stray seat is left vacant. The authority lies with, as in the present case, the CENTAC which is the Counselling Authority. There is no liberty or residual power given to the Institution to admit students on their own.

62. Shri N.L.Rajah, learned Senior Counsel, has pointed out that any provision not made for by the Hon'ble Supreme Court can still be adopted by the CENTAC and the



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Medical Council of India to facilitate filling up of stray vacancies, for which his argument is that those candidates who were already given an opportunity in the first and second round of counselling as well as the Mopping Up phase, should not be included in the 1:10 ratio list for filling up of stray vacancies. He submits that this situation was not taken into account nor any decision was rendered by the Hon'ble Supreme Court in such a peculiar situation and therefore, there is no such prohibition either on the Medical Council of India or the CENTAC to follow this system, thereby eliminating the mistake in sending of the list of 1:10 ratio. To buttress his submissions, he points out that an attempt made in this very case to send the list of forty candidates of high merit has turned out to be an unsuccessful attempt in attracting even a single candidate and on the other hand, such a system deprives admission to deserving candidates, who are otherwise even though down below yet from the same merit list prepared by the NEET.

63. We cannot accept this argument as this would be adding and supplementing something what has not been provided for either in the Regulations or in the directions of the Apex Court in the case of Dar-Us-Slam Educational Trust (supra) or even in the case of Akshita Singh (supra). The entire process of admissions is being conducted upon the



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directions so issued and therefore, to prescribe another mode of merit as suggested by learned counsel would be crossing the limits as prescribed by the Apex Court and the Regulations which hold the field today.

64. The direction in the communication dated 27.8.2018 accompanying the list of forty candidates, in the last sentence categorically recites that the Colleges are requested to fill the stray vacancies in order of merit from the 1:10 list only. This restriction was thrown over board by the College and in the event any such alteration is desirable as suggested by the learned counsel, then the same can only be by way of an amendment either in the Regulations or a clarification from the Apex Court in this regard. This Court cannot issue any such direction which may run counter to the directions issued by the Apex Court and which powers may have been exercised by the Apex Court under Article 142 of the Constitution of India. Any alteration in the scheme therefore so prescribed has to abide by the directions of the Apex Court.

65. The argument of learned counsel for the appellants that something which is not prohibited should be presumed to be permitted has to be answered in the negative by categorically holding that whatever has not been provided for by the Apex Court cannot be presumed to be permitted,



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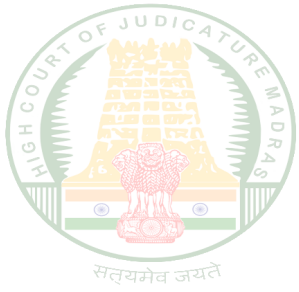
inasmuch as, the entire exercise undertaken by the Apex Court was to ensure that Colleges are prevented from taking admissions on their own and they have to abide by the admission process already in place.”

43.24. The tabular column drawn out by Hon’ble Mr.Justice N.Anand Venkatesh, would show how these admissions are illegal. Once it is found that the admissions are illegal, the fact that the students were allowed either to continue the Course or to appear for examinations does not matter. In the case on hand each and every one of the appellants viz. the students have filed affidavits undertaking that they will not claim equity while securing the interim orders. We are therefore not enamoured by the argument based on sympathy.

43.25. In view of the above, Point Nos. 1 and 2 are answered against the appellants. The Writ Appeals filed by the students and the respective Colleges will stand dismissed.

Point No.3:

74/80



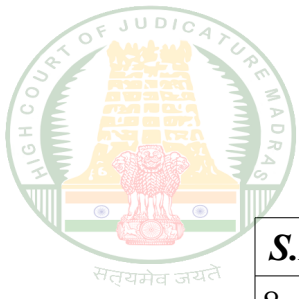
44. We are now left with the third question viz. the compensation aspect. The Writ Petition Court has found that the denial of admission to the 28 students viz. the petitioners in WP No.31921 of 2017 have been illegally denied admissions. Out of the 28 students 18 are on Appeal before us. The prayer in the Writ Petition is for discharging the illegally admitted students and to admit these students, due to the lapse of time, the prayer cannot be granted, but that by itself shall not be a ground to leave these meritorious students high and dry. In *Dr.P.Sidharthan Vs. Government of Puducherry in W.A.No.861 and 862 of 2017 dated 27.09.2023*, we have considered a similar situation and we have awarded a compensation of Rs.15,00,000/- and apportioned it between the Institution and the CENTAC at Rs.10,00,000/- and Rs.5,00,000/- respectively. We do not find any ground to deviate from the above judgment.

44.1. Out of the 18 students, who are on Appeal before us, the first appellant viz. Dr.A.Aswin has been awarded compensation in WA No.808 of 2021 dated 29.07.2021, where he figured as the fifth respondent and the fourteenth appellant viz. Dr.R.Mano, a student allotted to Pondicherry



Institute of Medical Science and Research, has accepted compensation in WEB COPY WA No.796 of 2021 dated 29.07.2021 where he figured as the fifth respondent. Hence except these two appellants viz the first appellant and the fourteenth appellant in WA No.1438 of 2021, the other appellants would be entitled to compensation. We fix the compensation payable at Rs.15,00,000/- each and the same is to be paid at Rs.10,00,000/- by the Institute to which that student was allotted and Rs.5,00,000/- by the CENTAC. The details of the allotment are as follows:

<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Institutions</i>
1.	Dr.L.Sathish Kumar	Mahatma Gandhi Medical College & Research Centre, Puducherry.
2.	Dr.Monisha. R	Mahatma Gandhi Medical College & Research Centre, Puducherry.
3.	Dr.Murugadas. S	Aarupadai Veedu Medical College, Puducherry.
4.	Dr.Malar Mannan. D	Vinayaka Missions Medical College, Karaikal, Puducherry.
5.	Dr.M.Baghyalakshmi	Aarupadai Veedu Medical College, Puducherry.
6.	Dr.Baba C.V. Brindha	Aarupadai Veedu Medical College, Puducherry.
7.	Dr.M. Madhavan	Aarupadai Veedu Medical College, Puducherry.



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<i>S.No.</i>	<i>Name of the Candidates</i>	<i>Institutions</i>
8.	Dr.Berenice Stella. B	Vinayaka Missions Medical College, Karaikal, Puducherry.
9.	Dr.A.Ramesh Bala	Vinayaka Missions Medical College, Karaikal, Puducherry.
10.	Dr.Haripranav. S	Aarupadai Veedu Medical College, Puducherry.
11.	Dr.S.Sivaranjini	Vinayaka Missions Medical College, Karaikal, Puducherry.
12.	Dr.Devanatha Sarma	Mahatma Gandhi Medical College & Research Centre, Puducherry.
13.	Dr.Monica	Mahatma Gandhi Medical College & Research Centre, Puducherry.
14.	Dr.Sumit Singh Kaushal	Sri Venkateswara Medical College and Research Centre, Puducherry.
15.	Dr.P.Nedunchezian	Vinayaka Missions Medical College, Karaikal, Puducherry.
16.	Dr.Majie Xavereena Aarthi. J	Aarupadai Veedu Medical College, Puducherry.

The compensation shall be paid within a period of six weeks from today.

45. In fine, Writ Appeal in WA No.1438 of 2021 will stand partly allowed, apart from the compensation each of the appellant would be entitled to Rs.1,00,000/- towards costs payable by the Colleges shown in the Tabular Column against each of the appellant except first and fourteenth appellants. The other Writ Appeals will stand dismissed. We, however,



W.A.Nos.835 of 2021 etc., batch

make no order as to costs in those Writ Appeals since we have found that

the CENTAC and the Health Department of Government of Puducherry

were in active connivance with the Colleges and have helped them to great

extent to implement their scheme to make illegal admissions. We sincerely

hope that the Administration changes its attitude towards Medical Education

at least in future.

(R.SUBRAMANIAN, J.) (R.KALAIMATHI, J.)

09.11.2023

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking order

dsa/jv



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1. The Joint Secretary,
National Medical Commission (NMC),
(Formerly known as Medical Council of India),
Pocket – 14, Sector – 8, Dwarka,
New Delhi – 110 077.
2. The Secretary (Health),
Health and Family Welfare Services Department,
Government of Puducherry, Secretariat,
Goubert Avenue, Puducherry – 605 001.
3. The Director,
Directorate of Health and Family Welfare Services (DHFWS),
Victor Samuel Street, Puducherry – 605 001.
4. The Convenor,
Centralised Admission Committee (CENTAC),
PEC Campus, ECR Road,
Pillaichavadi, Puducherry – 605 014.
5. The Dean,
Aarupadai Veedu Medical College & Hospital,
Pondy – Cuddalore Main Road,
Kirumampakkam, Puducherry – 607 402.
6. The Section Officer,
V.R. Section,
High Court.



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VERDICTUM.IN



W.A.Nos.835 of 2021 etc., batch

R.SUBRAMANIAN, J.
and
R.KALAIMATHI, J.

dsa/jv

**W.A.Nos.835 to 839, 841, 843 to 846, 849 to 853,
857, 861, 863, 864, 869, 870, 871, 873, 881, 882,
884 to 892, 901, 1119, 1031, 1030, 1133, 1134,
1135, 1137 and 1438 of 2021
and all connected Miscellaneous Petitions**

09.11.2023

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