

(2012) 11 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 26241. 26677. 27086. 27272, 27748. 29026.
29717, 30363, 33742, 33748, 33749, 33756, 33757, 33758, 33760,
33766, 33779, 33908, 34055, 34056, 34143, 34341, 34466, 34792
of 2012

Chandra Sai Vasudha Annapurna Represented by her father
and natural guardian Chandra Durga Sagar

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 2 ALT 740

Hon'ble Judges : V. Eswaraiah, J;N. Ravi Shankar, J

Bench : Division Bench

Advocate : Thalapally Rajashekhar in WVMP No. 3474 of 2012 and WPMP Nos. 42893, 43822, 44887 of 2012, Sri G. Venkata Reddy in WVMP Nos. 3476, 3477, 3478, 3479, 3854, 3855, 3856, 3857, 3858, 3860, 38709, 42950, 44242 of 2012, Sri Venkateshwar Varanasi in WPMP No. 35337 of 2012, Sri V. Mallik in WVMP No. 3475 of 2012, Sri C. Sumon in WPMP Nos. 42948, 42958 of 2012, Sri K.R. Prabhakar in WPMP No. 43145 of 2012, Sri N. Nagavani Prasuna in WPMP No. 43434 of 2012, Sri S. appadhara Reddy in WPMP No. 43677 of 2012, for the Appellant; K.R.K.V. Prasad for Respondent Nos. 5 to 7, Sri Sarang Afzalpurkar for Respondent Nos. 8 to 10, Sri K.R. Prabhakar for Respondent No. 13, Sri G. Vidyasagar for Respondent Nos. 11 and 12 in WVMP No. 3474 of 2012, in WVMP No. 3479 of 2012, Sri S.R. Ashok Senior Counsel for Sri Challa Gunaranjan for Respondent No. 3 in WVMP No. 3474 of 2012, in WVMP Nos. 3477, 3476, 3475, 3855, 3857, 3860, 3858, 3856, 3854 of 2012 and Writ Petition Nos. 30363, 33758, 33779, 33908, 34341, 34792 of 2012, in Writ Petition Nos. 33742, 33756, 33766, 34466 of 2012, for M/s Indus Law Firm for Respondent No. 4 in WVMP No. 3477 of 2012, Sri A. Prabhakar Rao SC, for Respondent Nos. 1 and 2 in Writ Petition No. 34143 of 2012, in WVMP No. 3474 of 2012, Writ Petition Nos. 33742, 34466 of 2012, in WVMP Nos. 3479, 3478 of 2012 and Writ Petition Nos. 33756, 33766 of 2012, in WVMP Nos. 3475, 3855, 3857, 3860, 3856, 3854 of 2012 and Writ Petition Nos. 33758, 33779, 33908, 34341, 34792 of 2012, for NTR University for Respondent No. 1 in Writ Petition No. 27748 of 2012, for NTR University for Respondent No. 3 in WVMP Nos. 3477, 3858 of 2012 and Writ Petition No. 30363 of 2012, for Respondent Nos. 3 and 4 in WVMP No. 3476 of 2012, Sri M/s Indus Law Firm for Respondent No. 2 in WVMP Nos. 3479, 3478 of

2012 and Writ Petition Nos. 33756, 33766, 27748 of 2012, in WVMP No. 3476 of 2012, in Writ Petition No. 34143 of 2012, Sri T. Janardhan Reddy for Respondent Nos. 3 and 4 in WVMP Nos. 3479, 3478 of 2012 and Writ Petition No. 27748 of 2012, for Respondent Nos. 5 and 6 in WVMP No. 3477 of 2012, Sri M/s Indus Law Firm for Respondent No. 4 in WVMP Nos. 3474, 3855, 3857, 3860, 3858, 3856 of 2012, 3475, 3854 of 2012 and Writ Petition Nos. 30363, 33742, 33758, 33779, 33908, 34341, 34466, 34792 of 2012, Additional Advocate General for Respondent No. 1 in WVMP Nos. 3476, 3477 of 2012 and Writ Petition No. 30363 of 2012, Sri K. Ramakanth Reddy for Respondent No. 5 in WVMP No. 3475 of 2012, Sri T. Niranjan Reddy for Respondent Nos. 5 to 10 in Writ Petition No. 30363 of 2012, Sri P. Radhiva Reddy for Respondent No. 5 in Writ Petition No. 33908 of 2012, GP for Higher Education for Respondent No. 1 in WVMP No. 3854 of 2012, for the Respondent

Final Decision : Dismissed

Judgement

1. Initially, the following writ petitions relating to admission into "C" category management quota seats of MBBS in Apollo Institute of Medical Sciences and Research, Jubilee Hills, Hyderabad (for short Apollo Institute) are filed. The said Institute is a non-minority private medical college. The reliefs sought for in the writ petitions are as follows:

Pursuant to the permission accorded by the Medical Council of India (for short MCI) vide its letter No. MCI No. 34 (41)/2012-Med/114704 dated 28.6.2012, Dr NTR University of Health Sciences, Vijayawada, Andhra Pradesh (for short NTRU) vide proceedings No. 995/A2/11 dated 10.7.2012, granted provisional affiliation to Apollo Institute for starting of 1st year MBBS course for the academic year 2012-13 and permitted to make admissions with an intake of 100 students for the academic year 2012-13, subject to condition that Apollo Institute shall follow the regulations made by the University/Government of Andhra Pradesh and also the Graduate Medical Education Regulations, 1997 of the MCI in making admissions, in conducting examinations and in respect of all other related matters from time to time. It was also specified therein that any deviation in that regard may lead to disaffiliation of the college without any notice.

2. The state of Andhra Pradesh has enacted the Act called A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 to curb the evil practices of collecting the Capitation fee in order to avoid frustration among the meritorious and indigent students and to maintain excellence in the standards, of education. The capitation fee means any amount collected in excess of the fee notified by the Government. The admissions are required to be made in medical colleges based on the weightage of the marks secured in the relevant science subjects of the intermediate and weightage to the marks secured in the prescribed common entrance test. Section 3 of the Regulation of Graduate Medical Education, 1997 also provide for similar procedure for selection of the students.

3. The admissions into Undergraduate Medical and Dental courses, are governed by the Rules called "Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulations of Admissions into Under Graduate Medical and Dental Professional Courses) Rules, 2007 (for short the Rules 2007). The relevant definitions and Rule 6 -C are extracted as under;

2. Definitions:

1. In these rules, unless the context otherwise requires;

(i).. "Act" means the Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 (A.P. Act No. 5 of 1983).

(v).. "Competent Authority Seats" means the seats earmarked from out of the sanctioned intake of seats in each course and in each College to be filled by the Committee for Admissions for constituted by the Competent Authority.

(vii).. "Management Seats" means the seats earmarked from out of the sanctioned intake of seats in each course to be filled in the manner as prescribed in these rules towards Management quota.

(viii).. "Inspecting Authority" means the Authority appointed by the Competent Authority for inspecting and scrutinizing the admissions of the candidates made in the Unaided Non-Minority Professional Institutions.

(ix).. "Institutions" means, unless otherwise specifically mentioned, all the Un-aided Non-Minority Professional Colleges imparting Professional Education in Medical and Dental Courses.

(xiii) "Qualified Candidates" in respect of Management seats shall be the candidate assigned ranking in common Entrance Test conducted by the Association of Managements or assigned ranking in the merit list prepared by the college out of the applications received as the case may be who shall be eligible for admission in C-category seats.

The Rule 6(c) of the Rules, 2007 reads as follows.

6. Procedure for admissions:

(A).. TO FILL UP COMPETENT AUTHORITY SEATS

(B).. TO FILL UP EAMCET RANKING BASED MANAGEMENT SEATS:

(C).. TO FILL UP MANAGEMENT SEATS:

(C - Category - 40% of the sanctioned intake of the seats) "Management Seats"
- The seats shall be filled by the individual College Managements/Committee of Managements in the order of merit in a transparent manner by following the procedure as detailed below :-

(1). Individual College management shall give a notification in a leading newspaper inviting the prospective candidates to approach the college office for

the applications for the said course.

(2). The College office shall invariably issue applications to all the candidates who request for applications.

(3). The filled in applications along with the necessary certificates shall be submitted by the candidates to the College office within the prescribed time period fixed by the College office.

(4). The College shall invariably issue a receipt of the application received.

(5). The College shall scrutinize all the applications received in respect of the eligibility in Biology, Physics and Chemistry subjects in 10 + 2 Course.

(6). The College shall prepare a merit list of all the candidates who have applied to the college based on the marks obtained in the three subjects mentioned in instruction (5) above and the interview conducted by the College to prevent multiple blocking of the seats in more than one college.

(7). The merit list prepared by the college shall be sent to the Dr. NTRUHS for scrutiny and approval from time to time till the final date of admission. (6 & 7 has been amended as per G.O.Ms.No. 181 dt. 21-05-2008)

(8). Dr. NTR University of Health Sciences shall verify the merit list and accord approval.

(9). The merit list approved by Dr. NTR University of Health Sciences containing the names of the applicants and the marks obtained by them shall be prominently displayed on the notice board of the college.

(10). Admissions shall be made by the College only on the basis of the merit list approved by the Dr. NTR University of Health Sciences.

4. The MCI issued regulations called "Regulations on Graduate Medical Education, 1997" (for short the Regulations 1997). The Regulation 5 deals with "selection of students", which reads as under;

5. Selection of Students: The selection of students to medical college shall be based solely on merit of the candidate and for determination of the merit, the following criteria be adopted uniformly throughout the country:

1. In states, having only one Medical College and one university board/examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration;

(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges.

4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character.

5. Procedure for selection to MBBS course shall be as follows:

(i) in case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above;

5. It is stated that pursuant to the grant of provisional affiliation by proceedings dated 10.7.2012, the Apollo Institute issued a notification on 17.7.2012, inviting the candidates to approach the college for the applications, which reads as under;

6. Pursuant to the said notification, in all 103 applications were sold, out of which 97 were applications were received by Apollo Institute, which include the applications of the writ petitioners herein. The case of the writ petitioners is that though they secured highest percentage of marks in the qualifying examination of 10+2 Bi.P.C. and submitted their applications fulfilling the required conditions along with a Demand Draft for Rs. 39,500/-drawn in favour of the Registrar, NTRU to join the Apollo Institute, but they were denied the admission and less meritorious candidates were selected, behind their back. The application form contains the following requirements under Management Quota.

FOR RESIDENT INDIAN STUDENTS:

1. Memorandum of Marks of Intermediate/CBSE plus two
2. S.S.C. Marks Memo for Evidence of Date of Birth and College Transfer Certificate (TC)
3. Certificate of Social Status (Caste) if the candidate belongs to SC/ST/OBC.
4. Study & Conduct Certificates from VI Class to Intermediate
5. Proof of Income (IT assessment copy/Salary certificate)
6. If appeared for Eamcet, Rank Card and Hall Ticket copies.
7. Migration Certificate from last studied institute for the candidates who have studied other than BOI, A.P.
8. Color Passport size Photos (10 copies)

9. Note: If the candidate studied other than intermediate of BOI, AP, such candidate shall submit Equivalence certificate issued by Board of Intermediate Education, Andhra Pradesh. In Addition To the Above Original Certificates, He/ She has to submit Four Sets of photocopies of all above certificates.

10. DD for Rs. 39500/- drawn in favor of the Registrar, Dr. NTR University of Health Sciences, payable at Vijayawada.

11. The State of Andhra Pradesh has decided to ask MBBS students to execute a bond for one year compulsory service in the designated PHCs/hospitals of the Government after completion of their study and Internship.

12. The students seeking admission to MBBS course may be required to face a qualifying examination if the medical council of India makes such examination mandatory for admission under Management quota seats as well.

The application form also contains Declaration, which reads as follow;

DECLARATION:

1.. The information provided in this application is correct and I am responsible for any discrepancies that may come up.

2.. All the documents required have been submitted and consequences of any documents that have not been submitted will be my responsibility.

3.. I have gone through the terms and conditions mentioned in the application and shall abide by them.

4.. I shall abide by all the rules and regulations of the Institution at all the times.

5.. I shall abide to all the rules & regulations/ terms & conditions of governing institutions (Medical council of India, Dr. NTR University of Health & Sciences, Government of India, Government of Andhra Pradesh etc.)

6.. This is only an application and does not guarantee admission into 1st MBBS Program. Admission will be based on merit (marks & interview), submission of all required documents and satisfaction of criteria required for admission. Once all the above are found to be satisfactory a fresh application form along with undertaking need to be filled and signed if admission is granted.

7.. I shall attend/work as Junior Resident in rural area allotted by the Govt. of AP and abide by the rules and regulations after completion of one year of House Surgency.

7. The case of the petitioners is that the interview contemplated under Clause (b) of Rule 6(c) is only to prevent multiple blockage of seats in more than one college but not for elimination of meritorious applicants from the merit list to be sent for NTRU for approval, but the aforesaid Declaration No. 6 indicates that admissions will be based on merit of marks and interview and submission of all required documents and satisfaction of criteria required for admission. That as

per the Rules, the criteria required for admission in management quota is only the merit of marks after ascertaining the information whether the candidate has applied in any other college so as to ensure that the seat shall not go waste, of course, subject to payment of fee prescribed for management quota seat of Rs. 5,50,000/- per year and submission of original documents at the time of admission. It is the further case of the petitioners that no notice was given to them nor exhibited in the notice board of the Apollo Institute or its web site intimating the interview and its date and calling them to attend the interview and they were absolutely unaware of conduct of any interview, though they were regularly pursuing with the college requesting it to inform the status of their admission, no information was given to them and it was told that the merit list is yet to be prepared. Some of the petitioners have also made representations before the NTRU and alleges that no action was taken by the NTRU also.

8. A Public Interest Litigation in PIL No. 214 of 2012 and several other writ petitions are filed before this Court complaining that the private medical colleges are committing various irregularities and illegalities with regard to admissions into MBBS course for category "C" management quota seats and allotting the seats to less meritorious candidates without following the merit and transparency as required under the rules and sought for a direction to call for the applications on-line as per the directions of this Court in W.P. No. 15555 of 2006 dated 31.07.2007 as in the case of Muslim Minority Institutions case. As the rules relating to the admissions in the management quota under Rule 6-C of G.O.Ms.No. 136 were not amended, this Court declined to grant interim direction to call for the applications on-line, but however, directed that the admissions shall be made strictly in accordance with merit and transparency.

9. In the present batch of writ petitions, the first writ petition i.e., W.P. No. 26241 of 2012 was filed on 22nd August, 2012 and this Court by order dated 24.8.2012 while admitting the writ petition issued urgent notices to the respondents returnable in two weeks. Thereafter, in W P No. 29026 of 2012 in view of the various allegations made therein, this Court by order dated 14.9.2012 in WPMP No. 37048 of 2012 directed the NTRU to submit a report about the action taken with regard to the complaint said to have been made by the petitioners by 21.9.2012 to which date the matter was adjourned.

10. Thereupon, the NTRU has submitted its report with regard to the action taken pursuant to the order of this Court dated 14.9.2012. In the said report, it is stated that this Court by order dated 17.7.2012 in W.P. No. 21504 of 2012 directed the NTRU to ensure that non minority private medical colleges scrupulously adhere to the rules and the directions of the Division Bench of this Court before approving the admission of the candidates under "C" category management quota seats. That this Court by order dated 31.7.2012 in PIL MP No. 264 of 2012 in PIL No. 214 of 2012 and batch directed the NTRU to deal with the merit list sent to it by the respondents/ managements for approval in accordance with law and take such further steps, however, any admissions issued

or admissions granted shall be subject to result of final disposal of the writ petition. That in view of the above directions of this Court dated 31.7.2012 the NTRU has started verification of the merit list submitted by the colleges for selection of the candidates for admission under "C" category and the Competent Authority has constituted a committee for verification of the merit list, enclosures submitted by the private unaided non minority medical colleges. The Dean/ Principal, Apollo Institute has submitted a merit list of the candidates for admission into "C" category seats on 31.7.2012. That on verification, the committee found that there is no proof of display of merit list in notice board or web site and that out of the list of 40 candidates, 36 candidates are eligible and 4 candidates are not eligible for MBBS/BDS courses and that the merit list of Apollo Institute is not in descending order and the merit list needs to be revised.

11. The report further states that a complaint was received on 1.8.2012 from one ANB Satya Sai, father of Mr. A Subrahmanya Sai Ram Prasad stating that his son secured 98.83 marks in Bi.P.C. group and not allotted seat. Based on the said complaint, by letter dated 7.8.2012, an explanation was called for from the Apollo Institute and in turn the Apollo Institute submitted its explanation vide its letter dated 9.8.2012 stating that 97 applications were received within the stipulated time, which were screened by the college committee and the list of the applicants was prepared and displayed in the college notice board. That 71 applicants have not submitted the original certificates, therefore it was decided to provide one more opportunity to them to submit the original certificates by appearing for the interview scheduled on 26.7.2012. That in the interview held on 26.7.2012, 40 applicants appeared for the interview and submitted their relevant original documents and as only 40 applicants met with the selection criteria and completed all the requirements, the same list*of names was submitted to NTRU for necessary approval on 31.7.2012. It was specifically stated that applicants who did not appear for the interview were rejected by the college committee. According to the college, out of 97 candidates, 26 candidates submitted original certificates, but it is not indicated as to whether the said 26 candidates appeared for the interview on 26.7.2012 or the 40 applicants appeared on 26.07.2012 are out of 71 or 97. Be that as it may, it is clear that the Apollo Institute did not send any merit list of 97 candidates but has only sent a list of 40 candidates who are stated to have attended for the interview said to have been conducted on 26.7.2012.

12. The competent authority examined the explanation of the Apollo Institute and approved the merit list of 39 candidates on 14.08.2012 without there being the merit list of 97 candidates before the NTRU, and directed to consider the case of Mr A Subrahmanya Sai Ram Prasad who had not appeared in the interview on 26.07.2012 for admission into MBBS course for the academic year 2012-13 before placing the final list in the college notice board.

13. In the report it was further stated that the NTRU has received a complaint dated 9.8.2012 by fax from Dr. B.S. Sreedhar, Member, Task Force Committee,

Ministry of Food Processing, Industries, Government of India stating that rules and regulations were not followed by Apollo Institute in admissions into "C" category seats. That President, Save Merit Society has made a complaint dated 13.8.2012 making similar allegations with regard to admissions into MBBS course under Management Quota "C" category seats. That in view of the said complaints, the NTRU constituted an enquiry committee which met on 22.8.2012 and verified the records of the college and in the preliminary verification the Principal of Apollo Institute also attended. In the preliminary report it was stated that all the 97 applicants have submitted demand drafts for Rs. 39,500/- at the time of submission of the applications forms but the college has sent a list of 40 selected candidates, and therefore the NTRU authorities instructed the college to send the whole merit list, but the college has sent the same list which was previously sent except one candidate by name Mr. Munagala harasha Bharat who is a NRI student who does not have physics in his qualifying examination. The Principal, Apollo Institute represented that the candidature of 57 candidates was rejected as they have not attended the interview conducted on 26.7.2012 and that they have not submitted original certificates. The college authorities did not produce the receipt book for the applications sold and it is stated that the receipt book is not being maintained by them. The names of the complainants were not found in the selected list of 40 candidates submitted by Apollo Institute. It is stated that Pasumarthi Mounica, Y. Jahnvi Reddy, M. Yashaswee Reddy, G Swetha Chowdary and V. Sai Amarnath have made complaints/representations stating that they have submitted their application forms complying with all the requirements but the college has not displayed the merit list of the selected candidates nor informed with regard to the status of their applications and they have been kept out of the selection process by concealing the details of the admissions in contravention of the Rules. It is stated that till the NTRU approved the list on 14.8.2012 none of the candidates were aware of the admissions and the list submitted by the Apollo Institute to the University. The father of M. Yashaswee Reddy made several representations to publish the merit list and particulars of the candidates who have secured the admissions and the marks secured by them and requested the NTRU not to send the final list to MCI and to take appropriate action against Apollo Institute to cancel the affiliation of the college. As the University has also received further complaints from the candidates who secured higher marks than the ones selected, it has decided to place the matter before the Executive Council in its meeting to be held on 17.9.2012 along with the enquiry report. The Executive Council after elaborate discussions, resolved to conduct a detailed in-depth enquiry giving opportunity to the complainants as well as the colleges and accordingly constituted a Three Member committee on 21.9.2012. Then only the NTRU has displayed the list of all the candidates applied, along with the approved merit list, on its website.

14. Thereafter, the NTRU has submitted another report dated 22.9.2012 stating that the Committee which met on 21.9.2012 at the Executive Council Hall of NTRU wherein the petitioners, the Principals of three medical colleges i.e., Apollo

Institute, Malla Reddy Institute of Medical Sciences and the NRI Institute of Medical Sciences, Visakapatnam have attended. It is stated that the committee has enquired six candidates as regards their grievance for not having been selected and found some grievances/allegations against Apollo Institute and given its conclusions, which read as under;

1. G.O.Ms No. 136 HM & FW (E!) Department dated 30.4.2007 did not clearly mention about the interview.
2. The candidates have to be selected only on the basis of merit by giving sufficient time for admission procedure.
3. All the candidates should be informed properly by sending the interview letter by registered post after giving sufficient time.
4. All the above 6 (six) candidates applied to Apollo Medical College allege that they have not received proper information regarding the time of interview and in spite of having merit they could not get the seat
- 5.. Their plea for allotment of seat may be considered.

15. In view of the report of the committee, the University informed the Apollo Institute vide its letter No. 9043/MBBS/BDS/EA1/2012 dated 22.9.2012 to review the merit list of all the candidates applied under "C" category for the year 2012-13 duly verifying the copies of eligibility and to resubmit the same to the University on or before 25.9.2012 for further action.

16. On 24.9.2012, learned counsel for Apollo Institute submitted that the merit list of 40 candidates applied under "C" category for the year 2012-13 submitted on 31.07.2012 is in accordance with Rule 6(c). However, while rejecting the contention of the Apollo Institute, this Court passed orders in WPMP No. 36758 of 2012 in WP No. 28677 of 2012 and batch dt 24.9.2012 directing the respondents to review and prepare the merit list of all the 97 applicants as directed by the University and submit the same to this Court by 26.9.2012 for passing further orders in the matter.

17. The NTRU by its proceedings dated 22.9.2012 directed the Apollo Institute to review the merit list of all the 97 candidates applied under "C" category management quota seats for MBBS for the year 2012-13 and to resubmit the same for its approval, however, the Apollo Institute did not choose to implement the said directions of the NTRU or the orders of this Court dated 24.9.2012.

18. The Apollo Institute did not choose to implement the orders of this Court and to rectify its mistake and filed vacate stay petitions. This Court on consideration of the matter by order dated 26.9.2012, while rejecting the contentions raised by Apollo Institute, dismissed the vacate stay petitions and made the interim orders dated 24.9.2012 as absolute and directed the respondents to implement the interim orders dated 24.9.2012 to review the merit list and do justice to the meritorious candidates. Aggrieved by the orders dated 26.9.2012, the Apollo

Institute and various selected candidates filed Special Leave Petitions to Appeal (C) before the Supreme Court in SLP (Civil) Nos. 29811 to 29818 of 2012 and batch. However, the Hon'ble Supreme Court after hearing them by order dated 15.10.2012 dismissed the said SLPs.

19. We have opined that the interview contemplated under Rule 6-C is only to prevent multiple blockage of seats but not to dispense with the merit, however, while the grievance of the petitioners is that no notice about interview was given to them and in fact no notice was put up on the notice board of the Apollo Institute, but it appears in the order dated 26.9.2012 in para 8 a typographical mistake is crept in stating "except putting upon the notice board of the college" which actually should be "without putting upon the notice board of the college". The contention of the petitioners is that none of the petitioners have pleaded that notice was put upon the notice board but in fact the petitioners have never stated that notice was put upon the notice board.

20. Even after dismissal of the Special Leave to Appeal (C) Nos. 29811 to 29818 of 2012 filed against the orders of this Court dated 26.9.2012, the Apollo Institute has not implemented the orders. The NTR University again submitted another action taken report dated 9.10.2012 stating that as per the available, information with the university, the University has prepared the list of 97 candidates who have applied with Apollo Institute in order of merit for admission into MBBS Course for the academic year 2012-13 under management quota in Apollo Institute and submitted the same to the High Court and sent a copy of the same to the Apollo Institute on 3.10.2012 with a direction to take immediate necessary action for review of admissions and also called for explanation within 48 hours from Apollo Institute for not submitting the merit list of all the candidates applied vide its letter No. 1770/MBBS/BDS/EA1/2012 dated 4.10.2012. As no explanation was submitted, the NTRU issued a show cause notice vide letter NO. 1770/MBBS/ BDS/EA1/2012 dated 8.10.2012 informing as to why action cannot be initiated against the college for not implementing the directions of the Hon'ble High Court of A.P. and directions of the University as per Rules, within 7 days from the date of receipt. In response to the same, the Apollo Institute submitted its explanation through email dated 8.10.2012 reiterating its stand stating that they have already admitted 40 candidates who had submitted their original certificates along with application and appeared for interview held on 26.7.2012 and the other candidates neither attended the interview nor submitted their original certificates and hence could not be considered for selection.

21. In the report submitted by the NTRU on 9.10.2012, it was clearly mentioned that if the merit of 97 candidates is taken, only six candidates initially selected by the Apollo Institute i.e., Shruti Chikyala, Adipudi Subramanya Sairam, Movva Teja Ramya, Aashritha M. Tatipatti Satya Shika and T. Raga Samhita who have secured 99 %, 98.83 %, 95.33 %, 94.83 %, 94.83 % and 94 % are only found eligible and the other 34 candidates who have secured less than 92.83 % marks

i.e., the marks secured by the 40th candidate in the overall merit list of 97 candidates were found ineligible.

22. Thereafter the NTRU filed another action taken report on 15.10.2012 stating that the college has not submitted any merit list of candidates along with the record, therefore notices have been issued but inspite of the issuance of the notices calling for explanation, the Apollo Institute has not submitted any explanation and the NTRU has then issued a show cause notice dated 8.10.2012 informing as to why action should not be taken against the college for not implementing the directions of this Court and the directions of the University. However, ultimately the Apollo Institute submitted its explanation dated 8.10.12 through email reiterating its stand, which was already discussed in the above paras.

23. In such circumstances, we are of the opinion that the explanation offered by the Apollo Institute on 8.10.2012 through email is in derogation of the orders of the University and also the orders of this Court and the attitude of the college shows that it has no respect for the rule of law and the directions of the University and this Court. The action of the Apollo Institute in admitting 34 less meritorious students, is in utter violation of the regulations of the MCI and Rule 6-C of the Rules, 2007.

24. For the sake of convenience, the various merits lists prepared by the Apollo Institute and the NTRU for 40 seats under "C" category management seats are extracted hereunder;

A) The list of initially selected candidates by the Apollo Institute;

B) The list of eligible candidates for admission into MBBS course under "C" Category when the list of 97 applicants were considered in the order of merit, prepared by the Registrar NTRU dated 9.10.2012;

C). The list of six candidates who are eligible for admission into MBBS courses for the academic year 2012-13 under management Quota i.e. "C" category if 97 candidates list is considered. Prepared by Registrar NTRU dated 9.10.2012

D). The list of 34 candidates who are not eligible for admission into MBBS course for the academic year 2012-13 under management quota i.e., "C" category if 97 candidates list is considered. Prepared by Registrar, NTRU dated 9.10.2012

E). The list of candidates applied in order of merit as per the available information with the University for Admission into MBBS Course for the academic year 2012-13 under "C" category. Prepared by Registrar, NTRU dated 2.10.2012.

A). The list of initially selected candidates by the Apollo Institute;

B). The list of eligible candidates for admission into MBBS course under "C" Category when the list of 97 applicants were considered in the order of merit. Prepared by the Registrar NTRU dated 9.10.2012;

*Note: The candidates with Serial No. 1,2,11,15,17 and 28 are the 6 candidates common both in the merit list of 40 candidates submitted by the college and in the list of 97 candidates.

C). The list of six candidates who are eligible for admission into MBBS courses for the academic year 2012-13 under management Quota i.e. "C" category if 97 candidates list is considered. Prepared by Registrar NTRU dated 9.10.2012.

D). The list of 34 candidates who are not eligible for admission into MBBS course for the academic year 2012-13 under management quota i.e., "C" category If 97 candidates list is considered. Prepared by Registrar, NTRU dated 9.10.2012

E). The list of candidates applied in order of merit as per the available information with the University for Admission into MBBS Course for the academic year 2012-13 under "C" category. Prepared by Registrar, NTRU dated 2.10.2012

25. The above lists clearly show as to how Apollo Institute clearly ignored the merit. In spite of the above orders dated 22.9.2012 and 9.10.2012 of the University and various orders of this Court, the Apollo Institute has not chosen to rectify its mistake and has not implemented the orders of this Court and the University which were to prepare select list as per merit. If the selected candidates list prepared by Apollo Institute is compared with the revised merit list of 97 candidates, in the 40 meritorious candidates only 6 candidates from the select list of the Apollo institute would find place and 34 candidates are admittedly less meritorious and ineligible for admission. It would be pertinent to note that this Court, having considered various contentions advanced by both the sides, by order dated 17.10.2012 directed the Apollo Institute to make admissions into MBBS course under "C category as per the merit list drawn and submitted before this Court on 17.10.2012 and admit them on 20.10.2012, however, it failed to implement the same on some or other pretext. The relevant portion of the said order is extracted below;

5. It is now stated that the after the Hon"ble Supreme Court dismissed the above SLPs by order dated 15-10-2012, the Apollo Institute has prepared the merit list of the candidates under "C" category and filed into the Court. Learned Senior Counsel Sri SR Ashok, appearing for the Apollo Institute submits if the merit list is implemented, some of the candidates who have been already given admissions have to be cancelled. One more contingency is also pleaded by the learned counsel that if admissions are made as per the merit list now drawn, the candidates who are going to be admitted in the MBBS course will be short of attendance and, therefore, this anomaly has to be rectified. It is also stated that some of the candidates who are given admissions are not given any notice to put forth their case as they were not parties to these writ petitions.

6. In the light of the merit list now placed before this Court, the candidates who are already given admissions, are candidates who scored less marks than the meritorious candidates who were denied admission into the course. Once an irregularity and illegality is occasioned in the matter of admissions of MBBS

course by the Apollo Institute, the said irregularity and illegality cannot be perpetuated. That part, only around 17 days have been passed from the last of making admissions into various categories and the delay occurred is on account of the in action on the part of the Apollo Institute as they fail to implement the orders of this Court passed on 24-9-2012.

7. In so far as the contention that the candidates who were admitted in the College ignoring the rules were not given any notice before cancelling their admission, we are of opinion that the Apollo Institute is to be blamed for having violated the statutory rules in making admissions by giving a go-bye to the merit for the reasons best known to them. Further, the candidates who are illegally, irregularly and contrary to the rules have been admitted, have no vested right muchless legal right to contend that they have to be heard in the matter. No right has been accrued to them as their very admissions were made contrary to the rules.

8. In the circumstances, we direct the Apollo Institute of Medical Sciences & Research, Jubilee Hills, Hyderabad, to make admissions into MBBS course under "C" category as per the merit list drawn and submitted by them today i.e. 17-10-2012 and admit them on 20-10-2012 (Saturday) commencing from 10-30 am and complete the admissions on the same day in the supervision of the NTR University. It is also directed that the Vice-Chancellor of the NTR University shall depute two responsible senior officers from the University to oversee the admission process as per the merit list by the Apollo Institute.

9. Apollo Institute of Medical Sciences & Research, Jubilee Hills, Hyderabad and Dr. NTR University of Health Sciences, Vijayawada, shall inform the candidates, as per the merits list, as to the admissions that are going to take place on 20-10-2012 by publishing the same in leading daily news papers, by placing them on Appollo Institute's web site and the NTR University's web site also respective notice boards. The candidates be also informed to their E-mail addresses and also residential addresses informing the date of admissions.

26. In spite of aforesaid specific directions of this Court dated 17.10.2012, directing the Apollo Institute to admit 40 meritorious candidates out of 97 candidates, the Apollo Institute having initially decided to give some of them provisional admission, but refused to give them admission on the ground that either the originals have not been submitted or the account number is not tallying or the bank guarantee was not submitted in time. Therefore, the following writ petitions have been filed, seeking reliefs as indicated below;

27. Thereafter, the University filed another action taken report dated 26.10.2012 and 30.10.2012 stating that as per the directions of this Court dated 17.10.2012, the merit list was displayed in the website of the NTRU and that it has issued a notification on 18.10.2012 in leading newspapers informing the date of counseling and also informed the candidates by email wherever email addresses are available and sent messages through SMS wherever mobile numbers are

available and sent telegrams to residential addresses informing that admissions are going to take place on 20.10.2012. The Vice Chancellor of NTRU has deputed two senior officers of the University as observers to oversee the counseling process on 20.10.2012 and that the said officers have submitted a report stating that the college insisted to submit bank guarantees and the Apollo Institute stated that time was given to submit the bank guarantee upto 26.10.2012 but some of the petitioners have stated that though cash was taken on 20.10.2012 towards the fee of Rs. 5,50,000/- the cash was not accepted and they were not permitted to take the Demand Drafts and that some of other candidates contended that though the bank guarantee was taken on 26.10.2012, the same was not received. Therefore, this Court by order dated 29.10.2012 directed the Apollo Institute to receive the bank guarantees/demand drafts sought to be submitted on 26.10.2012. It is stated that the Apollo Institute has submitted a final list on 30.10.2012 with specific remarks for provisional approval of the said list. In the remarks column with regard the candidates already admitted it is stated that the admission was confirmed and in so far as many other candidates various flimsy reasons like Demand Draft was rejected on the ground that Apollo Institute name was not fully written therefore the account is not tallied, the bank guarantees were not submitted within the stipulated time and that the original certificates were not submitted etc, therefore the provisional admission given to them on 20.10.2012 may be withdrawn and in respect of the candidates who have not submitted the bank guarantees their application was rejected. Accordingly, the university provisionally approved the said list to admit some of candidates on 30.10.2012 however subject to further orders to be passed by this Court. Thus, it is clear that the Apollo Institute is bent upon to confirm the list of candidates who secured initial admission with it and recommended to reject the candidature of more meritorious candidates on various grounds as stated above as reflected in the remarks column of the list submitted by the Apollo Institute.

28. Sri Challa Sitaramaiah, learned senior counsel appearing for respondents 5, 6, 7, 9 and 10 in W. P. No. 30363 of 2012 submits that the merit list submitted by Apollo Institute on 31.7.2012 was approved on 14.8.2012 after considering the representation of Mr. A. Subrahmanya Sai Ram Prasad and once the merit list is approved by the NTRU, the rules or regulations do not empower the University to review the earlier merit list, therefore the action of the University directing the college vide proceedings dated 22.9.2012 to review the merit list in order of merit of 97 applicants is unsustainable. It is further stated that unless the statute specifically provide to review or revise, such power cannot be exercised by judicial or quasi judicial or administrative authorities and placed reliance on a judgment of the Supreme Court in Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, . In the said case, an Advertising Agency obtained permission from the Housing society to erect a hording and based upon the said permission, it has approached the municipal corporation for grant of necessary permission for erecting the hoarding. The said application was allowed by the corporation. The agreement with the Housing Society was also reviewed for a

further period of three years and it appears that the said agreement was renewed from time to time. A public interest litigation was filed in 2002 against the municipal corporation pertaining to grant of permission for erecting hording alleging that such permission is in violation of the guidelines issued by the corporation. In the PIL case filed in 2002 certain directions were issued. Thereafter it appears that some disputes arose and members of the society approached the Cooperative Court challenging the resolution passed by the society in favour of the Advertising Agency and sought for an interim relief. It is stated that the Cooperative Court dismissed the application for grant of interim relief and aggrieved by the said order, the said members of the society have filed a writ petition in 2007 and obtained interim orders. Pursuant to the interim orders granted in the writ petition, the corporation has withdrawn its permission granted earlier and thereafter the writ petition itself was dismissed as withdrawn. It was contended that unless the statute/rules permit, the review application is not maintainable in case of judicial or quasi judicial orders including the administrative orders and therefore when there is no power of review under the rules and regulations either this Court or the NTRU are not empowered to review the merit list.

29. On the other hand, it is the contention of the learned counsel for the petitioners that when the merit list itself is in violation of the rules and regulations and it is only a rectification of a mistake committed by the college, it cannot be said that the said directions of the university amounts to review of its earlier order of approval, more so, when the list of 39 candidates was approved, the merit list of 97 candidates was not placed before the university and the University as well as the students were kept in dark about the merit list of 97 candidates. However, it is submitted that under Rule 6 -C (5) and (6) the college shall prepare the merit list of all the candidates who have applied based on the marks obtained in the three science subjects and interview is contemplated only to prevent the multiple blockage of seats in more than one college but not to eliminate the meritorious candidates. It is stated that under Rule 6-C (7) the merit list prepared by the college shall consist the particulars of all the candidates applied in order of merit indicating the information about filing of the application in more than one college. Under Rule 6-C (7), (8), (9) and (10) the merit list prepared by the college shall be sent to NTRU for scrutiny and approval from time to time till the final date of admission which indicates that the merit list as prepared by the college and approved earlier is not final but it is entitled to have a scrutiny of the merit list from time to time till the final date of admissions. The NTRU has right to verify the merit list with reference to the marks obtained by the candidates applied and after the approval the college has to prominently display it on the notice board of the college. After approval of the merit list under Rule 9 only the admissions shall be made by the college under Rule 10. In the instant case, pursuant to the directions of this Court, the University directed to review the merit list well before the cut off date and that the merit list was never reviewed and rectifying the earlier approved list in order

of merit, cannot be said to be a review of an earlier order but it is only a rectification of the illegality and irregularity committed earlier by the college.

30. Therefore, we are of the opinion the judgment in Kalabharati case (1 supra) has no application to the facts of the present case.

31. Sri C.V. Mohan Reddy, learned senior counsel appearing for the petitioners In some of the writ petitions submitted that the Apollo Institute has been consistently, purposefully bent upon to reject the admissions of meritorious candidates in violation of the merit and transparency and trying to ratify the Illegal admission made by the Apollo Institute. It is stated that the Apollo Institute did not insist upon submission of bank guarantees in respect of the 40 candidates who were initially selected by it and discriminated the petitioners herein in insisting upon the submission of bank guarantee and there cannot be any justification in rejecting the candidature of meritorious candidates on the ground of non submission or belated submission of bank guarantee. He further submitted that during the course of litigation, the petitioners have secured admission in other courses such as BDS, B.Sc. Agriculture etc by paying entire fee to the respective colleges and they had submitted the custodian certificate issued by the colleges, therefore rejection on the ground of non submission of the original certificates is without any justification and unjust. It is stated that the University by its proceedings dated 22.9.2012 directed the Apollo Institute to review the merit list of all the 97 candidates in order of merit and to give the admissions but the Apollo Institute has never reviewed or revised the merit list and flouted the orders of this Court which were passed well within the stipulated time and much before the cut off date of 30th September, therefore the petitioners cannot be blamed and cannot be deprived of seat on the ground of cut off date or commencement of classes etc, for no fault of them. It is also contended that if the Apollo Institute has acted bonafidely and implemented the orders of this Court dated 14.9.2012, 24.9.2012 and 26.9.2012, the admissions would have been completed within the stipulated date of 30th September but unfortunately, the Apollo Institute has never been inclined to implement the orders of the NTRU and this Court, which is in clear violation of regulations of MCI Rules, 2007, and such illegal admissions cannot be permitted and the same needs to be curtailed by canceling the admissions.

32. He further contended that the last date of 30th September cannot come in the way of admission of the petitioners for the reason that they have been vigilantly pursuing their remedy, approached this Court in time and established the illegal admissions of the Apollo Institute and this Court having regard to the various contentions raised has passed orders dated 14.9.2012, 24.9.2012 and 26.9.2012 which are all passed before 30th September and even the orders dated 17.10.2012 are only beyond 17 days of the cut off date, which cannot be said to be too long a period. While referring to judgment of the Supreme Court in Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, he submitted that in the present case the delay was on account of perverse handling of the

admission process by Apollo Institute in collusion with the less meritorious influential candidates and the liberal attitude of NTRU and the said admissions are arbitrary, discriminatory illegal and repugnant to the regulations and the Rules. It is stated that keeping in view the arbitrary exercise of the selection process which resulted in illegal admissions of less meritorious candidates and the peculiar facts and circumstances of the case, the delay or the cut off date can be relaxed, which would only be encouraging the merit and curtailing the illegal admissions and the same would be in the interest of public at large. The Supreme Court in Asha case held that the rule of merit for preference of courses and colleges admits no exception and it is an absolute rule and all stakeholders and concerned authorities are required to follow this rule strictly and without demur. The relevant portion of the same reads as under;

4. The questions are:

(a) Is there any exception to the principle of strict adherence to the rule of merit for preference of courses and colleges regarding admission to such courses?

(b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?

(c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations?

(d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but still in strict compliance with the framework of regulations and judgments of this Court governing the subject?

... ..

36. Now, we shall proceed to answer the questions posed by us in the opening part of this judgment.

ANSWERS

(a): The rule of merit for preference of courses and colleges admits no exception. It is an absolute rule and all stakeholders and authorities concerned are required to follow this rule strictly and without demur.

(b): 30th September is undoubtedly the last date by which the admitted students should report to their respective colleges without fail. In the normal course, the admissions must close by holding of second counselling by 15th September of the relevant academic year (in terms of the decision of this Court in Priya Gupta³). Thereafter, only in very rare and exceptional cases of unequivocal discrimination or arbitrariness or pressing emergency, admission may be permissible but such power may preferably be exercised by the courts. Further, it will be in the rarest of rare cases and where the ends of justice would be subverted or the process of law would stand frustrated that the courts would exercise their extraordinary jurisdiction of admitting candidates to the courses

after the deadline of 30th September of the current academic year. This, however, can only be done if the conditions stated by this Court in Priya Gupta[3] and this judgment are found to be unexceptionally satisfied and the reasons therefore are recorded by the court of competent jurisdiction.

(c) & (d): Wherever the court finds that action of the authorities has been arbitrary, contrary to the judgments of this Court and violative of the rules, regulations and conditions of the prospectus, causing prejudice to the rights of the students, the court shall award compensation to such students as well as direct initiation of disciplinary action against the erring officers/officials. The court shall also ensure that the proceedings under the Contempt of Courts Act, 1971 are initiated against the erring authorities irrespective of their stature and empowerment.

Where the admissions given by the authorities concerned are found by the courts to be legally unsustainable and where there is no reason to permit the students to continue with the course, the mere fact that such students have put in a year or so into the academic course is not by itself a ground to permit them to continue with the course.

37. With all humility, we reiterate the request that we have made to all the High Courts in Priya Gupta case that the Courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even In case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction.

38. Besides providing the above answers to the questions, we also issue the following directions to put the matters to rest beyond ambiguity and to ensure that the authorities act in accordance with law:

From the records of this case it is clear that two different records are being maintained at the time of counselling. Firstly, the attendance register and thereafter photography and thumb impressions are taken and, secondly, the Committee maintains a record of the counselling where the students are actually given a specific college/course of his/her preference. We direct that the second set of records shall be maintained more accurately. It shall not only contain the signatures of the candidate and the Committee members but also the date and time when the candidate is given a seat and it shall also be signed by the candidate with the course clearly written by the Committee and signed by the candidate in the remarks column.

The essence of all the judgments dealing with this issue is to nurture discipline, fairness and transparency in the selection and admission process and avoid prejudice to any of the stakeholders. Thus, while we expect the authorities to be perfect, fair and transparent in the discharge of their duties, we make it clear

that the students who adopt malpractices in collusion with the authorities or otherwise for seeking admissions and if their admissions are found to be irregular or faulty in law by the courts, they shall normally be held responsible for paying compensation to such other candidates who have been denied admission as a result of admission of the wrong candidates.

The law requires adherence to a settled protocol in the process of selection and grant of admission. None should be able to circumvent or trounce this process, with or without an ulterior motive. The courts are duty-bound to ensure that litigation relating to academic courses, particularly professional courses, should not be generated for want of will on the part of the stakeholders to follow the process of selection and admission fairly, transparently and without exploitation.

Keeping in mind the hard reality that there are number of petitions filed in each High Court of the country, on the one hand challenging the admissions on varied grounds while, on the other, praying for grant of admission on merit to the respective professional courses of MBBS/BDS, the Court cannot lose sight of the fact that the career of the meritorious youth is at stake. These are matters relating to adherence to the rule of merit and when its breach is complained of, the judiciary may be expected to deal with the said grievances preferentially and effectively. The diversity of our country and the fact that the larger population lives in rural areas and there being demand for consistent increase in the strength of qualified medical practitioners, we are of the considered view that such cases, at least as of now and particularly for a specific period of the year require higher priority in the heavy business of court cases. We are not oblivious of the fact that the Hon''ble Judges of the High Court are working under great pressure and with some limitations. However, we would still make a request to the Hon''ble Chief Justices of the respective High Courts to direct listing of all medical admission cases before one Bench of the Court as far as possible and in accordance with the Rules of that Court. It would further be highly appreciable if the said Bench is requested to deal with such cases within a definite period, particularly during the period from July to October of a particular year. We express a pious hope that our request would weigh with the Hon''ble Chief Justices of the respective High Courts as it would greatly help in serving the ends of justice as well as the national interest.

33. In the Asha case (cited supra), by the date of decision nearly about 10 months time has elapsed from the cut off date of beginning of the course, therefore, the Supreme Court has directed to provide admission in the next academic year, but in the present case, for no fault of the petitioners, about 112 days time has lapsed from the date of beginning of the course, therefore it cannot be said that the admissions of more meritorious candidates for the present academic year is not possible but the regulation relating to the attendance is coming in the way.

34. In reply Mr. C.V. Mohan Reddy, learned senior counsel appearing for the writ petitioners submitted that in view of the judgments of the Supreme Court, the

merit and transparency cannot be sacrificed and in the instant case with a view to collect the capitation fee and to provide seats to the kith and kin of the high functionaries, the merit has been sacrificed and transparency has been violated contrary to the rules and regulations. The contention of the Apollo Institute and the learned counsel appearing for some of the admitted students with regard to the exhibiting the information on the notice board about the interview on 26.7.2012, the University after holding enquiries held that no notice was put on the notice board informing the date of interview nor the candidates were given any communication to the email address, telephone and correspondence address provided by them nor they have received any information with regard to the preparation of any merit list nor the same was exhibited on the notice board of Apollo Institute. It is stated that at the time of receiving applications, the officials of Apollo Institute have thoroughly examined the relevant documents which are required to be submitted along with demand draft for Rs. 39,500/-, though submission of demand draft was not required for filing of the application. It was further stated that the applications were received subjecting the applicants to difficulties and only after persistent persuasions made by them the applications were received. It was alleged that at every level the officials of Apollo Institute had adopted methods for elimination, however, having received 97 applications they have never prepared a merit list nor chosen to inform any of the candidate about the alleged interview said to have been conducted on 26.7.2012.

35. While answering the contention of the learned Sri Challa Sitaramaiah that the NTRU is not empowered to review the merit list, Sri C.V. Mohan Reddy that the decision of the NTRU directing the Apollo Institute to review the merit list and to rectify the mistakes crept in, is an administrative decision not traceable to any judicial or quasi judicial function and placed reliance on decisions of the Supreme Court in *D. Ganesh Rao Patnaik and Others Vs. State of Jharkhand and Others*, wherein the Supreme Court held that as a principle of law, there is no legal bar or prohibition against an administrative body in seeking to review its earlier decision provided the parties likely to be affected by such a decision are afforded an opportunity of hearing. He further relied on a decision of Supreme Court in *R.R. Verma and Others Vs. Union of India (UOI) and Others*, wherein the Supreme Court held as under;

(5.) The last point raised by Shri Garg was that the Central Government had no power to review its earlier orders as the rules do not vest the Government with any such power. Shri Garg relied on certain decisions of this Court in support of his submission *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, *D.N. Roy and S.K. Bannerjee and Others Vs. The State of Bihar and Others*, and *State of Assam and Another Vs. J.N. Roy Biswas*, . All the cases cited by Shri Garg are cases where the Government was exercising quasi-judicial powers vested in them by statute. We do not think that the principle that the power to review must be conferred by statute either specifically or by necessary implication is applicable to decisions purely of an administrative nature. To extend the principle to pure administrative decisions would indeed lead to

untoward and startling results. Surely, any Government must be free to alter its policy or its decision in administrative matters. If they are to carry on their daily administration they cannot be hidebound by the rules and restrictions of judicial procedure though of course they are bound to obey all statutory requirements and also observe the principles of natural justice where rights of parties may be affected. Here again, we emphasise that if administrative decisions are reviewed, the decisions taken after review are subject to judicial review on all grounds on which an administrative decision may be questioned in a Court. We see no force in this submission of the learned counsel. The appeal is, therefore, dismissed.

36. Sri S. Ramachander Rao, the learned senior counsel appearing for the petitioner in W.P. No. 33908 of 2012, who is one of those students given admission among the 40 by the Apollo Institute, argued that this court's interim orders dated 14.09.2012, 24.09.2012, 26.09.2012 and 17.10.2012 have all been passed without notice to the admitted students making observations that their admissions were illegal or prejudicial to those students and therefore they cannot be sustained even though SLPs filed against them were dismissed. The contention is that mere dismissal of SLPs by the Supreme Court does not amount to affirming the above orders of this court on merits and consequently they should be set aside now on the rule of violation of audi alterem partem.

37. He also relied upon a decision of the Supreme Court given in Optiemus Infracom Ltd. Vs. Ishan Systems Pvt. Ltd. and Another, which no doubt lays down the proposition that grant of interim order without notice or opportunity to the party affected is arbitrary and contrary to the principles of natural justice. The other decisions cited by the learned counsel reiterate the same proposition and therefore are not mentioned. This contention however does not merit any acceptance.

38. It may be noted that the interim order dated 26.09.2012 would show that two learned senior counsel viz., Sri D. Prakash Reddy and Sri M.S. Prasad appeared for some of the unofficial respondents i.e. admitted students and they along with Sri S.R. Ashok, the another learned senior counsel appearing for the Apollo Institute were heard. Thus this cannot be said to be a case where the case of admitted students as such went totally unheard. In fact the learned senior counsel appearing for the Apollo Institute can as well be said to have argued the case of admitted students also as their case and the case of Apollo Institute are similar. This apart, the procedure adopted by the Apollo Institute is challenged in all these writ petitions as contrary to Rule 6(C) and therefore the contentions are more based upon adherence to fair procedure and fair principle.

39. In The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, relied upon by Sri C.V. Mohan Reddy and which pertains to a service matter, it has been held that where the validity of policy decisions of the Railway Board regulating seniority was challenged on the ground of violative of Articles 14 and 16 of the Constitution and the relief is claimed only against Railways, non-impleadment of affected employees is not fatal. In the

present case, the petitioners have challenged the procedure adopted by the Apollo Institute as violate of Rule 6(C) on the ground that it resulted in less meritorious candidates being selected. Except 6 candidates, 34 candidates/ students selected by the Apollo Institute have been found to be less meritorious than petitioners and the reports of NTRU in substance show that the said selection of 34 candidates was the result of unfair procedure adopted by the Apollo Institute contrary to rules. This apart, as we already mentioned, some of the admitted students were represented by counsel when the interim order dated 26.09.2012 was passed and even in the course of these arguments, the learned counsel appearing for several admitted candidates were heard. Thus the above argument of Sri Ramachander Rao cannot be accepted.

40. Mr. Challa Gunaranjan, learned standing counsel appearing for Medical Council of India submits that as per the Graduate Regulations of Medical Council of India, admissions shall be based on merit and transparency. Under Regulation 5 (2) the admissions have to be made based on merit of the marks secured in the common entrance test alone but not on the basis of the merit of the marks obtained in Science subjects in 10 + 2 standard as more than one agency conducts qualifying examination in the state of Andhra Pradesh. It is stated that the admissions of all the "C" category seats are illegal and in violation of Regulation 5 of the Graduate Medical Regulations. In support of his contentions, he relied upon the judgment of the Supreme Court in Raman Purohit & Ors Vs. Rajasthan University of Health Sciences & Ors Civil Appeal No. 8143 & 8144 of 2011 and 6210 & 6211 of 2012 dt 30.8.2012 Civil Appeal No. 6211 of 2012 dated 30.8.2012.

41. The Supreme Court in its recent judgment in the case of Faiza Choudhary Vs. State of Jammu and Kashmir and Another, wherein it was held that "a seat which fell vacant in a particular year cannot be carried forward or created in a succeeding year, in the absence of any rule or regulation to that effect ". It is not in dispute that as per various judgments, the cut-off date to admit the candidates is 30th September, 2012. It is stated that as per Regulation 12 of the Regulations on Graduate Medical Education, 1997 the attendance of 75 % is compulsory and the said regulations cannot be dispensed with. If that be so, as the academic year commenced from 1st August, 2012, more than 31/2 months have already elapsed, therefore it is stated that it is not possible to admit the meritorious students as per the merit list dated 9.10.2012 prepared and forwarded by the University.

42. Therefore, the only course left open is to cancel the admissions of the ineligible 34 candidates if it is not possible to admit the meritorious candidates in the order of their merit from among the 97 candidates who have submitted their applications, as the merit, transparency, the rules and regulations are violated. There cannot be any dispute that it would be unjust to permit a candidate who has secured mere 53% to pursue the course and deny a seat to a candidate who secured 92.83% in the qualifying examination. If the substandard students are

admitted and permitted to pursue the course, the same cannot be even be in the best interest of the public and would be at the cost of dispensing the merit which would amount to encouraging the capitation fee which is prohibited and the same cannot be permitted. It is to be noticed that there cannot be any reason to justify the admission of the 34 ineligible candidates as the said admissions are not legal or valid, as such the said admissions are liable to be set aside.

43. Now coming to the aspect of notice with regard to the interview displayed on the notice board, it has to be stated that the NTRU itself after conducting an enquiry found fault with Apollo Institute stating that none of the candidates have been intimated and no opportunity was given to them and there is no record of issuing notice to them. The paper advertisement also published in the Indian Express on 17.07.2012 does not refer to any interview. Clause 6 of Rule 6(C) says that merit list shall be prepared of all the candidates who have applied to the college based on the marks obtained in the three subjects i.e. Biology, Physics and Chemistry and the interview conducted by the college to prevent multiple blocking of seats. In spite of this rule about interview, the paper notification is totally silent about it and the interview aspect is mentioned only in the application form given by the college without mention of date for interview. Thus one expects that when there is an interview contemplated by the rules, the paper advertisement should also prominently publish the same further indicating a reasonable date from the last date of receipt of applications. This was not done by the college. In its action taken report dated 22.09.2012, the NTRU had informed that the enquiry committee concluded that candidates have to be selected only on the basis of merit by giving sufficient time for admission procedure and all the candidates should have been informed properly by sending the interview letters by registered post after giving sufficient time. The three lists which are already mentioned in para 24 of this judgment supra indicates that the college has adopted a procedure which suits its convenience without giving proper time for interview despite the fact that several outstation candidates were there among the applicants. These circumstances only point out that the Apollo Institute has adopted unfair procedure to choose only the 34 less meritorious candidates than the petitioners.

44. Sri S.R. Ashok pointed out on behalf of the Apollo Institute that interview is an essential requirement and this interview aspect was introduced in Rule 6 (C) (6) of the Rules by way of an amendment through G.O.Ms. No. 181 dated 21.05.2008 and the merit list has to be prepared not only on the merit list of the total number of candidates who have given applications, but also on the basis of the interview. His contention is that the Apollo Institute has to ascertain about the candidates who are willing to join the college and consequently interview cannot be given a go bye inasmuch as the petitioners have also not challenged the G.O.Ms. No. 181. He thus says that competence of the candidates which is a relative one has to be prepared by the Apollo Institute only upon the readiness of the candidates to appear for interview and show interest in joining the college by furnishing original certificates and as petitioners did not appear for interview on

26.07.2012, they can be rightly be said to have been ignored. Even the learned Additional Advocate General supported the arguments of Sri S.R. Ashok regarding interview. It is however difficult to accept this contention.

45. It may be noted at the risk of repetition that even NTRU in its action taken report dated 26.09.2012 reported that even the enquiry committee concluded that candidates have to be selected only on the basis of merit by giving sufficient time and all the candidates should have been informed properly by sending interview letters by registered post after giving sufficient time. This procedure was not followed by the Apollo Institute. It did not file even its office record to show as to when notice about the date of interviews was ordered to be kept in the notice board of the college. Having regard to the above reports of the NTRU, the irresistible conclusion would be that the Apollo Institute adopted a procedure convenient to it only to select the 40 candidates which it selected. It would also be not out of context to mention that the Apollo Institute did not insist upon bank guarantees for the five year tuition fee from those candidates and instead accepted postdated cheques from them while subsequently it insisted upon bank guarantees from others. Thus even assuming for a moment that interview is a must, still in the above circumstances, the contention of the Apollo Institute that it followed a fair procedure has to be rejected. The specific case of the petitioners is that no notice was issued to them and the college never exhibited any notice informing the date of interview on its notice board nor displayed the same in its web site nor the website of the NTRU. Further, had there been a notice issued by Apollo Institute, the question of making complaints/representations etc does not arise and more over the petitioners have already paid a fee of Rs. 39500/- along with the application and constantly pursuing with the college. In such circumstances, we have no hesitation to hold that Apollo Institute has not given any notice about the interview on 26.7.2012 nor displayed the same on its notice board, therefore there was no occasion for the petitioners to attend the said interview and their candidature cannot be rejected on the ground that they have not attended the interview. It is to be noted that the conduct of interview is meant only to prevent multiple blockage of seats and it is the case of the petitioners that except applying for the MBBS seat in Apollo Institute they have not applied in any other Medical College under "C" category seats. In the absence of any notice or intimation, it cannot be said that the petitioners failed to attend the interview conducted by the college on 26.7.2012. Therefore, the elimination of their names from the merit list sent for the approval of the NTRU is illegal. The petitioners, having considered the reputation of the Institute which is backed by a well known chain of Hospitals i.e., Apollo Hospitals, have chosen the said college to pursue their MBBS course and it is contended that they have never imagined that the college would indulge in such illegality and irregularities for collection of capitation fee and submits that an impartial enquiry by agencies like Central Bureau of Investigation or any other agency would reveal the facts, the manner In which the illegal admissions were made by collecting huge capitation fees.

46. The NTRU was also kept in dark by the Apollo Institute and the University without verifying the respective percentage of marks of the candidates has erroneous, approved the list submitted by the college but having realized its mistake, it has acted and rectified its mistake by conducting a detailed enquiry and ordered the college to review the merit list which is in accordance with the rules and regulations, but the Apollo Institute failed to obey the said directions of the University, therefore, we have no other alternative except to cancel the illegal admission. In spite of the directions of this Court, the University and the Apollo Institute has not admitted the meritorious candidates on various untenable grounds discussed above, which are without any justification.

47. It is also contended that the Rules 2007 do not specify that the original certificates/documents to be produced along with the application in respect of "C" category of seats. G.O.Ms. No. 161 dated 20.7.2010 also does not specify payment of fee at the time of interview but payable only at the time of admission after approval of the merit list by the NTRU. In fact, Rule 6 (C) (10) says that admissions shall be made only on the basis of merit list approved by NTRU, This rule therefore postulates that college should first send the merit list and after its approval alone by the NTRU admissions should be made by the college. Further, the candidates are required to produce proof of income only but the Rules do not speak any thing about production of the income certificate/bank guarantee. It is stated that nothing was indicated either in the application form or in the notification about the mode of payment of fee of Rs. 5,50,000/- and that the students/their parents have carried cash for payment, but cash was not accepted at the time of interview held on 20.10.2012. It is also contended that in respect of the batch of candidates initially selected by the Apollo Institute, no bank guarantee was insisted and later post dated cheques were accepted from them but insofar as the candidates who appeared for interview on 20.10.2012 in terms of the directions of this Court, the Apollo Institute has instated to furnish bank guarantee, which is discriminatory. It is further stated that telegrams were deliberately issued belatedly on 23.10.2012 in the late hours and In most of the cases the telegrams were received on 25.10.2012 and in some cases the same were received on 23.10.2012. It is further stated that deliberately and intentionally to deprive the meritorious students an admission, the Apollo Institute has belatedly given the information requiring to produce the bank guarantee.

48. Since some of the candidates have submitted the custodian certificate, there cannot be any objection for the NTRU for approval or the Apollo Institute to provide the admissions. Insofar as the bank guarantee is concerned, it is to be noted that the same was never insisted upon on the candidates initially admitted by the Apollo Institute, therefore the petitioners being meritorious candidates cannot be discriminated and deprived of an admission on the said ground. Be that as it may, the petitioners are ready to furnish bank guarantee and it is their case that the delay in submission of the bank guarantee is due to not providing the Bank Guarantee preformed by the Apollo Institute and the delay in

submission of the same is only attributable to Apollo Institute and rejection of seat on the said ground is only to deny admission to the meritorious candidate, which is illegal and unjust. In the circumstances we have directed the Apollo Institute to provide admission in order of merit as per the merit list of 97 candidates submitted on 17.10.2012 but the Apollo Institute rejected the admissions on the ground that the demand draft for Rs. 5,50,000/- towards annul fee is not in correct name; bank guarantee towards fee of subsequent years not submitted on 26.10.2012; and submission of the custodian certificates with regard to the original certificates etc, cannot be accepted.

49. The learned counsel for unofficial respondents who are initially admitted, the Apollo Institute and also the learned counsel for MCI submit that as per Regulation 12 of MCI Regulations on Graduate Medical Education, 1997, a student has to secure 75% of attendance in a subject on the lecture side and 80% attendance in non-lecture teaching to appear for examination and the said minimum percentage of attendances is mandatory and if petitioners are given admissions at this juncture, it would be violation of the above Regulation as they could not secure the minimum percentage of attendances. It is stated that the above percentage of attendances are necessary for each semester. This is mandatory and is stipulated as an essential condition to maintain quality of medical education which is required in the interest of society. Several decided cases emphasized on the importance of this requirement and adherence to the time schedule of the MCI that all admissions at any rate have to be completed by 30th September as per MCI Regulations. We have no other go except to follow the said Regulations regarding the time schedule. It therefore follows that as attendance has to be reckoned in 1st August and as we are in the third week of November, it is not possible to give admissions to the petitioners for the present academic year. As medical seats cannot be carried forward, it follows that this court cannot reserve any seats for the petitioners even in the next academic year. Therefore, the only course that is left open in view of the peculiar facts and circumstances is to cancel the illegal admissions of the 34 candidates who are admittedly less meritorious than the 40 candidates who are arranged as per merit out of the total 97 candidates, as the candidates were admitted by the Apollo Institute without following merit and transparency and in violation of the regulations and the rules.

50. The Capitation Fee is prohibited and compromising the merit and transparency is only to collect the capitation fee, therefore we are of the prima facie opinion that there is large scale collection of capitation fee in giving admission to the less meritorious candidates, therefore a deep probe is required to be conducted by Central Bureau of Investigation, else it would not be possible to curb such illegal acts being committed by such private medical colleges in regard to the admissions under the management quota.

51. We are also informed that Apollo Institute was allotted land for the purpose of establishing a Hospital and whether Apollo Institute is authorized to establish a

medical college therein, is not known and hence, a thorough probe is required to be conducted in the matter right from the stage of application filed by the Apollo Institute for the grant of permission under MCI regulations to the stage the admissions of 40 candidates under "C" category Management quota seats. Therefore, the writ petitions are accordingly disposed of with the following directions:

(a) The admission of 34 candidates mentioned at para 25 (D), who are less meritorious candidates than the first 40 of the merit list of 97 candidates mentioned at para 25 (E) are non-est in law and accordingly cancelled and they are not entitled to pursue the MBBS course in the Apollo Institute. The MCI and Dr. NTRU are directed to take appropriate action against the Apollo Institute for violating the Undergraduate Medical Education Regulations of the MCI, the Rule 6(C) of Rules of 2007 and for cancellation of permission and affiliation of the Apollo Institute.

(b) The CBI is directed to conduct a thorough probe right from the stage of application filed by the Apollo Institute for the grant of permission under MCI Regulations to the stage of admissions relating to C-category of Management quota of 40 seats in the Apollo Institute and take appropriate action against all the concerned in accordance with law, without any delay or loss of time, under the direct supervision of the concerned Joint Director of CBI, who shall monitor the investigation from time to time. This Court is constrained to give this direction having regard to the procedure adopted by Apollo Institute in granting admissions to 34 students which it granted initially, the contention of the petitioners that the Apollo Institute has given admissions to those 40 students by collecting capitation fee, which is prohibited under A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 cannot be ruled out. Even otherwise it is considered necessary to order such a probe in view of the circumstances under which we cancelled the admissions of 34 less meritorious students. The records relating to the action taken by the NTRU before this Court, may be obtained by CBI from the Registrar (Judicial) of this Court so as to enable them to proceed to conduct inquiry forthwith.

Sequel to the disposal of the writ petitions, the miscellaneous petitions filed along with the respective writ petitions are stand disposed of. No costs.

After delivery of the judgment in W.P. No. 26241 of 2012 and batch, Mr. T. Niranjana Reddy, learned counsel appearing for unofficial respondents in WP No. 30363 of 2012 who are less meritorious candidates and initially admitted by the Apollo Institute, orally requested to suspend the judgment for a period of two weeks and to grant leave to file an appeal before the Supreme Court.

We are of the opinion that the batch of cases disposed of by us today, involve simple question relating to implementation of MCI Regulations and unfair procedure adopted by Apollo Institute in admissions to "C" category management seats and they do not involve any substantial questions of law as to

the interpretation of the constitution or of general importance, therefore, we are not inclined to suspend the judgment or grant leave to file appeal before the Supreme Court, as sought for. Accordingly, the oral request is rejected.