

**(1994) 04 SC CK 0072**

**In the Supreme Court Of India**

**Case No :** I.As Nos. 20-23 In Slps (C) Nos. 1459-76 Of 1994

|                                                        |            |
|--------------------------------------------------------|------------|
| Convenor, MBBS/BDS Selection Board and Others          | APPELLANT  |
| Vs                                                     |            |
| Chandan Mishra and Others (For Impleadment/Directions) | RESPONDENT |

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**Date of Decision :** 22-04-1994

**Acts Referred:**

**Citation :** (1994) 2 SCC 666 Supp : (1996) 1 UPLBEC 347

**Hon'ble Judges :** M. N. Venkatachaliah, C.J;S. Mohan, J;R. M. Sahai, J

**Bench :** Full Bench

**Final Decision :** Dismissed

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## **Judgement**

1. These special leave petitions are by the Convener of the MBBS/BDS Selection Board of the State of orissa and arise out of the common judgment and order dated 16/12/1993 of the High court of orissa in a batch of writ petitions.
2. The matter pertains to the conduct of examinations for the selection of candidates for admission to the MBBS/BDS courses commencing from the academic year 1993-94. The entrance examinations were held on 22/8/1993.
3. The grievance of the writ petitioners before the High court was that some of the objective-type questions in the entrance examination contained patently incorrect propositions and the key-answers on which the valuation of those questions proceeded were manifestly, scientifically and verifiably fallacious.
4. The broad tests guiding the exercise of court's jurisdiction in such academic matters are indicated in the pronouncement of this court in Kanpur University v. Samir Gupta.
5. The High court on an appreciation of the matter and after application of the relevant and requisite tests felt persuaded to the view that the correctness of the key-answers should be examined by a body of experts and, accordingly, constituted an Expert Committee of five persons. This is stated to have been done with the consent of the parties.

6. On the recommendations made by the Expert Committee, the High court found that eight of the key-answers were inaccurate and incorrect and that, consequently, the valuation of the answer-scripts based on such defective key-answers would not reflect the true merit of the candidates as intended to be tested on the basis of the objective-type test and that admissions based on such selections would tilt the merit. The learned Judges of the High court, if we may say so with respect in a well-considered opinion expressed their anguish at the insensitivity of the authorities administering medical admission in the State to the need to prevent occasions for repetitive grievances from the student community and had occasion to observe:

"Shakespeare in Othello has written "Chaos is come again". This court has witnessed chaos almost annually when time for admission to MBBS/BDS courses came....

There is unanimity amongst the petitioners, the opposite parties and the intervenors that the manner in which the examination has been conducted, questions have been set and key answers indicated leaves much to be desired."

7. The High court allowed the writ petitions and directed revaluation of the answer scripts of all the candidates who were likely either to be affected or benefited by the revaluation of the answer scripts on the basis of the correct key-answers as recorded by the Expert Committee respecting the said eight questions. The High court also directed the Chief secretary of the State to enquire into the matter and submit a report to the High court as to the circumstances under which such controversies were allowed to arise. The High court directed:

"We are of the view that the reason for which the examining body has failed to perform its duties properly leading to numerous controversies needs to be investigated. We direct the Chief secretary of the State to enquire into the matter and submit a report to this court within three months from today so that the matter can be further looked into to find out the remedy. This, however, shall not stand on the way of the opposite parties in carrying out our directions contained hereinbefore."

8. What happened subsequently at the instance of the authorities in charge of the medical admissions in the State is as unedifying as it is disquieting. These special leave petitions were instituted by the Convener of the Admission Committee against the judgment of the High court. On 11/2/1994, at the instance and prayer of the Convener, this court made an order, the relevant portions of which read:

"There will be a stay of the operation of the order under appeal. However, the order of stay shall not prevent the authorities in charge of the administration of the medical admissions in the State to make admissions on the basis of merit upon revaluation of the questions in accordance with correct answers approved by the High court."

9. This court at that stage ordered stay of the operation of the judgment as the matter involved a question of principle as to the scope of judicial review in academic matters. That was a larger issue; but, at the same time, it was ensured that the operation of the judgment should not be construed as a licence to the authorities to make admissions on the basis of the merit list in which several infirmities were detected by the High court. It was, therefore, that the order of the court expressly required that if, in the meantime, the authorities wanted to go through the process of admissions, they could do so on the basis of the merit as reassessed on the basis of revaluation directed by the High court. What was implicit in the submission leading to the said order was that the admissions were yet to be done. The authorities did not disclose as is now discovered - that they by then had already made the admissions and that too on the basis of the list declared defective by the High court. This court was given the impression that the admissions had not yet been made as, indeed, that was implicit in the reasoning of the order. It was not disclosed to the court by the petitioner that admissions had already been made.

10. What is now disclosed shocks anyone's conscience. The way the State and its authorities have conducted themselves in this case leaves very much to be desired apart from being in direct violation of the High court's judgment whose operation had not then been stayed. Even the stay granted by this court did not authorise admissions except in the manner and by the process permitted by the High court. It could only be presumed that the authorities thought that they could present the court with a *fait accompli*. It is necessary to ascertain who are the officers who have been responsible for this unfortunate state of affairs.

11. The admissions which were hustled through in this manner in the interregnum cannot be presumed to be *bona fide*. It has all the insignia which render them *mala fide*, apart from being in direct violation of the orders of the High court unless, of course, the authorities offer an acceptable and satisfactory explanation. The officers who are responsible for this would clearly require to be punished for the liberties they have chosen to take with the courts and with the destiny of the students.

12. So far as the admissions already made are concerned, it is clear they were made in the teeth of the judgment of the High court. They are wholly illegal. The candidates who are the beneficiaries of the admissions cannot claim to be heard as any interest they may have or claim is acquired after the filing of the writ petitions and after the very basis of list on their claims are based was declared illegal. If the admissions continue even for a day public confidence would be shaken.

13. We, therefore, set aside the admissions of all the 290 candidates made to the courses. These students shall immediately be kept out of the course. The State shall ensure that no classes shall continue with these students as that would amount to placing a premium on illegality and high-handedness.

14. We, however, consider it possible that many of these displaced candidates might become eligible and qualified even on the basis of the revaluation. Indeed, most of them may make it good. This is, therefore, not to say that if ultimately these students or all or any of them are found on such revaluation of the answer scripts, as directed by the High court, to qualify for admissions they shall not lose their right to be so readmitted.

15. A compliance with the judgment of the High court and the interim directions of this court would require that the answer scripts of all the candidates who have obtained 115 marks and above should be revalued in accordance with the directions of the High court. After the revaluation the seats shall be distributed in accordance with the Rules regulating the reservations etc. on the basis of such revised list. All those who would become eligible and entitled to admissions on such revised list shall be granted admissions up to the number of 290 seats. This exercise shall be completed within four weeks from today.

16. Then, it might happen that some of the candidates who are now admitted may not become entitled for readmissions on the basis of revised merit list on revaluation. If there is any undue hardship in their cases - such as that they had given up other opportunities of technical education elsewhere and are now rendered nowhere to go etc. the government may consider, if they so think proper and appropriate, to rehabilitate the deserving cases by requesting the Indian Medical council for additional intake. But, this shall not come in the way of the time-bound revaluation and fresh admissions indicated above.

17. This is not the end of the matter. The Chief secretary of the State is asked to be present in this court on 29/4/1994, when this matter will be listed, to indicate to us what steps he would recommend to reassure the court that those who have been responsible for these illegal admissions would appropriately be proceeded with.

18. Call on 29/4/1994, court Masters.