

(2014) 11 SHI CK 0078
In the High Court Of Himachal Pradesh
Case No : CWP Nos. 4872 and 5419 of 2014

Disha Sharma

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Citation : (2014) 11 SHI CK 0078

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Ashwani Sharma, Advocate for the Appellant; Shrawan Dogra, Advocate General, Romesh Verma, V.S. Chauhan, Additional Advocate Generals, J.K. Verma, Deputy Advocate General and Anjali Soni Verma, Advocate for the Respondent

Judgement

Tarlok Singh Chauhan, J.—Since common question of law and facts arise for determination, therefore, both these petitions are taken up together for decision.

2. The petitioner(s) by way of these writ petitions have approached this Court making grievance therein that the respondents had not disclosed two seats of PSM (Preventive and Social Medicine) and Pathology in the open counselling held on 08.07.2014 for GDO in service candidates and had further illegally allotted these seats to respondents No. 6 and 7, who were lower in merit to the petitioner(s).

3. The respondents in February, 2014, issued prospectus for the year 2014 for filling-up PG seats in IGMCI, Shimla and DRPGMC, Tanda from amongst the candidates from HPHS (in service General Duty Medical Officers) and HPHS Contract Service Medical Officer Group and Direct Group. The seats for Post Graduate (MD and MS) Degree Course have been categorized under Group-A (All India Quota Seats), Group-B (State Quota Seats). Under Group-B, the seats are further sub-classified as HPHS (in service General Duty Medical Officers) and HPHS Contract Service Medical Officer Group under HPHS (in service GDO). The petitioner (s) and the private respondents applied for PG seats under HPHS (in

service General Duty Medical Officers) after qualifying All India NEET PG Competitive Entrance Examination. The petitioner(s) were ranked 63 and 79 respectively while the private respondents were ranked 91 and 93 respectively in the merit list.

4. The grievance of the petitioner (s) is that when they were called for second counselling on 08.07.2014 for filling-up the vacant PG seats, the respondents concealed and did not disclose two Post Graduate seats in Preventive and Social Medicine (in short hereinafter referred to "PSM") and Pathology and were informed that only seats in Microbiology and Biochemistry were vacant and were asked to give their options qua these two seats. Left with no other option, the petitioner(s) accepted these seats by depositing the fees. The petitioner(s) were shocked and surprised when they came to know that the official respondents had infact offered the aforesaid two Post Graduate seats in "PSM" and Pathology to the respondents No. 6 and 7 on 10.07.2014 without offering these seats first to the petitioner(s), who had a preferential right qua the same on account of their being better placed in merit.

5. The officials respondents initially filed short reply and there appeared to be some contradictions in Paras 3 and 7 thereof and accordingly this Court vide order dated 22.09.2014 directed the official respondents to file supplementary affidavit. In compliance to the aforesaid orders, the respondents filed supplementary affidavit wherein they categorically stated that in the 3rd round of counselling held on 08.07.2014, the following PG (MD/MS) seats were offered to the petitioner(s):-

1. PG seat of MD Community Medicine (Preventive and Social Medicine),

1. PG seat of Microbiology and

1. PG seat of Bio-chemistry for GDO (General) group and category.

6. It is further alleged that contrary to the claim set up by the petitioner(s), none of them opted for PG seats in "PSM" and infact exercised their options and accepted the seats of Microbiology and Biochemistry, respectively. Insofar as the allegation of the petitioner(s) that two seats of "PSM" and Pathology had been filled-up on 10.07.2014 in a surreptitious manner by offering the same to respondents No. 6 and 7 without first offering the same to the petitioner(s), who were higher in merit, the respondents have repelled this claim in the following manner:-

"10. That it is submitted that after completion of 3rd round of Counselling, while compilation/finalization of the record on 10.7.2014, it was found that two seats remained vacant (One seat of MD Community Medicine GDO General (regular) and one seat of MD Pathology GDO (contract).

It is worthwhile to submit here that the MD Pathology GDO General (Contract) seat which was allotted to one Dr. Puneet Singh during 2nd round of Counselling held on 29.4.2014 remained vacant due to the non-submission of fees by the

candidate as verified from the records, which did not come in the notice of Counselling Committee on 8.7.2014 and the same was brought to the knowledge of authorities by the concerned Dealing Assistant on 9.7.2014. The Principal, Indira Gandhi Medical College, Shimla called for the emergency meeting of Counselling Committee on 10.7.2014 in the chamber of Director Medical Education and Research, Himachal Pradesh. Copy of relevant Noting Sheet is annexed and marked herewith as Annexure R-4 for the kind perusal of this Hon"ble Court.

It is pertinent to submit here that no written information has been submitted by the candidate i.e. Dr. Puneet Singh regarding surrendering of MD Pathology seat, it is a known fact that surrendering of seats is total responsibility of candidate for which Director, Medical Education has also published a Notice in leading News Paper on 4.7.2014, inspite of this, we have not received any written information from the concerned Doctor for non-joining/surrendering of seats i.e. MD Pathology, Further, during the emergent meeting held on 10.7.2014, after detailed deliberation on this issue, it was unanimously decided by the Committee that in order to avoid the sheer wastage of precious Post Graduate Degree seats and in compliance to the direction passed by the Hon"ble Apex Court in Writ Petition (C) No. 433/2013 titled as Dr. Fraz Naseem V/S Union of India and others to fill the vacant seats arisen out of any reason may be filled up out of waiting list of 3rd round of Counselling. Accordingly, the candidates ranked at 91 and 93 were offered these seats in order of merit from the waiting list of 3rd round of Counselling. Xerox copies are annexed and marked as Annexure R-5 for the kind perusal of this Hon"ble Court."

7. Thus, what appears from the defence of the State is that the admissions in question have been made by offering the same only to the waiting list candidates in compliance to the directions passed by the Hon"ble Supreme Court in Dr. Fraz Naseem & others versus Union of India & others, Writ Petition (Civil) No. 433 of 2013.

8. Now, in case the order passed by the Hon"ble Supreme Court on 14.03.2014 is perused, it would be clear that the Hon"ble Supreme Court infact did not pass any effective order, but infact fixed the following schedule for the admissions to the Post Graduate Courses for the academic session 2014-15:-

"Upon hearing counsel the Court made the following

ORDER

We have heard learned counsel for the parties. For the timer being we fix the following schedule for the admissions to the Post Graduate Medical Courses for the academic session 2014-2015:-

The Medical Council of India will notify the aforesaid schedule.

List the matters in the month of April, 2014.

This order has been passed in modification of order dated 28th February, 2014."

9. In this background, the only question required to be determined in these petitions is as to whether the vacant seats of PG Courses were first required to be filled-up purely on merit from amongst the candidates desiring change of course/specialty or the same were required to be filled-up only out of the waiting list.

10. From the material placed on record and what has been stated above, it is clear that the respondents had not denied the fact that two seats of "PSM" and Pathology filled-up on 10.07.2014 had not been filled-up after due publicity and had been filled-up by contacting the candidates in the waiting list over their mobile telephones and after seeking their options, these seats were offered to respondents No. 6 and 7.

11. True import of the terms "cut off date" and "rule of merit" came up for consideration in Priya Gupta Vs. State of Chhatisgarh and Others, wherein after deprecating the practice of Universities not complying with the prescribed schedule and procedure, the Hon'ble Supreme Court held as follows:-

"45. The maxim *Boni judicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above-stated principles.

46. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned:

46.6. All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second Counselling should be the final Counselling, as this Court has already held in the case of Ms. Neelu Arora and Another Vs. Union of India (UOI) and Others, and third Counselling is not contemplated or permitted under the entire process

of selection/grant of admission to these professional courses.

46.7. If any seats remain vacant or are surrendered from All India Quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended Counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. No college may grant admissions without duly advertising the vacancies available and by publicizing the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex-facie arbitrary and casts the shadow of favouritism.

46.9. The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions."

12. Priya Gupta's case (supra) subsequently came up for consideration before the Hon'ble Supreme in Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others, wherein it was observed as follows:-

"23. Adherence to the schedule is the obligation of the authorities and the students both. The prescribed schedule is to be maintained *stricto sensu* by all the stakeholders because if one party adheres to the schedule and others do not or there is some kind of lack of communication or omission to make proper announcements and maintain proper records for such counselling, disastrous results can follow, of which the present case is an apt example.

24. The Court cannot ignore the fact that these admissions relate to professional courses and the entire life of a student depends upon his admission to a particular course. Every candidate of higher merit would always aspire admission to the course which is more promising. Undoubtedly, any candidate would prefer course of MBBS over BDS given the high-competitiveness in the present times, where on a fraction of a mark, the admission to course could vary. Higher the competition, greater is the duty on the part of the concerned authorities to act with utmost caution to ensure transparency and fairness. It is one of their primary obligations to see that a candidate of higher merit is not denied seat to

the appropriate course and college, as per his preference. We are not oblivious of the fact that the process of admissions is a cumbersome task for the authorities but that per se cannot be a ground for compromising merit. The concerned authorities are expected to perform certain functions, which must be performed in a fair and proper manner i.e. strictly in consonance with the relevant rules and regulations."

"40.2. 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 stake-holders. 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.

40.3. 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 stake holders to follow the process of selection and admission fairly, transparently and without exploitation."

13. Undoubtedly, the judgments of the Hon"ble Supreme Court referred hereinabove in Priya Gupta's case (supra) and Asha's case (supra) relate to MBBS and BDS Courses, however, nonetheless the broader guidelines and principles laid down therein can be applied to the facts of the present case as has been held by a co-ordinate Bench of this Court in CWP No. 5587 of 2012, Richa Kaushik versus State of Himachal Pradesh and others.

14. The aforesaid exposition of law by the Hon"ble Supreme Court makes it absolutely clear that admissions have to be made in a fair and transparent manner and, therefore, no admissions can be made without disclosing the vacancies available and by publishing the same through the newspaper and displaying the same on the notice board. Every effort has to be made by all concerned to ensure that the admissions are made on merit after due publicity and in no manner which is ex-facie arbitrary and casts the shadow of favouritism. The admissions have to be made on merit and merit alone. Infact, merit, fairness and transparency are the ethos of the process of admissions to such courses and it will be a travesty of justice if the rule of justice is defeated by inefficient or improper methods of admissions.

15. From the facts of this case, it is evident that "merit" has been a casualty because the respondents have failed to observe and oversee that the procedure adopted is fair and transparent which has been the consistent view of the

Hon"ble Supreme Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but it is also an abuse of process of Court.

16. At this stage, we may now refer to the prospectus issued by the respondents themselves setting out in detail the mode and manner of filling-up the seats in question. Clause-4 of the prospectus deals with the procedure to be followed for counselling which reads thus:-

"4.1. The Counselling will be held on dates mentioned in the prospectus as per the time schedule fixed by MCI/GOI based on the judgment of Hon"ble Supreme Court of India. The allotment of available seats to the eligible candidates will be made in order of merit on the basis of State merit drawn (group-wise as well as category-wise) by the Principal Indira Gandhi Medical College, Shimla-cum-Member Secretary Counselling Committee on the basis of score of Himachal Pradesh State AIPGMEE-2014 result supplied by the Assistant Director (Medical), NBE (Ministry of Health & Family Welfare Govt. of India) New Delhi vide letter No. NBE/AIPGMEE (2014)/Result/14038 dated 4.2.2014 of those candidates who have applied on the prescribed application form within stipulated date as mentioned in the prospectus for admission to PG(MD/MS) degree course in Indira Gandhi Medical College & Hospital Shimla and Dr. Rajindera Prasad Govt. Medical College & Hospital Tanda against 50% State quota seats for the academic session 2014-17 on the day of Counselling. All the eligible candidates or their authorized representatives will have to bring their original documents alongwith required documents at the time of Counselling. No Separate Communication will be Issued to the Candidates for Attending the Counselling. The candidate not reporting for Counselling as per schedule will forfeit their claim for admission without any further notice. No further opportunity will be given. Hence, appearance in the 1st round of Counselling is mandatory for consideration of candidature for further Counselling. Joining time is as per schedule prescribed in the prospectus. The selected candidates will be required to join latest by 26.5.2014 failing which their candidature will be cancelled. The academic session will start from 31.5.2014. In case of any vacancy arising on or after 26.5.2014 for any reason, the vacancy position will be displayed on the college notice board and uploaded on the College website on 30.5.2013 (afternoon). The available vacancies will be filled-up purely on merit from amongst the candidates desiring the change of course/speciality and thereafter from the waiting list. The interested candidates will report to the Principal Indira Gandhi Govt. Medical College, Shimla on 10.00 AM on 31.5.2014 along with original documents and requisite fees. No admission will be made after 31.5.2014 (including change of course) and seats still remaining vacant will not be filled-up in compliance of directions of MCI/GOI as per the Judgment of the Hon"ble Supreme Court of India.

Note: The candidate who brings incomplete certificates/documents including service certificate-cum-No objection certificate (NOC) as per provisions of the Prospectus will be rejected without any notice there and then by the Counselling

Committee."

(Underlining supplied by us)

A perusal of the underlined portion makes it abundantly clear that the available vacancies in all subsequent counselling after the first counselling are required to be filled-up purely on merit from amongst the candidates desiring change of course/specialty and only thereafter the same can be offered to the candidates from the waiting list.

17. The terms and conditions of the prospectus are binding even on those who have issued it. (See: Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and Others, . A prospectus issued with regard to admissions to educational courses is a declaration to the candidates that a field for development of educational technicalities is available for exploration and that there could be a chance of success. It is a piece of information. The rules and norms contained in the prospectus are binding on the Selection Committee and the authorities and, therefore, have to be strictly followed. The binding nature of the prospectus both on the Selection Committee and the candidates applying for admission is on the basis that it is a piece of information containing the summary essence of norms and rules that guide both the Selection Committee and the candidates. After setting out the various conditions and methods of selection, if anyone of the parties is permitted to travel beyond the prescribed procedure, that would adversely affect the right of the other party. Therefore, it is necessary that the Selection Committee is to follow the procedure enumerated in various clauses of the prospectus and cannot be permitted or allowed to introduce any new element or procedure for admission to those as are contained in the prospectus.

18. Now, in case the arguments of the learned Advocate General are taken to its logical end whereby it has been canvassed that the seats had to be offered to the waiting list candidates in preference to the meritorious candidates, who wanted to change their options/courses, it would essentially mean that what the respondents are virtually seeking is a direction to violate their own statutory rules and regulations in respect of admissions which admittedly will be contrary to what has been envisaged and provided under Clause-4 of the prospectus. We are afraid that no such direction can be issued by this Court in the teeth of the observations of the Hon''ble Supreme Court in State of Punjab and others Vs. Renuka Singla and others, wherein it was held that the High Court and the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students.

19. Further, in case the order passed by the Hon''ble Supreme Court in Dr. Fraz Naseem's case (supra) is minutely analyzed, it would be seen that the word "waiting list" has not been used in its literal sense. Even at the stage of second round of counselling, it has been provided as under:-

"2nd round of counselling for allotment of seats from waiting list, State Quota, 27th April to 3rd May."

In case the term "waiting list" is interpreted in the manner as suggested by the learned Advocate General, then it would essentially mean that a candidate, who has exercised his option in the first counselling held on 7th of April, is debarred for all times to come to change his option of course irrespective of subsequent counselling held thereafter at three stages and the course of choice being available. This clearly is not the intent of the order passed by the Hon"ble Supreme Court. We, therefore, have no manner of doubt that the respondents have failed to carry out counselling in terms of Clause-4 of the prospectus and have completely misconstrued and misinterpreted the order passed by the Hon"ble Supreme Court in Dr. Fraz Naseem's case (supra).

20. The present lis relates to admissions to the post of Graduate Medical Degree Courses which is a technical/academic course of super-specialty, where emphases are always on merit. In Dr. Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College, Allahabad and Others, , it was observed that if we want to introduce doctors, who are MD/MS particularly Surgeon, who were going to operate, on human beings, it is of utmost importance that the selection should be made on merits.

21. Indisputably, "counselling" has been prescribed in the prospectus as the medium on the basis of which admissions are required to be made. The system of Counselling for the purpose of granting admissions is now regarded as the most equitable one where options are given of various seats to the students in accordance with their overall merit position in the combined competitive examination. If as a result of first counselling, all the seats which are available are filled, then no further counselling takes place. Where, however, some seats become available, then the need for holding second, third or fourth counselling may arise. This was so held by the Hon"ble Supreme Court in Rajiv Mittal Vs. Maharshi Dayanand University and Others, in the following terms:-

"10.....The system of counselling for the purpose of granting admission to the various medical colleges in the State is now regarded as most equitable one where options are given of various seats to the students in accordance with their overall merit position in the combined entrance examination, which examination is competitive in nature.

11. If as a result of first counselling, all the seats, which are available, are filled then no further counselling takes place. Where however some seats become available, then it appears that second, third or if the need arise, fourth counselling does take place but in such a manner that normally there should be no delay in the commencement of the course of study. Further more unless and until counselling takes place, no candidate who has been granted admission on the basis of the counselling, is allowed to change his college merely because a seat in another college has fallen vacant. The seats, if any, which fall vacant, can

only be filled if and when counselling takes place where the candidates who have already been selected may have an option of shifting to another college. An appropriate analogy of this system is that of a booking chart for a dramatic performance which has to take place in the future. The people standing in the queue reserve or book their seats out of those which are available according to their preference. Once the chart fills up the booking closes. Only sometimes, if tickets are returned they may be reissued. But once the dramatic performance starts no one is allowed to enter. Just as counselling for seats to medical colleges must stop once the courses of study commence."

The centralized and integrated procedure for competitive examination and counselling optimizes chances of not only the students in securing the course available for admission on the one hand but it also maximizes educational institution chances of filling-up its seats. Once, therefore, the Hon"ble Supreme Court itself has held the counselling system to be one of the most equitable methods of filling-up of seats of different disciplines and further when a clear-cut provision was set out in Clause-4 of the prospectus prescribing therein the mode and manner in which the seats would be filled-in, it was imperative and mandatory for the respondents to have adhered to the provisions of the prospectus.

22. The allegations of the respondents that they only came to know about the seats of MD Pathology GDO General (Contract) only on 09.07.2014 when the same was brought to the notice of the authorities by the concerned dealing hand is more than what meets the eye. We say so because the second round of counselling was held way back on 29.04.2014 and the seat admittedly had become vacant on the said date itself since the selected candidate Dr. Puneet Singh had not deposited the fees. The third round of counselling was held after a gap of more than two months on 08.07.2014 and yet the respondents would have this Court believe that the dealing hand had not informed the authorities regarding this vacancy. After-all, the purpose of counselling is to offer to the eligible candidates the option and choice of seats which are available in the Institution. The respondents cannot be permitted to give admissions to the students in an arbitrary and nepotistic manner. The methodology adopted by the respondents and the manner in which the admissions were given to the private respondents, leaves no doubt in the mind of this Court that this process was neither fair nor transparent. It was incumbent upon the official respondents to have ensured that arbitrariness and discrimination do not creep into the process of admissions and the same are carried out in a just and fair manner.

23. Earlier also, while making admissions for the academic sessions 2012-13, the matter had reached this Court in Richa Kaushik's case (supra) wherein this Court in its majority decision after placing reliance on Priya Gupta's and Asha's cases (supra) had directed the seat in Periodontics to be offered to the candidate in the merit list after quashing the action of the respondents whereby they had offered this seat to the waiting list candidate.

24. More than three decades back, a three Judges Bench of the Hon'ble Supreme Court in Sanjay Gulati's case (supra) had expressed their anguish regarding the insensitivity of the educational authorities while granting admissions in the following terms:-

"4. Cases like these in which admissions granted to students in educational institutions are quashed raise a sensitive human issue. It is unquestionably true that the authorities who are charged with the duty of admitting students to educational institutions must act fairly and objectively. If admissions to these institutions are made on extraneous considerations and the authorities violate the norms set down by the rules and regulations, a sense of resentment and frustration is bound to be generated in the minds of those unfortunate young students who are wrongly or purposefully left out. Indiscipline in educational institutions is not wholly unconnected with a lack of sense of moral values on the part of the administrators and teachers alike. But, the problem which the courts are faced with in these cases is, that it is not until a period of six months or a year elapses after the admissions are made that the intervention of the court comes into play. Writ petitions involving a challenge to such admissions are generally taken up by the High Court as promptly as possible but even then, students who are wrongly admitted finish one or two semesters of the course by the time the decision of the High Court is pronounced. A further appeal to this Court consumes still more time, which creates further difficulties in adjusting equities between students who are wrongly admitted and those who are unjustly excluded. Inevitably, the Court has to rest content with an academic pronouncement of the true legal position. Students who are wrongly admitted do not suffer the consequences of the manipulations, if any, made on their behalf by interested persons. This has virtually come to mean that one must get into an educational institution by means, fair or foul: Once you are in, no one will put you out. Law's delays work their wonders in such diverse fashions.

5. We find that this situation has emboldened the erring authorities of educational institutions of various States to indulge in violating the norms of admission with impunity. They seem to feel that the Courts will leave the admissions intact, even if the admissions are granted contrary to the rules and regulations. This is a most unsatisfactory state of affairs. Laws are meant to be obeyed, not flouted. Some day, not distant, if admissions are quashed for the reason that they were made wrongly, it will have to be directed that the names of students who are wrongly admitted should be removed from the rolls of the institution. We might have been justified in adopting this course in this case itself, but we thought that we may utter a clear warning before taking that precipitate step. We have decided, regretfully, to allow the aforesaid sixteen students to continue their studies, despite the careful and weighty finding of the High Court that at least eight of them, namely, the seven wards of employees and Ashok Kumar Kaushik, were admitted to the Engineering Course in violation of the relevant rules and regulations.

6. It is strange that in all such cases, the authorities who make admissions by ignoring the rules of admissions contend that the seats cannot correspondingly be increased, since the State Government cannot meet the additional expenditure which will be caused, by increasing the number of seats or that the institution will not be able to cope up with the additional influx of students. An additional plea available in regard to Medical Colleges is that the Indian Medical Council will not sanction additional seats. We cannot entertain this submission. Those who infringe the rules must pay for their lapse and the wrong done to the deserving students who ought to have been admitted has to be rectified. The best solution under the circumstances is to ensure that the strength of seats is increased in proportion to the wrong admissions made."

25. Three decades later, the Hon'ble Supreme Court in *Aneesh D. Lawande and Others Vs. The State of Goa and Others*, , expressed its despair in the following terms:-

" The present litigation expositis a sad sad scenario. It is sad because a chaos has crept in the lives of some students and it is further sad as the State of Goa and its functionaries have allowed ingress of systemic anarchy throwing propriety to the winds possibly harbouring the attitude of utter indifference and nurturing an incurable propensity to pave the path of deviancy. The context is admission to Post Graduate courses in a single Government medical college at Goa. The insensitivity of the authorities administering medical college admissions was seriously decried by a three-Judge Bench in *Convenor, MBBS/BDS Selection Board and others v. Chandan Mishra and others* 1995 Supp (3) SCC 77 and further echoed in *Medical Council of India Vs. Madhu Singh and Others*, . The Court in *Chandan Mishra* (supra) had approvingly reproduced a sentence from the decision of the High Court that proclaimed in sheer anguish: "Shakespeare in *Othello* has written "Chaos is come again".

2. The saga of anguish continues with constant consistency. In *Asha Vs. Pt. B.D. Sharma University of Health Sciences and Others*, a two-Judge Bench commenced the judgment thus:-

"Admission to the medical courses (MBBS and BDS) has consistently been a subject of judicial scrutiny and review for more than three decades. While this Court has enunciated the law and put to rest the controversy arising in relation to one facet of the admission and selection process to the medical courses, because of the ingenuity of the authorities involved in this process, even more complex and sophisticated sets of questions have come up for consideration of the Court with the passage of time. One can hardly find any infirmities, inaccuracies or impracticalities in the prescribed scheme and notifications in regard to the process of selection and grant of admission. It is the arbitrary and colourable use of power and manipulation in implementation of the schedule as well as the apparently perverse handling of the process by the persons concerned or the authorities involved, in collusion with the students or otherwise, that have rendered the entire admission process faulty and questionable before

the courts. It is the admissions granted arbitrarily, discriminately or in a manner repugnant to the regulations dealing with the subject that have invited judicial catechism. With the passage of time, the quantum of this litigation has increased manifold."

3. We have begun with such a prefatory note and referred to the aforesaid pronouncements as the facts, as have been uncurtained, would shock one's conscience. A deliberate labyrinth which not only assaults the majesty, sanctity and purity of law, but also simultaneously creates a complex situation requiring this Court to intervene in a different manner to redeem the situation as far as possible so that there is some sanguine cathartic effect."

26. The respondents would then contend that it will not only be difficult but an impossible task to contact all the candidates as per the merit list. This plea is equally fallacious and cannot be countenanced because the seats in question relate to in service candidates, meaning thereby candidates, who are already in the service of respondents, therefore, contacting them would not at all be difficult.

27. This is an age of communication and if waiting list candidates could be contacted, so could the candidates in order of merit be contacted. This is not a case of individual hardship because what we are examining is the generality of the situation and such matters have been repeatedly coming up before this Court. More meritorious candidates cannot be compelled to be pinned down to their choice given under compulsion in view of the limited seats available at the earlier counselling by refusing them a course of their choice which may have subsequently fallen vacant. This is not only contrary to the provisions of the prospectus issued by the respondents themselves but also in conflict with the very concept of "counselling".

28. The upshot of the aforesaid discussion is that the action of the respondents is, undoubtedly, illegal and arbitrary when they have filled-up vacant seats from the waiting list candidates instead of filling-up the same purely on the basis of merit from amongst the candidates desiring change of course/specialty and thereafter filling-up the same from the waiting list candidates. But, then there would be many other candidates, who would be even more meritorious than the petitioner(s), who may also want to opt for the same seats. In case the seats at this stage are offered merit wise, this will start a chain reaction and the effect of putting the seat back for counselling for all candidates would, therefore, be to upset the entire counselling which has taken place. Therefore, there is no alternative apart from leaving this aspect of the matter to rest.

29. There is yet another reason why the petitioner(s) cannot be granted any relief at this stage. Undisputedly, the Hon'ble Supreme Court in Dr. Fraz Naseem's case (supra) has fixed the schedule for admission to the Post Graduate Courses for the academic sessions 2014-15 which time schedule as held by the Hon'ble Supreme Court in Asha's case (supra) has to be strictly adhered to:-

"25. Strict adherence to the time schedule has again been a matter of controversy before the courts. The courts have consistently taken the view that the schedule is sacrosanct like the rule of merit and all the stakeholders including the authorities concerned should adhere to it and should in no circumstances permit its violation. This, in our opinion, gives rise to dual problem. Firstly, it jeopardizes the interest and future of the students. Secondly, which is more serious, is that such action would be ex facie in violation of the orders of the court, and therefore, invite wrath of the courts under the provisions of the Contempt of Courts Act, 1971. In this regard, we may appropriately refer to the judgments of this Court in Priya Gupta Vs. State of Chhatisgarh and Others, , State of Bihar and others Vs. Dr. Sanjay Kumar Sinha and others, , Medical Council of India Vs. Madhu Singh and Others, , GSF Medical and Paramedical Association Vs. Association of Management of Self Financing Technical Institutes and Another etc. etc., and Christian Medical College Vs. State of Punjab and Others, ."

30. Adherence to the time schedule in professional courses was recently a subject-matter before the Hon'ble Supreme Court in Chandigarh Administration Vs. Jasmine Kaur, and after taking into consideration the relevant principles contained in its previous decisions, the following principles were culled out:-

"30. Having noted the various decisions relied upon by the Appellant in SLP (C) No. 18099 of 2014 and the contesting Respondent, we are able to discern the following principles:

(1) The schedule relating to admissions to the professional colleges should be strictly and scrupulously adhered to and shall not be deviated under any circumstance either by the courts or the Board and midstream admission should not be permitted.

(2) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate i.e., the candidate has pursued his or her legal right expeditiously without any delay and that there is fault only on the part of the authorities or there is an apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right to equality and equal treatment to the competing candidates and the relief of admission can be directed within the time schedule prescribed, it would be completely just and fair to provide exceptional reliefs to the candidate under such circumstance alone.

(3) If a candidate is not selected during a particular academic year due to the fault of the Institutions/Authorities and in this process if the seats are filled up and the scope for granting admission is lost due to eclipse of time schedule, then under such circumstances, the candidate should not be victimised for no fault of his/her and the Court may consider grant of appropriate compensation to offset the loss caused, if any.

(4) When a candidate does not exercise or pursue his/her rights or legal

remedies against his/her non-selection expeditiously and promptly, then the Courts cannot grant any relief to the candidate in the form of securing an admission.

(5) If the candidate takes a calculated risk/chance by subjecting himself/herself to the selection process and after knowing his/her non-selection, he/she cannot subsequently turn around and contend that the process of selection was unfair.

(6) If it is found that the candidate acquiesces or waives his/her right to claim relief before the Court promptly, then in such cases, the legal maxim *vigilantibus non dormientibus aequitas subvenit*, which means that equity aids only the vigilant and not the ones who sleep over their rights, will be highly appropriate.

(7) No relief can be granted even though the prospectus is declared illegal or invalid if the same is not challenged promptly. Once the candidate is aware that he/she does not fulfil the criteria of the prospectus he/she cannot be heard to state that, he/she chose to challenge the same only after preferring the application and after the same is refused on the ground of eligibility.

(8) There cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year i.e., carry forward of seats cannot be permitted how much ever meritorious a candidate is and deserved admission. In such circumstances, the Courts cannot grant any relief to the candidate but it is up to the candidate to re-apply next academic year.

(9) There cannot be at any point of time a direction given either by the Court or the Board to increase the number of seats which is exclusively in the realm of the Medical Council of India.

(10) Each of these above mentioned principles should be applied based on the unique and distinguishable facts and circumstances of each case and no two cases can be held to be identical."

As observed earlier, there would be more meritorious candidates than the petitioner(s) herein, therefore, the case of the petitioner(s) do not fall in any of the exceptions specified hereinabove.

31. Moreover, the time gap between 10th July, 2014 till date is certainly a long period and in similar situation, the Hon"ble Supreme Court in Jasmine Kaur's case (supra) held as follows:-

"36. The time gap between April, 2013 and July, 2013 nearly three months is certainly a long period as the process of admission to professional courses are regulated by the Selection Authorities such as the Medical Council of India, All India Council for Technical Education, National Council for Teacher Education, State Government Authorities as well as the concerned affiliated universities each one of whom have got to play their corresponding roles in regulating the admissions and also monitoring the subsequent course of study for the purpose of ultimately granting the degrees of successful candidates after the completion

of the course. As the process being a continuous one, any delay in working out the remedies promptly will have to be viewed very seriously or otherwise the same would impinge upon the rights of other candidates apart from causing unnecessary administrative hardship to the regulatory bodies. When the said factors are kept in mind while analyzing the case on hand, it will have to be stated that even though the contesting Respondent was successful in her challenge to the concerned provision relating to the NRI quota in the prospectus of 2013-14, on that sole ground it cannot be held that every other factor should be kept aside and her claim for admission to M.B.B.S. course should be ensured by issuing directions unmindful of the infringement of rights of other candidates and the other statutory bodies. We are, therefore, of the view that the conduct of the contesting Respondent in having fixed her own time limit in making the challenge, namely, after three months of the issuance of the prospectus and thereafter, in filing the Letters Patent Appeal which process resulted in the Division Bench in deciding the appeal only in the month of January, 2014 by which time the substantial part of the academic year had been crossed, the question remained as to whether the Division Bench was justified in directing the admission of the contesting Respondent to the M.B.B.S. course in the academic year 2014-15 by merely stating that she was already undergoing the B.D.S. course and that the course content of the first six months of B.D.S. and M.B.B.S. are more or less identical. Beyond that we do not find any other good grounds which weighed with the Division Bench in issuing the direction for creating an additional seat."

"38. As time and again such instances of claiming admission into such professional courses are brought before the Court, and on every such occasion, reliance is placed upon the various decisions of this Court for issuing necessary directions for accommodating the students to various courses claiming parity, we feel it appropriate to state that unless such claims of exceptional nature are brought before the Court within the time schedule fixed by this Court, Court or Board should not pass orders for granting admission into any particular course out of time. In this context, it will have to be stated that in whatever earlier decisions of this Court such out of time admissions were granted, the same cannot be quoted as a precedent in any other case, as such directions were issued after due consideration of the peculiar facts involved in those cases. No two cases can be held to be similar in all respects. Therefore, in such of those cases where the Court or Board is not in a position to grant the relief within the time schedule due to the fault attributable to the candidate concerned, like the case on hand, there should be no hesitation to deny the relief as was done by the learned Single Judge. If for any reason, such grant of relief is not possible within the time schedule, due to reasons attributable to other parties, and such reasons are found to be deliberate or mala fide the Court should only consider any other relief other than direction for admission, such as compensation, etc. In such situations, the Court should ensure that those who were at fault are appropriately proceeded against and punished in order to ensure that such

deliberate or malicious acts do not recur."

32. Though no relief can be granted to the petitioner(s) for the reasons stated above, yet this Court cannot ignore the lapses on the part of the official respondents, who have acted in the most callous and negligent manner in carrying out the admissions little realizing that the career of more meritorious students has been jeopardized without adhering to the rule of merit that too in violation of its own sacred prospectus. It was on account of the corrective measures and adherence to rule being thwarted by motivated action on the part of the authorities concerned which had led to manifold increase in arbitrary admissions whereby the repeated defaults had resulted in generating more and more litigation with the passage of time and the desire to curb these incidents of disobedience that the Hon''ble Supreme Court while dealing with cases relating to admissions had issued directions in rem for their strict compliance without demur and default by all concerned in Priya Gupta's case (supra). Therefore, the respondent No. 1 is directed to hold an inquiry and fix responsibility against the erring official(s) and submit its report to this Court by 31st December, 2014.

33. Taking into account all these facts and circumstances, it has become imperative for this Court to issue directions that henceforth respondents shall make admissions to PG (MD/MS) Courses strictly in consonance with the procedure as prescribed in the prospectus, more particularly Clause-4, after adhering to the schedule as prescribed in Dr. Fraz Naseem's case (supra) by the Hon''ble Supreme Court. The schedule for admissions shall be religiously followed and vacant seats falling to the respective courses and quotas shall be notified at least a week earlier to the next counselling by displaying and publishing the same on the College notice board, uploading the same on the college website. Apart therefrom, the desirability of informing the eligible candidates through e-mail and text message over the mobile phones can also be considered. In short, the respondents would ensure that the admissions are carried out on the basis of merit and merit alone in a fair and transparent manner and in no event would merit be compromised.

34. Ex-consequenti, the writ petitions are disposed of in the aforesaid terms accordingly, so also the pending application (s), if any. A copy of this judgment be placed on the connected file.

35. List the case on 1st January, 2015 for consideration of the report to be submitted by the respondent No. 1.