

(2016) 11 AHC CK 0024

In the Allahabad High Court

Case No : Writ Petition No. 16895 of 2016 (M/S)

Dodia Narendra Dilipbhai

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-11-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Medical Council Act, 1956 — Section 10A, Section 10B, Section 11
Uttar Pradesh State Universities Act, 1973 — Section 37

Citation : (2016) 11 ADJ 473 : (2017) 2 AILLJ 563 : (2017) 1 AllWC 19 : (2017) 1 ESC 148

Hon'ble Judges : Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : C.S.C., A.G.A., Gyanendra Kumar Srivastava, Kumar Ayush, Shobhit Mohan Shukla and Shraddha Agarwal, Advocates, for the Opposite Parties; Lalta Prasad Misra and Sharad Pathak, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

Devendra Kumar Arora, J. - At the outset, it is relevant to mention that in all the afore-captioned writ petition almost similar reliefs have been sought for and as such all the writ petitions have been clubbed together and are being decided by a common judgment.

2. Heard Mr. Sharad Pathak, Mr. Mayankar Singh and Mr. Sreesh Mishra, learned Counsel for the petitioners, Mr. Asit Kumar Chaturvedi, Senior Advocate, assisted by Mr. Ashwani Kumar Singh, learned Counsel for the Union of India, Mr. Sanjay Bhasin, learned additional chief Standing Counsel appearing on behalf of the State as well as Director General, Medical Education, U.P., Lucknow (opposite parties Nos. 2 and 3), Mr. Gyanendra Kumar Srivastava, learned Counsel for the opposite party No.4-Medical Council of India, Mr. Shobhit Mohan Shukla, learned Counsel for the opposite party No.5-Dr. Ram Manohar Lohiya Avadh University, Faizabad, and Mr. S.K. Kalia, Senior Advocate, assisted by Ms. Shraddha Agarwal, learned Counsel for the opposite party No.6-Society for Advancement of

Environment Science, Aliganj, through its President Dr. M.C. Saxena.

3. Petitioners, who took admission in MBBS First Year in Dr. M.C. Saxena College of Medical Science, Lucknow, on being declared successful in U.P. Combined Medical Entrance Examination, 2015 [in short referred to as UPCMET-2015] conducted by the Association of the private Medical Colleges, have approached this Court under Article 226 of the Constitution of India, seeking a writ of Mandamus commanding the opposite parties to allow them to appear in MBBS First Year Examination, while holding the Annual Examination for the Academic Session 2015-16 by taking all requisite steps before commencement of Examinations, including adjusting and allocating the petitioners/students against the vacant seats of other recognised and affiliated Medical Colleges by the concerned opposite parties.

4. Shorn off, unnecessary details, the facts of the case are as under :

The Society, namely, Society for Advancement of Environment Science, 222, Chandralok Colony, Aliganj, Lucknow, established a medical college in the name and style of "Dr. M.C. Saxena College of Medical Sciences, Lucknow" [hereinafter referred to as the "Institution" for the sake of brevity]. The Society has filed a writ petition, bearing No. 6703 of 2016 (M/B): Society for Advancement of Environmental Science v. Union of India and others, challenging the order of the Government of India dated 15.6.2015, whereby the recommendations made by the Medical Council of India to disapprove the Scheme submitted by the Society for establishing a new Medical College at Lucknow, has been accepted and the said scheme has been disapproved. A Division Bench of this Court, vide order dated 24.9.2015, on appreciating the fact that the last date of admission of MBBS First Professional Course is 30.9.2015, as an interim measure, permitted the Institution to admit 150 students in the MBBS First Professional Course as per the existing system of the admission applicable to the Institution with the following conditions :

"(ii) The admission of the students under this order will be subject to further orders which may be passed by this Court in this writ petition.

(iii) The petitioner's institution, while making admissions, will clearly indicate and apprise the students in writing that their admission, if any, will be subject to further orders which may be passed by this Court in this writ petition and in case of failure of the writ petition, their admission to this institution shall stand automatically cancelled. The students so informed shall be required to furnish an undertaking to the Registrar of the University concerned to the effect that they have been informed about this order and they will not have any claim with regard to admission with this institution and that they understand that in case the writ petition fails, their admission shall stand cancelled.

(iv) The petitioner's institution shall furnish Bank Guarantee to the extent of total fees with the Registrar, Dr. Ram Manohar Lohiya Awadh University, Faizabad, which may be charged from the students for admitting them in MBBS

First Professional Course.

(v) The said order has been passed in the presence of the learned Counsel appearing for Union of India, State Government, Medical Council of India and Dr. Ram Manohar Lohiya Awadh University, Faizabad."

5. According to petitioners, pursuant to the aforesaid ad interim order dated 24.9.2015, the U.P. Unaided Medical Colleges Welfare Association [hereinafter referred to as the "Association"] issued an advertisement on 27.9.2015 for special Counselling of the successful candidates of UPCMT-2015. Petitioners, on coming to know the aforesaid advertisement dated 27.9.2015, appeared in the Counselling and were allotted the "Dr M.C. Saxena College of Medical Sciences, Lucknow [hereinafter referred to as the "Medical College"] vide letter dated 28.9.2015 issued by the Association.

6. It has been stated in the writ petition that petitioners had taken admissions in "Dr. M.C. Saxena College of Medical Sciences, Lucknow" on 28.9.2015 itself after depositing the requisite fee. Thus, petitioners became the students of MBBS Course of Dr. M.C. Saxena College of Medical Sciences, Lucknow for all practical purposes w.e.f. 28.9.2015. In the meantime, the Medical Council of India approached the Hon"ble Supreme Court by filing Special Leave to Appeal (C) No. 26006 of 2015, challenging the ad interim order dated 29.7.2015 passed in writ petition No. 6703 of 2015 (M/B). Hon"ble Supreme Court had taken the aforesaid appeal with identical SLP, bearing No. 28100 of 2015 and vide ad interim order dated 29.9.2015, Hon"ble Supreme Court directed the Medical Council of India to carry out the inspection as directed by the High Court on or before 10.10.2015 but the report of the inspection be kept in a sealed cover. Hon"ble Supreme Court has further directed to maintain status quo as on 24.9.2015 and further provided that admissions of students, if any, shall not be given effect to.

7. According to petitioners, the classes of the petitioners had already commenced and they have no information with regard to ad interim order dated 29.9.2015 passed by the Hon"ble Supreme Court. Subsequently, Special Leave to Appeal (C) No. 26006 of 2015 was converted to Civil Appeal No. 2968 of 2016, whereas another Special Leave to Appeal (C) No. 2969 of 2016 was converted to Civil Appeal No. 2969 of 2016. The Hon"ble Supreme Court, vide its judgment and order 10.3.2016, allowed both the appeals by setting aside ad interim order dated 24.9.2015 passed in writ petition No. 6703 of 2015 (M/B) and expected that the High Court shall finally decide the petitions at an early date. According to the petitioners, the aforesaid judgment and order dated 10.3.2016 was uploaded on Internet on 16.3.2016.

8. Submission of the learned Counsel for the petitioners is that as per Chapter IV and also Appendix-C of the Medical Council of India Regulation, 75% attendance is necessary for appearing in the examination and total 650 hours are required for teaching in First and Second Semester. Petitioners have completed their course of MBBS First Year as the classes were being run by the Institution.

Petitioners were not having specific knowledge about any interim order passed by the Hon''ble Supreme Court of India and they came to know about the interim order passed in SLP only after passing of the judgment and order dated 10.3.2016. Thereafter, petitioners along with other similarly situated persons moved an application for impleadment/intervention in writ petition No. 6703 (M/B) of 2015 filed by the Society, which was allowed by a Division Bench of this Court on 18.4.2016. Thereafter, despite their great efforts, the writ petition No. 6703 (M/B) of 2015 could not be decided till date and the same is pending disposal.

9. Mr. Sharad Pathak, learned Counsel for the petitioners of writ petition no. 21040 (MS) of 2016 has submitted that since there is no direct prayer having been made either by petitioners or by any other student of the Institution in writ petition No. 6703 (M/B) of 2015, therefore, petitioners moved an application before the Registrar, Dr. Ram Manohar Lohiya Avadh University, Faizabad [hereinafter referred to as the "University"] for permitting them to appear in the examination of First Year scheduled to be held in the month of September, 2016 but their applications were not considered by the University. Therefore, petitioners are constrained to approach this Court by filing the above-captioned writ petitions with the prayer, as referred to herein above.

10. Mr. Sharad Pathak, learned Counsel for the petitioners has further submitted that after passing the requisite competitive examination test for entrance in MBBS Course, petitioners were admitted in the Medical College run and managed by the opposite party no. 6-Society in furtherance of the interim order dated 24.09.2015 passed by this Court in Writ Petition No. 6703 (M/B) of 2016 filed by the opposite party No.6-Society as such the future of the petitioners, who are in the process of grooming as Medicos, cannot and should not be subjected to any dispute between the Management of the Medical College of the petitioners and the Medical Council of India and because of such dispute or any legal hurdle of technicalities cannot legally be permitted to stand so as to mar the future career of petitioners.

11. Further submission of the learned Counsel for the petitioners is that undisputedly, the candidates, who have secured lesser marks in the Medical Entrance Examination than the petitioners and got admissions in other Medical Colleges are being permitted to appear in the examination of MBBS First Year but without any fault attributable to them, the future of the petitioners is being put under clout. His submission is that no person, more particularly a student at the threshold of his career cannot be made to suffer.

12. On placing reliance upon the judgment and order dated 12.1.2016 passed in Civil Appeal No. 195 of 2016 : Medical Council of India v. JSS Medical College, Mr. Pathak has contended that interest of the students is supreme as has been held by the Hon''ble Supreme Court in a similar matter i.e. Civil Appeal No. 1954 of 2015, in which, Hon''ble Supreme Court has been pleased to pass order dated 12.1.2016 in the matter of JSS Medical College directing for completion of course

of 50 students without their being any recognition by the Medical Council of India to the said Medical College, in regard to which Medical College, the Hon''ble Supreme Court had cancelled their admissions earlier vide judgment and order dated 11.1.2012 2012 (5) SCC 28 but as the said College i.e. JSS Medical College continued to allow such students to hold classes and then the Hon''ble Supreme Court securing the interests of the said students passed the aforesaid order dated 12.1.2016 directing that the students may be allowed to complete their course by imposing a cost of Rs.5 Crore upon the JSS Medical College. His submission is that petitioners also deserves the same benefit as now there is compulsion of qualifying NEET Examination for taking admission in MBBS Course and petitioners having already taken admission in MBBS Course have not applied in any other competitive examination, are bound to suffer irreparable loss and injury, therefore, this Court may save the interest of petitioners by exercising its jurisdiction under Article 226 of the Constitution of India.

13. Mr. Pathak has urged that in another similar matter, like the present one, Hon''ble High Court of Karnataka has been pleased to pass order dated 23.6.2016 in writ petition No. 470 of 2016 by which petitioners of the said writ petition, who were similarly situated persons like petitioners, were pleased to accommodate those petitioners on vacant seats available in other Medical Colleges of the State of Karnataka.

14. Mr. Pathak, in these backgrounds, has contended that opposite party no. 5- University is going to start the process of MBBS Examination in the month of September, 2016 in various colleges affiliated to it but no steps were taken for facilitating the First Year Examinations of petitioners as till date no enrolment of petitioners has been done, therefore, appropriate directions deserve to be issued by this Court to the Opposite party no. 5. His submission is that petitioners, who have qualified the UPCMET 2015 securing a considerable rank for admission in MBBS Course, deserve relief for saving their one valuable year or in the alternative in order to save their carrier they be adjusted on vacant seats of MBBS course in other Medical Colleges of the State of Uttar Pradesh, particularly, when the persons obtaining lower rank to the petitioners in the same UPCMET-2015, having been allotted other Medical Colleges, are successfully completing their MBBS course but petitioners are facing legal hurdle in their way which hurdle can only be removed by this Court by exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

15. Lastly, Mr. Pathak has contended that petitioners'' fundamental right of equality under Article 14 of the Constitution of India is under jeopardy as the persons having been selected in the same selection of competitive examinations of 2015 for MBBS Course and having secured lower rank than the petitioners are successfully completing their MBBS Course but the petitioners being allocated the Medical College, i.e. the opposite party no.6 are going to lose their one valuable year for no fault on their part.

16. Mr. Mayankar Singh, learned Counsel for the petitioners of connected writ

petition No. 18468 of 2016 (M/S) and 21485 of 2016 (M/S) and Mr. Sreesh Mishra, learned Counsel for the petitioners of writ petition No. 23347 of 2016 (M/S) and Writ Petition No. 24283 of 2016(MS) have submitted that they do not want to add anything in the matter and adopts the arguments advanced by Sri Sharad Pathak, Advocate.

17. Mr. S.K. Kalia, Senior Advocate, appearing on behalf of the opposite party No.6-Society has submitted that before passing of the interim order dated 29.9.2015 by the Apex Court, opposite party No.6 had already admitted 150 students through counselling by Association of Private Medical Colleges, in pursuance of the interim order dated 24.9.2015 passed by this Court. The aforesaid admissions were taken through counselling after publication of advertisement in daily news paper. His submission is that although the Apex Court directed the opposite party No.6 to maintain status quo as on 24.9.2015 but with respect to other institution against whom a SLP was filed by the MCI, the Apex Court out rightly cancelled the admission of the students. On 30.9.2015 i.e. on the next date of passing of interim order by the Apex Court, a panel of assessors appointed by the MCI visited the Medical College in question to see the availability of necessary infrastructure and requirement for establishing the medical college. A perusal of the aforesaid assessors report reveals that the assessors have found that opposite party no.6 possess a 300 be hospital, which was the only ground for disapproving the scheme of opposite party No.6 for establishing the Medical College. The aforesaid report was submitted before the Apex Court and the Apex Court vide order dated 26.10.2015 directed the MCI to give its comments on the said report and the said report was also available to the institution for filing its reply. In pursuance thereof, the institution filed its affidavit before the Apex Court, wherein deficiencies pointed out by the assessors were replied with supported evidence. In these backgrounds, he submitted that in view of the fact that the basis of non-approval vanished after the inspection by MCI on the very next day i.e. 30.9.2015, the students who were admitted were allowed to continue to stay in the hostel and pursue their studies which was obviously subject to favourable orders of this Court and approval by the competent authority.

18. Further submission of the learned Senior Counsel Mr. S.K. Kalia is that as there was an order of status quo as on 24.9.2015 by the Apex Court, therefore, the Institution did not undertake the formalities as prescribed by the University to give legal effect to the admissions done, such as filling up of enrolment forms, sending attendance to the University, issuing book bank/lockers etc. The Institution also could not submit bank guarantee to the extent of total fees with the Registrar of the University as was directed by this Court vide ad interim order dated 24.9.2015 in view of the order dated 29.9.2015 passed by the Apex court for maintaining status quo as on 24.9.2015. However, finally, the Apex Court vide order dated 10.3.2016, allowed the appeal filed by the MCI and set-aside the interim order passed by this court. Thereafter, the opposite party No.6, vide notice dated 10.3.2016, duly informed the students about the passing of the

order dated 10.3.2016 of the Apex Court and they were requested to inform their parents accordingly. The local police station was also apprised about the situation by means of letter dated 11.3.2016.

19. Mr. Kalia has submitted that after the aforesaid final order of the Apex Court, now the matter with respect to approval of opposite party No.6 for 2015-16 is sub-judice before this Court in Writ Petition No. 6703 (M/B) of 2015. He has submitted that some of the petitioners have also applied to the institution for cancellation/refund of fee, which is under consideration.

20. In refutation, Mr. Asit Kumar Chaturvedi, Senior Advocate, assisted by Mr. Ashwani Kumar Singh, appearing on behalf of the Union of India, while opposing the writ petition, has contended that in order to establish a Medical College, the opposite party No.6-Society made an application on 20.9.2012 to Dr. Ram Manohar Lohia Avadh University, Faizabad for issuance of a Letter of Consent of Affiliation required towards fulfilment of the conditions for grant of permission by the Central Government as per Section 10A of the Indian Medical Council Act, 1956. Similarly, the opposite party No.6-Society had also made an application for issuance of Essentiality Certificate, whereupon the Director General, Medical and Health Services, U.P. recommended to the State Government for issuance of Essentiality Certificate vide letter dated 25.9.2012. However, application moved earlier by the Society was rejected by the Medical Council of India on 17.1.2013 for want of Essentiality Certificate and the Letter of Consent of Affiliation of the University. Lastly, the State Government granted Essentiality Certificate to the opposite party No.6-Society on 30.9.2013 but as Letter of Consent for affiliation was not issued by the University, opposite party No.6- Medical College has approached this Court under Article 226 of the Constitution of India by filing writ petition No. 9658 (M/B) of 2013, which was disposed of finally vide order dated 21.10.2013, directing the competent authority to look into the matter and pass a speaking and reasoned order on the application preferred by the opposite party No.6-Society for grant of Letter of Consent of Affiliation, expeditiously, say, within a period of two weeks from the date of production of certified copy of the order. Ultimately, the University considered the matter and granted the Letter of Consent of Affiliation to the Society on 29.11.2013 for the Academic Session 2014-15. Thereafter, the Medical Council of India passed an order on 14.2.2014, rejecting the application of the Society for the reason that the Consent of Affiliation was issued on 29.11.2013 i.e. on a date subsequent to the cut off date for submission of application i.e. 30.9.2013.

21. Further submission of the learned Senior Counsel Mr. Asit Chaturvedi is that not being satisfied with the order dated 14.2.2014 passed by the Medical Council of India, the opposite party No.6-Society had approached this Court by filing writ petition No. 1605 of 2014 (M/B) : Society for Advancement of Environmental Sciences v. Union of India. A Division Bench of this Court, vide judgment and order dated 26.5.2014, while allowing the writ petition vide order dated 14.2.2014, directed the Medical Council of India to consider and decide the

application moved by the Society in accordance with law for the academic session 2014-15 and, thereafter, the Central Government was directed to consider the case of the Society for grant of permission under Section 10A of the Indian Medical Council Act for establishing the Medical College in accordance with the recommendations which may be made by the Medical Council of India for the Academic Session 2014-15. Against the judgment and order dated 26.5.2014, the Medical Council of India preferred a Special Leave to Appeal (Civil) No. 14759 of 2014, which was converted to Civil Appeal No. 5933 of 2014. Hon''ble Supreme Court, vide judgment and order dated 2.7.2014, while appreciating the undertaking given by the Counsel for the Medical Council of India that the application which had already been submitted by the College would be treated as a valid application for commencement of studies for the Academic Session 2015-16, directed the Medical Council of India to complete inspection of the Institution on or before 31.10.2014. Thereafter, Medical Council of India made an application for extension of time as granted vide judgment and order dated 2.7.2014, which was disposed of by the Hon''ble Supreme Court by extending four weeks time from 17.11.2014 vide judgment and order dated 17.11.2014.

22. Further submission of Mr. Asit Kumar Chaturvedi is that in pursuance of the judgment and order dated 2.7.2014 read with order dated 17.11.2014, the Council Assessors carried out an inspection of the Institution on 9th and 10th of December, 2014. The assessment report was considered by the Executive Committee of the Council at its meeting dated 13.1.2015 and found that since the Institution has failed to meet the qualifying criteria under Section 3 (2) (5) of Establishment of Medical College Regulations, 1999 pertaining to the person owning and managing a hospital of not less than 300 beds, therefore, it was decided to return the application for establishment of a new medical College at Lucknow, Uttar Pradesh by Society to the Central Government recommending disapproval of the Scheme under Section 10A of the Indian Medical Council Act, 1956 for the academic session 2015-16 as there is no provision under Section 10A of the Indian Medical Council Act, 1956 or the regulations framed therein to keep the application pending in the council office for the next academic year.

23. Further submission of Mr. Asit Kumar Chaturvedi is that the aforesaid decision of the Executive Council of Medical Council of India was sent to the Central Government vide letter dated 21.1.2015, upon which, the Central Government, vide letter dated 20.2.2015, requested the Medical Council of India to review/assess the schemes in the light of the documents submitted by the Institution in compliance and the recommendations of the Committee so constituted under the provision of Section 10(A) (4) of the Indian Medical Council Act, 1956. In pursuance of the letter dated 20.2.2015 of the Central Government, the Medical Council of India examined the issue and vide letter dated 11.5.2015, it was informed that the Scheme for establishment of new medical College at Lucknow has been disapproved for the academic session 2015-16. The Central Government, in turn, has also accepted recommendations for disapproval of the scheme for establishment of new medical College at

Lucknow. Accordingly, the Central Government, vide letter dated 15.6.2015, informed the opposite party No. 6-Society for disapproval of scheme for establishment of new medical College at Lucknow. However, in the said letter dated 15.6.2016, it has been mentioned that it will be open for the Society to apply afresh for next academic session strictly as per the provision of Indian Medical Council Act, 1956 and Regulations framed thereunder.

24. Mr. Asit Kumar Chaturvedi has further submitted that the aforesaid disapproval of the Scheme for establishment of new Medical College at Lucknow was challenged by the opposite party No.6-Society by filing writ petition No. 6703 of 2015 (M/B). A Division Bench of this Court, vide order dated 29.7.2015, as an interim measure, directed the Medical Council of India to review and reassess the infrastructure and other requirements in the Institution within a period of four weeks from the date of the order with regard to the deficiency pointed out by its Executive Committee. It was also provided that for the aforesaid purpose, the Medical Council of India was required to depute a panel of experts which would submit its report within a period of four weeks and the Medical Council of India was required to consider the same and forward its recommendations to the Government of India for its consideration and further action. However, it was also provided that the aforesaid exercise would be subject to further orders which may be passed in the writ petition. Subsequently, a Division Bench of this Court, vide order dated 24.9.2015, on appreciating the fact that the last date of admission of MBBS First Professional Course is 30.9.2015, as an interim measure, permitted the Institution to admit 150 students in the MBBS First Professional Course as per the existing system of the admission applicable to the Institution subject to the condition that the admission of the students under the said order will be subject to further orders. It was also provided that the institution, while making admissions, will clearly indicate and apprise the students in writing that their admission, if any, will be subject to further orders, and in case of failure of the writ petition, their admission to the institution shall stand automatically cancelled. The students so informed shall be required to furnish an undertaking to the Registrar of the University concerned to the effect that they have been informed about the said order and they will not have any claim with regard to admission with the institution in question and that they understand that in case writ petition fails, their admission shall stand cancelled. It was also provided that the petitioner's institution shall furnish Bank Guarantee to the extent of total fees with the Registrar, Dr. Ram Manohar Lohiya Awadh University, Faizabad, which may be charged from the students for admitting them in MBBS First Professional Course.

25. Mr. Chaturvedi has pointed out that pursuant to the interim order dated 24.9.2015 passed in writ petition No. 6703 (M/B) of 2015, the Association issued an advertisement dated 27.9.2015 for special counselling for the successful candidates of the main/waiting list of UPCMET-2015 with the condition that the candidates, who have already attended any of the earlier counselling will not be entertained in the counselling which was to be held on 28.09.2015 and

29.09.2015 at centres specified therein. In pursuance of the aforesaid advertisement, 150 candidates including petitioners sought admission in the medical college, by participating in the special counselling held at specified centres after submitting affidavit to the effect that the admission is provisional subject to decision in Writ Petition No. 6703 (M/B) of 2015 and were allocated the Medical College run by the opposite party no. 6. However, the copy of the affidavit as directed, has not been filed by the petitioners or by the opposite party no. 6.

26. Mr. Chaturvedi has contended that 150 candidates including the petitioners, were admitted in the medical college after depositing the fees etc. but have not disclosed the amount of fees etc. deposited with details thereof (including receipt) in the Medical College. It is said that Dr. M.C. Saxena, Honorary President of the Society wrote a letter to Dr. Ram Manohar Lohia Awadh University to provisionally enroll 150 students including the petitioners as well as to forward the format to submit the bank Guarantee as directed by the Hon''ble High Court, by the ad-interim order dated 24.09.2015.

27. Mr. Asit Chaturvedi, learned Senior Counsel appearing on behalf of the Union of India has contended that both the aforesaid ad interim orders dated 29.7.2015 and 24.9.2015 were challenged by the Medical Council of India before the Apex Court by filing Special Leave to Appeal (C) Nos. 26006 of 2015 and 28100 of 2015, respectively. The Apex Court had heard both the matters together with and vide order dated 29.9.2015, as an interim measure, directed the Medical Council of India to carry out the inspection as directed by the High Court vide order dated 29.7.2015, on or before 10.10.2015 and the report of the inspection be kept in a sealed cover. The Apex Court had also directed to maintain status quo as on 24.9.2015 and not to give effect admission of students, if any.

28. In the aforesaid backgrounds, submission of the learned Senior Counsel is that all actions/admission held after 24.09.2015 cannot be given effect to as the clock stood reversed back to 24.09.2015. All actions/decisions stated herein above between 25.09.2015 and 28.09.2015 cannot be given effect to in view of the order of the Apex Court dated 29.9.2015. Moreover, the Society/Medical College was represented through Counsel before the Hon''ble Supreme Court and as such the authorities of the Medical College/opposite party no.6 were well aware about the orders having been passed by the Apex Court. The Medical Council of India, in compliance of the interim order dated 29.9.2015, held inspection but the same was kept in sealed cover. The sealed cover inspection report dated 30.09.2015 was placed before the Hon''ble Supreme Court and the Hon''ble Supreme Court, after considering the same directed Executive Committee of MCI to consider in accordance with law and forward its remark to Hon''ble Supreme Court on or before 20.11.2015.

29. Mr. Chaturvedi has submitted that Hon''ble Supreme Court allowed the SLP no. 26006/2015 & 28100/2015 (Medical Council of India v. Society for Advancement of Environmental Science and others) and set aside the order

dated 29.07.2015 & 24.9.2015 passed in writ Petition No. 6703 (M/B) of 2015 (Society for Advancement of Environmental Science v. U.O.I. and others). His submission is that since the Hon''ble Supreme Court set aside this Court's interim order dated 29.07.2015 and 24.09.2015, therefore, all actions/decisions from 30.07.2015 till date in compliance of the interim order dated 29.07.2015 and 24.09.2015 are nullity and so no action/decision since 29.07.2015 can be given effect to. He has further submitted that Medical Superintendent of the Medical College issued notice to all MBBS students including the petitioners requesting to inform their parents and accordingly vacate the campus till further orders passed by the Hon''ble High Court in Writ Petition No.6703 (M/B) of 2015 on the basis of Hon''ble Supreme Court judgement & order dated 10.03.2016. Petitioner of Writ Petition No.16895 (M/S) of 2016 has admitted this document, whereas petitioners of Writ Petition No.18468 (M/S) 2016 have denied this document. Petitioners of Writ Petition No.18468 (M/S) 2016 have annexed an Office Order dated 11.03.2016, issued by Dr. M.C. Saxena, Group Chairman of the Society, after the Hon''ble Supreme Court judgment & order dated 10.03.2016 constituting a committee to process the refund of admitted students who are no more willing to stay back with the college for the academic session 2015-16.

30. It has been stated by the learned Senior Counsel that Registrar of the Medical College wrote letter to the Station House Officer, P.S. Thakurganj, Lucknow with regard to agitating students including petitioners of six writ petitions for necessary action. Petitioners have also admitted this document. A notice was issued by Col. O.B. Srivastava (Retired), Chief Administrator of the Medical College that final hearing is fixed before this Hon''ble Court on 18.04.2016 and as such no further applications for refund/cancellation shall be entertained till further orders. A notice issued by Col. O.B. Srivastava (Retired) Chief Administrator of the Medical College was issued for holidays w.e.f. 14.04.2016 to 17.04.2016. His submission is that since the Medical college is new and M.B.B.S. students were for the first time in academic session 2015-16, therefore, there was no occasion to issue such notice after the Hon''ble Supreme Court interim order dated 29.09.2015 and Hon''ble Supreme Court judgment dated 10.03.2016.

31. To strengthen his submissions, Mr. Chaturvedi has placed reliance upon Chandigarh Administration v. Jagjit Singh :(1995) 1 SCC 745; Maharishi Dayanand University v. M.L.R. Saraswati College of Education : (2000) 7 SCC 746; Chandra Shashi v. Anil Kumar Verma : 1995 (1) SCC 421 and submitted that the Society/Medical College has wilfully disobeyed, disrespected, undermined and violated the interim order dated 29.09.2015 of the Hon''ble Supreme Court since 29.09.2015 to 09.03.2016 and judgment & order dated 10.03.2016 and since 10.03.2016 till date in the background that the Society/Medical College was represented through Counsel before the Hon''ble Supreme Court when the interim order dated 29.09.2015 and judgment and order dated 10.03.2016 was delivered. The Society/Medical College has clearly scandalised

and acted in blatant disregard of orders dated 29.09.2015 of the Hon'ble Supreme Court since 29.09.2015 to 09.03.2016 and judgement & order dated 10.03.2016 since 10.03.2016, till date in the background that the Society/Medical College was represented through battery of lawyers before the Hon'ble Supreme Court on the day, when the interim order dated 29.09.2015 was passed and also when the judgement & order dated 10.03.2016 was delivered. Thus it is clear that opposite party no.6 have attempted to deceive by disguising the true nature of the claim or abuse of the process of Court by stating before this Court that all formalities of admission, deposit of fees etc. was completed on 28.09.2015 and the academic session 2015-16 was conducted smoothly.

32. Mr. Gyanendra Kumar Srivastava, learned Counsel for the Medical Council of India [fourth respondent] While supporting the submissions of Mr. Asit Kumar Chaturvedi, learned Senior Advocate appearing on behalf of the Central Government, has submitted that Hon'ble High Court of Orissa at Cuttack vide order dated 26.2.2016 passed in WPC No. 2200 of 2016 : Tumhanath Panda and others v. Principal, Hi-Tech Medical College and others, declined to entertain the petition preferred by the students, who were admitted in pursuance of the interim order passed by this Court, under the facts similar to that of the present petition, in the medical College therein, on the ground that the said interim order had been stayed by the Apex Court in the SLP preferred by the answering respondent. He further submitted that reliance placed by the petitioners/students in the case of MCI v. JSS Medical College and others (C.A. No. 195 of 2016), is not maintainable as the same has been passed by the Apex Court in peculiar facts of the case and the same shall not have the bearing on the present petitions. Moreover, the said matter pertains to increase of seats and not establishment of new medical college as in the present case.

33. So far as the allegations of the petitioners against the MCI Assessors is concerned, Counsel for the Medical Council of India has contended that the same is absolutely incorrect and baseless as the inspections of the MCI are conducted by an inspection team comprising of three neutral inspectors, possessing utmost integrity. Out of these three, one is a co-ordinator and the other two are taken from the approved list of eminent Medical Professors from reputed Government Institutions only such as AIMS, PGI-Chandigarh, Maulana Azad Medical College, Kolkata, Madras Medical College, Chennai, Osmania Medical College Hyderabad, Grant Medical College, Mumbai, G.S. Medical College, Mumbai, Bangalore Medical College, Bangalore etc. It has also been submitted that the Co-ordinator as well as the Inspectors are randomly selected from the list of Co-ordinators and Inspectors by a computer Software. Each of the inspection report is considered by the Executive Committee of the Medical Council of India for making recommendations to the Government of India.

34. Mr. Srivastava has further submitted that the Apex Court, in the case of Manoharlal Sharma v. Union of India : 2013 (10) SCC 60 has categorically held that in the absence of mala fide allegations against the assessment team, there

is no question of challenging the observations of the Medical Council of India's assessors in the assessment report, since all the assessors are independent from various Government Medical Colleges across the Country. Almost similar view has been reiterated recently by the Apex Court in judgment dated 6.5.2016 in SLP (c) No. 9997 of 2016 : MCI v. Kalinga Institute of Medical Sciences passed by the Apex Court.

35. Submission of the learned Counsel for the Medical Council of India, in this backgrounds, is that the writ petitions are not maintainable before this Court as petitioners who had been admitted in the Medical College in pursuance of the interim order dated 24.9.2015 passed by this Court in writ petition No. 6703 (M/B) of 2015 has been challenged by the answering respondent before the Apex Court and the Apex Court, vide interim order dated 29.9.2015 directed to maintain status quo as it exists on 24.9.2015 and the Apex Court further directed that admission of students, if any shall not be given effect to. Finally, the Apex Court, vide judgment and order dated 10.3.2016, set-aside the interim order dated 29.7.2015 and 24.9.2015.

36. Learned Counsel for the Medical Council of India has submitted that the aforesaid writ petition bearing No. 6703 of 2015 (M/B) is pending before this Court for final hearing in which affidavits have been exchanged by the parties. He submits that there is no vested right of petitioners to claim relief which has been sought in the writ petitions as petitioners are not bona fide students as their admission has been nullified by the Apex Court vide its order dated 29.7.2015 passed in the Special Leave Petition No. 28100 of 2015.

37. Lastly, Counsel for the Medical Council of India has vehemently argued that the writ petitions do not deserve any indulgence from this Court under Article 226 of the Constitution of India as the petitioners/students have not approached this Court with clean hands as the petitioners/students have approached this Court at the behest of the Medical College as is evident from perusal of paragraph 18 of writ petition No. 16895 of 2016 (M/S). He submits that opposite party No.6-Society has imparted education in first year MBBS Course to the petitioners in gross violation of the interim order dated 29.7.2015 passed by the Apex Court in SLP No. 28100 of 2015, in which the Apex Court strictly directed that status quo as existed on 24.9.2015 shall be maintained and further direction has been issued that the students admitted, if any, shall not be given effect to. The aforesaid interim order was passed after hearing the parties in the presence of the Counsel for the opposite party/Medical College. The opposite party/Medical College was required to comply with the directions issued by the Apex Court but the respondent/Medical College ignoring the interim order dated 29.9.2015 imparted medical education to the petitioners for first year MBBS Course. Thus, to maintain the sanctity of the orders passed by the Apex Court and to give a message to the people, opposite party No.6/Society may be punished for Contempt of Court as opposite party no.6 which runs the Medical College is guilty of contempt of their wilful disobedience of the order passed by the Apex Court.

38. Mr. Shobhit Mohan Shukla, learned Counsel for the opposite party No.5-Dr Ram Manohar Lohia University has submitted that the University has supported the submissions advanced by the Counsel for the Medical Council of India as well as Central Government. However, he added that from the interim order dated 29.9.2015 passed by the Apex Court, one thing is clear in abundance that the interim order contained in the order dated 24.9.2015 passed by this Court stood completely eclipsed, therefore, firstly the College being run and managed by the opposite party No.6 could have not taken admission and if at all it had taken admission of the students, then, the same shall not be given effect to. He further submitted that the University has no knowledge of any admission having been taken by the Institute being run and managed by the opposite party No.6 as no one has furnished undertaking to the Registrar of the University to the effect that he/she has been admitted after passing of interim order by the Division Bench and that he/she will not have any claim with regard to admission. He also added that the Institute being run and managed by the opposite party No.6 has not furnished any bank guarantee to the University. Thus, the claim putforth by petitioners proves to be absolutely misconceived.

39. Mr. Sanjay Bhasin, learned Additional Chief Standing Counsel, representing the State of UP and the Director General, Medical Education, adopted the submissions advanced by Mr. Asit Chaturvedi, learned Senior Counsel for Union of India, with certain addendums. The first being that the alleged admissions of petitioners by opposite party No. 6 cannot be found to have been made in a fair, transparent and non-exploitative manner, nor can it be found from the pleadings that the admissions have been made adhering to merit obtained by the candidates in the entrance examination, said to have been conducted by the Association of Private Medical Colleges, and thus the dictum of the Hon''ble Supreme Court for adherence to merit has been clearly infringed. Such an admission is not a valid admission in the eyes of law and has to be discarded as being completely in derogation of the established norm and procedure and, therefore, illegal and not sustainable.

40. To strengthen his submission, Mr. Sanjay Bhasin has relied upon the judgement of the Hon''ble Supreme Court in the case of P.A. Inamdar v. State of Maharashtra (2005) 6 SCC 537, wherein the Hon''ble Supreme Court while interpreting the judgement in the case of TMA Pai Foundation has mandated that admission to any private professional educational institution has to be fair, transparent, non-exploitative, and based on merit. In these backgrounds, submission of Mr. Sanjay Bhasin is that in the instant case, based on the pleadings exchanged between the parties as are available on record, the admissions of petitioners fails the triple test, as laid down by the Hon''ble Supreme Court, of being fair, transparent and non-exploitative and also that merit has been given a complete go-by, which has resulted in merit being a complete casualty. The admissions made in derogation of the dictum of the Hon''ble Supreme Court of adherence to merit and qualifying the triple test, neither deserve nor can be saved, being in derogation of the established norms

and procedure.

41. It has been argued that the case of petitioners has to stand on its own legs and a party in opposition has every right to demolish the case of the petitioner on the basis of the averments made in the plaint (or memo of petition) itself and/or on the basis of the available pleadings on record, that may have been exchanged between adversarial parties.

42. Before dealing with the merits and demerits of the case, it would be apt to reproduce some of the relevant provisions of the Medical Council Act which deals with the permission and recognition of the Medical College. The Indian Medical Council Act, 1956 (hereinafter referred to as "the Act" specifically provides for recognition of medical qualification granted by universities or medical institutions either in India or abroad. Section 10 deals with the permission for establishment of new Medical College, new course of study. Recognition of medical qualification granted by universities or medical institutions in India is dealt with under Section 11 of the Act. The provision reads as follows:

10A. Permission for Establishment of New Medical College, New Course of Study etc.

1. Notwithstanding anything contained in this Act or any other law for the time being in force:-

1. no person shall establish a medical college (or)

2. no medical college shall:-

1. open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognised medical qualification; or

2. increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1 - For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

Explanation 2 - For the purposes of this section "admission capacity" in relation to any course of study or training (including postgraduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training.

1. Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the central Government shall

refer the scheme to the Council for its recommendations.

2. The Scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

3. On receipt of a scheme by the Council under sub-section (2) the Council may obtain such other particulars as may be considered necessary by it from the person or the medical college concerned, and thereafter, it may -

1. if the scheme is defective and does not contain any necessary particulars, give a reasonable opportunity to the person or college concerned for making a written representation and it shall be open to such person or medical college to rectify the defects, if any, specified by the Council.

2. consider the scheme, having regard to the factors referred to in sub-section (7) and submit the scheme together with its recommendations thereon to the Central Government.

4. The Central Govt. may after considering the scheme and the recommendations of the Council under sub-section (3) and after obtaining, where necessary, such other particulars as may be considered necessary by it from the person or college concerned, and having regard to the factors referred to in sub-section (7), either approve (with such conditions, if any, as it may consider necessary) or disapprove the scheme, and any such approval shall be a permission under sub-section (1):

Provided that no scheme shall be disapproved by the Central Government except after giving the person or college concerned a reasonable opportunity of being heard; Provided further that nothing in this sub section shall prevent any person or medical college whose scheme has not been approved by the Central Government to submit a fresh scheme and the provisions of this section shall apply to such scheme, as if such scheme has been submitted for the first time under sub-section (1).

5. Where, within a period of one year from the date of submission of the scheme to the Central Government under sub-section (1), no order passed by the Central Government has been communicated to the person or college submitting the scheme, such scheme shall be deemed to have been approved by the Central Government in the form in which it had been submitted, and accordingly, the permission of the Central Government required under sub-section (1) shall also be deemed to have been granted.

6. In computing the time-limit specified in sub-section (5), the time taken by the person or college concerned submitting the scheme, in furnishing any particulars called for by the Council, or by the Central Government, shall be excluded.

7. The Council, while making its recommendations under clause (b) of sub-section (3) and the Central Government, while passing an order, either approving

or disapproving the scheme under sub-section (4), shall have due regard to the following factors, namely:-

1. whether the proposed medical college or the existing medical college seeking to open a new or higher course of study or training, would be in a position to offer the minimum standards of medical education as prescribed by the Council under section 19A or, as the case may be under section 20 in the case of postgraduate medical education.
2. whether the person seeking to establish a medical college or the existing medical college seeking to open a new or higher course of study or training or to increase its admission capacity has adequate financial resources;
3. whether necessary facilities in respect of staff, equipment, accommodation, training and other facilities to ensure proper functioning of the medical college or conducting the new course of study or training or accommodating the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme.
4. whether adequate hospital facilities, having regard to the number of students likely to attend such medical college or course of study or training or as a result of the increased admission capacity, have been provided or would be provided within the time-limit specified in the scheme;
5. whether any arrangement has been made or programme drawn to impart proper training to students likely to attend such medical college or course of study or training by persons having the recognised medical qualifications;
6. the requirement of manpower in the field of practice of medicine; and any other factors as may be prescribed.
7. Where the Central Government passes an order either approving or disapproving a scheme under this section, a copy of the order shall be communicated to the person or college concerned.

10B. Non-Recognition of Medical Qualifications in Certain Cases.

1. Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college shall be a recognised medical qualification for the purposes of this Act.
2. Where any medical college opens a new or higher course of study or training (including a postgraduate course of study or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognised medical qualification for the purposes of this Act.
3. Where any medical college increases its admission capacity in any course of

study or training except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognised medical qualification for the purposes of this Act.

Explanation - For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

11. Recognition of Medical Qualification Granted by Universities or Medical Institutions In India.

1. The medical qualifications granted by any university or medical Institution in India which are included in the first Schedule shall be recognised medical qualifications for the purposes of this Act.

2. Any university or medical Institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Govt., to have such qualification recognised, and the Central Government, after consulting the Council, may, by notification in the official Gazette, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognised medical qualification only when granted after a specified date.

Thus it is crystal clear that permission of the Central Government is required - (1) to establish a medical college, (2) to open a new course of study or training other than the recognised course and (3) to increase the admission capacity in any course of study or training. However, recognition of the Central Government is also required for the medical college and the course of study for the purpose of the medical qualification. Once a medical college is recognised under Section 11 of the Act along with medical qualification, thereafter, for increase in the admission capacity in any course of study or training that is recognised under Section 11 of the Act, only permission from Central Government as per the scheme under Section 10A of the Act is required. But there are three Exceptions to this. Those Exceptions are provided under Section 10B:

(i) The medical qualification granted to any student of a medical college established without permission of the Central Government;

(ii) Medical qualification granted to any student in any recognised medical college where the new or higher course of study or training is conducted without the previous permission of the Central Government;

(iii) Where a medical college increased its admission capacity in any recognised course of study or training without the previous permission of the Central Government, and in such a case, the medical qualification granted to those students of such recognised medical colleges on the basis of the increased

admission capacity, which is unauthorized, shall not be a recognised medical qualification for the purpose of the Act.

43. From the facts mentioned above, undoubtedly, the Institute does not possess either a recognition from the Government of India nor does it possess affiliation with the University. Under List III of Schedule VII of the Constitution of India Entry 25 relates to Medical Education, subject to the provisions of Entries 63, 64, 65 and 66 of List I. Entry 66 of List I empowers the Parliament of India to frame laws relating to coordination and determination of standards in institutions for higher education or research and scientific and technical institutions. As averred above, the Indian Medical Council Act, 1956 has been enacted for maintenance and determination of Standards of medical education and under section 10-A thereof the Central Government is the competent authority to grant permission to set up any medical college. There is a categorical bar against setting up of any Medical College U/s 10-A except with the previous permission of the Central Government. In the absence of a previous permission, no medical college can be deemed to have come into existence in any form. And without there being a medical college in existence, there is no occasion of either having any admission or any study or course.

44. Recognition and affiliation are two distinct things and occupies their independent field and only after grant of both, a college becomes a legally constituted entity. Section 37 of the Uttar Pradesh State Universities Act, 1973 deals with the Affiliation and Recognition. Sub-clause (2) of Section 37 says that the Executive Council may, with the previous sanction of the State Government admit any college which fulfils the conditions of affiliation. Proviso appended to the said sub clause further provides that unless all the prescribed condition of affiliation are fulfilled by a college, it shall not admit any student in the first year of the course of study for which affiliation is granted after one year from the date of commencement of such affiliation. Affiliation is granted after inspection of the college and hospital to ensure that they have proper buildings, apparatus, equipments, teaching staff etc. Even after grant of permanent affiliation, the same can be cancelled, if the conditions mentioned in Section 37(8) or 37(9) exist. As far as the Medical College in question is concerned, Dr Ram Manohar Lohia Awadh University, Faizabad had issued a consent of affiliation dated 27.8.2014 which reads as under"

Consent of Affiliation

"On the basis of the report of the Local Inquiry Committee, Dr. Ram Manohar Lohia Avadh University, Faizabad has agreed in principle, to affiliate the proposed course of M.B.B.S to be opened at Lucknow by the "proposed Dr M.C. Saxena College of Medical Sciences, 688, Saitha, Barawan Kala, Dubagga I.I.M. Bypass, Lucknow, U.P" being established by Society for the Advancement of Environmental Sciences 222, Chandlok Colony, Aliganj, Lucknow, Subject to Grant of Permission by the Government of India, Ministry of Health and Family Welfare, New Delhi, under/Section 10(a) of the Indian Medical Council Act, 1956

(102 of 1956) for the academic session 2015-16."

Except this document, no other document has been brought on record to establish that the college has been granted valid affiliation by the University for the academic session 2015-2016. Thus it can easily be gathered, the Medical College in question was neither having recognition nor affiliation and in blatant disregard of Section 37(2) Of the Uttar Pradesh State Universities Act, 1973 admitted the students. Thus the authorities of the Medical College/opposite party no.6 not only played fraud but are solely responsible for ruining the career of students/petitioners.

45. Here, it is necessary to refer the advertisement issued on 27.09.2015 inviting students for participation in counselling, which has been filed by the petitioners along with the memo of writ petition. A bare perusal of the advertisement shockingly exposes, in a manner like textbook example, that process of counselling said to have taken place on 28.09.2015 was completely unfair/non-transparent/purely exploitative and shunned merit in totality. Just one line in the advertisement, which is strikingly highlighted gives it away. That highlighted line occurring in the advertisement reads thus :-

"The candidates who have already attended any of the earlier counselling will not be entertained"

46. The meaning and message intended to be conveyed by the above emboldened insertion in the advertisement is not difficult to decipher. In unequivocal terms, it restrains those candidates from participating in the counselling process, who had attended the earlier counselling, by blatantly advertising and telling them that they would not be entertained. This, in my opinion, is definitely a pointer towards the exploitative character of counselling. Even if one refrains from taking this as a pointer towards the exploitative nature of counselling, in the absence of specific material on record, but then one is confronted with a consequential discomfoting question as to why candidates, who had participated in the earlier counselling, have been debared that they would not be entertained. Answer to this is not difficult to reach. The very fact that they had participated in the earlier counselling meant that they were placed higher in merit, or at least they ought to have been so found placed, to have been invited for counselling earlier on and for reason of higher placement in merit had earlier got an occasion to participate in counselling. Yet, on the earlier occasion, they could not succeed in getting admission in any of the private medical colleges. Now such students, who have been placed higher in the merit, have been told through the advertisement that they would not be entertained for participation in counselling. The pointer towards exploitative character of counselling gets firmed up for this obvious reason. Secondly, these restrained students who were higher placed in merit and have been told that they would not be entertained, without spelling out as to why they would not be permitted to participate in the counselling scheduled for 28th and 29 September 2015, is an act against all cannons of fairness and raises serious question on the fairness of

the counselling process. Thirdly, there is nothing on record to indicate as to how the counselling was held, which alone could have established the transparent nature of counselling. As against this what we do have on record is that as per the advertisement the counselling was to be held on 2 days viz. on 28th and 29 September 2015. While on 28th September, 2015, the counselling was to be held at Lucknow and Bareilly, on 29th September, the counselling was to be held at Mathura, Bareilly and Agra. For appearing in Counselling there is some process which is to be followed by a candidate. A student has to enroll himself by payment of some prescribed fee for counselling, where after his credentials are checked and then based on his merit position, he gets an opportunity to make his choice / option of selecting a college, upon his turn being reached in order of merit. There is complete opaqueness regarding the process adopted. There is nothing on record to indicate that as to what happened to students who would have prepared themselves to participate in the counselling scheduled for 29th September, 2015, at Mathura and Agra. There can be no denying of the fact that many of such students would have been placed higher in merit than the petitioners. Also noticeable is the fact that the petitioners have neither disclosed their marks nor merit ranking even while saying that they had obtained considerable rank and asserting that candidates having lower marks have been admitted. The whole process seems to have been gone about, in a grey area, behind a smoke screen with no transparency. Thus, leading to the inevitable conclusion that the process of admission had failed to pass the triple test as laid down by the Hon"ble Supreme Court on each of the three counts, and merit has been a casualty in such admissions. And, therefore, such admissions cannot be said to be admissions made on accepted norms of fairness, transparency and non-exploitativeness, nor on merit.

47. I find force in the submission advanced by Mr. Sanjay Bhasin, Addl. Chief Standing Counsel that on a single day viz. 28th September, 2015, the counselling for 150 seats is said to have taken place at Bareilly and Lucknow, which itself is a time consuming task by itself. The counselling, as per the advertisement, was to commence at 9:00 am and continue till 3:00 pm. Only after the end of counselling at around 3:00 pm, the list of candidates to be recommended from both the centres viz. Bareilly and Lucknow would have been prepared. The petitioners are said to have been allotted to the college of opposite party no. 6 on that very day by the Association. On that very date, all the petitioners (and the remainder of 150 students) are said to have deposited the entire fee (by cash or cheque etc) with the college and in the process some of them would have travelled from Bareilly (where counselling was scheduled). On the same day, letter is said to have been dispatched to the University, regarding admissions having been completed. The enormity of the above task involving 150 admissions makes it impossible to be completed on a single day, more so when the closing time for counselling was 3:00 pm on that first day of counselling, with second day of counselling still remaining. Moreover, no undertaking was furnished by any of the students to the Registrar of the University as mandated under the interim

orders dated 24.09.2015 of this Court, under which admissions are said to have been done.

48. It is pertinent to add that there is nothing on record to suggest as to how, if at all, petitioners undertook the studies academically, even if they did so in the face of the interim order of the Hon''ble Supreme Court. Was there a time-table for theory classes, with Lecturers assigned to deliver lecture ? Were the lecturers actually taking classes even in the face of the interim orders of the Hon''ble Supreme Court ? Admittedly, no attendance of any student has either been marked nor produced before this Court. Even an averment to that effect is not there in the memo of writ petition. To sustain any prayer for being permitted to take the exams, a student has to undergo minimum teaching hours for the First and Second Semester as have been prescribed in Appendix-C of the MCI Regulations on Graduate Education, 1997 . The same include 650 hours of Anatomy; 480 hours of Physiology; 240 hours of Biochemistry; and 60 hours of Community medicine. There is no averment, much less any material, to suggest completion of the minimum standards of education thus prescribed.

49. In the instant cases, petitioners are claiming benefits based on alleged admissions and also claiming their adjustment in vacant seats of other recognised and affiliated medical colleges. For grant of such a relief at the first instance petitioners would have to establish, that they were bona fide students of the college in which they were admitted; secondly, that their admission was in accordance with law; and thirdly, that they have undertaken the course academically in a proper manner maintaining the standards of education. Surprisingly, there is no such averments in the memo of writ petition as well as other pleadings exchanged between the parties; there is nothing to indicate affirmation of any of the above three basic minimum ingredients.

50. As regard, the first requirement of being a bona fide student of the college, it completely fails in view of the interim order dated 29.09.2015 passed by the Hon''ble Supreme Court directing for maintenance of status quo as on 24.09.2015 and for not giving effect to admissions, if any, made. Further, there is neither any averment in the writ petition nor an iota of evidence to substantiate the factum of admission having been duly made on 28.09.2015, as alleged by petitioners, as well as the college management. The pleadings are completely silent as to how much was the fee amount; as to when the fee was deposited by petitioners; when the same was accepted by opposite party No.6 through issuance of any receipt; what was the amount of fee deposited by each student; how much of the fee deposited was in the form of cash and how much was in the form of cheque/demand draft/NEFT/any form of bank transfer; how the petitioners covered the distance from far-off places like Gujarat, Rajasthan, Orissa, Himachal Pradesh etc pursuant to the advertisement dated 27.09.2015 to reach the place of counselling on 28.09.2015 and also as to how the entire admission process was completed on a single day i.e. 28.09.2015 itself. The silence of pleadings on the above counts is a deliberate and well thought

omission since details on this count would have exposed that the counselling and admissions of petitioners were not made on a single day i.e. on 28.09.2015.

51. Regarding the second ingredient of requirement of the admissions to be in accordance with law, the admissions do not satisfy the triple tests of being fair, transparent and non-exploitative; and based on merit, to qualify such admissions as a valid admission. In this regard the pleadings in the memo of writ petition, are again found to be completely silent and wherever present are vague. In fact, the triple test, as laid down by the Hon"ble Supreme Court, fails on all the three counts viz. on fairness, on transparency and on non-exploitativeness; besides failing on adherence to merit. Here, it would be apt to mention the averment made in paragraph 22 of the writ petition, which upon reproduction read as under :-

"That the petitioners, who have qualified the UPCMET 2015 securing a considerable rank for admission in MBBS course, deserve relief for saving their one valuable year or in the alternative in order to save their carrier to adjust them in vacant seats of MBBS course in other medical colleges of the State of Uttar Pradesh, particularly, when the persons obtaining lower marks to the petitioners in the same UPCMET 2015 and having been allotted other medical colleges, are successfully completing their MBBS course but the petitioners are facing legal hurdle in their way, which hurdle can only be removed by this Hon"ble court.... "

52. To my considered opinion, the above pleadings are incomplete and vague as they do not depict as to what has been the rank of the petitioners in the UPCMET-2015 and who were the persons with lower merit than the petitioners, who got admitted. If such an assertion is believed, it would lead to an irresistible inference that if a candidate lower in rank than the petitioners could secure admission prior to admissions of the petitioners, as pleaded by the petitioners and not denied by the respondent, a case of shunning of merit is made out in itself merely on the basis of the pleadings of the parties. The very fact that the petitioners themselves have asserted in the above paragraph that persons lower in merit were admitted to other colleges, all of which admissions had taken place prior to the advertisement dated 27.09.2016, itself would go to show that merit has not been adhered to and then, how could it be found that students more meritorious than the petitioners have not been left out from being admitted. Thus from the aforesaid facts, it is established beyond doubt that the very admission of the students/petitioners is not in accordance with the law. In other words, there is no right available to the petitioner to claim relief which has been sought in the present set of writ petition as petitioners are not bona fide students as by an ad interim order dated 29.9.2015, the Apex Court directed that the status quo as on 24th September, 2015, shall be maintained and also provided that admission of students, if any, shall not be given effect to. Later on, their admission has been nullified by the Apex Court vide its final judgment and order dated 10th March, 2016. Thus, there is no question of issuing any direction for

adjustment of such students in other Medical Colleges.

53. The Apex Court in the case of Chandigarh administration v. Jagjit Singh, (1995) 1 SCC 745, has emphasized that the court cannot ignore the law and well accepted norms. The relevant observations reads as under:-

".... to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. thus the high court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken , the same must be repeated irrespective of the fact whether such an orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

54. In view of the narration of the facts, as disclosed above, it is hard to digest that petitioners weren't aware of the interim orders of the Hon'ble Supreme Court dated 29th September, 2015, till the time that the SLP was allowed on 10.03.2016, when the interim orders, under which they are said to have taken admission, was set aside. Under the interim order of this Court dated 24.09.2015, all the students were required to furnish an undertaking to the Registrar of the University to the effect that they had been informed about this order and that they would have no claims with regards to admission and that they understand the repercussions thereof. The college on the other hand was required to furnish bank guarantee to the extent of total fee with the Registrar of the University. Neither the undertaking was submitted by the students nor bank guarantee was furnished by the College. The reason for non-submission of undertaking and non-furnishing of Bank Guarantee is not difficult to find. Such non-submission of undertaking is possible only when the incumbent is aware that the order under which he / she was to be admitted has been stayed by the Apex Court on 29th September, 2015, no other reason for non-submission of undertaking is plausible.

55. The sordid saga of admissions to medical colleges again came up for consideration in the matter of Medical Council of India v. Kalinga Institute of Medical Sciences (Civil Appeal No. 4014 of 2016) and it observed as under:-

"That apart, we are of opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25th September, 2015. There was no need for the High Court to rush into an area that the MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved - what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that

the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.

Learned counsel for KIMS and the students contended that unless this appeal is dismissed it will result in the students suffering a loss of two years of their studies. This may be so - but if such a situation has come to pass, KIMS is entirely to be blamed. KIMS was specifically told not to admit students by the Central Government in its letter dated 15th June, 2015. Despite this KIMS persisted in litigation to somehow or the other accommodate 50 additional students. This was certainly not with a charitable motive. As an institution that should have some responsibility towards the welfare of the students, it would have been far more appropriate for KIMS to have refrained from giving admission to 50 additional students rather than being instrumental in jeopardising their career."

56. In *Andhra Pradesh Christian Medical Educational Society v. Government of Andhra Pradesh* [(1986) 2 SCC 667], it was held that even in a case where students were admitted in the Medical Colleges and who had continued their studies for more than a year, the Apex Court refused to recognise such admission and observed:-

"We regret that the students who have been admitted into the college have not only lost the money which they must have spent to gain admission into the college, but have also lost one or two years of precious time virtually jeopardising their future careers. But that is a situation which they have brought upon themselves as they sought and obtained admission in the college despite the warnings issued by the University from time to time."

57. One has to keep in mind that Medical education must be taken very seriously and when an expert body certifies that the facilities in a medical college are inadequate, the Courts are not equipped to take a different view in the matter except for very cogent jurisdictional reasons such as mala fides of the Inspection Team, ex facie perversity in the inspection report, jurisdictional error on the part of the MCI etc. The Apex Court emphasised in clear words in number of cases that under no circumstance should the High Court examine the report as an appellate body - this is simply not the function of the High Court. The inspection is carried out by eminent Professors from reputed medical institutions who were experts in the field and the best persons to give an unbiased report on the facilities.

58. This court is constrained to observe that there has been a wilful disobedience by the respondent Medical College of the orders passed by the Apex Court, which is nothing but an interference with the administration of justice. Disobedience of

an order of a court, which is wilful, shakes the very foundation of the judicial system and can erode the faith and confidence reposed by the people in judiciary and undermines the Rules of Law. The respondent Medical College has shown scant respect to the order passed by the highest court of the country and depicted under haste to impart medical education to the petitioners for 1st year MBBS course, possibly to make unlawful gain adopting unhealthy practices.

59. Again in the matter of Chandra Shashi v. Anil Kumar Verma, 1995 SCC (1) 421, the apex court held in para 8, "to enable the courts to ward off unjustified interference in their working , those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that "Satyamev Jayte" (truth alone triumphs) is an achievable aim there; or "yato dharmastato jai" (it is the virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts."

60. Any direction of the nature as sought for the petitioners would be in clear transgression of the provisions of the Medical Council Act, University Act and the regulations of the University. Therefore, this court cannot by a fiat direct the concerned authorities to disobey the provisions of the Act, Regulations and statute to which it owes its existence. The court cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the laws.

61. In view of the above detailed discussions, this court is not inclined to interfere under Article 226 of the Constitution and to grant relief as sought for the petitioners. Accordingly, all the writ petitions stands dismissed.

62. Taking the holistic view of the matter, the only option left to the court is to direct the Medical College/opposite party no.6 to refund the fee deposited by the students and compensate them to some extent by awarding damages. In the academic session 2016-17, the State Government has fixed fee for MBBS course from Rupees eleven lacs and odd to eighteen lacs per annum depending upon the infrastructure and other facilities.

63. In these circumstances and considering the facts in its entirety, the ends of justice would be met by directing the management of Dr M.C. Saxena College of Medical Science, Lucknow, which is run by Society for Advancement of Environmental Science (opposite party no.6) to pay Rs. Twenty five lacs to every student irrespective of the fact as to whether they are petitioners are not. This amount would include the fee as well as damages. The Management of the Medical College shall deposit the aforesaid entire amount in respect of the each one of the 150 students, who was admitted in the College, with the Director General, Medical Education, Lucknow,[opposite party no.3] within a period of two months from today. The Director General, in turn, shall distribute the amount to the students after due verification. It is further provided, that in the

event the management of the Medical College fails to deposit the amount, as aforesaid, the Director General, Medical Education shall write a letter to the District Magistrate, Lucknow, for the realisation of the total amount as arrears of land revenue.

64. Compliance report be submitted by the Director General, Medical Education, Lucknow, within three months.

65. Registry shall send a copy of this order to the Director General, Medical Education, U.P., Lucknow within three days.