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(2017) 08 AP CK 0044

In the Andhra Pradesh High Court

Case No : 11752 of 2015

Dr.Rizwana & 3 others — APPELLANT

Vs

The State of Andhra Pradesh, & 3 others — RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

Constitution of India, Article 14, Article 21, Article 226, Article 19(1)(g), Article 6, Article 30 -
Ind

Citation : (2017) 08 AP CK 0044

Hon'ble Judges : B. Siva Sankara Rao

Bench : SINGLE BENCH

Advocate : K.P. Prabhakar Rao, A.Prabhakara Rao, Dammalapati Srinivas

Final Decision : Disposed oFF

Judgement

1. Writ petition No. 11752 of 2015 is filed under Article 226 of the Constitution of India, by the four petitioners viz., 1)Dr.Rizwana, student of Pathology, 2)Dr.N.S.Begum Komatigunta SK, student of Gynaecology, 3)Dr.Venkata Rajesh Poojala and 4)Dr.T.Venugopal, students of Orthopedics of 4th respondent collegeNRI Medical College at Chinakakani, Mangalagiri Mandal, Guntur District against respondents viz.,1)the State of Andhra Pradesh, represented by its Principal Secretary, Medical & Health, Secretariat, Hyderabad 2)the NTR University of Health Sciences, (for short NTRUHS) represented by its Registrar, Vijayawada, Krishna District 3) The Medical Council of India (for short MCI) represented by its Secretary, New Delhi, 4) the NRI Medical College, (for short NRIMC) rep. by its Principal, Chinakakani, Manglagiri Mandal, Guntur District. The prayer in the writ petition reads as follows: to issue any appropriate Writ, order or direction preferably a writ in the nature of Writ of Mandamus, declaring the action of the 2nd respondent passing the impugned order No.3078/EA2/ PG/2014 dated 31.03.2015 directing the 4th respondent college discharges from

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the admission given for the academic year 2014-15 to avoid further legal complications and submit compliance report without notice and opportunity, as illegal, arbitrary, malafide, intentional, abuse of powers and contrary to Article 14 of the Constitution of India and consequently set aside the impugned order in the interest of justice and pass all necessary orders for the said purpose.

2. Writ Petition No.16369 of 2016 is filed by the five petitioners, of whom the 1st petitioner is the 4th respondent in W.P. No.11752 of 2015 petitioner Nos.2 to 5 are petitioners in W.P. No.11752 of 2015 against the respondents viz., 1) the State of Andhra Pradesh, represented by its Principal Secretary, Medical & Health Department, 2) the NTRUHS, represented by its Registrar, Vijayawada, Krishna District, 3) the Joint Registrar (Admissions), NTRUHS, Vijayawada, Krishna District and 4) the MCI represented by its Secretary New Delhi. The prayer in the writ petition reads as under: to issue a writ or order or direction or writ of Mandamus, declaring the action of the respondents 2 and 3 passing the impugned order Letter No.1791/EA2/PG/2015 dated 12.05.2016 in not approving the admissions of petitioners 2 to 5 just before the final examinations to be held from 24.05.2016 as illegal, arbitrary, malafide, intentional, not supported by reasons and opposed to principles of natural justice and consequently set-aside the same in the interest of justice and to pass such other order or orders as this Court may deems fit, just and proper in the circumstances of the case.

3. Writ Petition No.14239 of 2017 is filed by Dr.Rizwana, who is the 1st petitioner in W.P. No.11752 of 2015 and the 5th petitioner in W.P. No.16369 of 2016 as sole petitioner against the respondents viz., 1) the State of Andhra Pradesh, represented by its Principal Secretary, Medical & Health Department, Secretariat, Velagapudi, Amaravathi, Guntur, 2) the NTRUHS represented by its Registrar, Vijayawada, Krishna District, 3) the MCI, represented by its Secretary, New Delhi and 4) the NRIMC, represented by its Principal, Chinakakani, Mangalagiri Mandal, Guntur District. The prayer in the writ petition reads as under: to issue an appropriate writ, order or direction preferably a writ in the nature of Writ of Mandamus, declaring the action of the 2nd respondent in declining to issue hall ticket in favour of petitioner for MD Pathology for the final examinations to be held on 11.05.2017 as illegal, arbitrary, malafide, intentional and consequently declare the action of the 2nd respondent as illegal and in violation of Article 14 of the Constitution of India and pass all necessary orders for the said purpose.

4. Pending these writ petitions, as regards W.P. No.11752 of 2015 is concerned, an interim order was passed in W.P.M.P. No.15531 of 2015 on 27.04.2015 granting interim suspension of the impugned order dated 31.03.2015 issued by NTRUHS until further orders, only in respect of petitioners therein, who are discharged. In W.P. No.16369 of 2016 also, an interim order was passed on 19.05.2016 pending disposal of the writ Petition. It is an order on contest after hearing the learned counsel for the petitioners vis-a-vis learned Government Pleader for Medical and Health representing respondent No.1State, the learned Standing Counsel for NTRUHS representing respondents 2 and 3 and learned

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Standing Counsel for MCI representing respondent No.4. The said order reads as follows:

Order in proceedings, dated 31.03.2015, of Dr.N.T.R University of Health Sciences was challenged by Post Graduate students in W.P. No.11752 of 2015. This Court, by order, dated 27.04.2015, made in W.P.M.P. No.15531 of 2015, ordered interim suspension of the said proceedings. By the proceedings impugned in the said writ petition, the Registrar of the University directed petitioner No.1 college to discharge the students mentioned therein in the Post Graduation Course.

By the impugned U.O. Note, the Controller of Examinations was informed that the College was already directed to discharge the students, even though the interim order was passed by this Court, since University has already filed appeal against the said interim order and the candidature of the students mentioned in the order, dated 31.03.2015, is not approved by the University.

Petitioners challenge the said order on the ground that since earlier discharge order was suspended by this Court, petitioner Nos.2 to 4 have prosecuted the course of study. However, on account of the impugned U.O Note, petitioner Nos.2 to 5 would not be permitted to sit for the final examinations scheduled to be commenced from 24.05.2016 and if they are not permitted to write the examinations, great prejudice would be caused. Prima facie, as seen from the documents on record and in view of the earlier orders of this Court, merely because the University preferred writ appeal, cannot be a ground to take a stand contrary to order of the learned Single Judge. Furthermore, since the examinations are scheduled to be held from 24.05.2016 balance of convenience is in favour of the petitioners.

Therefore, respondent Nos.2 and 3 are directed to permit petitioner Nos.2 to 4 to write the final examinations in their respective courses of study in P.G./ Diploma Medical Courses scheduled to be commenced from 24.05.2016 or from any other subsequent date. However, it is made clear that no equities would accrue to petitioner Nos.2 to 4 and their appearance in the examinations would be subject to the further orders of this Court in this writ petition and in W.P. No.11752 of 2015. Respondent No.2 University is further directed not to announce the results of petitioner Nos.2 to 4 until further orders.

5. Insofar as W.P. No.14239 of 2017 is concerned, there was an interim direction in W.P.M.P. No.17654 of 2017 dated 20.04.2017 directing the NTRUHS to issue hall ticket to the petitioner for M.D. Pathology for the final examinations to be held on 11.05.2017 pending disposal of the writ petition.

6. In the background of writ petitions with the respective reliefs and interim orders, it is necessary to mention that as per the affidavit filed, by Dr.Venkata Rajesh Poojala, one of the four petitioners in W.P. No.11752 of 2015, in support of the prayer therein that the NRIMC invited applications on 09.07.2014 in respect of unfilled seats in Medical P.G Degree and Diploma courses and in

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response to it, the said four petitioners were joined for the academic year 2014-15 respectively in MD (Pathology), Diploma in Gynacology and diploma in Orthopaedics (as detailed supra); that since their efforts failed in getting a seat through entrance examination, they opted to join in the post graduate courses by paying the Government fee; that by the time they approached the NRIMC in the first week of April, 2014 other seats were filled up and the college informed them to approach when unfilled seats notified to fill up and from notifying the same on 09.07.2014, being they applied and joined in the respective courses before the last date for filling the PG seats for the academic year 2014-15 i.e., 10.07.2014 and the NTRUHS also forwarded their names on 10.07.2014 for approval to MCI as required. The dispute between the Management, NRIMC, and NTRUHS is with regard to management quota for the academic year 2014-15 in respect of certain PG courses, which is outcome of internal dispute between the management of NRIMC and principal of the College, who invited applications to fill up the seats and the other group opposing the existing management entertained certain applications on their own and both sent the lists of candidates to the NTRUHS. Therefrom, NTRUHS wrote a letter to the NRIMC to clarify as to which of the two lists to be accepted and pursuant to which five students viz., Dr.S.P.Shivani, Dr. Malladi Venkata Padma, Dr Ch.Bala Sandhya Rani, Dr.S.Sree Sai Rekha and Dr.D.M.Snehareddy filed W.P. No.17918 of 2014 with the following prayer: a) declare the Rule 3 (vi) and Rule 4 (v) (a), in so far as fixing 15% weightage to the interview, of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admission into Post Graduation Medical and Dental Professional Courses/ Super Speciality Courses) Rules, 2013 as arbitrary, illegal, contrary to the provisions of Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and Post Graduate Medical Education Regulations, 2000, issued by MCI apart from violative of Articles 14 and 16 of the Constitution of India and the principles of natural justice; and

b) declare the action of the NRIMC in not considering the case of the petitioners for admission to the Post Graduate Medical Courses applied by them under Management quota seats for the academic year 2014-15, as arbitrary, illegal, contrary to the Rules governing admissions, the judgments of the Supreme Court and A.P High Court and violative of fundamental rights guaranteed under Constitution of India and

c) consequently, direct the NRIMC to consider the case of the petitioners for admission in P.G Medical courses under management quota for the academic year 2014-15; as per their merit in the qualifying examination i.e., MBBS without reference to the interview and

d) declare the inaction of the NTRUHS in taking corrective action against NRIMC as arbitrary and illegal and unjustified and consequently to direct the NTRUHS not to approve the P.G. admissions under management quota in NRIMC unless and until the case of the petitioners is considered for admission according to their

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merit in the qualifying examination in the NRIMC.

7. The Division Bench of this Court by order dated 25.09.2014 disposed of the said Writ Petition directing the NTRUHS to consider both the lists and to prepare a merit list by taking into account the cumulative academic merit of students in both the lists.

8. The further averment in W.P. No.11752 of 2015 is that the names of four petitioners did not find place in both the lists and the NRIMC after giving admissions, sent the names of four writ petitioners to NTRUHS with covering letter dated 10.07.2014 to approve their admissions. However, the NTRUHS did not pay attention to approve the same despite there is no dispute and competition in respect of the said four seats and even the NRIMC sent the four names for approval before the cut-off date. It is also further averred that the NTRUHS passed an order on 31.03.2015, which is impugned, directing the NRIMC to discharge them from the admissions given for the academic year 2014-15 as their names not found place in the two lists covered by the Division Bench order in W.P. Nos.17918 of 2014. The NTRUHS lost sight of the fact that the approved merit list dated 09.11.2014 is only in respect of seats where there was controversy and the list, sent for approval of the names of the four petitioners is lying with the NTRUHS while issuing the approved admissions list on merit on 09.11.2014, the university should have included the names of four petitioners. However, it was not done and the impugned order of direction of the NTRUHS to the NRIMC to discharge the four petitioners is illegal and without issuing any prior notice to them or to the college before passing the impugned order and the only reason for their names did not find place in the approved merit list dated 09.11.2014 is baseless for that merit list is only in relation to controversy and not otherwise.

9. It is in the factual background, coming to the order passed by the Division Bench of this Court in W.P. No.17918 of 2014, the operative portion reads as follows: For the aforesaid reasons, the writ petition is allowed with the following order and directions:

1.The impugned Rules i.e,. Rules 3 (vi) and 4 (v) (a) of the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/ Super Speciality Courses) Rules, 2013, framed vide G.O. Ms.No.93, dated 01.07.2013, are hereby struck down by declaring the same as arbitrary, illegal and run contrary to the Post-graduate Medical Education Regulations, 2000, directions in the judgment of Honble Supreme Court in Mridul Dhar & another vs Union of India and also run contrary to the provision under Section 3 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 itself.

2.The 2nd respondentUniversity is directed to prepare a fresh merits list by taking into account the cumulative academic merit of students in their I, II and

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III year MBBS course alone, by considering the names of all the candidates from both the lists i.e., the list sent by the Principal of the 4th respondentcollege and the other list sent by the management of the said college and approve such list and forward the same to the 4th respondentcollege within three days from the date of receipt of this order. After receipt of such approved merit list from the 2nd respondentUniversity, the 4th respondentcollege shall take steps for admission of students into various post-graduate degree and diploma courses in medicine for the academic year 2014-15, in such merit order.

3.It is made clear that the admissions into post- graduate medical course, which are already made in various private institutions under management quota, which are approved by the 2nd respondentUniversity by following the Rules which were in force, hold good and this order will not affect such admissions, which are already made for the academic year 2014-15.

4.The 1st respondentGovernment shall take steps forthwith, for making suitable amendments to the Andhra Pradesh Un-aided Non-Minority Professional Institutions (Regulation of Admissions into Post Graduate Medical and Dental Professional Courses/ Super Speciality Courses) Rules, 2013 to bring them in conformity with the Post-graduate Medical Education Regulations, 2000, for the purpose of post-graduate medical admissions.

5.The State Government shall take necessary steps to ensure that admissions for the coming academic years into post-graduate degree and diploma courses in the 50% management quota are made only in accordance with the academic merit, without subjecting the applicants/ students to any oral interview.

10. From the above, coming to the affidavit of Vice Principal in W.P. No.16369 of 2016, he stated that the Joint Registrar of NTRUHS passed the impugned order dated 12.05.2016 not to approve the admissions of the students, who are about to take their final examinations on 24.05.2016 and as the NRIMC is supporting the case of the students, filed the present writ petition along with four students. Among four students i.e., petitioners 2 to 5, petitioners 2 to 4Dr.Venkata Rajesh Poojala, Dr.T.Venugopal and Dr.N.S.Begum Komatigunta Sk, completed their three years period of study and the final examination date was fixed as 25.05.2016. However, they were not furnished hall tickets to write the final exams despite the earlier proceedings of the NTRUHS directing the NRIMC on 31.03.2015 to discharge the petitioners 2 to 5 from admission to the academic year 2014-15, were suspended, the NTRUHS ought to have issued hall tickets for appearing the final examination. The non-giving of hall tickets by the university despite NRIMC sent representation to NTRUHS on 28.01.2016 informing that the four students are continuing their studies and they are about to take final exams to be conducted by the NTRUHS and requested to take a decision at an early date and what the NTRUHS stated that their names were not found place in the two lists submitted by the Principal and Management of NRIMC pursuant to the order in W.P. No.17918 of 2014, thereby cannot be considered in asking to discharge and they are continuing against the discharge order, by obtaining

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interim suspension order from the Court and thereby, the action of the NTRUHS by letter date 12.05.2016 in not approving their admissions for not to allow for their final examinations being held from 24.05.2016 is illegal and they are entitled to the relief prayed for.

11. Coming to the affidavit of sole petitioner, Dr.Rizwana, student of Pathology in W.P. No.14239 of 2017 is concerned, the action of NTRUHS in not issuing hall ticket for her examination to be conducted from 11.05.2017 for the final year PG course in MD Pathology and by referring to the interim order passed on 27.04.2015 in W.P.M.P. No.15531 of 2015 in W.P. No.11752 of 2015 and the interim order passed on 19.05.2016 in W.P. No.16369 of 2016 directing the respondents to permit the petitioners 2 to 4 to write examinations, who are PG diploma students, in her seeking such relief of direction to the NTRUHS to issue hall ticket for writing final year examination to be held from 11.05.2017.

12. The counter affidavit filed by Registrar on behalf of the NTRUHS is with the contentions that the NRIMC is a private un- aided minority college and its total sanctioned intake of seats under Management quota in the special subjects are viz., 1) DVL one seat, 2) DM & RDone seat, 3) D.Orthotwo seats, 4) DGO two seats, 5) MD Pathologytwo seats. As per the Andhra Pradesh Unaided Non-Minority Professional Institutions (Regulation of admissions into Post Graduate Medical and Dental Professional Courses/ Super Speciality Courses) Rules, 2013 covered by G.O. Ms. No.93, dated 01.07.2013 from Rule 3 (vi) and Rule 4 (v) (a), the management of the private medical college is empowered to constitute a committee for selection of candidates applied seeking admission into Post Graduate Diploma and Degree courses by conducting interviews of which the marks obtained in the qualifying examination is restricted to 85% and 15% of marks were allotted for interview. The NRIMC submitted, merit list after following the rules, to the NTRUHS by letter dated 24.06.2014. The management of the college submitted another merit list dated 28.06.2014 and the NTRUHS called for explanation of the College Principal by letter dated 05.07.2014 regarding the two merit lists and the Principal of the college submitted a letter dated 07.07.2014 stating that the merit list sent by him is by following the Rules, 2013 by constituting a selection committee on 15.04.2014 having considered all the applications received before the closure of the date i.e., 28.03.2014 and that the list sent for approval of the NTRUHS and the principal is not aware of the another unauthorized list sent by the college management. It is further submitted that Dr.S.P.Shivani and four other students filed writ petition No.17918 of 2014 questioning the Rule 3 (vi) and Rule 4 (v) (a) of Rules, 2013 and the Division Bench by order dated 01.07.2017 granted interim direction not to approve the selected list of candidates sent by college and later, there was a final order passed on 25.09.2014. The said final order is reproduced above.

13. The NTRUHS in obedience with the final orders passed by the Division Bench has prepared a fresh merit list on the basis of the marks secured by the applicants in I, II and III year MBBS course alone and forwarded to the NRIMC to

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admit the candidates referred therein for various P.G Degree and Diploma courses as per the merit list and the four petitioners in W.P. No.11752 of 2017 are not there in the merit list prepared by the NTRUHS pursuant to the Division Bench Order of this Court in W.P. No.17918 of 2014 (supra) and the 1st petitionerDr.Rizwana even not named in merit list was admitted by the college in MD Pathology contrary to the orders passed on 25.09.2014 by the Division Bench supra and thereby, her admission was not approved. The last date for admission into PG Degree/ Diploma courses is 10.07.2014 and the name of the said Dr.Rizwana was not received by the NTRUHS even in the alleged supplementary list before that last date. Likewise the name of Dr.N.S.Begum Komatigunta SK, is also not there in the merit list prepared by the NTRUHS pursuant to the order of the Division Bench supra but the NRIMC admitter her into PG diploma in Gynacology contrary to the said writ petition order, thereby her admission was also not approved by the NTRUHS and the NTRUHS did not receive even any alleged supplementary list before the last date i.e., 10.07.2014. Likewise, petitioners 3 and 4 were admitted by the college in Orthopedics and their names were not there in the two lists sent by the Principal and Management of the NRIMC, thereby this Court find place in the merit list prepared by NTRUHS pursuant to the order of the Division Bench in W.P. No.17918 of 2014 and despite the college admitted though contrary to the orders of the Division Bench supra, and thereby, their admissions also not approved by the NTRUHS and the university not even received any supplementary list with their names before the due dated 10.07.2014 and the University is not aware of any notification issued by the College on 09.07.2014 calling applications for unfilled seats and also on receipt of applications by the College by 10.07.2014, the NRIMC is in fact bound to follow the Rules, 2103 in filling up the seats meant for management quota whereunder the management of the NRIMC has to issue notification in two newspapers calling applications to fill up the seats under the Management quota and also by making a provision for downloading the application forms by the prospective candidates from the website of the college and as NRIMC has not followed the Rules, 2013 insofar as the unfilled seats in the specialties of Diploma in Pathology or Gynocology or DVC or DM& RD, as the case may be, and thereby, their admissions are invalid.

14. It is also contended in the counter affidavit that apart from no such alleged supplementary list received within the stipulated time of 10.07.2014 and what the NRIMC sent the list was only in October, 2014 and by then the Division Bench of this Court allowed W.P. No.17918 of 2014 on 25.09.2014 directing NTRUHS to prepare the common merit list from the lists sent by the Principal and the Management of the NRIMC and the contentions in the writ petition are untrue and untenable and thereby, the four writ petitioners in question are not entitled to be considered for admission in their respective courses for their names not forwarded to the NTRUHS for approval before the cut-off date i.e., 10.07.2014 fixed by the NTRUHS for receipt of the merit list prepared by the respective private unaided medical college for admission of seats under Management Quota

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and also as per the orders of the Division Bench of this Court in W.P. No.17918 of 2014 (supra), as such their unauthorized admissions and continuation by the NRIMC will not entitle them to get any relief in the writ petitions. In relation to the admission of the candidates to be approved by the NTRUHS, since their names were not found place in the merit list for approval, they are not entitled to any notice and their unauthorized continuation by the NRIMC, no way entitles them to get the relief and the NTRUHS cannot include their names as approved candidates in any merit list and thereby sought for dismissal of the writ petitions.

15. In fact, against the interim order passed in W.P.M.P. No.15531 of 2015 in W.P. No.11752 of 2015 of interim suspension of direction of the NTRUHS to the NRIMC to discharge the four students, is no doubt not subject matter of any appeal.

16. The NTRUHS filed counter affidavit with vacate stay petition in W.V.M.P. No.1152 of 2017 to vacate the interim order passed on 19.05.2016 in W.P. No.16369 of 2016 in relation to three of the four students equally in relation to other student in W.P. No.14239 of 2017 to read in the same line. The said counter affidavit of the Registrar of NTRUHS reads facts covered by the pleadings referred supra.

17. The NTRUHS contends of not approved the unauthorized admissions of four students by the NRIMC and they were not figured in any merit list sent by Principal or Management of the NRIMC and thereby, the NTRUHS directed the principal of the College to discharge the four students to avoid legal complications and that letter dated 31.03.2015 was undoubtedly suspended by this Court on 27.04.2015 in W.P.M.P. No.15531 of 2015 in W.P. No.11752 of 2015 and the NTRUHS also sent letter dated 12.05.2016 to the NRIMC in this regard and there was an interim direction granted on 19.05.2016 to permit three students other than of MD Pathology to write their final exams of that academic year that was going to be conducted on 24.05.2016 and it is the college that played fraud, if at all, on the students and created the litigation in admitting them unauthorisedly that gives no right to the petitioners, and thereby the interim order is to be vacated. The counter filed by NTRUHS sought to read in same line. The order in W.P. No.14239 of 2017 is remaining student of Pathology.

18. Heard both sides at length and perused the material on record and also the propositions.

19. The three Judge Bench expression of the Apex Court in Ashok Kumar Thakur Vs. University of Himachal Pradesh and others , held that the minimum prescribed academic attendance is to condone by the Principal under Rule 1(a) of the Panjab University Calendar 1969 and the Rules made thereunder under volume III to condone the deficiency upto 15 lectures for subject whereas the student exceeded 18 lectures in Economics and 20 lectures in Civics. In fact, there was a provisional admission of him subject to production of certificates which he could not and even he attended that period held could not be considered as attendance after transfer to another college and ultimately holding

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even the students loose two academic years, the Rule is since mandatory Court cannot even relax by exercising writ jurisdiction.

20. The Division Bench expression of this Court in B.Yugandhar Vs. Principal, Kuppam Engineering College, Kuppam, Chittoor District and another , dismissed the writ petition, where there was no required attendance as held mandatory by referring to the earlier Division Bench expression of M.Sunil Chakravarthy and others case (referred supra), it is held particularly from para Nos.6 to 9 as follows: 6. The above reproduced regulation was interpreted by the Division Bench in M.S. Chakravarthi case. After noticing the judgment of the Supreme Court in Ashok Kumar Thakur case, the Division Bench held: Since nobody has power to condone the attendance below 65% therefore, it should be assumed that even this Court cannot order such a condonation. Something which is prohibited by the Regulations cannot be subject-matter of a mandamus.

7. In Ashok Kumar Thakur case, the Supreme Court unequivocally rejected the plea of sympathy and held: Considering that this case concerns the career of a young student we tried to look at the matter with all possible sympathy and consideration but we do not see how we can direct or compel an authority to do something which is beyond its legal competence to do. Since the principal is the only authority who can condone and since it was beyond his competence to condone the shortage in question, we do not see how we can intervene in favour of the petitioner even if the petitioner had succeeded in making out a case for condonation. In our opinion, the appeal must fail on this short point. Much as we regret the unfortunate fact that the petitioner is going to lose almost two precious years of his academic life we are in law bound to confirm the decision of the High Court, and dismiss the petitioner''s appeal. We, therefore, do so. In the circumstances of this case, however, we are making no order as to costs.

8. In view of the aforementioned judgments, it must be held that the Court cannot issue a judicial fiat to the respondents to admit the appellant in I semester examination of the 4th year and thereby violate the mandate of Regulation 5 of the Academic Regulations.

9. We are further of the view that even if the benefit of Regulation 5(ii) was to be extended to the appellant, he would not have been able to achieve the requirement of minimum 75% attendance in aggregate. Therefore, the learned single Judge did not commit any error by refusing to entertain his prayer and we do not see any reason to differ with him.

21. No doubt the above expressions are in relation to the attendance of a student where the principle laid down is that once there is a regulation prescribing the minimum attendance and the discretionary power in a just case to condone to a certain limit, even Court has no power to condone beyond the limit of attendance to the required discretionary range. From that what the principle laid down is that Court has no power to deviate the regulations prescribing the procedure to be followed where mandatory.

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22. Here coming to the admissions and regularization concerned and the power of the Court to pass interim orders in pending writ petitions and the consequences and particularly in admission of students not duly authorized as per the procedure, very recently in Dental Council of India Vs. Dr. Hedgewar Smruti Rugna Seva Mandal, Hingoli and Others , the Apex Court observed in Para 19 as follows: 19. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations. There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order, but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the court grants approval in a way which is the subject matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is sub judice, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

23. Further the Apex Court in Asha vs Pt.B.D.Sharma University of Health Sciences & others held particularly at para No.37 as under: With all humility, we reiterate the request that we have made to all the High Courts in Priya Guptas case (supra) that the courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction.

24. In Asha (supra), it is observed in para Nos.22 to 33 as under: 22. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that

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merit has been a casuality. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. Priya Gupta Vs. State of Chhatisgarh & Another , Harshali v. State of Maharashtra and Others , Pradeep Jain v. UOI , Sharwan Kumar and others v. Director of Health Services and another , Preeti Srivastava v. State of MP , Guru Nanak Dev University v. Saumil Garg and Others , AIIMS Students Union v. AIIMS and Others .

23. It is true that the notification dated 26th August, 2011 had clearly stated that the candidate should appear before the second Counseling Board well in time along with all the original documents and that the photograph and thumb impression of the candidate would be taken at the time of the counseling. The notification stated the reporting time as 8.00 a.m. The exact time when the candidates of each category i.e. General, SC, PH (MS), EMS and FF were to be present was nowhere stated. In other words all candidates were required to be present at 8.00 a.m.. It cannot be disputed that the appellant was present at that time and undisputedly she had marked her presence in the attendance register. She admittedly participated in the photography and taking of thumb impressions held by the concerned authority. However, her absence at the crucial time of counseling is the essence of dispute in the present case.

24. 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 counseling, disastrous results can follow, of which the present case is an apt example.

25. 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. 26. 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

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the concerned authorities 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, would 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 the cases of Priya Gupta (supra), State of Bihar v. Sanjay Kumar Sinha & Others , Medical Council of India v. Madhu Singh & others , GSF Medical and Paramedical Association v. Association of Management of Self Financing Technical Institutes and another , Christian Medical College v. State of Punjab and others .

27. The judgments of this Court constitute the law of the land in terms of Article 141 of the Constitution and the regulations framed by the Medical Council of India are statutorily having the force of law and are binding on all the concerned parties. Various aspects of the admission process as of now are covered either by the respective notifications issued by the State Governments, prospectus issued by the colleges and, in any case, by the regulations framed by the Medical Council of India. There is no reason why every act of the authorities be not done as per the procedure prescribed under the Rules and why due records thereof be not maintained.

28. This proposition of law or this issue is no more res integra and has been firmly stated by this Court in its various judgments which may usefully be referred at this stage. Ref. State of M.P. v. Gopal D. Tirthani and Others , State of Punjab v. Dayanand Medical College & Hospital and Others , Bharati Vidyapeeth v. State of Maharashtra and Another , Chowdhury Navin Hemabhai and Others v. State of Gujarat and Others , Harish Verma and Others v. Ajay Srivastava and Another .

29. In the prospectus issued by the respondents, Chapter 9 dealt with the method of selection and admission. Clause 3.1 stated that it was mandatory for the qualified candidates to appear before the Counseling Board in person. No relaxation was to be given to the candidates who were unable to appear before the Counseling Board on the fixed dates. Further, it was stated in the prospectus that at the time of the counseling, the candidates would be required to exercise their choice for the institution and the course. The allotment of the seats would be made according to the merit and preference exercised by the candidates at the time of counseling. During the subsequent counseling the Course/Institution would be allotted as per the merit of the candidates depending on the availability of seats.

30. All these clauses are in accordance with the regulations framed by the Medical Council of India or the notifications issued by the concerned State Government. Relaxation of the Rule of Merit for reason of non- appearance is not permissible. In the present case, there is no dispute that the appellant was present at the place and on the date of the second counseling but the dispute

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relates to her absence at the particular time when her name was called out for the purpose of counseling. As far as this issue is concerned, we have already expressed the opinion that there is no substance in the defence taken by the respondents and the appellant should be entitled to the relief prayed for. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in MCI (11 supra), Ms.Neelu Arora and Another v. Union of India and Others , Aman Deep Jaswal v. State of Punjab and Others , Medical Council of India v. Naina Verma and Others , Mridul Dhar (1 supra), MCI (11 supra).

31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case. The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer Arti Sapru and Others v. State of J & K and others ; Chavi Mehrotra v. Director General Health Services ; and Aravind Kumar Kankane v. State of UP and Others .

32. We must hasten to add at this stage that even if these conditions are satisfied, still, the court would be called upon to decide whether the relief should or should not be granted and, if granted, should it be with or without

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compensation.

33. This brings us to the last phase of this case as to what relief, if any, the appellant is entitled to. Having returned a finding on merits in favour of the appellant, the Court has to grant relief to the appellant even, if necessary, by moulding the relief appropriately and in accordance with law. This Court must do complete justice between the parties, particularly, where the legitimate right of the appellant stands frustrated because of inaction or inappropriate action on the part of the concerned respondents. In fact, normally keeping in view the factual matrix of this case, we would have directed the admission of the appellant to the MBBS course in the academic year 2011-2012 and would further have directed the respondents to pay compensation to the appellant towards the mental agony and expense of litigation and the valuable period of her life that stands wasted for failure on the part of the respondents to adhere to the proper procedure of selection and admission process. May be the Court would have granted this relief subject to some further conditions. However, we are unable to grant this relief to the appellant in its totality for reason of her own doing. She has completely faulted in pursuing her academic course in accordance with the Rules and like a diligent student should do. In the reply filed on behalf of respondent Nos.1 and 2, it has been stated that as per the Dental Council of India Norms, minimum required attendance is 75 per cent in Theory as well as in Practical of each subject individually for issuance of roll numbers in the BDS course. Undoubtedly, the appellant was admitted to the BDS course and she was expected to complete her academic course in terms of the Norms of Dental Council of India. It is also not disputed before us and, in fact, was confirmed to us on behalf of the Medical Council of India and the respondent University that the course for the first year of both, BDS and MBBS, is more or less the same. Except one paper of Anatomy, rest of the subjects and papers are more or less similar particularly for the first six months. If the appellant had pursued the BDS course to which she was admitted diligently and had attended all the lectures, she might have been eligible to pursue her MBBS course in continuation thereto. We are not recording any finding in this behalf as, in our opinion, the appellant is not entitled to this particular relief, as already indicated, and for the same she has to blame none else but herself.

25. The case of Asha (2 supra), from the above is that she was a meritorious candidate and in saying as if she was absent at the particular time when her name was called for counseling, the persons who secured far below to her, were given admissions in the MBBS course.

26. The case on hand is not such even to consider as a rarest of a rare case or with any exceptional circumstances to grant such relief. In fact, even in that case also ultimately it was held that, the relief of admission after cut-off date i.e., 30th September can be given, if there is no fault attributed to the candidate in respect of admission and there is fault on the part of the authorities and there is violation of principles of equity, rule and conditions. If all the three conditions are

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satisfied her admission in preferred course is directed only in the succeeding academic year and not in that academic year even in specifically directing whenever to start MBBS afresh from 1st year by ignoring mere consideration of her earlier admission of BDS and attending to classes.

27. Coming to the earlier Three Judges Bench expression in Mridul Dhars case (1 supra) in directing the total impartiality is the need of the time and not the so-called loyalty to the State and time table mentioned in notifications relating to the admissions be strictly adhered to by all concerned including States and Union Territories. It is observed in Mridul Dhar at para No.8 that in Medical Council of India (11 supra) while making it clear that no admissions can be granted after the scheduled date, which essentially should be the date for commencement of the course, MCI was directed to ensure that the examining bodies fix a time schedule specifying the duration of the course, the date of its commencement and the last date for admission. It was further directed that different modalities for admission can be worked out and necessary steps like holding of examination, if prescribed, counseling and the like have to be completed, within the specified time and no variation of the schedule so far as admissions are concerned shall be allowed. In case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.

28. So far as education is in the concurrent list and both the parliament and state legislatures can legislate on the aspects concerned, the very recent expression of the Apex Court in Secretary Mahatama Gandhi Mission v. Bhartiya Kamgar Sena held that as per the Constitution of India with reference to Articles 19 (1)(g), 6 and 30 and from Schedule VII List 3, Entry 25, the education in State Cadre includes Establishment and Administration of Educational Institutions whether it is established by the State, its instrumentalities or private sector (non-state actors).

29. It also recognises the right to education is to implead right to life as a matter of fact of Article 21 of Constitution of India is one of the most vital elements for preservation of the democratic system of Government and is an important factor for maintaining democracy and the economic well being of the society. Since education becomes basic tool for individual to live in an economically productive life and technical education has the potential to directly contribute to the economic prosperity of a technically qualified individual as well as the society. However, so far as the right to education though one of the fundamental facets of right to life, it must be regulated by legislations for the systematic functioning and in the larger interest of the society and to protect the competing equalities.

30. In fact, the Division Bench in its judgment in W.P. No.17918 of 2014 dated 25.09.2014 observed that the Rules, 2013 were framed in exercise of powers under Sections 3 and 15 of the Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 (Act No.5 of 1983) and as per the said Rules, 50% of the sanctioned intake of seats (management quota) can be filled-up by the individual private un-aided non-

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minority institutions with the eligible candidates in order of merit after following the fair, transparent and non- exploitative procedure. It also referred G.O. Ms.No.93, Health, Medical and Family Welfare (E1) Department, dated 01.07.2013 and as per Rule 4 (v) (a) of said Rules, for making admissions under 50% management quota seats, colleges have to prepare the merit list of candidates by giving weightage of 15% of marks secured by them in the interview conducted by the management. After receipt of applications from the students, college shall scrutinize such applications and prepare merit list on the basis of individual cumulative performance in their I, II and III year MBBS course and display the list of candidates eligible for interview. After conducing interviews, a final merit list will be drawn based on the individuals cumulative performance in I, II and III year MBBS course which will carry 85% of weightage and the marks obtained in the interview, which will carry 15% weightage and such list has to be sent to the University and on approval of such list by the University, colleges are empowered to admit the candidates strictly in the order of merit as shown in the approved merit list.

S No. Name Appln/ Receipt No. DD No. Marks Obtained in MBBS Course applied

1 Dr.S.P.Shivani 63/2863 312110 67% DDVL

2 Dr.Malladi Venkata Padma 16/2816 949898 60.58% DMRD

3 Dr.Ch.Bala Sandhya Rani 41/2841 493028 70.85% MD (Anesthesia)

-do- 43/2842 493027 70.85% MS (OB & GY)

4 Dr.S.Sree Sai Rekha 78/2878 312111 72.37% MS (Opthamology)

5 Dr.D.M.Snehareddy Reddy 13/2813 493002 74.69% MD (Pediatrics)

-do- 14/2814 493001 74.69% MS (Gen. Surgery)

-do- 15/2815 493000 74.69% MD (Gen. Medicine)

31. The same is observed in para No.2 of the Division Bench Judgment (supra) and coming to the impugnment of Rule 3 and Rule 4 (v) (a) of the Rules, 2013 it is also necessary to refer G.O. Ms. No.93 supra and also by referring to the Three Judge Bench expression of the Apex Court in Mridul Dhar (supra) and the Indian Medical Council Act, 1956 which repealed the earlier Act, 1933 particularly Section 33 which empowers the Medical Council of India to make regulations to carry out the purposes of the Act with the prior sanction of the Central Government and the Post Graduate Medical Education Regulations, 2000 framed referred to regulation No.9 in relation to selection of post-graduate students whereunder students for post graduate medical course shall be selected strictly on the basis of their academic merit within the prescribed procedure to be adopted and by other method for selection to the admissions. It was ultimately held by strucking down the Rule 3 (vi) and (v) (a) of the Rules, 2013 issued vide G.O. Ms. No.93 dated 01.07.2013 as arbitrary, illegal and contrary to PG Medical Education Regulation, 2000 and also contrary to the directions in Mridul Dhar

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(supra) and also rather than contrary to Section 3 of Andhra Pradesh Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983 and consequently as repatriated above in directing the university to prepare fresh list by taking into account the cumulative academic merit of students in their I and II and III year MBA course alone by considering the names of all candidates from both the lists i.e., one sent by principal of the College and the other by Management of the College and approve such list in forwarding the same to the College within three days from the date of receipt of a copy of the order and after receipt of such approved merit list from the university, the college shall take steps for admission of students into various PG diploma and PG degree courses for the academic year 2014-15 in such merit order. The very order is crystal clear that any admission is only from the approved merit list of the university received by the College.

32. No doubt, the Division Bench resolved the controversy between the two merit lists sent by the Principal and the Management of the college.

33. Even taken the same into account for arguments sake atleast, any of the four students in question, who are the petitioners in W.P. No.11752 of 2015 are not found place in any of the merit lists sent by the principal or by the Management of the college. However, for admission of the unfilled seats, there is a prescribed procedure is not in dispute. It is not the case of the college that the said procedure contemplated and as held was followed. It is not even the case of the students that the said procedure was followed. They are silent with regard to the same though the NTRUHS in its counter affidavit mentioned that the said procedure was not followed though strictly to be followed to legalise their admissions and exams.

34. Coming to the allegation of names of the four petitioners in the supplementary list was not as per the due procedure, if any, is concerned, undisputedly last date for admission into PG degree/ diploma is 10.07.2014. As per the university, none of the names of the four petitioners were reflected in the supplementary list received by the university by or before 10.07.2014. The so-called admission of other students as per the college and as per the version of four students was only on 10.07.2014 and not even before.

35. In para No.7 of the counter affidavit of the university in W.P. No.11752 of 2015 as 2nd respondent to the Writ Petition is crystal clear that the University is not aware of the notification issued by the 4th respondent college dated 09.07.2014 calling applications for the unfilled seats and also receipt of the applications by the 4th respondent college on 10.07.2014. The 4th respondent college is required to follow the Rules 2013 in filling up the seats meant for Management quota. Under the said rules, the Management of the 4th respondent college has to issue a notification in two news papers calling applications to fill up the seats under Management quota and also by making a provision for down loading application forms by the prospective candidates from the Website of the 4th respondent college and the college has not followed the Rules, 2013 insofar

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as the alleged unfilled seats in the specialities of DVL, DM RD, DGO, D.Ortho and MD Pathology. The admissions of the petitioners are not valid as their admissions, given by the 4th respondent college, are contrary to Rules 2013 and also contrary to the Orders passed in W.P. No.17918 of 2014 dated 25.09.2014.

36. From the Rules, 2013 supra including from taking cognizance of Rules 3 (vi) and Rule 4 (v) (a) and 6 were struck down by the Division Bench as referred supra, even there is nothing that could be shown by the petitioners with regard to supplementary list for the unfilled seats, that too, followed by merit list concerned, to follow the said procedure contemplated was strictly followed. Once the procedure as contemplated was not followed, the admissions are not as per the procedure established by law and not legally taken place. Once such is the case, after noticing their admissions are unauthorized, the university asked to discharge the petitioners. However, the petitioners chosen to continue under interim orders of this Court. In spite of interim orders passed by this Court on 27.04.2015 in W.P.M.P. No.15531 of 2015 in W.P. No.11752 of 2015, the university did not choose to issue hall tickets to the petitioners to enable them to write examination, then again they obtained interim orders in W.P. No.16369 of 2016 dated 19.05.2016 for three of the four students. Therefore, Dr.Rizwana filed W.P. No.14239 of 2017 and obtained interim order on 20.04.2017 in W.P. M.P. No.17654 of 2017. In view of the expression of the Apex Court in Asha (supra) referring to earlier expression with a direction to all the High Courts of Priya Gupta (supra) that the Courts should avoid giving interim orders where admissions are the matter of dispute before the Court. Even in case where the candidates are permitted to continue with the courses, they should normally be not permitted to take further examinations of the professional courses. The students who pursue the courses under the orders of the Court would not be entitled to claim any equity at the final decision of the case nor should it weigh with the courts of competent jurisdiction and thereby, in view of the mandate from the said expressions, it is difficult to consider for regularization of the petitioners even pursuant to the orders of this Court.

37. Having regard to the above, the petitioners are not entitled to get such relief as their admissions are made without following the procedure, being unauthorized and contrary to the rules and directions and they are continuing pursuant to interim orders dated 27.04.2015 in W.P.M.P. No.15531 of 2015 in W.P. No.11752 of 2015, thereby the petitioners are not entitled to claim equity much less to consider.

38. Accordingly, the Writ Petitions are dismissed and interim orders granted earlier shall stand vacated as coterminus with the main writ petitions. No order as to costs.

39. Consequently, miscellaneous petitions, if any shall stand closed.

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