

(2016) 08 P&H CK 0223
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 10700 of 2016

Komal Poswal

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 03-08-2016

Acts Referred:

Constitution of India, 1950 — Article 132, 141
Indian Medical Council Act, 1956 — Section 10(A)

Citation : (2016) 3 SCT 800

Hon'ble Judges : G.S. Sandhawalia, J.

Bench : Single Bench

Advocate : Puneet Bali, Sr. Advocate, with Gunjan Rishi, Namit Gautam, Shiv Kumar, Advocates, for the Appellant; Puneet Gupta, Sr. Panel Counsel, and Manish Dadwal, Advocates, Randhir Singh, Addl. A.G., Haryana, Gurminder Singh, Sr. Advocate, with Ms. Harpriya Khane

Final Decision : Disposed Off

Judgement

G.S. Sandhawalia, J.—The present judgment shall dispose of four writ petitions i.e. CWP Nos. 11059, 11050, 10700 and 11196 of 2016, since common questions of law and facts are involved in all the writ petitions. Facts of CWP No. 10700 of 2016, Komal Poswal and others v. UOI and others are as under:-

2. The petitioners challenge the public notice dated 22.05.2016 (Annexure P-10) qua the academic session 2014-15 and seek adjustment in Government colleges of the State of Haryana on account of the fact that they have been admitted against Government quota as per the orders of the Apex Court dated 18.09.2014 and 25.09.2014 in CWP No. 469 of 2014. Similarly, reliance is also placed upon the letter dated 20.05.2016 (Annexure P-9) issued by the Union of India to submit that they were entitled for adjustment in the Government quota and could not be transferred to the private colleges.

3. The pleaded case of the petitioners is that they were MBBS students of Gold Field Institute of Medical Science and Research situated at Faridabad (in short

"GFIMSR") respondent no. 6, which had closed down on account of the non-grant of the recognition for the session 2015-16 and, therefore, on account of the fact that they had taken admission on the strength of the orders of the Apex Court against the Government quota, a decision had been taken by respondent no. 5 in a meeting held on 25.03.2016 (Annexure P-7) that the batches would be divided amongst the 4 Government colleges at PGIMS, Rohtak, MAMC Agroha, BPS GMC for Women, Khanpur Kalan (Sonapat) and SHKM, GMC, Nalhar.

4. Resultantly, the challenge is to the public notice dated 22.05.2016 whereby, the students of the academic session 2014-15 have to be adjusted on a proportionate ratio as per sanctioned intake in both Government and private medical colleges. The petitioners have also placed reliance upon the letter dated 15.05.2016 issued by the MCI to plead that the 100 students who were admitted for the said batch of 2014-15 were to pay the Government fee as prescribed at Rs. 60,220/- and which was the fee payable in the Government medical colleges. As per the public notice, they were being adjusted in private colleges whereby, they would have to pay fees @ Rs. 7,00,000/- per academic session. It was their case that only 64 students were being adjusted in the Government quota and rest of the 36, to which category they belong, would be adjusted in the two private medical colleges. The break up was thus violative of the orders of the Apex Court and thus, they would be forced to pay the fees 20 times which they were paying in the earlier institution.

5. The stand of the MCI was that on account of the deficiencies in GFIMSR, it had been recommended not to renew the permission for the admission to the fourth batch of the 100 MBBS students for the academic session 2014-15. The Central Government, vide letter dated 15.07.2014 had declined to grant renewal of permission to the college for the academic session 2014-15. The same was challenged in the Apex Court, in which the directions were issued and the undertakings had been taken from the President and the Secretary of GFIMSR that there existed no deficiency. However, on account of failure to remove the said deficiencies, decision had been taken not to renew the admission for the subsequent academic year 2015-16 even by the Central Government on 15.06.2015.

6. The private college at Gurgaon, SGT-respondent no. 7, in its pleading, took the plea that it was the self financed institution and not getting any grant-in-aid from the State/Central Government. It is accordingly pleaded that the Government, in such circumstances, had in the notice provided that the fees which was being paid at GFIMSR for the corresponding year was liable to be paid and other charges by the students who would be adjusted for the corresponding year, whichever is higher. It was pleaded that the benefit of the judgment of the Apex Court could not be taken against the said respondent as the same was not applicable as the said respondent was not a party to the litigation. Resultantly, it was entitled to charge the requisite fee as per the provisions of the Haryana Private Universities Act, 2006. Reference is made to Section 8 of the said Act

that the said college was a constituent college of Sh. Guru Gobind Singh Tricentary University, Gurgaon and was self financed and not receiving any grant or financial assistance from the Government. It was authorised to prepare its fee structure from time to time and send it to the Government for the commencement of the academic session. As per Section 36 and as per the Statutes of the Universities approved and published by the State Government as per notification dated 31.12.2013, the fee was to be charged from the students as decided by the Board in consultation with the Finance Department and the Fee Committee. The students were free to seek admission on the deposit of the fees and the fee had been prescribed after visualising all aspects of infrastructure which was made available to the students pertaining to faculty, laboratory, laboratory facilities, sports, extra curricular activities, research facilities, seminars, building, examination facilities etc. Accordingly, it was pleaded that the students could not be adjusted at a sum of Rs. 60,220/- and they were free to seek admission elsewhere. It was averred that the order of the Apex Court was to support those private colleges which had been permitted to admit the students on account of the representations filed by them that they had made up all the deficiencies pointed out by the inspection team of MCI. Resultantly, prayer was made for dismissal of the writ petition.

7. Facts of CWP No. 11059 of 2016, Parvesh and others v. Union of India and others are as under:-

The petitioners, who are 14 in number, seek admission in the second year MBBS course as per the criteria enshrined in public notice dated 22.05.2016 (Annexure P-6) issued by the State in Government medical college.

The pleaded case of the petitioners is that a number of medical colleges were declined renewal of their recognition by the respondent no. 2- Medical Council of India (in short "MCI") because of deficiencies being found on inspection of their premises. The said action of the MCI was assailed by the affected colleges including respondent no. 6 in CWP No. 10700 of 2016. On account of interim orders dated 18.09.2014 and 25.09.2014 (Annexures P-1 and P-2), admissions were ordered against only one list and there was only to be a state quota and there was not to be any management quota list. The petitioners, in pursuance of the said order dated 18.09.2014, applied for applications on account of respondent no. 4 inviting the applications for admission against 100 seats for the session 2014-15 as per notice Annexure P-4. The merit list was compiled by the said respondent and the petitioners were accordingly admitted in the GFIMSR at Faridabad. The petitioners completed their first year in the said institute and thereafter, the college was closed down placing the petitioners in a lurch. Respondent no. 4, in order to adjust the students of the institute, took a decision after seeking approval of petitioner no. 1 and the respondent-MCI. Resultantly, a public notice dated 22.05.2016 was issued whereby, the 100 students for the academic session 2014-15 were to be adjusted in the 6 medical colleges in the State of Haryana including private colleges i.e. at Mullana and Gurgaon

respondents no. 6 and 7. It is the case of the petitioner that counselling was accordingly scheduled for 30.05.2016 for Government quota seats and for management quota on 31.05.2016. The students were to be adjusted in the Government medical colleges and the private medical colleges in the ratio of 64:36 and thus, the first 64 were to be admitted in the Government medical colleges and the remaining 36 in the private medical colleges. The petitioners being in the merit list from Sr. Nos. 51 to 64, were thus entitled for admission in the Government medical colleges at SHKM, Nalhar, Mewat and MAMC, Aggroha, Hisar. However, during the counselling, the admission was granted to first 50 students in Government medical colleges and thereafter, counselling was stopped. The petitioners were thereafter informed that they were to be admitted in the private colleges. Resultantly, they approached this Court on the strength of the notice Annexure P-6 laid down by the State itself.

8. In the written statement filed by respondent no. 1, the plea taken is that renewal was not given to GFIMSR which had an intake capacity of 100 seats for the academic session 2015-16 by the Central Government due to certain deficiencies. Permission had been given from the academic year 2011-12, 2012-13 and 2013-14. Resultantly, the said institute had approached the Apex Court in SLP No. 21765 of 2014. For the year with which we are concerned i.e. 2014-15, it has been averred that 46 medical colleges were not given renewal and, therefore, they had approached the Apex Court and in the bunch of cases, interim orders were passed on 18.09.2014 and 25.09.2014. Since the necessary infrastructure had not been created by GFIMSR and a proposal was received from the State Government on 29.04.2016 (Annexure R-1/1) for shifting of students to other medical colleges in the State. A letter dated 15.05.2016 (Annexure R-1/2) had also been received from the MCI and permission had been granted on 20.05.2016 (Annexure R-1/3) for shifting adjustment of the 400 MBBS students admitted during the 4 academic sessions to other recognised medical colleges.

9. Respondent-State, in its reply, which was on similar lines, clarified that sum of 10 crores had to be deposited by the institutes as per the orders of the Apex Court, which could be forfeited by way of penalty if their undertaking given before the Apex Court was found to be incorrect at the time of the next inspection. It was averred that the State Government had already notified the procedure for admission in the private unaided, medical/dental colleges vide notification dated 30.05.2014. In compliance of the orders passed by the Apex Court, a single State list was prepared by respondent no. 4 for admission to GFIMSR on the basis of procedure already notified by the State Government vide the said notification of 2014. 50% of the seats were to be filled up under open merit category Government quota and remaining 50% under management category. The management quota list had not been sent to the private medical college and the said institute was not allowed to make any admission under the management quota. It was also admitted that the management quota was also filled by the state list under the management quota seats and fee for the said management quota was also charged at the similar level and rates as applicable

to the state quota list as per orders of the Apex Court. However, reference has been made to the procedure that first 50% seats were to be filled up by the Haryana State merit of AIPMT-2014 etc. and the remaining 50% seats on AIPMT-2014. A plea has been further taken that 50% of the under graduate seats were of the open merit category and the remaining 50% seats were of the management category, out of which, 15% of the total seats were of NRI category.

10. In para no. 15 of the written statement, it has been averred that 50% seats were filled under Government quota and the remaining 50% from the management quota from a single state quota list prepared as per the merits of the candidates and the management quota seats were also filled up by the department in compliance with the orders of the Apex Court. The fees from all students who are under state quota or admitted under management quota was charged @ Rs. 60,220/- per annum, which was the fees prescribed by the State Government for the Government medical colleges in the State. The GFIMSR was shut down in March, 2016 which was got verified and keeping in view the future of the students, it was decided that they would be adjusted in recognised Government medical colleges and the students admitted under the management quota seats were adjusted in recognised private medical colleges. The State had given a concession by way of special admissions which was a sympathetic gesture to the students and their only remedy was otherwise to claim refund of fees and compensation against GFIMSR. Reference was made to the letter of the respondent no. 2-MCI that the students admitted under Government quota and management quota should be transferred to Government colleges and private colleges respectively. The Union of India had accorded approval accordingly and 400 students had been adjusted. It was pleaded that there was an error in calculation of seats of the 2014-15 batch in the public notice. The same was rectified when it came to the knowledge of the department. A corrigendum was published on 30.05.2014, which was conveyed to the Counselling Committee on the said date before the start of the counselling after due approval from the competent authority as there was no time to get it published in the newspaper. The correction was made to the extent that the students admitted under Government quota seats would be adjusted in the recognised Government medical colleges. The students admitted in management quota seats would be adjusted in recognised private medical colleges. Accordingly, top 50 students had been adjusted in Government medical colleges whereas remaining 50 students were to be adjusted in private medical institutes as these were admitted under management quota. The petitioners, who were at Sr. Nos. 51 to 64 in the list of admitted students in the GFIMSR, were admitted under management quota and were to be adjusted in the private medical institutes as per the decision of the State Government, Central Government and MCI. 2 private institutes i.e. respondents no. 6 and 7 at Mullana and Gurgaon were offering MBBS courses in private sector and were to make their own admission as per their own criteria. The fee charged by them was also to be fixed by them and the State Government had no control or role in fixation of fees. The said institutes were to

accept admissions on the request of the State Government only on the condition that they would be allowed to charge the same fees as was being charged by them from the students already studying in these institutions in the same class. The 400 students of the GFIMSR had to be accommodated in other medical institutes situated within the State of Haryana and it was not possible to accommodate all these students in Government medical colleges. The admission of the students in both the Government and private medical institutions was over and above the permitted and sanctioned intake by the MCI. The students who were higher in merit than the petitioners could not get admission in Government medical colleges because of the limited seats and they had to opt for other institutions or other courses. The petitioners had thus stolen a march over the students who had higher merit at the time of admission by seeking adjustment under special circumstances. The Government was taking positive steps to adjust the petitioners and it was just and fair in the facts and circumstances.

11. In the written statement filed by respondent no. 5, it has been pleaded that counselling was held as per directions received from the office of respondent no. 4. As per the notification dated 30.05.2014, 50% seats were to be of open merit category and 50% were to be of management category. Out of the second 50% of the seats, 15% were to be of NRI category and therefore, first 50% were admitted under Government quota and the remaining 50% would be admitted under management quota. The counselling was concluded on 31.05.2016 and the students were admitted as per the notification and directions issued by respondent no. 4.

12. Respondent no. 6, in the written statement, took the plea that if the petitioners had to be adjusted, the answering respondents would charge the fee as prescribed by them as per the public notice dated 22.05.2016. The students were required to pay to an institute where they were to be adjusted. The fee along with other charges being paid to the GFIMSR for the corresponding academic year or the fees being charged at the institute where the students would be adjusted for the corresponding academic year whichever is higher was chargeable. Thus, justification was sought that the said respondents were entitled to charge the fees as per the notice issued by respondent no. 4. It was accordingly submitted that the said respondent has no objection if the petitioners were adjusted in the Government college.

13. From the above-said pleadings in both the cases, the pertinent issues which would, thus, arise for consideration is that whether:

(i) Whether the directions of the Apex Court dated 18.09.2014 and 25.09.2014 would continue to be binding on the State/MCI and the GFIMSR in which the admissions were made in spite of the fact that it had closed down.

(ii) In case the directions are binding, on which of the respondents and to what extent and which of the students would be liable to the benefit of the orders of the Apex Court for payment of fees at Government rates.

(iii) Whether the stand of the State whereby it modified its earlier notice vide corrigendum dated 30.05.2016 and converted 50% of the seats as State seats and the balance 50% as management quota, is justifiable, in the facts and circumstances of the case.

(iv) Whether the State is under any statutory duty to take over the responsibility of the students who had been admitted to GFIMSR of the State which closed down and to ensure that in the eventuality of the closure, they had to be adjusted in other colleges.

14. Counsel for the students who already stand admitted from Sr.Nos.1 to 50, submits that admissions have been made on the basis of merit and as per the public notice dated 22.05.2016 and their admission is not liable to be disturbed in the respective Government medical colleges.

15. Mr. Namit Gautam and Mr. Shiv Kumar, Advocates, appearing for the petitioners/candidates at Sr.Nos.65 to 100 of the merit list, referred to the letter dated 29.04.2016 of the State Government, to submit that as per Clause (b) and (c), the students admitted under the management quota had to be transferred to the Government Medical Colleges of the State whereas the students admitted under the management quota had to be transferred to the private Medical Colleges of the State. Similarly, reliance was placed upon the public notice dated 22.05.2016 to submit that the State Government had itself admitted that the adjustment would be as per the above condition whether the students had been admitted against the State Government quota or the management quota. Reliance was, accordingly, placed upon the Apex Court orders to submit that there was no management quota seats, apart from referring to the terms of the essentiality certificate which has been reproduced in the communication of the State Government itself dated 29.04.2016 to submit that the state was under a statutory duty to adjust the students accordingly.

16. Learned Senior Counsel, Mr. Puneet Bali, who is representing the students from Sr.Nos.51 to 64 of the merit-list, accordingly, argued that all the 100 seats of GFIMSR were of the Government quota and were to be charged as per the Government rates as per the directions of the Apex Court. As per the notice issued by the State, the first 64 candidates were liable to be adjusted in the Government Medical Colleges and the corrigendum, vide which 50 students were to be adjusted in the Government seats and the balance 50 in the private colleges, was unjustified.

17. State Counsel, on the other hand, submitted that GFIMSR and one Sardar Rajas Medical College & Research Centre, situated in the State of Orissa were part of the earlier litigation and had got conditional orders of admission. On account of the deficiencies continuing, they had been closed down and the students admitted in GFIMSR had no right of admission in the Government colleges. The benefit was only given subject to certain conditions which was on account of the fact that GFIMSR was losing its recognition. It is, accordingly,

contended that State had done its duty of adjusting the students on the basis of the letter of the MCI and the adjustment in the private colleges to the extent of 36 students, initially and subsequently, by way of corrigendum to the tune of 50 students, was justified. Reference is also made to the subsequent orders passed by the Apex Court in SLP No. 35075 of 2015 in Soumya Ranjan Panda and others v. Subhalaxmi Dash and others to submit that the Apex Court had also directed that the students should be admitted to the private institutes and therefore, the action of the State was justified.

18. Learned Senior Counsel for the MCI, Mr. Gurminder Singh has pointed out that GFIMSR had been directed to furnish a bank guarantee and there was to be a forfeiture in case the undertaking was found to be incorrect. It is submitted that the interest of the students had to be protected. However, the petitioners were not high in merit and therefore, could not, as such, seek admission in the Government Medical Colleges, over and above the others, who were less meritorious, for the said academic session. It was submitted that the bank guarantee payable by M/s Goldfields had been encashed, though the said institute had filed CWP-646- 2015 before the Apex Court. Reference was, accordingly, made to the statement made by counsel for the bank on 24.04.2015 in CWP-646-2015 before the Apex Court that the bank guarantee already stood invoked and the amount stood paid to the MCI, before the order was passed regarding maintenance of status quo.

19. Mr. Kamal Sehgal and Mr. Brijender Kaushik, Advocates on the other hand, submitted that the dispute before the Apex Court, at that point of time, was of the private Medical Colleges who had not got the requisite infrastructure and on account of the deficiencies, extension was not being given. In the special facts and circumstances and to avoid the seats from going waste they had been allowed to fill up the seats for the academic session 2014-15, on certain onerous conditions. The respondent college had already filled up their seats and their interest was rightly protected by the State, which provided that higher fees had to be charged, as per the fee structure of the said institute. Resultantly, it is submitted that the faculty and infrastructure would have to be increased in both the cases, for 14/20 students, as per the initial notice or for the 22/30 students, as per the corrigendum issued subsequently by the State. The respondents were private unaided institutions which had a right to run medical colleges and the fee had been approved by the Committee for the said year. 64 more students had been admitted from the other batches from GFIMSR and some of them had not deposited the fees, leading to various disputes arising. It was, accordingly, submitted that there is no fault on its part and on account of not being party to the earlier litigation, the said order could not be enforced against the said college. It is accordingly submitted that they had a right to establish and administer its college under the statute and its regulations and therefore, the stand of the petitioners that they were entitled for admission, on payment of Government fees, was not tenable.

(i) The directions of the Apex Court dated 18.09.2014 and 25.09.2014 would continue to be binding on the State/MCI and the private colleges, in which admissions were made.

20. Keeping in view the pleadings and the facts, as noticed above and on a perusal of the orders of the Apex Court, which have been referred to by the parties, would clearly go on to show that the dispute was inter se the respondent-GFIMSR who had filed SLP No. 21765 of 2014 and the UOI/MCI/State. On account of the fact that the seats were likely to go vacant due to the deficiencies arising in the said colleges, the Apex Court had directed furnishing of the undertakings by the Management of the said institutes who were party before it which were to be subject to inspections. It was, in such circumstances, a direction was issued that the fees which is prescribed by the Government Medical Colleges of the respective States, would be charged as per the merit-list prepared by the States. The first order dated 18.9.2014 was, thereafter, clarified on 25.09.2014, to the extent that it would be applicable to the students till they pass out of the private colleges or the institutions and was further extended to all the institutions, whether the petitions were pending before the Apex Court or in any of the High Courts and even if they had not approached the High Court. It was further specified that the list would be only one for the said colleges alone and there would be no management quota, as such and the fees would only be chargeable as that for the students in Government Medical Colleges, regardless of the status of minority institutions or deemed Universities. Relevant para of order dated 25.09.2014 reads as under:

"5. In cases where two separate lists are prepared and sent by the State agencies one relating to State quota and the other relating to management quota in private institutions, we clarify that for the current academic year there shall be only one list and that shall be the "State quota" alone. There shall not be any management quota list to be sent to the private colleges or institutions taking the benefit under our order dated 18th September, 2014. The Management quota shall also be filled through the State list and the fees chargeable for the management quota shall also be charged at the same levels and rates as applicable to State quota list.

6. We further clarify that private institutions taking benefit under our order dated 18th September, 2014 shall have to take students only from the State agencies and at fees chargeable for students in Government medical colleges as stated above, regardless of their status or claim as Minority Institutions or Deemed Universities.

21. It is not disputed that in pursuance of the first direction, notice was issued wherein it was specified that the tuition fees would be @ Rs. 60,220/- and a caveat was also put that the petitioners-colleges had filed review application for the modification of the orders, for the fees to be charged and the tuition fees would be Rs. 7 lacs, in such a case. Resultantly, counselling was fixed for 29th and 30th of September, 2014. The notice (Annexure P-4) reads as under:

"Advertisement

Directorate of Medical Education & Research Haryana Panchkula

MBBS ADMISSIONS

To

Gold Field Institute of Medical Sciences and Research Village Chhainsa,
Ballabgarh, Faridabad

The Hon"ble Supreme Court of India, vide their interim order dated 19.9.2014 in Writ Petition (Civil) No.469 of 2014 along with related writs, in case of Hind Charitable Trust Shekhar Hospital Pvt. Ltd. v. Union of India & others, has permitted the petitioners Private Medical Colleges to admit students on the basis of undertaking given by them for the academic year 2014-15. The Directorate of Medical Education & Research shall send students in order of their merit to the petitioner Medical College for admission in MBBS Course in accordance with the Rules and Regulations of MCI. The order of the Hon"ble Court may be seen at the Departmental Website. www.dme.gov.in

Accordingly the Directorate of Medical Education & Research Haryana invites applications for 100 seats for admission to MBBS Course for the Session 2014-15 in Gold Field Institution of Medical Sciences and Research, Village Chhainsa, Ballabgarh, Faridabad as per the following criteria in that order.

A. First 50% seats

1. Haryana State Merit of AIPMT-2014.
2. All India Merit of AIPMT-2014.
3. Merit of qualifying exam i.e. 10+2 (total marks obtained in Physics Chemistry and Biology).

B. Remaining

1. All India Merit of AIPMT-2014.
2. Haryana State Merit of AIPMT-2014.
3. Merit of qualifying exam i.e. 10+2 (total marks obtained in Physics Chemistry and Biology).

The Applications may be submitted to the Office of DMER, Bays NO.55-58, Paryatan Bhawan, 2nd floor, Sector-2 Panchkula by hand, post or any other method so as to reach before 5.00 PM on 27.9.2014. The proforma of Application and General Conditions can be downloaded from the Department website www.dme.gov.in

Application fee of Rs. 4000/- Demand Draft in favour of Haryana State Medical Education Society, Panchkula has to be submitted along with application fee.

Note:- Candidates who have already applied to Pt.B.D.Sharma University of Health Sciences, Rohtak as per their prospectus for admission to Open Merit Category of Private Colleges, have to apply afresh. However, they need not submit fee along with the application, if they produce adequate proof along with the application.

FEES

The fees for the course shall be as prescribed by the Government Medical Colleges which is as under:

Tuition fee Rs. 60,220/- P.A. per student

Note:- However the petitioner college have filed an application for review/modification of this order for fees to be charged at the rates prescribed by the Government for the Private Medical Colleges. In the eventuality of the petitioner colleges succeeding in their application to the Hon"ble Supreme Court, the admitted students shall have to pay the fee at the following rate.

Tuition Fee including Development charges Rs. 7 lacs

The Merit list shall be displayed on the website of the Department on 28.9.2014. The candidate shall be required to report to Gold Field Institute of Medical Sciences, Village Chhainsa, Ballabgarh, Faridabad on 29.9.2014 & 30.9.2014 from 11.00 AM to 5.00 PM.

In case of any difficulty kindly contact Dr.Kamaldeep Gill, Joint Director, Medical Education & Research, at Mobile No.9356924989.

Director General

Medical Education & Research Haryana Panchkula"

22. In compliance of the orders of the Apex Court, the admission process was also finalised and the 100 students were admitted, though the select list (Annexure P-5) shows 29 from List-I and 30 to 61, from List-II whereas 62 to 100 were from the waiting list. GFMSR vide letter dated 09.10.2014 (Annexure P14) sent a communication to the respondent-MCI that the admissions had been made under the direct control and supervision of the State Government, as per the orders of the Apex Court. The list of 100 students, as per the merit, was also appended. A perusal of the same would go on to show that all the students mentioned were of Government category and the sub-category was General. Till Sr.No.62, the merit was on the basis of the AIPMT whereas from 63 onwards, it was on the basis of +2 marks. The second batch from serial no 63 onwards had been admitted on 30.09.2014, as per the public notice itself. It is, thus, apparent that the students were of one category, as per the directions of the Apex Court and were only to be treated as State quota students, in view of the peculiar facts and circumstances, as the bona fides of the respondent-colleges was under suspect and test by the Apex Court. It is not disputed that eventually the directions issued by the Apex Court were confirmed on 20.08.2015 in Royal

Medical Trust (Regd.) and another v. Union of India and another, 2015 (4) SCT 140. However the said college closed down in April, 2016, when the essentiality certificate was withdrawn.

23. Thus, it is apparent that the 100 students who were admitted on 29th and 30th of September, 2014 in M/s GFIMSR were to be treated as students belonging to the State quota alone and the fees chargeable was to be at the same level as applicable to the State quota and the same was specified @ Rs. 60,220/- per annum per student. The State Government and the MCI were party to the said lis along with M/s GFIMSR and therefore, would be bound by the said order. Rather, a perusal of the reply filed by the State would go on to show that it is taking a contradictory stand, as such. On one hand, it has been averred that a single State list was prepared for admission and that the management quota list had not been sent to the M/s GFIMSR and the institute had not been allowed to make any admission under the management quota. It has also been admitted that the fees was as per the State rate. However, a contrary plea has been taken also that 50% of the Under-Graduate seats were of management category which stand is not justifiable, in view of the directions of the Apex Court and as per the list prepared by the Government supervisors on 30.09.2014 (Annexure P5). Resultantly, it is held that the Apex Court's order dated 16.09.2014 and 25.09.2014 were complied with by the State, MCI and GFIMSR in the said litigation and the petitioners herein for the batch of 2014-15 were part of the admission of the State quota and it would continue to bind the parties therein.

(ii) In case the directions are binding, on which of the respondents and to what extent and which of the students would be liable to the benefit of the orders of the Apex Court for payment of fees at Government rates.

24. In view of the findings regarding issue No.1, the State, MCI and GFIMSR have acted upon the said directions and are bound by the same. However, the private-colleges, in the present writ petition, namely the institutes at Ambala and Gurgaon were never a party to the lis before the Apex Court and therefore, they being private-institutes and not receiving any aid, would not be liable to comply with the directions of the Apex Court to admit students at the Government rates, as has been contended by counsel for the petitioners. It has been rightly pointed out that they had already filled up their seats for the present academic session and for them to take on the extra load, they would have to create further infrastructure and enroll faculty and cannot be restricted to receiving fees only at the Government rates. They not being party to the said litigation, cannot, thus, be foisted with additional admissions for the students for the academic session 2014-15 at Government rates as contended by the counsels for the petitioners. Thus, the claim of the students also to that extent is not justified against the said private-respondents that they are liable to be admitted in the said institutes, on payment of Government fees.

(iii) Whether the stand of the State whereby it modified its earlier corrigendum dated 30.05.2016 and converted 50% of the seats as State seats and the

balance 50% as management quota, is justifiable, in the facts and circumstances of the case.

25. Similarly, the stand of the State that it had modified its earlier notice vide the corrigendum dated 30.05.2016 and treated 50 students as the management quota, cannot be justified, in view of the findings recorded above. It is to be noticed that while withdrawing the essentiality certificate on 29.04.2016, the Additional Chief Secretary, Haryana had written to the respondent-MCI and the UOI that for the academic session 2014-15, the admissions had been done as per the orders of the Apex Court under the Government quota on Government fee structure @ Rs. 60,220/- per annum per student. Keeping in view the conditions in the essentiality certificate, they had taken a decision to adjust all the 400 students from the batch 2011- 12 onwards. The students which had been admitted under the Government quota were to be transferred to the Government Medical Colleges of the State. Relevant portion of the said letter reads as under:

"After consulting all the stakeholders, the Government of Haryana has prepared a Scheme of adjustment of 400 MBBS students of the said Institute based on the following principles/criteria issued by the MCI in similar cases:-

- a) Formal undertaking/declaration by the State Government that the Institute would be closed down.
- b) The students admitted under the Government Quota should be transferred to Government Medical Colleges of the State.
- c) The students admitted under Management Quota should be transferred to private Medical Colleges of the State.
- d) Common agreement regarding the fee structure of these shifted/adjusted students.

The detailed scheme of adjustment of 400 MBBS students is annexed at Annexure "A". Declaration/undertaking by the State Government that the Institute would be closed down is annexed at Annexure "B".

In view of the above, it is requested that necessary permission may kindly be granted to the Government of Haryana as per the condition of Essentiality Certificate clause for adjustment of these students of Gold Field Institute of Medical Sciences & Research, Village Chhainsa, Ballabhgarh, Faridabad as per the proposed scheme (Annexure "A") so that further necessary action could be taken in this regard. It is also mentioned that these students are apprehensive about their future as their studies has been disrupted because the Institute has not been functioning since last more than two months. Therefore, an early decision is required in the matter. The matter has also been referred to the Ministry of Health and Family Welfare, Govt. of India for necessary approval."

Keeping in view the above, for the academic session 2014-15, the break-up, on

proportional ratio, keeping in mind the sanctioned strength of the Medical Colleges and the additional 100 students, accordingly, reads as under in Annexure "A":

"4. Academic Session 2014-15

Admission status for 2014-15

The admissions in this academic session were done as per the directions of Hon'ble Supreme Court of India in Writ Petition (Civil) No.469 of 2014 along with related writs, in case of Hind Charitable Trust Shekhar Hospital Pvt. Ltd. v. Union of India & Ors whereas no permission was accorded by the Medical Council of India.

The students have been proposed to be adjusted equally in all the Government & Private Medical Colleges on proportional ratio as per sanctioned intake

Name of Institute

Annual Intake

Proposed No. of Students to be adjusted/shifted

PGIMS Rohtak

200

29

BPSGMCW, Sonapat

100

14

SHKM, Nalhar, Mewat

100

14

MAMC, Agroha, Hisar

50

7

MMMSR Mullana, Ambala

150

22

SGT Medical College, Budhera, Gurgaon

100

The said proposal as, thus, had to be acted upon as per Clauses (b) and (c) above, and the students who were admitted under the Government quota were to be only transferred to Government Medical Colleges. Resultantly, the action of the State in sending the 22 and 14 students to the private-institutes, was without any basis and against their own proposal. The said proposal was approved by the Executive Committee of the MCI, vide letter dated 15.05.2016, wherein the State was informed in similar terms that students admitted under the Government quota were to be transferred to the Government colleges only. Relevant portion of the letter dated 15.05.2016 reads as under:

"In view of above, the Executive Committee of the Council decided to inform the State Government of Haryana that:-

- a) Students admitted under Government quota should be transferred to Government Colleges of the State only.
- b) Students admitted under management quota should be transferred to private colleges of the State."

26. The Union of India also, vide communication dated 20.05.2016, had granted its approval on the recommendations of the MCI to the same extent. The same reads as under:

"Sub: Shifting/Adjustment of 400 MBBS students including the interns from Gold Field Institute of Medical Sciences & Research to other recognised Medical Colleges of Haryana State-reg.

Sir,

The Medical Council of India vide its letter No. MCI-34(41)(Gen)/2015-Med./107170 dated 04.05.2016 (copy enclosed) had made the following recommendations to the Central Government in respect of Gold Field Institute of Medical Sciences & Research, Faridabad, Haryana:

- (a) that the State Govt. be advised to invoke the conditions of Essentiality Certificate and the revoke bank guarantee given by the Institute and transfer the students studying in this Institute to other Institutions located in the State.
- (b) that the Delhi Medical Council & Haryana Medical Council be advised to act as per provisions of Indian Medical Council Act, 1956 & Graduate Medical Education Regulations, 1997.
- (c) that the students who have passed out be allowed to be granted provisional registration by Haryana Medical Council and be allowed to do internship in the institutes located in Haryana.

2. The Government of Haryana vide Memo NO.DSMER- 2016/16.04.2016 has withdrawn the Essentiality Certificate issued to Gold Field Shiksha Sansthan, Faridabad for establishment of new medical college and also forwarded a detailed

proposal for shifting/adjustment of 400 MBBS students admitted during four academic sessions at Gold Field Institute of Medical Sciences & Research, Faridabad, Haryana to other recognised Medical Colleges of Haryana State. Further, the MCI vide its letter dated 15.5.2016 has also informed that the students admitted under Government quota and Management quota should be transferred to only Government Colleges and Private Colleges respectively of the State. As regard to bank guarantee, the MCI has informed that the same be encashed and the amount handed over to the State Govt. for utilisation for adjustment of the students of the four academic years i.e 2011-12 to 2014-15.

3. After due consideration of the request of the State Government and the recommendations of MCI, the Central Government grants its approval to the following:

(i) shifting/adjustment of 400 MBBS students admitted during four academic sessions at Gold Field Institute of Medical Sciences & Research, Faridabad, Haryana to other recognised Medical Colleges of Haryana State.

(ii) Grant of provisional registration to all students who have passed from the Gold Field Institute of Medical Sciences & Research, Faridabad, Haryana by Haryana Medical Council.

(iii) Provisioning for internship of the students in the institutes located in Haryana.

4. This issue with the approval of Hon"ble Minister of Health & Family Welfare."

Thus, from the above communication, it would be apparent that the subsequent decision of the State, vide the corrigendum dated 30.05.2016, to adjust 50 students, in private-colleges and 50 students, in management seats, was totally uncalled for. Even in the said corrigendum, there is mention that the management quota seats were also filled up by the Department, in compliance of the orders of the Apex Court and thus, the stand of the State that 50 students have to go to the private colleges, to the tune of 30 at Mullana College, Ambala and 20 to Gurgaon, cannot be countenanced, in any manner, in view of the findings recorded on the above issues.

(iv) Whether the State is under any statutory duty to take over the responsibility of the students who have been admitted to the Medical College of the State which closed down and to ensure that in the eventuality of the closure, they had to be adjusted in other colleges.

27. Section 10(A) of the Indian Medical Council Act, 1956 provides that the scheme for establishing the Medical College is to be submitted to the Central Government, in such form and manner. The Apex Court in *State of Maharashtra v. Indian Medical Association & others*, 2002 (1) SCC 589 while examining the object behind the eligibility certificate which is issued by the State Government under the Maharashtra University of Health Sciences Act, 1998 and also the Medical Council Act, 1956, held that the certificate would cast an obligation upon the State Government to take over the affairs of such a private Medical College

and discharge the obligation. Relevant observation reads as under:

"4. Another object behind the necessity to obtain the Eligibility Certificate from the State Government under para 3 of the Regulations is that in the event a private management becomes incapable of setting up the proposed medical college or impart education therein, such a Certificate by the State Government casts an obligation on the State Government to take over the affairs of such a private medical college and discharge the obligations of the private management."

28. Thereafter, in *Government of Andhra Pradesh & another v. Medwin Educational Society & others*, (2004) 1 SCC 86 it was held by the Apex Court that as per Clause 11(d) of Form-2, issued under the 1999 Regulations of the MCI, the State Government is obligated to take responsibility of the students admitted in the colleges. Relevant para reads as under:

"27. By reason of clause 11(d), a responsibility has been cast upon the State Government to give an undertaking that in case the applicant who seeks to establish a medical college, fails to create infrastructure for the medical college as per the norms laid down by the Council and in the event the fresh admissions are stopped by the Central Government, the State Government shall be obligated to take over the responsibility of the students already admitted in the college. Such an undertaking on the part of the State Government is unequivocal and unambiguous. The Central Government and the Medical Council of India in the aforementioned premise opined that the selection of locations for establishment of a medical college is a matter which is required to be dealt with by the respective State Governments and not by the Medical Council of India."

Form 2 reads as under:

"Form-2

Subject: Essentiality Certificate

No.

Government of _____

The Department of Health,

Dated, the ____

To

(applicant),

Sir,

The desired certificate is as follows:

(1) No. of institutions already existing in the State.

- (2) No. of seats available or No. of doctors being produced annually.
- (3) No. of doctors registered with the State Medical Council.
- (4) No. of doctors in Government Service.
- (5) No. of Government posts vacant and those in rural/difficult areas.
- (6) No. of doctors registered with Employment Exchange.
- (7) Doctor population ratio in the State.
- (8) How the establishment of the college would resolve the problem of deficiencies of qualified medical personnel in the State and improve the availability of such medical manpower in the State.
- (9) The restrictions imposed by the State Government, if any, on students who are not domiciled in the State from obtaining admissions in the State be specified.
- (10) Full justification for opening of the proposed college.
- (11) Doctor-patient ration proposed to be achieved.

The (Name of the person)_____has applied for establishment of a medical college at_____. On careful consideration of the proposal, the Government for_____has decided to issue an essentiality certificate to the applicant for the establishment of a Medical College with_____(no.) seats.

It is certified that:

- (a) The applicant owns and manages a 300 bedded hospital which was established in _____.
- (b) It is desirable to establish a medical college in the public interest;
- (c) Establishment of a medical college at_____by (the name of Society/Trust) is feasible.
- (d) Adequate clinical material as per the Medical Council of India norms is available. It is further certified that in case the applicant fails to create infrastructure for the medical college as per MCI norms and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of the students already admitted in the College with the permission of the Central Government.

Yours faithfully,

(Signature of the Competent Authority)"

29. In similar circumstances, in the case of students of Chintpurni Medical College & Hospital, Pathankot, the factum of the State's role to take over the responsibility of making admissions and to shift the batches was commented upon, on account of the inaction of the MCI. Resultantly, directions were issued

to the Central Government to take further course of action on the recommendations of the MCI. Relevant portion of the order (4) S.C.T. 574 : dated 16.9.2014 in CWP No.2028 of 2014, Ms. Jagat Deep Kaur & others v. State of Punjab & others, reads as under:

"11. In this case, I have already extracted the stand of the State Government that the existing batch of students would continue and complete the course. Even the essentiality certificate only contemplates a situation of how when fresh admissions are to be stopped by the Central Government, the State Government will take over the responsibility of the students already admitted in a college. If in this case therefore the fresh admission into the college has been stopped for the succeeding years, the State's duty of taking over responsibility of the students must be to seek for appropriate permission from the Central Government in the light of what is set out in the essentiality certificate itself. We have already seen the judgment of the Supreme Court in *Medwin Educational Society's case* (supra) of the genesis of the essentiality certificate. The Medical Council of India cannot at all times be the only institution which can take a call on whether the students must be transferred from one institute or another. Tracing the history, the Supreme Court has observed that the Medical Council of India expressed difficulties and it came across the cases where colleges despite permission could not provide the infrastructure, teaching and other facilities. The 1999 regulations that came, therefore, provided for a role to a State Government to provide for several regulations that are required to be answered in the essentiality certificate itself. Education itself is a concurrent subject in the scheme of the constitution and if the State was not in a position to relocate the students in other colleges within the State as declared by it in its written statement, the attempt must only be to garner at least the necessary infrastructure commensurate with the needs of the existing batch of students. I cannot find an occasion for the State to be saddled with the responsibility of making admission in colleges where there may not be sufficient infrastructure to take the additional load. At least as of now there is no data made available to me by the petitioners of the existing facilities or vacancies in any other college within the State to which they could be admitted. There was an option to me of merely going by the word of the Medical Council of India that the students could be admitted elsewhere but it will be too risky a prospect of passing an order that cannot be enforced."

30. In the present case, as noticed, the State has already taken a decision and sent a proposal to the MCI, which was approved by the MCI and also by the Union of India and therefore, it was only to act upon the same, as had been approved. The action of the State to, firstly, ask 16 students to take admission in the private-colleges and subsequently decide that 50 of them would go to the private-colleges, thus, cannot be held to be justified, in the above facts and circumstances. As per the terms of the essentiality certificate, the State is under a bounden statutory duty to accommodate the students against the quota under which they had been admitted.

31. Reference by the State Counsel to the pendency of the matters in M/s Sardar Rajas Medical College, before the Apex Court, would be of no assistance, since in the said case, the matters arose from the judgment of the Orissa High Court wherein no action had been taken by the MCI to shift students and directions were issued which was subject matter of adjudication before the Apex Court. As noticed herein, State had sent the recommendations which were not as per the correct facts, by treating part of the admissions as management quota seats which had been duly approved. It had, thus, started action upon the same by noticing that admission had been made as per State quota but subsequently, again in midstream, chose to alter the conditions, to the detriment of the petitioners for the academic session 2014-15, without any justifiable reason and thus, the same cannot be held to be sustainable.

32. Resultantly, the present writ petitions are allowed. The 50 students from Sr. Nos. 51 to 100, of batch of 2014-15 of the M/s GFIMSR, would also be entitled for admission in Government Medical Colleges, on the strength of their merit. Accordingly, the State is directed to admit the said students in the Government Medical Colleges, on proportionate basis, as per the merit. Keeping in view the fact that only girl students can be admitted at the BPMSGM College for Women, Khanpur Kalan necessary adjustments be made. The necessary exercise be conducted within a period of 10 days. It is further clarified that the benefit of fee deposited and classes which have been attended by the students of the said batch in whichever college after the earlier shifting would be given in the subsequent colleges, so that they will not have to face any difficulty regarding any deposit of fee or have any shortage of lectures. The State would take necessary steps to increase the infrastructure in the said Medical Colleges, on account of additional students from the amount which has been received from the bank guarantee of the GFIMSR as per the guidelines of the MCI, in view of the fact that the same stood encashed.