
(2004) 03 BOM CK 0051

In the Bombay High Court

Case No : Writ Petition No. 9394 of 2003

Maharashtra Academy of Engineering and Educational
Research

APPELLANT

Vs

Maharashtra University of Health Sciences, The State of
Maharashtra and Director of Medical Education and Research

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A(4)
Maharashtra University of Health Sciences Act, 1998 — Section 64, 65(7), 68

Citation : (2004) 6 BomCR 444

Hon'ble Judges : H.L. Gokhale, J;F.I. Rebello, J

Bench : Division Bench

Advocate : C.J. Sawant, Prafulla Shah, Smita Mane, V.M. Thorat, Patil and A.T. Gate, for the Appellant; R.V. Govilkar and A.A. Kumbhakoni, for the Respondent

Judgement

H.L. Gokhale, J.—The first of these two petitions is filed by an educational institutional which is running a Medical College at Talegaon, Dhabale in District Pune known as Maharashtra Institute of Medical Education and Research. For convenience, the Petitioner institution is hereinafter reference to as "MIMER College. The Respondent No. 1 (MUHS) is a University constituted under the Maharashtra University of Health Science Act, 1998 and which is empowered amongst others to regulate the medical education and conduct the examinations of various medical courses in the State of Maharashtra. The Respondent No. 2 is the State of Maharashtra whereas the Respondent No. 3 is the Director of Medical Education and Research, who is the Competent Authority to conduct the Common Entrance Test (CET) on the basis of which the students are admitted to various medical courses.

2. The second of these petitions is filed by 17 students (Neha Karnik and others) who have been admitted to the First Year M.B.B.S. Course of the academic year 2003-04 to the MIMER College. The 1st Respondent to this petition is the above referred MUHS. The 2nd Respondent is MIMER College and the 3rd Respondent is

the above referred Director of Medical Education and Research.

3. The first of these two petitions seeks amongst other prayers to challenge through its prayer (b) the legality and propriety of the letter dated 16th October 2003 issued by MUHS. This letter refuses to grant eligibility to the students admitted by MIMER College for the First Year M.B.B.S. Course in the academic year 2003-04. The Petitioners have sought to amend this petition and to add para 20-A and prayer Clauses (f) and (f-i) which we hereby grant. Prayer (f-i) seeks to challenge the decision of the Academic Council of MUHS dated 8th December 2003 communicated by letter date 17th December 2003 refusing to the MIMER College the continuation of affiliation for the First Year M.B.B.S. Course in the academic year 2003-04.

4. The second petition of Neha Karnik and others also seeks to challenge the decision of the MUHS canceling the admission of the Petitioners for the First Year M.B.B.S. Course. This is sought vide prayer (a).

5. The first of these two petitions seeks an interim order of stay on the decision of the MUHS dated 16th October 2003 whereas the second petition seeks two interim prayers, namely that MUHS be directed to issue the eligibility certificates to the students and they be permitted to pursue their First Year M.B.B.S. Course and be allowed to appear for the annual examination.

6. The first of these two petitions is filed on 18th December 2003 whereas the second petition is filed on 16th December 2003. Both of them first appeared before the Division Bench of Hon''ble Chief Justice Shri C.K. Thakkar and Hon''ble Justice Shri A.S. Oka, and thereafter have been appearing before this Bench from time to time. The Director of Medical Education and Research has filed an affidavit in reply explaining his stand and opposing the prayers in Writ Petition No. 9394 of 2003. The said affidavit is affirmed on 26th February 2004. The MIMER College has filed an affidavit in rejoinder through its Secretary affirmed on 6th March 2004.

7. Mr. C.J. Sawant and Mr. Prafulla Shah have appeared for MIMER College in the first petition. Mr. V.M. Thorat and Mr. Patil have appeared for the Petitioner students in the second petition. Mr. Kumbhakoni has appeared for the State of Maharashtra and the Director of Medical Education and Research. Mr. Govilkar has appeared for MUHS in both these petitions. Since the prayers in both these petitions are inter-connected, they are heard together. The counsel for all the parties have referred to various documents governing the subject and have tendered the same before the Court. They have also referred to and relied upon various judgments governing the field.

8. It is the case of MIMER College that they established a medical college since the academic year 1994-95 and it had the approval of the University of Pune, to which it was granted affiliation on 11th March, 1995. It is its case that the Medical Council of India (MCI) carried out inspection of its facilities from time to time and it granted necessary recognition thereafter. It also got recognition from

the State Government and the Central Government from time to time. It is its case that its students from the first three batches have passed out and graduated with a very good percentage.

9. After the MUHS, Nasik was formed and the medial institutions were directed to be affiliated with it, the MIMER College was affiliated with MUHS from the year 1998-99. It however so happened that because of some deficiencies, recognition for the academic year 2002-2003 was declined by the MCI and hence in that academic year there could not be any batch for the First Year M.B.B.S. It appears that MUHS also did not grant affiliation to MIMER College for the First Year M.B.B.S. Course in that year.

10. It is the case of MIMER College that thereafter, i.e. on 19th September 2003, the Central Government granted it the approval for the academic year 2003-04. The Central Government, however, made it clear to MIMER College in that letter that the admission process for the academic year 2003-04 has to be completed by 30th September, 2003 in view of the directions of the Supreme Court in Madhu Singh's case Medical Council of India Vs. Madhu Singh and Others, . Consequently by its letter dated 27th September 2003, the Government of Maharashtra also granted permission to MIMER College to admit 100 students for First Year M.B.B.S. Course during the academic year 2003-04. The second para of this letter, however, stated as follows:

"This approval is however granted subject to affiliation/renewal of affiliation to the MUHS, Nasik."

The Petitioner institution was expected to take the necessary steps.

11. It is the case of MIMER College that in view of this direction, the Petitioner Institution took up the matter with MUHS which required payment of Rs. 20,000/- for re-affiliation. The college proceeded to admit 100 students on its own by 30th September 2003 since it was running against the time. On 3rd October 2003, MIMER College made the payment of Rs. 20,000/- for re-affiliation. MIMER College was informed that a detailed inquiry will be made by MUHS with respect to re-affiliation. On the very day, MIMER College received a letter dated 29th September 2003 calling upon it to forward the list of admitted students which it forwarded on 3rd October 2003. On this background, it received the letter dated 16th October 2003 from MUHS which informed that since the college was not granted affiliation for 2003-04, the concerned students will not be granted the eligibility certificates. Therefore, it is the grievance of MIMER College that on the one hand MUHS conducted the inspection and informed that the report of the Inquiry Committee will be placed before the Academic Council, on the other hand, MUHS also wrote on (SIC) October 2003 that the re-affiliation will not be granted. It is, therefore, that MIMER College has challenged this letter dated 16th October 2003. It has subsequently received the letter of MUHS dated 17th December 2003 informing that the Academic Council has rejected re-affiliation for the academic year 2003-04 since the re-affiliation

was not sought prior to 30th September 2003. It is this letter dated 17th December 2003 which is sought to be challenged by amended prayer (f)(i).

12. It is the case of the MIMER College that admittedly for the academic year 2002-2003, it did not have the affiliation with the MUHS and it was not recognized by the MCI and the Central Government. However, for the academic year 2003-04, it did receive the recognition from the Central Government vide its letter dated 19th September 2003, which called upon it to complete the admission process by 30th September 2003. The State Government's letter dated 27th September 2003 also permitted it to give admission to 100 students. That was, however, subject to the affiliation/renewal of affiliation with MUHS. Now, when the State Government was informing the Petitioners on 27th September 2003 that it granted permission to admit 100 students and when it was known to everybody that admissions were to be effected by 30th September 2003, it was implied that the University will consider the application for re-affiliation in due course, since it could not have taken the decision of re-affiliation within 3 days, i.e. by 30th September 2003. At the same time, if the MIMER College had to fill in 100 seats within 3 days, it had to know about the students which were to be admitted against the Government quota. In the absence of any such information coming forward, it proceeded to fill those 100 admissions on the basis of the list furnished by the Association of Management of Unaided Private Medical and Dental Colleges (AMUPMDC). It received a list from the said AMUPMDC of 50 students for the Management quota. Some 13 out of them turned up for admission. MIMER College also gave advertisements in local newspapers and thereafter on the basis of the marks obtained by the students in the CET, it granted admissions first to the 50 students in the Management quota and thereafter another 50 students against the Government quota. Mr. Sawant for the Petitioner has tendered to us the list received from AMUPMDC. He has also tendered the two lists of the students admitted against the Management quota and those admitted against the Government quota. The list of 50 students admitted in the Management quota starts with the name of one Sarfaraz Alam Akhtar Alam who has obtained 175 marks in CET and ends with one Viraj Dhasal who has obtained 130 marks in CET. As per the requirement of Clause 4.5.1 of the brochure of the State Government for the CET, the students have also to obtain 50% marks in HSC for becoming eligible. All these students have obtained marks above 50%. The second list of the students, who are admitted against the Government quota, starts with one Sanjay Pasoria who has obtained 129 marks. The candidates in this list upto Sr. No. 78 are from CET of Maharashtra. The persons from 79 onwards are from outside Maharashtra and they are Non-CET students. The students from Sr. No. 71 to 78 have appeared for the State CET but have less than 50% in CET. It is stated by MIMER College that they have forwarded the list of the students to MUHS on 3rd October 2003 and MUHS has declined to grant eligibility by its letter dated 16th October 2003.

13. Mr. Sawant, learned counsel for MIMER College, submitted that in the given situation, it had no option but to do what it has done. It is an institution with

reputation. Three batches of students have already passed out and it had an affiliation with the Pune University earlier and later on with MUHS. In the academic year 2003-04, there was lot of confusion with respect to the rights of various parties. This is because the correct legal position on the subject became available rather late. The judgment of the Apex Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, was decided on 31st October 2002 and the subsequent clarificatory judgment in the case of Islamic Academy of Education and Another Vs. State of Karnataka and Others, was decided on 14th August 2003. The MIMER College itself got its approval from the Central Government on 19th September 2003 and from the State Government on 27th September 2003. In his submission, the Petitioner had its own option to fill in 50 seats, which it did by obtaining the list of students from AMUPMDC and thereafter by giving advertisement in the local newspapers. However, it did not want the remaining 50% seats to lapse and, therefore, it filled in the seats against the Government quota on its own. He submitted that the Petitioner institution has put in good funds on setting up its facilities. They are approved by MCI and the seats should not be allowed to be wasted. As far as the affiliation from MUHS is concerned, in his submission, it was expected over the period and, therefore, MUHS also took the affiliation fee and sent the Local Inspection Committee. It has however proceeded in a bureaucratic manner and rejected the prayer for affiliation. In his submission, therefore, there was no infirmity on the part of the MIMER College and the decision of MUHS should be set aside, it be directed to grant affiliation and the forms of the students ought to be directed to be received. The forms had to be received now for the examination to be held in June 2004. The date for sending the forms is to expire on 15th March 2004. However, as far as that part is concerned, Mr. Govilkar, learned counsel appearing for MUHS, has fairly stated that if directed, the forms will be received even latter on with late fees. Mr. Sawant, therefore, submitted that this is a fit case that the forms should be directed to be accepted.

14. The submissions of Mr. Sawant were adopted by Mr. Thorat and Mr. Patil, learned counsel appearing for the Petitioners in the second petition. They submitted that there was no fault on the part of the students whether they were from the CET or Non-CET. They had approached the MIMER College in pursuance to the advertisement given by the college and have paid the fees. Mr. Patil drew our attention to the notification issued by the Director of Medical Education and Research dated 27th September 2003 with respect to the filling of the 50% Government quota. He pointed out that the name of the Petitioner institution figured at Sr. No. 14 in the list of colleges for which admissions were to be effected. He pressed into service Clause 4 of this advertisement, which reads as follows:-

"4. Wait list upto 25% of the Govt. Quota seats will be prepared for each institution and colleges will be required to operate this wait list, if enough number of candidates are not available from main list. If after exhausting waiting list still there are vacancies, management may fill the same on the basis of inter-

se merit as per MH-CET-2003, out of the candidates applying to them. Such candidate will not be entitled for any financial assistance."

15. In their reply, Mr. Kumbhakoni and Mr. Govilkar stoutly opposed the submissions made by Mr. Sawant and Mr. Patil. Mr. Kumbhakoni submitted that for an institution to have valid admission for medical course, there were four requisites, viz. that there should be an approval of the MCI, a clearance by the Central Government, then a recognition by the State Government, and lastly the affiliation from the University. He submitted that in the letter dated 27th September 2003, the State Government had made it clear that its permission of filling 100 seats was conditioned on the University granting affiliation. He submitted that it was a condition precedent and if the college did not get such an affiliation by 30th September 2003, it was not expected to fill the seats. The second submission was that in any case the college could not appropriate the 50% seats which were meant for the Government quota and could not fill those seats on its own. In the affidavit in reply affirmed by Dr. W.B. Tayade, Director of Medical Education, it has been contended that the 50% admissions granted by the Petitioner in its college are wholly unauthorised and illegal since these admissions are not effected on the basis of the counselling by the State agencies nor by the State Government or the Competent Authority. He made it specifically clear that the State Government and the Competent Authority have not recommended a single name against the 50% Government quota. He submitted that after the judgment of the Apex Court in Islamic Academy of Education (supra), the college had no business to touch the 50% Government quota. He pressed into service the following passages from para 13, 16 and 21 of the said judgment.

"13. ...A reading of paragraphs 59 and 68 shows that in non-minority professional colleges admission of students, other than the percentage given to the management, can only be on the basis of merit as per the common entrance tests conducted by government agencies. The manner in which the percentage given to the management can be filled in is set out hereinafter.

16. ...In our view what is necessary is a practical approach keeping in mind the need for a merit-based selection. Paragraph 68 provides that admissions by the management can be by a common entrance test held by "itself or by the State/University". The words "common entrance test" clearly indicate that each institute cannot hold a separate test. We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test, held by the association must be for admission to all colleges of that type in the State.

21. So far as the year 2003-04 is concerned, time is running out as the outer time-limit for admission is fast approaching or has gone. To meet the urgent situation without going into the issues involved in the various petitions/

applications, we direct that the seats be filled up by the institution and the State Government in the ratio 50:50. However, if by any interim order, this Court has permitted any institution to fill up a higher percentage of seats and the seats have been filled up accordingly, the same shall not be disturbed. It is made clear that due to the time constraint this arrangement has been made, without deciding the contentious issue involved in various pending cases."

Mr. Kumbhakoni, therefore, submitted that all the 100 seats filled by the Petitioner are unauthorised and illegal and, in any case, 50% thereof were totally without any authority of law. He pointed out that the college had not sought names from the Government also which was its duty. He submitted that merit alone has to be the basis of selection and a large number of meritorious students are being denied admissions.

16. Mr. Kumbhakoni submitted that the college giving its own advertisement and filling the 50% seats was contrary also to the judgment of a Division Bench of this Court in Writ Petition No. 3061 of 2003 in the case of Association of Management of Unaided Private Medical and Dental Colleges v. State of Maharashtra decided on 23rd August 2003. He referred to the fact that in this petition, a submission was advanced on behalf of the unaided medical and dental colleges to permit them to admit students in management quota on the basis of the H.S.C. results. The Division Bench has referred to the judgment in the case of Islamic Academy of Education. The Division Bench has thereafter observed -

"We are unable to accept the submission of the learned counsel. The five Judge Bench has clearly directed that the CET to be held by the private management must be for admission to all colleges of that type in the State and in the absence of such CET seats in the management quota should be filled on the basis of the CET conducted by the State."

17. Mr. Kumbhakoni then referred to the two judgments of the Apex Court. Firstly in the case of A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , and particularly para 10 thereof, wherein a submission was made on behalf of the students that the interest of the students should not be sacrificed because of the conduct or folly of the management and that they should be permitted to appear at the University examination notwithstanding the circumstances that permission and affiliation had not been granted to the institution. The Apex Court in clear terms ruled therein that they could not by their fiat direct the University to disobey the statute. However, what is material to note is that which is further recorded in that judgment wherein it is stated that it is a situation which they had brought upon themselves as they sought and obtained admission in the college despite the warning issued by the University from time to time. In our case, there is no such direct intimation by the University to the students. On the contrary, there is a notification of the State Government wherein the name of this institution figured in a public advertisement as late as on 27th September 2003. The University received the names of the students forwarded by the college and the question of re-affiliation

was under consideration. The facts of the present matter are a little different. Mr. Kumbhakoni also referred to another judgment in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, wherein the Apex Court has deprecated the practice of permitting students of unaffiliated institution to appear for the examination on a provisional basis. He therefore submitted that the petitions ought to be dismissed.

18. Mr. Govilkar, learned counsel appearing for MUHS, drew our attention to various sections of the Maharashtra Universities of Health Sciences Act, and particularly Sections 64, 65(7) and 68 thereof. He submitted that u/s 65, a procedure for affiliation has been laid down. That is applicable where an affiliation is to be continued also in view of Section 65(7) and Section 68. Ordinarily an application for continuation of affiliation or recognition is to be sought and granted 6 months prior to the expiry of affiliation. u/s 65(2), an inquiry is to be caused by the Academic Council through a Committee appointed by it and then on its report, the necessary decision is to be taken.

19. Mr. Sawant in his rejoinder drew our attention to an interim order passed by another Division Bench on 9th March 2004 in Civil Application No. 449 of 2004 in Writ Petition No. 3061 of 2003, AMUPMDC v. State of Maharashtra. He submitted that the said order was passed in a somewhat similar situation arising in private colleges where a few seats remained to be filled since some vacancies occurred from the Government quota and they were to be filled by 30th September 2003. This was in a situation where the Government had forwarded its list, but thereafter a few of the students had not taken admissions leading to some seats remaining vacant. These seats were filled by the private colleges. The Government had considered this aspect and the Principal Secretary to the Government of Maharashtra, Medical Education and Drugs Department by its letter dated 16th February 2004 addressed to the AMUPMDC had taken a sympathetic view, and looking to the circumstances, had observed in para 6(o) as follows:-

"It appears that the private colleges had no choice but to go in for such a procedure that was never contemplated by the Honourable Courts while passing the judgments and order requiring them to admit students solely on the basis of CET merit and refusing them permission to admit students on the basis of X+II (HSC) Examination results. It is also worthwhile to note that the MCI rules do permit admission of students in the first year M.B.B.S. Course on the basis of X+II Examination results with the minimum marks secured at such an examination being 50%. Therefore, if such students are allowed to be admitted without reference to the results of the CET Examination the same will not contravene the MCI regulations."

Mr. Sawant submitted that considering this view taken by the Secretary of the concerned Government Department itself, the other Division Bench passed an order on 9th March 2004 on the above Civil Application wherein it stated as follows:

"In the meanwhile, since the last date for filling the forms is expiring, the concerned Universities are directed to accept the examination forms of the concerned students subject to further orders of this Court. It is made clear that this direction would apply only to the colleges who are recognized by Medical Council of India/Dental Council of India and affiliated to the Universities. It is further made clear that the concerned students shall not be entitled to claim any equity on the ground that their examination forms are accepted."

20. Mr. Sawant therefore submitted that what applies to those institutions should be applied to MIMER College in the present case. He submitted that in those cases, a few seats i.e. less than 10% were remaining vacant. In the present case, 50% seats are going vacant, and therefore same yardstick should be applied. Mr. Kumbhakoni for the State, on the other hand, emphasised the fact that those were all cases where the list meant from the Government quota were forwarded to the colleges, but a few students did not take admissions leading to the vacancies. It is only a few seats from the Government quota were remaining to be filled and therefore under Clause 4 of the Government Notification of 27th September 2003 referred to above the Government had taken a benevolent view and permitted those seats to be filled in the peculiar facts and circumstances.

21. Mr. Kumbhakoni emphasised that as per para 7 of the Government decision dated 16th February 2004 referred before the other Division Bench, the condonation was to be granted subject to the college having approval of the Government and being affiliated to the University. In the present case, the college did not have the affiliation of the University and the Government had taken the conscious decision not to forward a single name. The result of course will be that the 50% of the quota will lapse in the given situation since the college did not get affiliation by the date it was expected and the names from the Government quota were not forwarded. Mr. Kumbhakoni however submitted that the two situations were different. In the present case, the college has appropriated the entire Government quota of 50% and that is also by giving admission to 22 out of 50% students who came from outside State and who had not passed the HSC examination from any institution in the State of Maharashtra. He drew our attention to Clause 4.5 of the condition of eligibility from the brochure published by the State Government for the MH-CET held in the year 2003. Under the clause, the student has to pass his HSC examination or an equivalent examination from the institution situated in the State of Maharashtra with English, Physics, Chemistry and Biology as subjects. Under Clause 4.5.1, the concerned student must obtain 50% marks in Physics, Chemistry and Biology taken together at the HSC examination. If we consider the list of the students from Sr. No. 51 onwards, which is sought to be cleared from Government quota, then it is seen that 22 students from Sr. No. 79 onwards are students from the institutions outside Maharashtra and who are clearly ineligible under Clause 4.5, and hence under no circumstance their forms could be forwarded and entertained by the University. Again from the remaining students those from Sr. No. 71 to 78 are students, who have received less than 50% marks in the CET

examination and they are also not eligible.

22. If at all any considerate view is sought to be taken, only the students from Sr. No. 51 to 70 are seen to be with more than 50% marks in CET. From Sr. No. 71 to 78, the students at Sr. Nos. 71, 72, 74, 75 and 78 belong to the reserved categories and who have got the eligible marks above 40% (since the eligibility for them is fixed at lesser marks at 40%). Another strange thing is that the students at Sr. No. 78 belonging to Scheduled Caste is shown to have obtained 158 marks in CET. If that was so, he should have figured normally amongst first 50. Mr. Sawant however has taken instruction and has stated that there is an error in showing his HSC marks as the marks of CET. We accept this explanation. Thus if the principle of the order of the Division Bench dated 9th March 2004 in Civil Application No. 449 of 2004 is extended to this Petitioner, 25 students i.e. from Sr. No. 51 to 70 and those at Sr. No. 71, 72, 74, 75 and 78 would benefit. However, even the students from Sr. No. 51 onwards, as observed above, are basically allotted the seats which were meant for the Government quota. In the present case Government has taken conscious decision not to forward the names in the facts of the present case. We accept the submission of Mr. Kumbhakoni that this is a case of a wholesale appropriation of the Government quota whereas the one in Civil Application No. 449 of 2004 was a case of a few vacancies since some of the students from the Government quota did not turn up. The two situations are different. Therefore, we cannot direct the University to accept the forms of these students which are allocated by the college against the Government quota.

23. Mr. Sawant has drawn out attention to Clause 9.16.3 of the brochure. We have gone through the concerned rule. That rule is a part of 9.16.3 which is concerning admission to vacant seats at the disposal of the competent authority and will apply on competent authority releasing those seats. In the facts of the present case, that rule will not have any application whereas Clause 4.5 will squarely apply.

24. Mr. Sawant and Mr. Patil drew our attention to an order passed by a Division Bench at Nagpur in Writ Petition No. 4592 of 2003 on 28th November 2003 in the case of Vidya Shikshan Prasarak Mandal v. MUHS. That was a situation where the number of seats for the Dentistry Course of this college were raised under the permission of Government of India from 60 to 100 decision on 22nd September 2003. The University declined to grant admission to the extended seats. Relying upon an order passed in an earlier petition, i.e. Writ Petition No. 4185 of 2003 in the case of Gondia Homeopathic Education Society v. State of Maharashtra, the Division Bench granted an interim relief in terms of prayer (v) of that petition. By virtue of that interim order, the students were permitted to be admitted to the remaining 40 seats. We have seen that interim order. We are also shown synopsis of that petition since the other papers were not available to the counsel of the Petitioners. We are also shown part of the order passed in the earlier petition. In none of these orders or in the petitions, the question of Government

quota being appropriated by a private body has been specifically raised nor does it appear to be reflected in the orders passed by the Division Bench.

25. We have considered the rival submissions. It is quite clear that the Petitioner institution did receive the intimation from the Central Government belatedly on 17th September 2003 and then from the State Government on 27th September 2003. It is true that nobody forced it to proceed to effect the admissions forthwith. However, it is also to be noted that this is not an institution which has come overnight. Three batches of the students have already cleared graduation. Even for the academic year 2003-04, the Central Government has granted approval to its running the course, which is granted on the basis of the approval of the MCI u/s 10-A(4) of the Indian Medical Council Act, 1956. Thus, prima facie, its facilities were found in order. Undoubtedly, the University has every authority to have its local committed to inspect and then make a report. However, it is not possible to accept, in the facts of the present case, that merely because the institution did not have the affiliation prior to 30th September 2003, it could not admit students and that the University can refuse to grant re-affiliation merely on that basis. If that was so, there was no reason for the University to receive the fee for the re-affiliation, and also to send its local inspection committee. Thereafter it cannot turn back and say that because the affiliation is not granted prior to 30th September 2003, it can not be renewed.

26. The fact however remains that the Petitioner institution has also exceeded its jurisdiction in filling of 100% seats on its own. It knew that all these years the admissions were being effected through CET conducted by the State Government. It is only in the academic year 2003-04 that in view of the judgments rendered by the Apex Court, that the private managements had the option to fill certain percentage of seats on their own. This quota was laid down at 50%. Even the notification of the Director of Medical Education dated 27th September 2003, on which reliance is placed by the institution as well as by the students, clearly states that it is pertaining to admission to 50% Government quota. Clause 4 of this notification cannot therefore help the students. It is only when wait list of 25% Government quota was prepared and when candidates were not available and wait list gets exhausted that the management can fill those seats. In the instant case, the Government did not forward any names nor did the Petitioner institution seek any names from the State Government. Prima facie, therefore, there is good substance in the submission of Mr. Kumbhakoni that 50% of the admissions granted against Government quota are without any authority. We cannot, therefore, direct the University to grant affiliation or accept the forms of these 50% students. Allowing this would mean that the private institution will be filling 100% of seats on its own depriving the meritorious students, who are otherwise available and who were waited for seats at the door of the Director of Medical Education.

27. As far as the 50% seats filled by the Petitioner institution from the management quota is concerned, there also it had to fill them through a common

entrance test of the private colleges or from CET. Mr. Sawant has sought to explain that the names were called and received from the AMUPMDC. However, only 13 of those students accepted admissions. It is in this situation that he submits that the admissions for the remaining seats on the basis of the private advertisement be permitted on a provisional basis.

28. We are told that the judgment of the Division Bench dated 23rd August 2003 in Writ Petition No. 3061 of 2003 (supra) is challenged in the Apex Court. We are shown the order passed by the Apex Court in Petition for Special Leave to Appeal (Civil) No. 16447 of 2003 in the case of South Indian Education Society v. State of Maharashtra on 15th September 2003. The Apex Court directed notice to be issued and directed status quo to be maintained in the meanwhile. In view thereof, we would like to await the decision of the Apex Court. However, in the meanwhile, time has come for forwarding the names of the students for the examination which is to be held in June 2004.

29. Having considered the totality of circumstances, the matters require consideration. Hence Rule. In our view, a distinction will have to be made between the students who are admitted against the Management quota and those against the Government quota. Those are admitted against the Government quota are wholly without any authority. Many of them have not appeared for CET and some of the others have less than 50% marks in CET. However, those who were admitted against the Management quota have to cross two hurdles. As far as the affiliation of the college with the University is concerned, the college has an arguable case. The other difficulty is with respect to the manner in which they were selected. On that also, we have noted Mr. Sawant's explanation which requires consideration. Hence, in view of the peculiar facts of this case, by way of an interim order, we permit the Petitioner institution to forward the forms of 50% of the students who have been admitted only against the Management quota. They will be granted the eligibility on a provisional basis provided they are otherwise eligible i.e. they have 50% marks in HSC and other conditions are fulfilled. The examination fees will be accepted and they will be permitted to appear for the examination though their results will not be declared until further orders are passed in these petitions.

30. This will mean that the forms to be forwarded will be those of first fifty admitted against the Management quota i.e. the list starting from Sarfaraz Alam. The college will however not forward the form of the 50th candidate Viraj Dhasal until appropriate orders are passed in another companion Writ Petition No. 9375 of 2003 filed by one Pooja Lathi and two others. Mr. Sawant has fairly accepted that out of these 3 students the name of Pooja Lathi is wrongly shown in the Government list (second list). She has received much more i.e. 154 marks. Incase she is shown in the Management list, she will replace the 50th student i.e. Viraj Dhasal and hence his form will not be sent for the time being until appropriate orders are passed in Writ Petition No. 9375 of 2003 after hearing him.

31. From amongst the Petitioners in the second petition, i.e. Writ Petition No.

9396 of 2003, Petitioner Nos. 1, 4, 5, 6, 8, 9, 12, 13, 14, 15 and 17 i.e. Neha Karnik, Sumiran Bajpe, Nivedita Kadam, Neha Thite, Esha Trivedi, Amit Joshi, Sheetal Jagtap, Hussain Gheewala, Shweta Thorat, Utsav Patel and Niraj Jobanputra figure in the Management list of 50. Hence their names will naturally be forwarded though not of others. Mr. Patil submits that forms of others and of all those in the Government quota should also be forwarded. He submitted that students were never informed against which quota they were admitted. Mr. Sawant has however explained that in the time available those with the higher marks were first listed in the Management quota and remaining in the Government quota. It is also seen that in the Management list, the 13 names forwarded by AMUPMDC figure first. We find no equity to clear the forms of those who are marked against Government quota since the college cannot allocate those seats. That apart, they are students with very low marks, some of them even with less than 50% in CET and some who have not appeared for the CET. They may reclaim their fees from the college and the college should also offer to return them in fairness. That is however a matter to be sorted out amongst them as per their arrangement and the rules.

32. We had asked Mr. Govilkar as to whether MUHS will conduct a further inquiry by sending an inspection committee. He stated that they will require about 4 weeks time. In the circumstances, we direct MUHS to conduct the inspection and arrive at its decision on merits within 4 weeks. The Petitioner institution will be at liberty to furnish the necessary material including the information which was given to MCI while seeking the recognition for the First year M.B.B.S. Course for the year 2003-04. We except the University to take the decision in its own merits. In the event, the decision comes in favour of the Petitioner institution, the affiliation to the college will follow and the provisional eligibility certificates will be converted into regular eligibility certificates and the results of the students will be declared. In the event, the report goes against the Petitioner institution, it report goes against the Petitioner institution, it will be open to the Petitioner institution to amend the petition and to challenge that decision. MUHS will also file its reply. In the meanwhile, the decision of the University dated 16th October 2003 and the communication dated 17th December 2003 will remain stayed.

33. Liberty to the parties to apply for early date of hearing after the receipt of the report and decision of the Inspection Committee of the University.