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**(2008) 10 OHC CK 0033**  
**In the Orissa High Court**

Medical Council of India

APPELLANT

Vs

Manas Ranjan Behera and Others

RESPONDENT

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**Date of Decision :** 27-10-2008

**Acts Referred:**

**Citation :** AIR 2009 Ori 81 : (2008) CLT 911 Supp

**Hon'ble Judges :** B.S. Chauhan, C.J;B.N. Mahapatra, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

B.S. Chauhan, C.J.—Both the writ appeals have been filed challenging the judgment and order dated 25-9-2008 passed by a learned Single Judge in W.P. (C) Nos. 14011 and 14097 of 2008 by which a direction has been issued to the present appellant, Medical Council of India and the Orissa Joint Entrance Examination, 2008, (hereinafter called "OJEE") respondent No. 5 in both the appeals.

2. The facts and circumstances giving rise to these cases are that respondent No. 5 conducted a test for admission of students in MBBS/BDS courses in the Medical Colleges. Result was declared and admissions were taken by the successful candidates. However, 12 seats became vacant as some students after the admission in the course had gone to other institutions and some of them did not join. Some of the students who could not get admission or could get admission in BDS course approached the respondent No. 5 pointing put that there was sufficient time for it to fill up the said 12 vacancies in view of the time schedule fixed by the Medical Council of India, the present appellant as it was permissible to complete the admissions by 30th September, 2008. Therefore, it must take steps to do the counselling for filling up the said 12 seats. Respondent No. 5 did not take any step. After waiting for some time, Manas Raj nan Behera, respondent No. 1 in W.A. No. 200 of 2008 and Miss. Swati Sagarika Panda respondent No. 1 in W.A. No. 201 of 2008 filed the aforesaid writ petitions on 22-9-2008 and 23-9-2008 respectively for a direction to the authorities

concerned to fill up 12 seats as in case re-counselling for 12 remaining vacant seats was held, they had a fair chance of getting admission in MBBS course.

3. The learned single Judge considering the seriousness of the issue and taking note of the schedule time fixed by the Hon"ble Apex Court disposed of both the writ petitions by judgment and order dated 25-9-2008 and issued direction to respondent No. 5 to fill up the 12 vacant seats strictly in accordance with the merit of the candidates in the OJEE, 2008 and complete the process latest by 30-10-2008.

4. Mr. R.C. Mohanty, learned Counsel appearing on behalf of the appellant, Medical Council of India has submitted that any direction to grant admission beyond 30th September, 2008 amounts to a direction in contravention of the directions issued by the Hon"ble Apex Court and it amounts to fixing the time schedule beyond the time fixed by the Medical Council of India.

5. Learned Addl. Standing Counsel appearing for the State has submitted that there was sufficient time for the present appellant and respondent No. 5 to fill up the twelve vacant seats but for the reasons best known to them, they did not consider it proper to proceed with the selection process. The students were not expecting such a unreasonable and indifferent attitude on the part of the statutory authorities. The students had approached this Court in time and the matter was disposed of immediately. There was sufficient time for the OJEE to fill up the vacant seats before the cut off date. In such a fact situation, if the authority did not proceed with the selection process, the students should not suffer. Thus, the appeal is liable to be dismissed.

6. We have considered the rival submissions made by the learned Counsel for the parties and perused the record.

7. The Hon"ble Apex Court has time and again said that it is not permissible for the Courts to issue direction for admission in mid academic session. The reason for it has been that admission to a student at a belated stage disturbs other students, who have already been pursuing the course and such a student would not be able to complete the required attendance in theory as well as in practical classes. Quality of education cannot be compromised. The students taking admission at a belated stage may not be able to complete the courses in the limited period. In this connection reference may be made to the decisions of the Apex Court in Dr Pramod Kumar Joshi Vs. Medical Council of India and Others, ; State of Uttar Pradesh and others Vs. Dr. Anupam Gupta, etc., ; State of Punjab and others Vs. Renuka Singla and others, ; Medical Council of India Vs. Madhu Singh and Others, ; and Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, . In view of the aforesaid decisions of the Apex Court no direction should be issued by the Court to admit a student in mid-session or after the cut off date.

8. In view of the above, there may be force in the submissions made by the learned Counsel for the appellant that the Courts should not grant indulgence or

a direction to grant admission to students in mid-session, particularly after the cut off date fixed by the Hon''ble Supreme Court. However, there may be circumstances where the students cannot be held responsible for the delay. Where the authorities themselves are responsible for such delay they cannot be permitted to take benefit of their mistake or inaction.

9. In *Sadanand Mishra Vs. Forest Research Institute and Others*, the Apex Court has held as under:

...As the writ petition was filed by the appellant promptly and there has been no delay on his part, he cannot be made to suffer on account of the time lost in litigation.

Therefore, if the instant case is examined in the light of the law laid down by the Apex Court, it is to be noted that 12 seats were lying vacant in MBBS course and there was enough time for OJEE and the Medical Council of India to fill up those seats. For the reasons best known to them they did not proceed with the matter and the students had to approach this Court. This Court considering the grievance of the petitioners before it and taking note of the directions given by the Apex Court disposed of the writ petition immediately issuing direction for re-counselling and filling up those 12 seats. The writ petitions had been disposed of on 25-9-2008. The cut off date fixed by the Apex Court as well as the Medical Council of India had been 30th September, 2008. Therefore, there was sufficient time for respondent No. 5 to ensure compliance of the direction given by this Court. All the parties were represented before the learned single Judge including the present appellant. Learned single Judge has also issued a direction that copy of the order be served upon all the parties concerned including the present appellant. But for no reason respondent No. 5 did not consider it proper to proceed with the process of selection and for such inaction of respondent No. 5 the students who are eligible to take admission in MBBS/BDS course were about to suffer. Learned Single Judge has issued direction for admission strictly in accordance with the merit, but no such benefit had been conferred to the students who had approached the Court. It is beyond our imagination as under such fact situation when there were twelve seats available, why the OJEE had not taken any steps whatsoever to fill up the said seats.

10. In view of the above, we do not find any cogent reason to interfere in these appeals which are accordingly dismissed. However, it is open for the Medical Council of India to take appropriate action against respondent No. 5 whatever permissible in law for inaction on its part.

B.N. Mahapatra, J.

11. I agree.