
(2009) 05 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No's. 9274 of 2005 and 29170 of 2007

P. Ilamparithi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Dentists Act, 1948 — Section 10A

Indian Medical Council Act, 1956 — Section 10A, 10B, 10C

Citation : (2009) 05 MAD CK 0018

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : G. Justin, for the Appellant; S. Veera Bagu, ACGSC for R. 1, R. Neelakandan, Government Advocate for R. 2, V.P. Raman, for R. 3, A.L. Gandhimathy, for R. 4 and D. Balaraman, for R. 5, for the Respondent

Judgement

M. Sathyanarayanan, J.—The facts and issues involved in these writ petitions are interconnected and therefore, these writ petitions are disposed of by this common order.

2. In W.P. No. 9274 of 2005, the petitioner seeks for appropriate direction in the form of writ of mandamus directing the Ministry of Health and Family Welfare, Department of Health, Union of India, to forward the application submitted by the 5th respondent college namely PSG Institute of Medical Sciences and Research, Coimbatore, seeking for increase of one additional seat for evaluation by the Medical Council of India, New Delhi in terms of the Medical Council of India Act and the consequential regularization of the petitioner's admission to MBBS course.

3. In W.P. No. 29170 of 2007, the petitioner prays for the issuance of writ of mandamus directing the respondents namely Tamil Nadu Dr. M.G.R. Medical University, Chennai and PSG Institute of Medical Sciences and Research, Coimbatore to publish her IV year MBBS examination results held during August

2007 and also prays for the issuance of the mark sheet for first, second and fourth year MBBS course, so as to enable her to register for I year CRRI.

4. The facts which are necessary for the disposal of these writ petitions are as follows:

The petitioner appeared for Plus Two Examination for the academic year 2000-2001 and she became successful. In the said examination, there was some defect in awarding marks pertaining to Biology subject and therefore, the petitioner filed a writ petition in W.P. No. 14147 of 2001. The said writ petition was allowed and the respondents therein were directed to revise the marks.

5. In spite of the said order, no further marks were awarded and therefore, the petitioner once again filed W.P. No. 4742 of 2002 and this Court vide order dated 12.3.2002, has allowed the writ petition and directed that the marks obtained in Biology subject should be 191 out of 200. In the interregnum, the petitioner had already appeared in the entrance examination for admission to MBBS course for the academic year 2001-2002. After the orders passed in W.P. No. 4742 of 2002, the marks were revised and therefore, the petitioner again approached the authorities for considering her case to MBBS course, even against payment seats.

6. The cut-off mark prescribed for admission to MBBS course against payment seat was 289 and as per the revised marks obtained by the petitioner, she had secured 289.68 marks.

7. The petitioner's request to obtain admission to MBBS course in payment category became unsuccessful and therefore, she filed one more writ petition in W.P. No. 11892 of 2002 and it was allowed on 24.6.2002 and a direction was given to the respondents therein to consider admission to the petitioner under payment quota. However, the appropriate authorities had passed an order stating that the last date for admission to MBBS course was on 15.10.2001 and since the petitioner's request came belatedly, she cannot be admitted.

8. Hence, the petitioner was left with no other option except to approach this Court once again by filing W.P. No. 31954 of 2002, praying for a direction to the respondent namely, the Secretary, Selection Committee for MBBS/BDS courses, Chennai-10, to provide a seat to her. In the meanwhile, a contempt application was also filed alleging the violation.

9. The respondent therein has filed a counter in the above said writ petition, stating that all the seats had already been filled up and consequently, it was not possible to admit the petitioner in any one of the colleges. The learned Special Government Pleader has also submitted that seats for the academic year 2001-2002 have already been filled up and as such, no relief can be granted to the petitioner.

10. This Court (The Hon'ble Mr. Justice P.K. Misra), has taken into consideration the judgments of the Hon'ble Supreme Court of India reported in Punjab Engineering College Chandigarh through its Principal Vs. Sanjay Gulati and

Others, ; Mrs Sheela Ashok Patwardhan Vs. Dean, Dr. V.M. Medical College and others, and Ritesh R. Sah Vs. Dr. Y.L. Yamul and others, , found that the only reason for not giving admission to the petitioner is on account of the last date for admission to the MBBS course expired on 15.10.2001 and admissions were closed on 31.12.2001. This Court further found that in the month of February itself, 11 other candidates have been admitted by virtue of the court orders and consequently, is inclined to grant direction for giving admission to the petitioner. This Court has reached the said conclusion for the reason that the petitioner has suffered "either due to inevitable delay in law courts or due to negligent act of the authorities.

11. This Court in the said order, further found that in May 2001 itself, the petitioner had appeared at the improvement examination and thereafter, in spite of the order passed by this Court, the authorities had not revised the mark, which resulted in the petitioner approached this Court. It was further found that if the petitioner would have been awarded marks deserved by her initially and which she got only after prolonged litigation, she would have been admitted in the year 2001 itself in normal course, against payment seat.

12. Therefore, by virtue of the said findings, this Court in the above said order, has taken into consideration the request made by the petitioner that she may be granted admission under payment category in PSG Institute of Medical Science and Research, Coimbatore, has directed the said college to write to the Tamil Nadu Dr. MGR Medical University, Chennai and to the Medical Council of India, New Delhi for raising one additional seat after granting admission to the petitioner by pointing out the orders passed by this Court and such an application shall be routed through the Government and the Government shall also make necessary recommendations in this matter.

13. This Court also ordered that even though Dr. MGR Medical University, Chennai and Medical Council of India are not parties in the above said writ petition, they would not be prejudiced in any manner. Copies of the order dated 22.10.2002 passed in W.P. No. 31954 of 2002 were also marked to Dr. MGR Medical University, Chennai and the Medical Council of India, New Delhi and also to the Health and Family Welfare Department of the Government of Tamil Nadu. It is to be pointed out at this juncture that though the said orders were marked to the above authorities, they have not chosen to challenge the vires of the above said orders.

14. The 5th respondent institution in compliance of the orders passed in W.P. No. 31954 of 2002, has sent a communication dated 01.11.2002 to the petitioner to join the 1st year MBBS course for the academic year 2002-2003 against payment quota and the petitioner has also joined the course on 8.11.2002.

15. The 5th respondent institution has sent a letter dated 19.11.2002 to the third respondent/Medical Council of India, requesting them to grant one additional seat in MBBS course for the academic year 2002-2003 only in respect of the

petitioner. The said request was forwarded through the second respondent/ Health and Family Welfare Department, Government of Tamil Nadu. Copies of the said letters were also marked to the first respondent namely, the Ministry of Health and Family Welfare, Union of India.

16. The Medical Counsel of India sent a communication to the 5th respondent stating that no medical college is permitted to increase its admission capacity in any course of study of training except with the previous permission of the Central Government and hence advised them to approach the first respondent.

17. The second respondent/Health and Family Welfare Department, Government of Tamil Nadu, has sent a letter dated 7.2.2003 to the Medical Council of India, requesting them to grant approval for creation of additional seat in MBBS course in 5th respondent institution for the academic year 2002-2003.

18. The 5th respondent institution made a request to the fourth respondent/ Tamil Nadu Dr. MGR Medical University seeking permission to write her first year MBBS examination to be held in February 2004 and the University has informed the 5th respondent that the candidature of the petitioner will be admitted only on receipt of approval of Medical Council of India/Government of Tamil Nadu.

19. The 5th respondent institution, has submitted a request dated 27.10.2003 to the Ministry of Health and Family Welfare, Department of Health, Union of India, requesting them to provide one additional seat in the MBBS course for the academic year 2002-2003 in order to accommodate the petitioner who was admitted pursuant to the order dated 22.10.2002 passed in W.P. No. 31954 of 2002. The copies of the said letter were also marked to the respondents 2,3 and 4. The 5th respondent institution vide letter dated 11.11.2003, has requested the fourth respondent to confirm the provisional registration of the petitioner and permit her to write first year MBBS examination during February 2004. It has also been indicated in the said letter that the 5th respondent is taking effort to obtain permission from first and third respondents.

20. The petitioner has invoked the contempt jurisdiction of this Court by filing contempt petition No. 1088 of 2003 alleging non obedience of the order dated 22.10.2002 made in W.P. No. 31954 of 2002. This Court (The Hon"ble Mr. Justice P.K. Misra), has passed the following order on 24.4.2003:

This matter shall be called on 21.1.2004. In the meantime, without prejudice to the contentions of both the parties, Application form for sitting in the examination along with the fees may be processed. The question as to whether the student should appear or not shall be decided on 21.1.2004.

A final order dated 23.1.2004 was passed in the said contempt wherein this Court has taken note of the submission that the petitioner has been allowed to appear in the examination without prejudice to the contention of the parties. Liberty was also given to the petitioner to pursue her remedy in accordance with the law. If she is aggrieved by any subsequent action of any other party.

21. As approval of one additional seat was getting delayed, the petition filed in W.P. No. 37410 of 2003 praying for the issuance of writ of mandamus to issue permission in terms of Indian Medical Council Act for approval of one additional seat as per the order passed in W.P. No. 31954 of 2002 so as to enable the petitioner to sit for first year MBBS examination to be held during February 2004. This Court vide interim order dated 29.1.2004, has directed the respondents to permit the petitioner to sit for first year MBBS examination and further ordered that the results shall not be declared without the permission of this Court. The petitioner filed W.P. No. 8416 of 2004 praying for declaration of first year MBBS examination results so as to enable her to continue the second year course and this Court vide interim order dated 22.4.2004, has directed the respondents to declare the result of the petitioner and also made it clear that the continuation of the petitioner for second year may be made as per law and it is subject to the result of the main writ petition.

22. W.P. No. 37410 of 2003 filed by the petitioner for approval of one additional seat in MBBS course came up for final disposal of this Court and this Court vide order dated 16.3.2004, has directed the third respondent/Medical Council of India to pass orders in terms of Section 10-A of the Indian Medical Council Act, within a period of 8 weeks from the date of passing order and send a report to the first respondent, who in turn shall pass orders on merits and in accordance with law, within four weeks thereafter. The second respondent herein has also made a positive recommendation to respondents 1 and 3 for creation of one additional seat for the academic year 2002-2003 pertaining to the petitioner. The 5th respondent institution has also sent a remainder on 29.6.2004 to the first respondent.

23. The third respondent/Medical Council of India in its proceedings dated 12.6.2004, has stated that a prior permission from Central Government on the recommendation of the Medical Council of India towards satisfaction for proportionate increase in the minimum infrastructure, teaching and other facilities, is a must and without providing the same, no college is entitled for seeking permission for admission of any additional student over and above its annual intake capacity and if any such admission is made, it is not valid. Therefore, the third respondent has indicated that it is not permissible for them to increase annual intake capacity of any medical college without proportionate increase and minimum infrastructure and facilities required as per the regulations without prior approval of the Central Government u/s 10-A of the Indian Medical Council Act.

24. The first respondent vide its communication dated 9.7.2004, addressed to the petitioner, has reiterated the same thing and stated that it is not possible to increase one additional seat in the 5th respondent institution for the academic year 2002-2003.

25. The petitioner thereafter, submitted a representation to the second respondent, who in turn sent a letter dated 29.10.2004 to the first respondent

requesting for creation of additional seat to accommodate the petitioner. It has also been clearly indicated in the said letter that the said increase is being sought for one time basis only and it will be surrendered when the petitioner completes the course.

26. Since the request of the petitioner which was endorsed favourably by the second and 5th respondents has not been considered by the respondents 1 and 3, the petitioner has filed this present writ petition.

27. In W.P. No. 29170 of 2007 the petitioner averred that she has completed the academic course of MBBS by successfully completing four years and since she has to undergo one year Compulsory Rotatory Residential Internship), CRRI, she has to surrender all her mark sheets for temporary registration with the Medical Council of Tamil Nadu and therefore, she prays for the issuance of mark sheet for first, second and fourth year MBBS course and also to publish the result of fourth year examination.

28. The third respondent has filed its counter in W.P. No. 9274 of 2005 reiterating the same stand taken by them in their letter dated 12.6.2004 addressed to the first respondent. The third respondent in the said counter has placed reliance upon various pronouncements of the Hon'ble Supreme Court of India and submitted that the prayer for increase of sanctioned capacity of 5th respondent is contrary to the provisions of Section 10-A of the Indian Medical Council Act and Regulations made therein and such a prayer is in direct conflict to the various pronouncements of the Apex Court. It is further stated in the counter that this Court is not empowered to grant any indulgence as the admission of the petitioner was made in violation of the law. Therefore, the third respondent prayed for the dismissal of these writ petitions.

29. This Court heard the submissions of Mr. G. Justin, learned Counsel appearing for the petitioner, Mr. S. Veera Bagu, learned Additional Central Government Standing Counsel appearing for the first respondent, Mr. R. Neelakandan, learned Government Advocate (Writs) appearing for the second respondent, Mr. V.P. Raman, learned standing counsel appearing for the Medical Council of India/third respondent, Mrs.A.L. Gandhimathy learned standing counsel appearing for the Tamil Nadu Dr. M.G.R. Medical University/fourth respondent and Mr. D. Balaraman, learned Counsel appearing for the 5th respondent/Medical Institution.

30. The learned Counsel appearing for the petitioner heavily placed reliance upon the order dated 22.10.2002 made in W.P. No. 31954 of 2002, based on which the 5th respondent has permitted the petitioner to join the first year MBBS course for the academic year 2002-2003 in payment category. It is further submitted by the learned Counsel appearing for the petitioner that even though the first and third respondents were not parties to the said writ petition, copies have been marked to them and in the order also it has been clearly indicated that they would not be prejudiced in any manner. The respondents 1 and 3 in spite of having knowledge of the orders passed in W.P. No. 31954 of 2002, have not

preferred any appeal and allowed the order became final. Therefore, it is not open to them to contend that the admission of the petitioner cannot be regularized as it violates Section 10-A of the Indian Medical Council Act. It is also submitted by the learned Counsel appearing for the petitioner that the creation of an additional seat only in respect of academic year 2002-2003 to accommodate the petitioner in pursuant to the Court orders and the second respondent has also clearly indicated that after the petitioner completes the course, the said additional seat would be surrendered and the said aspect has not been taken into consideration by the respondents 1 and 3.

31. The learned Counsel appearing for the 5th respondent institution would submit that the petitioner was admitted in the first year MBBS course for the academic year 2002-2003 in compliance of the orders passed by this Court in W.P. No. 31954 of 2002 and their request for creation of only one additional seat to accommodate the petitioner has been rejected unjustly by the respondents 1 and 3 without proper application of mind. It is further submitted by the learned Counsel appearing for the 5th respondent that they have already made a written application to the first and third respondents for increase of 50 seats in MBBS course in terms of the Establishment of New Medical Colleges (open of Higher Courses of study and increase of capacity in Medical Colleges) Regulation 1993 and it is pending consideration before them. The learned Counsel appearing for the 5th respondent also submitted that the 5th respondent institution is one of the reputed institutions and its stature as a premier institution which has been recognized through out India and it is having sufficient faculties and infrastructure facilities for increase of additional seats. The learned Counsel appearing for the petitioner in support of his submissions, has placed reliance upon an un-reported judgment of the Hon''ble Supreme Court of India in Civil Appeal No. 4051 of 2004- Medical Counsel of India v. G. Udhaya Bharathi and Ors. In the judgment reported in Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another,

32. In Civil Appeal No. 4051 of 2004 - Medical Counsel of India v. G. Udhaya Bharathi and Ors. the appeal was preferred by the Medical Council of India, challenging the order passed by this Court directing the creation of an additional seat. The Hon''ble Supreme Court of India in the said decision, held that such an order cannot be passed. However, on the facts of the said case, has passed the following orders:

However, the Respondent No. 1-writ petitioner has been pursuing his studies pursuant to the impugned order at least from the beginning of this year. In that view of the matter, we are of the view that the respondent - writ petitioner should be granted admission for the academic year 2004-05 without any further counseling "within the permissible intake limit". This order is being passed in the presence of all the authorities in question including the State of Tamil Nadu which will abide by this direction without any further demur or delay.

33. In Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another, , the

appeal was preferred by Guru Nanak Dev University against the judgment of High Court of Panjab and Haryana, whereby the writ petition filed by the first respondent-student was allowed approving his admission to LLB course affiliated to the said University. In the said case, the University contended that the first respondent-student has not possessed basic degree and he was admitted based on Masters Degree obtained through Distant Education and as such he is ineligible to get admission to 3 years LLB professional course. The Hon''ble Supreme Court of India has allowed the appeal and held that the judgment of the High Court of Punjab and Haryana holding that M.A. (English) degree obtained through Distant Education Program conducted by Annamalai University cannot be equivalent to regular M.A. degree of the appellant University.

34. However, the Hon''ble Supreme Court of India by taking into consideration the peculiar facts of the case found that the first respondent was admitted through common entrance test and he was permitted to continue the course and completed the course in 2007 and he has also succeeded before the High Court. It is further held that after four years if it is to be held that he is not entitled to admission, four years of his career will be irretrievably lost and therefore, in the circumstances, it will be unfair and unjust to deny the first respondent/student the benefit of admission which was initially accepted and recognized by the appellant University. The Hon''ble Supreme Court of India has accordingly disposed of the appeal by confirming the judgment of High Court of Punjab and Haryana, in the peculiar facts of the said case.

35. The learned Counsel appearing for the petitioner by placing reliance upon those two decisions, has vehemently contended that petitioner was not at fault and in spite of orders passed by this Court, she was denied the relief and her belated admission after the cut-off date is not due to her fault and she has not made any misrepresentation. Therefore, the admission of the petitioner in the 5th respondent institution was in order and in any event the respondents 1 and 3 in the peculiar facts and circumstances of the case and also taking into consideration that the petitioner had completed her four years academic course in payment category ought to have granted approval. The learned Counsel appearing for the petitioner also pointed out that the respondents 1 and 3 have not denied the fact that the 5th respondent is having sufficient infrastructure in respect of one additional seat and the second respondent -Health and Family Welfare Department of Tamil Nadu has also made recommendations. Hence the learned Counsel appearing for the petitioner prays for allowing of these writ petitions.

36. Per contra, Mr. V.P. Raman, learned standing counsel appearing for the third respondent/Medical Council of India would submit that in terms of the mandatory requirements contemplated u/s 10-A of the Indian Medical Council Act 1956, r/w Establishment of New Medical Colleges (opening of Higher Courses of Study and Increase of capacity in Medical Colleges) Regulation 1993 coupled with various pronouncements of the Hon''ble Supreme Court of India, approval of creation of

one additional seat cannot be granted and that the power vests only with the first respondent.

37. The learned standing counsel appearing for the third respondent has placed reliance upon the following judgments:

1. State of Punjab and others Vs. Renuka Singla and others,
2. C.B.S.E. and Another Vs. P. Sunil Kumar and Others,
3. Mallikarjuna Mudhagal Nagappa and Others Vs. State of Karnataka and Others,
4. K.S. Bhoir Vs. State of Maharashtra and Others,
5. Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others, .

38. In State of Punjab and others Vs. Renuka Singla and others, , the State of Punjab has preferred an appeal before the Hon"ble Supreme Court of India, challenging the direction of the High Court of Punjab and Haryana to admit respondent No. 1 student against the seat reserved for candidates belonging to Backward areas which had fallen vacant as a result of withdrawal of one student from BDS course and to admit the second respondent after creating the additional seat on "compassionate ground". The stand taken by the appellant was that the first respondent student had not submitted any certificate along with the admission form and only at a later date, such a certificate was sent. The Dental Council of India, one of the respondents had also taken a stand that in terms of Section 10-A of the Dentist Act, without the permission of the Central Government to increase the additional capacity cannot be granted.

39. The Hon"ble Supreme Court of India on the facts of the case, held that the High Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students and consideration is to be taken regarding the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. Hence no admission can be granted on compassionate ground. The Hon"ble Supreme Court of India on the said decision, ultimately set aside the decision of first respondent and accordingly liberty to admit her in BAMS course if any seat is available.

40. In C.B.S.E. and Another Vs. P. Sunil Kumar and Others, , the question arose was as to whether students studying in institutions not affiliated to the Board of Secondary Education can be permitted by the High Court by an interim order to appear at the examination conducted by the Board and ultimately can the Board be compelled to issue certificates to those students who have appeared at the examination pursuant to the interim direction of the Court notwithstanding the fact that the institutions where the students were prosecuting their study have not yet received affiliation of the Central Board of Secondary Education?

41. By virtue of the order passed by the Kerala High Court, the students of the non-affiliated institutions were allowed to sit at the examination and further, they were granted certificates on the basis of the result of the examination with the condition that the same will be subject to the result of the case. The matter was taken up by way of appeal to the Division Bench and the Division Bench took a sympathetic and compassionate view of the matter and held that the students who have been permitted to take admission and who have appeared in the examination, should not be allowed to suffer and accordingly, modified the conditions attached to the certificate and also directed granting of certificates to the students pursuant to the declaration of the result of the examination. The Hon"ble Supreme Court of India on the facts of the case found that the students who had pursued their studies have not received any affiliation from the Central Board of Secondary Education, and under the bye-laws of the Board, only regular students of affiliated school are entitled to appear in the secondary school examination etc. The Hon"ble Supreme Court of India in the facts of the said case, held that there is no iota of material placed before them to indicate that the Central Board of Secondary Education either directly or indirectly had held out to the students at any point of time that the institutions in which they are prosecuting their studies have been affiliated or are going to be affiliated in the near future. Therefore, the Hon"ble Supreme Court of India has set aside the order passed by the Division Bench of Kerala High Court and allowed the appeal by the Board.

42. In *K.S. Bhoir Vs. State of Maharashtra and Others*, , the questions arose for consideration were:

(i) Whether, in view of an extraordinary situation having arisen, the Central Government was justified in rejecting the request of the State Government to grant one-time increase in admission capacity in Medicine (MBBS) and Dentistry (BDS) courses run in various medical colleges located within the State of Maharashtra.

(ii) Whether, in view of the facts and circumstances of the case, the High Court in exercise of its power under Article 226 of the Constitution ought to have issued directions to the Central Government to grant one-time increase in admission capacity in Medicine (MBBS) and Dentistry (BDS) courses undertaken by various medical colleges (government-run as well as private management-run colleges) in the State of Maharashtra.

43. The facts of the said case are: That a merit list was prepared in respect of Maharashtra Health Sciences Common Entrust Test pertaining to admission of the courses namely MBBS, BDS, BAMS, BHMS etc. On the basis of the said examination, a merit list was prepared and those who were higher in merit were given admission in colleges of their choice and adjusted against free seats. Some of the candidates had challenged the legality of the said order based on the ground that there was some error in the evaluation of Biology paper. The High Court of Bombay had ordered the State Government for re-evaluation of answer

sheets and it was found that there were mistakes/errors in the model key answer sheet of version 33 in the subject of Biology. Therefore, the respondents therein decided to re-evaluate all the answer sheets of version 33. After revaluation of the answer sheets of version 33 the Directorate prepared a revised merit list and consequence of the said list there were at least 350 students from version 33 who ought to have been admitted in Medicine and Dentistry at the first instance, were denied admissions on account of wrong evaluation of their answer sheets. Therefore, in order to meet such an extraordinary situation, the State Government wrote to the Central Government for grant of one-time increase in admission seats in MBBS and BDS courses in various medical colleges in the State of Maharashtra, but it was refused by the Central Government on account of non-compliance with the provisions of Section 10-A and the Regulation. The said writ petition was allowed and directions were issued to accommodate those students who were already admitted on the basis of the first merit list in various courses and dislodged by the revised merit list. Aggrieved by the said orders, admitted students prepared appeal to the Hon'ble Supreme Court of India.

44. The Hon'ble Supreme Court of India, after taking into consideration its earlier pronouncements held that the compliance with the requirements under the Act and the Regulations being mandatory, in the absence of their compliance, no permission can be granted by the Central Government for increase in admission capacity in any course in any medical college. The Hon'ble Supreme Court of India also found that what was required, was that medical colleges desirous of one-time increase in admission capacity should have submitted a scheme prepared in accordance with the Act and the Regulations to the Central Government and no such scheme was submitted to the Central Government and the Medical Council has no occasion to verify the sufficiency of the facilities and other requirements.

45. The Hon'ble Supreme Court of India has also considered the scope of Section 10-A of the Indian Medical Council Act and held as follows:

The object being to achieve the highest standard of medical education. The said objective can be achieved only by ensuring that a medical college has the requisite infrastructure to impart medical education. As noticed earlier, the object of amending Sections 10-A, 10B and 10C was for a specific purpose of controlling and restricting the unchecked and unregulated mushroom growth of medical colleges without requisite infrastructure resulting in decline in the maintenance of highest standard of education. The highest standard of medical education is only possible when the requirement of provisions of Section 10-A and the Regulations are complied with. It has been experienced that unless there is required infrastructure available in the medical college, the standard of medical education has declined. Unless an institution can provide complete and full facilities for training to each student who is admitted in various disciplines, the medical education would remain incomplete and the medical college would be turning out half-baked doctors which, in turn, would adversely affect the health of the public

in general. Thus, for every increase in the admission capacity, either it is one-time or permanent, the Council is obliged to ensure a proportionate increase of infrastructure facilities. The Medical Council can only make recommendations to the Central Government for grant of permission for one-time intake capacity in seats only when it is satisfied that scheme to be submitted by the medical colleges fulfils all the requirements. Unless such a scheme providing for all the requirements provided for in the Act and the Regulations is submitted to the Central Government and the Medical Council is satisfied that the scheme complies with all the requirements and makes a recommendation to that effect, only then the Central Government can consider for grant of permission for increase of admission capacity in a medical college. Similarly, the Central Government without compliance with the Act and the Regulations cannot grant, without recommendation of the Medical Council, any permission for one-time increase in admission capacity in various courses conducted by the medical colleges. For the aforesaid reasons, we are of the view that the Central Government was fully justified when it rejected the request of the State Government for grant of permission for one-time increase in the admission capacity in Medicine and Dentistry courses in various medical colleges in the State of Maharashtra.

Hence, the Hon'ble Supreme Court of India held that unless the requirements u/s 10-A of the Act are not complied with, no permission can be granted by the Central Government. If any direction is issued by the High Court to the Central Government to increase admission capacity in the Medical College it would be in the teeth of statutory provisions and amounts to amending the provisions of Section 10-A and therefore, it is not permissible for the High Court, to direct the authority under the Act, to act contrary to the statutory provisions. Ultimately, the Hon'ble Supreme Court of India, has set aside the orders passed by the High Court of Bombay.

46. This Court has carefully considered the submissions made by the learned Counsel appearing on either side and also perused the materials available on record.

47. The undisputed facts are that the petitioner with a view to improve her marks in the Plus Two examination held in the month of March 2000, has once again appeared for the subjects namely Physics, Chemistry and Biology. Though she secured improved marks in other two subjects, she has not secured higher marks in Biology and she applied for revaluation of Biology paper within the permissible guidelines. On revaluation, it was found that the petitioner was entitled to 6 more marks in Biology and not satisfied with that, she filed W.P. No. 14147 of 2001, which came to be allowed and it was directed that the marks in Biology may be revised. As no further marks were awarded by the respondents, the petitioner once again filed W.P. No. 4742 of 2002 and this Court vide order dated 12.3.2002, has allowed the said writ petition and directed that the marks obtained in Biology subject is out of 191/200.

48. In the interregnum the petitioner appeared for entrance examination for admission to MBBS course for the academic year 2001-2002. After the marks were revised in terms of the order passed in W.P. No. 4742 of 2002, the petitioner again approached the authorities for considering her case for admission to MBBS course even against payment seats. The cut-off marks prescribed for payment seats was 289 and as per the revised marks, the petitioner had secured 289.68 marks. In spite of it, the case of the petitioner was not considered and the petitioner was constrained to file one more writ petition in W.P. No. 11892 of 2002 and it was allowed on 24.6.2002, wherein, a direction was given to consider the question of admission to the petitioner against payment seat.

49. A fresh order was passed by the authorities stating that the last date for admission to the MBBS course had expired on 15.10.2002 and as such she cannot be admitted. The petitioner was constrained to file W.P. No. 31954 of 2002 and this Court vide order dated 22.10.2002 after taking into consideration the various pronouncements of the Hon"ble Supreme Court of India, has passed the following order:

It is stated by the learned Special Government Pleader that in 2002, the seats are already filled up and the petitioner can be accommodated in self-financing colleges. The learned Counsel for the petitioner has submitted that 2 self-financing colleges are in the State, one is PSG Medical and Research Institute, Coimbatore and the other is Vinayagam Medical College, Salem. Since, Coimbatore is nearer to the place of the petitioner, the learned Counsel for the petitioner has submitted that she may be permitted to take admission in PSG Medical College, Coimbatore and this admission should be taken for the academic year 2002-2003. It goes without saying that after such college grants admission, the college shall write to the University and to the Medical Council for raising of the additional seats by pointing out the order passed by this Court and such an application shall be routed through the Government and the Government shall make necessary recommendations in this matter.

Even in the College and other authorities are not parties, such a direction is given as they would not be prejudiced in any manner. Necessary steps for admission shall be taken by the College against the payment seat on the basis of this order within a period of 10 days from today. Copy of this order shall be forwarded to the College as well as Dr. MGR Medical University, Chennai and the Medical Council of India, New Delhi.

The writ petition is allowed subject to the aforesaid observations.

50. The 5th respondent institution in compliance of the above said orders, sent a communication dated 1.11.2002 to the petitioner and she joined the said institution against payment category on 8.11.2002. The 5th respondent institution has addressed letters to the third respondent as well as to the first respondent seeking their permission to increase additional strength of one seat

for the academic year 2002-2003 as the petitioner was accommodated in pursuant to the orders passed by this Court. It is pertinent to point out at this juncture the second respondent State Government has also made a recommendation for increase of strength by one seat for the academic year 2002-2003. However, the third respondent in its communication dated 12.6.2004, addressed to the first respondent, has indicated that there is no scope for any increase of seat without specific permission from the authorities concerned as it would amount to violation of Section 10-A of the Indian Medical Council Act. The first respondent on the basis of such recommendation made by the third respondent, has rejected the request made by the petitioner which is as follows:

I am directed to refer to the judgment dated 16.3.04 in W.P. No. 37410/03 & WPMP No. 4227/04 by the Hon'ble High Court of Tamil Nadu at Chennai and to say that in compliance with the directions of the Hon'ble Court, Medical Council of India has considered the representation dated 26.3.04 received from you for increase of one seat of MBBS course at PSG Institute of Medical Sciences & Research, Coimbatore for the academic session 2002-03. First of all as per provisions of Section 10-A of the IMC Act, 1956 a candidate is not eligible to forward the application for increase of intake directly to the Medical Council of India and such application should be routed through the Central Govt. Secondly, the binding of statutory provision and the judgment of Hon'ble Supreme Court in various recent judgment especially in the case of State of Maharashtra v. K.S. Bhoi, the Council has conveyed its recommendation that it is not permissible for them to increase the annual intake capacity of any medical college without proportionate increase in the minimum infrastructure and facilities required as per norms of the Council and without obtaining the prior approval of the Central Govt. u/s 10-A of the Act and statutory regulations made thereunder. Therefore, it is not possible to increase one additional seat in MBBS course at PSG Institute of Medical Sciences & Research, Coimbatore for the academic session 2002-03. A copy of the recommendations made by MCI in this regard is also enclosed.

51. A careful analysis of the judgment cited by the learned standing counsel appearing for the Medical Council of India would indicate that there was a practice of large number of persons and institutions establishing Medical Colleges without providing therein, minimum necessary and proportionate infrastructure i.e. teaching and other facilities required for them and consequently, it was found that there was sharp decline in the maintenance of higher standard of medical education. In order to prevent the said practice and to improve the quality of Medical Education, Section 10-A, 10-B and 10-C were inserted in the Medical Council Act as well as Dentists Act. In K.S. Bhoir Vs. State of Maharashtra and Others, , additional number of seats beyond 150 was sought to be created, which was deprecated by the Hon'ble Supreme Court of India.

52. In Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, , the Hon'ble Supreme Court of India has framed directions for strict adherence of

time schedule. As per the said time schedule, the last date up to which students can be admitted against vacancies arising due to any reason in respect of first year MBBS/BDS courses is fixed on 30th September. According to the third respondent-Medical Council of India, the petitioner was admitted on 8.11.2002, which is beyond the above said cut-off date and in the absence of prior permission with regard to the creation of the said additional seat to accommodate the petitioner, the admission of the petitioner made by the 5th respondent is unsustainable and cannot be validated.

53. It is to be remembered at this juncture that the 5th respondent has admitted the petitioner for the academic year 2002-2003 in the first year MBBS course in payment category in compliance of the order dated 22.10.2002 passed in W.P. No. 31954 of 2002 and the petitioner by virtue of the said orders had completed four years of academics and her result of fourth year MBBS held in August 2007 with Registration No. 52024325 is yet to be declared and that mark sheets for first year, second year and fourth year MBBS course have not been given to her. Without publishing the results of fourth year MBBS examination and in the absence of mark sheets for the above said years, the petitioner is unable to undergo Compulsory Rotatory Residential Internship (House Surgeon).

54. The learned Counsel appearing for the 5th respondent institution on instructions, would submit that the said institution has also made an application in terms of Section 10-A of the Indian Medical Council Act and the "Establishment of New Medical Colleges (opening of Higher Courses of study and increase of capacity in Medical Colleges) Regulation 1993, additional intake of 50 seats and the respondents 1 and 3 are yet to pass orders.

55. Be that as it may, the petitioner has successfully completed the academic course of MBBS and she has to undergo training as House Surgeon in order to get MBBS degree and further registration with Medical Council of Tamil Nadu to practice as a Doctor.

56. In 2005 (13) SCC 677 M.A. Salam (II) v. Principal Secy., Govt. of A.P., the petitioner therein was given admission in a Medical College by extending the benefits of Notification dated 13.4.1976 and he joined the Medical College on 18.12.2000 and pursued the course till 11.1.2003.

57. In view of the objection raised, that she has not covered by the above said notification, his admission was cancelled and the same was the subject matter of challenge. In the interregnum, in the seat vacated by the petitioner, somebody was accommodated.

58. The Hon'ble Supreme Court of India, vide order dated 10.12.2004, has passed the following order:

3. Having regard to the facts and circumstances of the case, we are of the view that the petitioner was not guilty of having made any misrepresentation. It is clear that the authorities granted him admission in the Medical College pursuant

to the notification aforesaid. However, at the same time we also feel that the interest of Respondent 3 must be protected.

4. With a view to find an equitable and fair solution we issue notice to Respondent 4 and the Secretary, Medical Council of India, so that appropriate order may be passed in their presence.

59. Thereafter, the matter was taken up for final disposal on 4.3.2005 and the Hon''ble Supreme Court of India has passed the following order:

This order may be read in continuation of our earlier order dated 10-12-2004???. The learned Solicitor General appears on behalf of the Medical Council of India. He has placed before us several decisions of this Court where with a view to do justice appropriate directions were passed. In the instant case we are satisfied that the appellant is entitled to consideration on equitable grounds, because for no fault of his he should not be made to suffer more than what is unavoidable.

60. In *Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others*, , with regard to the admission in Government Medical and Dental Colleges, six key answers provided by the University were palpably and demonstrably wrong by that time first counseling for admissions already over and there was possibility of the students who had already admitted on the basis of the result already declared were found to be fault on account of fresh evaluation by feeding correct key answers. The Hon''ble Supreme Court of India held that the fresh evaluation of papers by feeding correct answers would not affect the students who have already secured admissions as a result of the first counseling and that they are not made to suffer on account of errors committed by the University.

61. In *Guru Nanak Dev University Vs. Sanjay Kumar Katwal and Another*, the students who got admission to LLB Course through common entrust test by virtue of MA degree obtained through Open University System though found to be ineligible, the fact that he has gone through the process and successfully completed the course has been taken into consideration and the admission of the said student to LLB course was not disturbed. This Court is inclined to apply the said yardstick in the above cited three decisions to the facts of this case. The fact remains that the petitioner has not made any misrepresentation, and by virtue of the order dated 22.10.2002, made in W.P. No. 31954 of 2002, was granted admission by the 5th respondent institution and also successfully completed the MBBS academic course and therefore, declaration of results and issuance of mark lists cannot be withheld on the ground that the additional intake of one seat by the 5th respondent institution is not in accordance with Section 10-A of the Indian Medical Council Act.

62. It is not denied that the 5th respondent institution is one of the premier private medical colleges in this country and that it is having all necessary infrastructure to accommodate one more student in the form of the petitioner. The submission made by the learned standing counsel appearing for the 5th

respondent that it has already applied for additional intake of 50 students at an earlier point of time, has also been taken into account by this Court.

63. In view of the peculiar circumstances of the case and that the petitioner is not at all at fault, and she had also successfully completed the MBBS academics by virtue of the various orders passed by this Court in writ petitions, she cannot be denied the fruits of hard labour and sincerity put in by her. The interest of justice also requires that the relief to be granted in favour of the petitioner. Hence the following order is passed:

(a) the respondents 1 and 3 in W.P. No. 9274 of 2005, in the light of the recommendations made by the second respondent in letter No. 55757/MCA2/2002/2007 Health, dated 18.5.2004 and the letter No. 55757/MCA2/2002/2007 Health, dated 29.10.2004 and the orders dated 22.10.2002 in W.P. No. 31954 of 2002, are requested to once again consider the request of the 5th respondent for creation of one additional seat for the academic year 2002-2003 in MBBS course pertaining to the petitioner and pass appropriate orders after affording reasonable opportunity to the 5th respondent within a period of four weeks from the date of receipt of copy of this order.

(b) The respondents 4 and 5 in W.P. No. 9274 of 2005/respondents 1 and 2 in W.P. No. 29170/07 are directed to publish the result of fourth MBBS examination held during 2007 with registration No. 52024325 of the petitioner and issue mark sheets for 1st, 2nd and 4th year MBBS course to the petitioner within a period of two weeks from the date of receipt of copy of this order.

Both the writ petitions are disposed of accordingly. In the circumstances, there will be no order as to costs.