
(2009) 10 BOM CK 0054
In the Bombay High Court
Case No : Writ Petition No. 5029 of 2009

Saurin Rohit Shah

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 10 BOM CK 0054

Hon'ble Judges : S.B. Mhase, J; R.M. Savant, J

Bench : Division Bench

Advocate : A.C. Singh assisted with D.R. Shah, for the Appellant; C.R. Sonawane, AGP for Respondent Nos. 1 and 6, K.Y. Mandlik, for Respondent No. 3, Chandana Salgaocar and R.V. Govilkar, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule, with consent of the parties made returnable forthwith and heard.

2. The above Petition has been filed by a student who has completed his degree course in Medicine i.e. MBBS and who is seeking admission to the postgraduate course in Radiodignosis (Radiology) in the Respondent No. 3 College which comes under the aegis of the Respondent No. 4 Association of Managements of Unaided Private Medical and Dental Colleges. The above Petition exemplifies how a meritorious student has been denied admission to the said postgraduate course.

3. The facts necessary to be cited for adjudication of the issue are as under:

The Petitioner, who is having a degree of MBBS, appeared for the Common Entrance Test (CET) of 2009 conducted by the Respondent No. 4 i.e. the Association of Management of Unaided Private Medical and Dental Colleges for admission to the various Post Graduate Courses in the unaided private medical colleges in the State of Maharashtra. The brochure interalia published by the Respondent No. 4 Association contains the information as regards the

programme schedule for the said Common Entrance Test and the admissions thereafter. The said brochure also contains the information as regards the seats available for the said postgraduate courses in the colleges which are the members of the Respondent No. 4 Association. The said information is contained in Annexure "A" and "B" of the said brochure. In so far as Respondent No. 3 College is concerned, as regards the subject of Radiology, two seats were shown and an asterisk mark was shown against the said seats thereby indicating that the Respondent No. 3 College has applied to the Medical Council of India (MCI) for recognition of the course and the same was under consideration of the MCI. The Petitioner had appeared for the said examination and secured 230 marks out of 300 and was 26th in the merit list out of about 500 candidates. The procedure for admission, in so far as the colleges which are the members of the Respondent No. 4 Association is concerned, is that there are two rounds of admission viz. first round and second round and thereafter if the seat falls vacant, the concerned college can fill it at the college level. It appears that the first merit list for the first round was issued. However, in the first round no seats of the Respondent No. 3 College were considered in view of the fact that the Respondent No. 3 College received recognition for the courses mentioned in Annexure "A" of the brochure, amongst which Radiology was one of the courses, after the first round. It appears that between the first and the merit list for the second round, the Respondent No. 3 College got recognition for the postgraduate courses as per Annexure "A" of the brochure from the Respondent No. 2 MCI. Hence in the merit list for the second round, the Petitioner's name was appearing at Serial No. 3 for the course of MD Radiology.

As per the schedule of the programme for admissions it was mentioned in the brochure that the last date for taking admission for the said courses after the issuance of the merit list was 23rd May 2009. As per the provisional seat matrix which was issued by the Respondent No. 4, the said two seats were earmarked for Non Resident Indian (NRI) and NT1. The Petitioner had approached the Respondent No. 3 College on 22nd May 2009 along with Demand Draft. It is the case of the Petitioner that on the said day it was for the first time informed to him that though the Petitioner's name appeared at Serial No. 3 of the merit list for the second round for the course of Radiology seat, the said seat could not be given to the Petitioner as the said two seats were meant for the NRI and NT1 category. It appears that the Petitioner immediately on 22nd May 2009 addressed a letter to the Principal of Respondent No. 3 College that he had visited the Respondent No. 3 College on 22nd May 2009 and sought admission, as the admission was to be taken within the prescribed time limit, however, the admission was denied to him. The Petitioner by the said letter requested the Principal to look into the matter and do the needful. It is the case of the Petitioner that though the said letter was received by the Respondent No. 3 College, the College refused to give an acknowledgement of the said letter. The Petitioner, therefore, on the same day sent a email to the Respondent No. 4 Association, and to the Principal of the Respondent No. 3 and also to Dr. Vasant

Pawar, the Secretary of the Respondent No. 3 to the effect that that though the Petitioner had gone to seek admission, he was denied the same. The Petitioner thereafter on 23rd May 2009 also sent a copy of the said letter dated 22nd May 2009 by speed post to the Respondent Nos. 3 and 4. The Petitioner thereafter addressed a letter dated 25th May 2009 to the Respondent Nos. 4 and 5 recording all that was stated in the earlier letter and email and requested the Respondent Nos. 4 and 5 to look into the matter and do the needful. Though the said letter was accepted by the Respondent Nos. 4 and 5 no steps were taken and no reply was given to the said letter. It is the case of the Petitioner that he was telephonically informed and also through the website of Respondent No. 4 he came to know that the last date for taking admission is extended up to 28th May 2009. The Petitioner therefore along with the necessary documents and Demand Draft as mentioned in Clause 15.12 of the brochure went to the Respondent No. 3 College to secure admission but he was kept waiting from 10 a.m. on the said day and ultimately the Respondent No. 3 College refused to give admission to the Petitioner. It is the case of the Petitioner that another student who was in the merit list for the second round i.e. Pooja Kharbanda, who had applied for Ophthalmology ? MS and who was Ranked 7 in the merit list was also waiting with the Petitioner to take admission but was denied the same. The Petitioner, therefore, once again addressed a letter to the Respondent No. 4 complaining against the act of the Respondent No. 3 College of not giving admission to the persons whose names appear in the merit list. The Petitioner has also sent an email to the Respondent No. 4 Association stating thereby that he was denied admission and requested the Respondent No. 4 to look into the matter immediately. It is therefore the case of the Petitioner that though he was 26th in merit in the CET examination held by the Respondent No. 4 Association and his name was appearing at Serial No. 3 in the merit list for the second round issued by the Respondent No. 4 Association, the Petitioner was denied admission for the reasons best known to the Respondent No. 3.

4. It would be relevant at this stage to refer to the procedure for filling up the seats which has been prescribed by the Respondent No. 4 Association and which is disclosed in the brochure published by the Respondent No. 4. The procedure is under the Heading of "Filling Vacant Seats". For the purpose of the present Petition, Clauses 15.7, 15.8, 15.10 and 15.11 are material which are reproduced herein under: Clause 15.7: After selection in first round if the candidate desires to retain the same selection (Subject & College) and does not want to take any further betterment then he/she can do so by filling "Status Retention Form" in prescribed proforma (Annexure E). Status Retention Form is to be submitted to the Competent Authority through the college only, where he/she is admitted. However, candidate should note that after filling Status Retention Form, he/she will be deleted from the further selection process for the academic year 2009-10.

Clause 15.8: After the first round, the vacant seats, if any, will be filled in the second round of selection on 22/04/2009 by declaring the selection list on the website of AMUPMDC and Pravesh Niyantran Samiti. Selected Candidates in

Second round will report to the respective college on or before 02/05/2009. For these seats the selected as well as the not selected candidate who have filled in the Preference Form are eligible except those who have opted for status retention.

Clause 15.10: Any seat remaining vacant after the Second round of admission will be filled in by the respective Colleges by inviting application from the Eligible candidates by giving advertisement in news papers.

Clause 15.11: The last date of admission process for filling vacant seats for post Graduate Medical and Dental Course is 31/05/2009.

Reading of the said procedure discloses that there are two rounds of selection as contemplated in Clauses 15.7 and 15.8. And in terms of Clause 15.10 any seat remaining vacant after the Second round of admission would be fielding by the respective colleges by inviting applications from the eligible candidates by giving advertisement in news papers.

5. The Respondent No. 7 herein has been admitted pursuant to the advertisement issued by the Respondent No. 3 College in the news papers. It would be relevant to note that the Respondent No. 7 was ranked more than 300 in the merit list which was published after the CET examination. The Petitioner has raised a serious issue as regards the manner in which the seat in MD Radiology for open category was filled up by the Respondent No. 3 College by resorting to the said procedure prescribed by Clause 15.10 which we would deal with in the latter part of this judgment.

6. On behalf of the Respondent No. 3 an Affidavit in Reply has been filed by Dr. Mrunal Suresh Patil. It has been stated in the said affidavit that as per the seat matrix promulgated by the Respondent No. 4, two seats for MD Radiology were allotted as one for NRI category and another for NT1 (i.e. Nomadic Tribe 1) category. It has further been averred that the Petitioner, who belongs to open category and claimed the seat for the said MD Radiology allocated to the NT1 category. It has further been stated in the said affidavit that since the permission was not granted by the State Government till 27/04/2009, the Respondent No. 3 College was not part of the first round of admission. It has further been stated in the said affidavit that the second round of admission by the Respondent No. 4 was declared on 16/05/2009 and last date for reporting for admission was 23/05/2009. It has further been stated that the affiliation for the said course of Radiology from Maharashtra University of Health Sciences (MUHS) was received on 23/05/2009 at 4.52 p.m, and therefore no candidate could be admitted prior to 23/05/2009. It has further been stated that though the Petitioner stated that he came for admission on 22/05/2009, the Petitioner did not report to the Respondent No. 3 on 23/05/2009. It has further been stated in the said affidavit that the letter addressed by the Petitioner dated 22/05/2009 to the Principal was not received by the Dean and the entry of the said letter is also not made in the College Inward Register. It has further been stated that the email sent by the

Petitioner was sent on the wrong email address. The said email was sent to principalty whereas the email address of the principal was "principal@mvpmcn.ac.in" It has further been stated that though the last date for admission of second round was extended up to 28/05/2009. The Petitioner did not report for admission on 28/05/2009 whereas 12 candidates out of 21 candidates referred by the Respondent No. 4 reported for admission on or before 28/05/2009 and 11 were given admission. The allegation of the Petitioner that he and one Dr. Pooja Kharbanda were waiting for admission on 28/05/2009 and both were denied the admission was false. It has further been stated in the said affidavit that the Petitioner is making a false statement as Dr. Pooja Kharbanda could never have been waiting with the Petitioner as she was already granted admission in MS ? Ophthalmology on 23rd May 2009. It has further been stated that since the earlier last date for reporting was 23/05/2009 but was later on extended up to 28/05/2009. Hence application for vacant seats after the second round were invited by advertisement in the news papers "Indian Express and Punyanagari" published on 24/05/2009 and the admission for vacant seats were conducted from 29/05/2009 to 31/05/2009 and the said procedure is in consonance with Clause 15.10 and Clause 15.11 of the admission procedure.

7. The said affidavit filed on behalf of the Respondent No. 3 makes an interesting reading. Initially the relief claimed by the Petitioner is sought to be opposed on the ground that two seats as per the provisional seat matrix promulgated by the Respondent No. 4 were meant for NRI and NT1 category, and therefore, it is sought to be contended that the Petitioner could not claim a seat meant for the said categories. However, thereafter realising that in the final seat matrix one of the seats was allocated for the open category in the second round, the defence is sought to be changed and it is sought to be contended that the Petitioner never approached the Respondent No. 3 College on 28/05/2009 which was the last date for admission. The said affidavit also discloses that the Respondent No. 3 is also trying to take shelter behind the fact that affiliation from MUHS was received on 23/05/2009 at 4.52 pm and therefore no student could be admitted prior to the said date. Therefore the initial burden of the song is that the Petitioner was not entitled for admission and thereafter that the Petitioner did not approach the Respondent No. 3 College for admission on 28/05/2009 i.e. the last day.

8. Fortunately for the Petitioner, the Respondent No. 4 Association has filed two affidavits and has inter alia disclosed facts which go to substantiate the case of the Petitioner and go to demonstrate that a meritorious student like the Petitioner has been wrongly denied admission. The first affidavit is dated 26th June 2009 filed by one Mrs. Ranga Srinivasan. It has been stated in the said affidavit that for the first round of admissions, the Respondent No. 4 had prepared a seat matrix based on provisional seats. The said provisional seats were subject to permission of MCI/Government of India/Government of Maharashtra/Affiliation of MUHS. Accordingly the students were informed that they could give preferences for the courses which were marked as # (Provisional) and allotment would be made if permission were given by the

aforementioned authorities. It has further been stated in the said affidavit that two seats in Respondent No. 3 College were provisional and were shown reserved for NRI and NT1 for the first round. It has further been stated that as many of the provisional seats did not come through, the seat matrix was revised and the two seats in the Respondent No. 3 College were shown reserved for the Open Category and the NRI category for the second round. The copy of the said seat revised matrix in Respondent No. 3 College for the second round is annexed to the said Affidavit as Exhibit A wherein the said two seats of Radiology are shown for open category and NRI category.

9. What is significant to note that it has been stated in the said affidavit that the Respondent No. 3 being a member of the Respondent No.4 association is bound to admit students on the basis of the merit list prepared by the Respondent No. 4 Association. It has further been stated in the said affidavit that since the Petitioner has complained to the Respondent No. 4 Association that the Respondent No. 3 did not grant him admission on 23rd May 2009, the Competent Authority of the Respondent No. 4 Association, taking cognizance of the said letter, was constrained to address a letter dated 27th May 2009 to the Respondent No. 3 that allotted students should be allowed to report to the Respondent No. 3 on or before 28th May 2009.

10. From the point of view of the present Petition, Para3 is the defining paragraph of the said affidavit wherein it has been stated by the Respondent No. 4 that the Respondent No. 4 having prepared a select list for the second round, the Respondent No. 3 College was duty bound as a member of the Respondent No. 4 Association to admit students on the basis of the list prepared by the Respondent No. 4 Association.

11. An Additional Affidavit has also been filed by the said Mrs. Ranga Srinivasan on behalf of the the Respondent No. 4 Association clarifying the admission and selection process as prescribed by the Respondent No. 4. In the said Additional Affidavit the reasons for reworking of allocation of the seats has been mentioned in Para 6 of the said Affidavit. It has been stated that there were initially 165 seats with the members of the Respondent No. 4 Association of which some were provisional seats and as 45 seats did not come through, the Competent Authority of the Respondent No. 4 had to rework the seat matrix for 120 seats in order to comply with the various reservation which are statutorily prescribed. It has further been stated that it is on account of the said reason that the Respondent No. 4 Association reworked the seat matrix in order to comply and satisfy the reservations. It has further been stated that the Competent Authority of the Respondent No. 4 is vested with the powers of making and drawing up the Selection List as per the merit of the candidate, as per his/her preference and as per the reservations that have to be maintained. It has been stated that the same is subject to the approval of the Pravesh Niyantaran Samiti which approves the Selection List prepared by the Respondent No. 4 for the first and second rounds. It has further been stated that the Selection List for the first and second

rounds as well the final merit list is published on the website of the Respondent No. 4 so that the same can be easily and simultaneously accessed by the candidates all over Maharashtra as also to ensure transparency in the process.

12. In so far as Petitioner is concerned, it has been stated that the Petitioner was allotted a seat in the Respondent No. 3 College as per his merit list ranking at 26th, out of approximately 450 medical students who appeared for the CET examination conducted by the Respondent No. 416 Association. Thereafter in the said affidavit, contradictions in the affidavit of Respondent No. 3 College have been pointed out by the Respondent No. 4, and lastly it has been stated in the said affidavit that if the Respondent No. 3 was desirous of getting certain clarifications, it should have approached the Respondent No. 4 in stead of denying admission to a meritorious student like the Petitioner.

13. An Affidavit is also filed by the Respondent No. 7 who was joined as a party whilst the above Petition was pending for admission. It has been stated by the Respondent No. 7 that he has been admitted as he had applied pursuant to the advertisement issued by the Respondent No. 3 and that he is pursuing the said course since June 2009.

14. We have heard the learned Counsel for the parties. On behalf of the Petitioner Shri Anil Singh, the learned Counsel, submitted that it is an undisputed position that the Petitioner had stood 26th in rank amongst 500 candidates who had appeared for CET examination conducted by the Respondent No. 4 Association for admission to the postgraduate course.

It is further submitted by the learned Counsel for the Petitioner that the Petitioner ought to have been admitted in the one seat meant for open category in the second round as the Petitioner figures in the list sent by the Respondent No. 4 Association to the Respondent No. 3 College for admission to the said course of MD Radiology. He further submitted that the Petitioner could have been admitted even on 22nd May 2009 when he approached the Respondent No. 3 College as the brochure itself prescribed that a candidate can apply and give his preference even for provisional seat and same would be dependent upon the final allocation made by the Respondent No. 4 on the basis of affiliation/permission of the MCI, MUHS etc. It is further submitted by the learned Counsel for the Petitioner that in denying the admission to the Petitioner, the Respondent No. 3 College has acted in a high handed and arbitrary manner and that the said conduct of the Respondent No. 3 is also malafide considering the defence taken by the Respondent No. 3 subsequently. The learned Counsel for the Petitioner submitted that merit is the sinequanon for admission to the postgraduate courses pursuant to the CET examination and since the Petitioner was available and was desirous of seeking admission, there was no reason for the Respondent No. 3 to resort to the procedure prescribed in Clause 15.10 by issuing an advertisement for filling up the said seat at the college level. The learned Counsel for the Petitioner drew our attention to the letter dated 22nd May 2009 addressed by the Petitioner to the Principal of the Respondent No. 3 College

wherein the Petitioner has stated that though he had come to secure admission with the Demand Draft, he was denied admission. The learned Counsel for the Petitioner also drew out attention to the email sent by the Petitioner to the Principal, the Secretary Dr. Vasant Pawar as well as to the Respondent No. 4. The learned Counsel for the Petitioner drew our attention to the further letter dated 25th May 2009 addressed by the Petitioner to the Competent Authority Dr. AM Vare of the Respondent No. 4 Association wherein he has stated that he had been selected for MD ? Radiology in the second round and though he had visited the Respondent No. 3 College on 22nd and 23rd of May to secure admission, he was denied admission for the same. The learned Counsel further drew our attention to the letter dated 28th May 2009 addressed by the Petitioner to the Respondent No. 4 wherein the Petitioner has stated that though the Petitioner and one other selected candidate who were waiting since 10.00 a.m. for admission, the Respondent No. 3 College is not accepting them for joining. The learned Counsel for the Petitioner also drew our attention to the email sent to the Respondent No. 4 on its email address. Shri Anil Singh, the learned Counsel for the Petitioner, relying upon the said correspondence and the emails sent to the Respondent No. 3 College as well as Respondent No. 4 Association, submitted that in the light of the said material, the case of the Respondent No. 3 that the Petitioner did not report on 28th May 2009 for admission cannot be accepted. He further submitted that for the reasons best known to the Respondent No. 3 College, the Petitioner was not admitted and the Respondent No. 3 filled up the said seat by resorting to Clause 15.10 of the said admission procedure i.e. by admitting a student at the college level pursuant to the advertisement issued by it. The learned Counsel for the Petitioner, therefore, submitted that a great injustice has been caused to the Petitioner and thereby merit has suffered at the hands of the Respondent No. 3 College.

15. The learned Counsel appearing for the Respondent No. 3 College Shri K Y Mandlik submitted that in so far as the two seats for Radiology were concerned, it is an admitted position that the said seats in the original seat matrix were shown as such for NRI category and NT1 category. The learned Counsel for the Respondent No. 3 submitted that the affiliation for the said course was received only on 23rd May 2009, and therefore, the Petitioner could not be admitted prior to that date. He further submitted that the Respondent No. 3 was not made aware of the change in the seat matrix by the Respondent No. 4 whereby the seat for the NT1 category was changed to one meant for the open category, and therefore, in the said circumstances, the Respondent No. 3 could not be blamed if it had filled up the said seat by resorting to the procedure mentioned in Clause 15.10. In so far as the correspondence on which the reliance was placed by the learned Counsel for the Petitioner is concerned, the learned Counsel for the Respondent No. 3 submitted that in so far as letter dated 22nd May 2009 and the email sent by the Petitioner on 23rd May 2009 are concerned, they were of no avail as the affiliation for the said course had only come on 23rd May 2009 at 4.52 pm, and therefore the Petitioner could not have been admitted prior to the

said date. The learned Counsel for the Respondent No. 3 also submitted that though the last date was extended to 28th May 2009, the Petitioner did not remain present on 28th May 2009 to secure admission and the Petitioner's case that he along with one Dr. Pooja Kharbanda was waiting for admission from 10.00 am cannot be believed and is a false case as the said Dr. Pooja Kharbanda has been admitted already on 23rd May 2009 for MS Ophthalmology, and therefore considering the aforesaid facts, the Petitioner has to blame himself for not getting admission in the Respondent No. 3 College. The learned Counsel for the Respondent No. 3 submitted that in view of the fact that the seat was already advertised in two daily news papers on 24th May 2009, the Respondent No. 3 was free to fill up the said seat and, accordingly the Respondent No. 7 has been admitted for the said MD Radiology course in the seat meant for the open category. He further submitted that the Petitioner having failed to approach the Respondent No. 3 on 28th May 2009 thus could not be admitted to the said MD Radiology course.

16. On behalf of the Respondent No. 4 Mrs. Chandana Salgaocar the learned Counsel submitted that the provisional seat matrix is fixed on account of the fact that certain seats in certain subjects can be filled up only after the approval of the affiliation is received from the MCI/MUHS. It is on the said basis that the said two seats were provisionally allocated in the Respondent No. 3 College for the NRI category and NT1 category and after the approval/affiliation was received from the MCI/MUHS, the seat matrix was worked out on the basis of the total reservation as mentioned in the additional affidavit and as per the said reworking two seats were earmarked as one for open category and one for the NRI category. The learned Counsel for the Respondent No. 4 drew our attention to the letter dated 19th May 2009 by which letter the second selection list was forwarded to the Dean of the Respondent No. 3 College for the second round and the selected candidates were asked to report on or before 23rd May 2009. The learned Counsel for the Respondent No. 4 fairly submitted that the Petitioner's name stands at Serial No. 3 of the said list as his merit ranking was 26th in the State Merit List and the Petitioner's name is shown against the subject of MD Radiology. She reiterated the averments made in the affidavit and submitted that the Respondent No. 3 College, being a member of the Respondent No. 4 Association was duty bound to admit a student on the basis of the list prepared by the Respondent No. 4 Association. She also submitted that if the Respondent No. 4 had any doubt as regards the seat matrix in the second round, the Respondent No. 3 ought to have approached the Respondent No. 4. The learned Counsel for the Respondent No. 4 submitted that there could not have been any doubt on the part of the Respondent No. 3 in so far as selection list for the second round is concerned inasmuch as the Respondent No. 3 in fact has admitted students as per the said selection list forwarded by the Respondent No. 4 for the second round to the Respondent No. 3. The learned Counsel for the Respondent No. 4 submitted that the Petitioner being meritorious as having stood 26th in CET was entitled for admission to the said postgraduate course.

17. On behalf of the Respondent No. 7 it is contended by Shri Govilkar the learned Counsel that the Respondent No. 7 has secured admission in the Respondent No. 3 College in view of the application he made pursuant to the advertisement issued by the Respondent No. 3. He further submitted that the Respondent No. 7 has been prosecuting the said MD Radiology course since June 2009, and therefore even assuming that there is any illegality committed by the Respondent No. 3 College in not admitting the Petitioner, the Respondent No. 7 cannot be made liable to suffer by cancelling his admission at this point of time. He therefore submitted that the above Petition cannot be allowed and the relief cannot be granted to the Petitioner on that ground.

18. We have heard the learned Counsel for the respective parties and have given our anxious consideration to their rival contentions. The question which poses for our consideration is, whether the Petitioner is entitled for admission to the said postgraduate course in MD Radiology in the one seat meant for open category. It is an undisputed fact that the Petitioner had stood 26th in the merit list in the CET examination conducted by the Respondent No. 4 for admission to the said postgraduate course. It is also an undisputed position that the name of the Petitioner figured in the selection list at Serial No. 3 for the second round of admission. It is also pertinent to note that the Petitioner approached the Respondent No. 3 College for the first time on 22nd May 2009 for admission and had also gone with the Demand Draft for the said. However, the Petitioner was refused the admission on the said day as well as on the next day i.e. on 23rd May 2009. The correspondence in that behalf is very eloquent. The Petitioner has virtually shown his exasperation at not being granted admission on 22nd May 2009 and thereafter on 23rd May 2009. Even if the case of the Respondent No. 3 that no student could have been admitted before 23rd May 2009 as the affiliation was received from the MUHS only at 4.52 pm on 23rd May 2009 is to be accepted, the fact remains that the Respondent No. 3 was aware that the Petitioner was desirous of seeking admission to the said MD Radiology course and the admission procedure contemplated that candidates could give their preference to the provisional seats subject to the same becoming available later on. Hence the subsequent conduct of the Respondent No. 3 of resorting to the procedure by resorting to Clause 15.10, in our view, cannot be countenanced. How the Respondent No. 3 could give an advertisement on 24th May 2009 when the affiliation had come on 23rd May 2009 at 4.52 pm and when they were very well aware that the Petitioner's name was figuring in the second round in the selection list which was forwarded to the Respondent No. 3 by the Respondent No. 4 by the letter dated 19th May 2009 for the said seat for MD Radiology course. The said conduct of the Respondent No. 3 in advertising the said seat of MD Radiology knowing fully well that the Petitioner was interested in securing admission was, in our view, premeditated.

19. It is also significant to note that the defence of the Respondent No. 3 initially was, the Petitioner was seeking a seat meant for NT1 category, and therefore could not be admitted though knowing fully well that in the selection list

forwarded by the letter dated 19th May 2009 by the Respondent No. 4 Association the name of the Petitioner stood at Serial No. 3 in the list and he was selected candidate for the seat meant for the open category for the MD Radiology course in the second round. The stand of the Respondent No. 3 College therefore that the Petitioner could not have been granted admission either by 22nd May or 23rd May 2009 is, in our view, dishonest stand as the Respondent No. 3 was very well knew that the Petitioner's name figured in the selection list for the second round in the said subject. Subsequent defence of the Respondent No. 3 is even more wondrous. The second defence of the Respondent No. 3 is that the Petitioner never approached the Respondent No. 3 College on 28th May 2009. In the light of the correspondence referred to herein above and in the light of the email sent by the Petitioner to the Respondent Nos. 3 and 4 it is impossible to believe that the Petitioner has not approached the Respondent No. 3 on 28th May 2009. Though it is sought to be contended that the claim of the Petitioner that he was waiting with another selected candidate Dr. Pooja Kharbanda could not be believed as Dr. Pooja Kharbanda was granted admitted already on 23rd May 2009. In our view, the said fact by itself even assuming to be true, cannot be make a dent in the Petitioner's case that he was approaching the Respondent No. 3 and Respondent No. 4 from 22nd May 2009 to 28th May 2009. In fact the Respondent No. 4 took cognizance of the Petitioner's letter and directed the Respondent No. 3 to allow the selected students to report till 28th May 2009. It is impossible to believe that a candidate who has appeared for the CET and who has stood 26th in rank would not approach the Respondent No. 3 on 28th May 2009 as is sought to be contended by it, the anxiety of such a student can well be imagined. The student in our view must have been restless from 22nd May 2009 to 28th May 2009 considering the competition that there is in securing a seat for postgraduate studies in medicine. In our view, the Respondent No. 3 is therefore just finding a ruse to deny admission to the Petitioner on one pretext or the other.

20. The conduct of the Respondent No. 3 can also be seen from the fact that though the Petitioner's name figured in the selection list for the second round for the seat meant for open category for the MD27 Radiology, the Respondent No. 3 took a recourse to Clause 15.10 which can be resorted to only if no candidate is available after the second round and the seat remains vacant. The advertisement was issued by the Respondent No. 3 on 24th May 2009. That is much before the last date for reporting which was 28th May 2009. We can take judicial notice of the fact that the Radiology is one of the coveted subjects for post graduation today, and therefore we can safely assume that the Respondent No. 3 wanted to exploit the situation to the maximum by advertising the said seat and filling it up at the college level, when the candidate from the merit list for the second round i.e. the Petitioner was very well available and was approaching the Respondent No. 3 from 22nd May to 28th May 2009. We have therefore no doubt that the said action of the Respondent No.3 in denying the seat to the Petitioner and filling it by issuing advertisement and filling it at the college level was not a

bonafide exercise but was actuated by malafide in so far as denying the seat to the Petitioner is concerned. Considering the aforesaid facts and considering the fact that a meritorious student like the Petitioner was denied the seat, we have to consider what relief can be granted to the Petitioner. It is pertinent to note that the above Petition has been filed on 8th June 2009 immediately after the last date after admissions i.e. 31st May 2009. The delay in deciding the Petition therefore cannot be held against the Petitioner. Though a period of about 4 months has elapsed since the last date in our view the Petitioner cannot be denied relief on the said ground. In our view the injustice caused to the Petitioner is required to be redressed in our writ jurisdiction under Article 226 of the Constitution of India.

21. Though the Respondent No. 7 has been admitted pursuant to the advertisement issued by the Respondent No. 3 since we have recorded a finding that the Respondent No. 3 could have never resorted to the said procedure contemplated under Clause 15.10 as the Petitioner was very much available from the selection list for the second round, the admission granted to the Respondent No. 7, therefore, cannot be sustained on the said ground and would have to be set aside. However, the Respondent No. 7 would be entitled to refund of fees that he has paid to the Respondent No. 3 College. For the reasons stated herein above, the above Petition is allowed. Rule is accordingly made absolute in terms of prayer Clause (c) which is as under:

That this Hon?ble Court be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus to forthwith grant to the Petitioner admission to the course/seat of Radiology forthwith and consider the Merit List No. 26 and Second Merit List No. 3 of Respondent No. 4 in proper perspective and on merits.

At this stage, Shri R V Govilkar, the learned Counsel appearing for the Respondent No. 7 prays for stay of the order. Considering the fact that the issue involved in the above Petition is of not granting admission to the Petitioner for the postgraduate course of Radiology to which the Petitioner was legally entitled to, the prayer for stay is rejected.