
(2005) 12 AHC CK 0172

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 68387 of 2005

Subharati K.K.B. Charitable Trust

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Indian Medical Council Act, 1956 — Section 10A

Uttar Pradesh State Universities Act, 1973 — Section 21, 37, 37(2), 7

Citation : (2006) 3 UPLBEC 2978

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : R.N. Singh, Anurag Khanna, G.K. Singh, V.K. Singh and Vivek Rai, for the Appellant; Pankaj Mithal and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—In the present case, the contesting parties are the management of a Medical College (petitioners); the Agra University (Respondent Nos. 2/3); as well as the State Government (Respondent No. 1). Their dispute has left the 1st year students of the Medical College in a lurch and in mid stream, as even after they were admitted in the Medical College for the session 2004-05 for M.B.B.S. course and had attended classes for the entire session, their examinations are not being held by the Agra University, which has granted affiliation to the Medical College. Thus, it seems that in a dispute between the two established educational institutions and the State Government, the worst sufferers are the students, who unfortunately do not even have any say in the entire matter.

2. For proper appreciation of and understanding the controversy involved in this writ petition, the facts relating to the establishment of the Medical College in question, as well as its recognition/affiliation and admissions made in the past years would be very relevant. The petitioners here are Subharati K.K.B. Charitable Trust (for short "the Trust") and Subharati Medical College (for short

"Medical College"). The Medical College has been established by the Trust which is running a Law College, Management College, Para-medical College, Nursing College, Dental College, besides other Intermediate Colleges and Junior High Schools.

3. Here it may be relevant to notice the procedure for the establishment, recognition/affiliation and grant of admission in private medical colleges which, according to the parties, is as follows:-

(i) The proposed Medical College is to first seek consent of the University for affiliation, which is thereafter submitted to the Central Government, along with an application for opening a new Medical College.

(ii) Then the Central Government, after receiving recommendations from the Medical Council of India, which is based on physical verification of the college, grants permission u/s 10A of the Indian Medical Council Act, to start its M.B.B.S. course.

(iii) The University, from which the Medical College seeks the affiliation, after conducting the inspection, makes a recommendation to the Chancellor for grant of affiliation, on the basis of which the Chancellor accords the sanction for affiliation.

(iv) Medical College admits students in the Management and State quotas and the petitioners assert that such admissions can be given to students even while the application for affiliation of the College is pending.

4. After the proposal of the petitioners to establish the Medical College was accepted, on 23.1.2001, for the academic session 2000-01, the Government of India initially granted permission for running the M.B.B.S. course. Such permission was granted u/s 10A of the Indian Medical Council Act, which was done after receiving the recommendations from the Medical Council of India. The said permission was for admitting 100 students. The Medical College then, on 31.1.2001, issued an advertisement inviting applications for filling up the management quota seats for the aforesaid session. After such admissions were made, the Chancellor of Dr. B.R. Ambedkar University, Agra (for short "Agra University"), on 3.3.2001, granted affiliation to the Petitioner-Medical College for the said session 2000-01. Thereafter on 4.4.2001, the State Government, through C.P.M.T. counseling, allotted students of the State quota to the Medical College.

5. For the next session 2001-02, after receiving recommendations from the Medical Council of India, the Central Government again granted permission on 27.2.2002. Thereafter on 10.3.2002, an advertisement was issued by the Medical College, inviting applications for filling up the management quota seats. On 22.4.2002, the State Government allotted students to fill up the State quota seats. However, it was only thereafter, on 31.8.2002, that the Chancellor of the Agra University granted affiliation to the Medical College for the session 2001-02.

6. For the next session 2002-03, the Central Government renewed the permission on 13.3.2003, after the necessary recommendations had been received from the Medical Council of India. On 16.3.2003, the Medical College made a request to the Agra University for grant of permanent affiliation. Then on 30.3.2003, the Medical College issued an advertisement inviting applications to fill up the management quota seats for the session 2002-03. The State Government also allotted the students of the State quota through C.P.M.T. counseling on 21.4.2003. Despite the application having been made by the Medical College for permanent affiliation, no orders had yet been passed by the Agra University with regard to its affiliation for the session 2002-03.

7. For the session 2003-04, the Central Government again renewed its permission for the said session on 4.9.2003, after receiving the necessary recommendations from the Medical Council of India. On the same date the Medical College issued an advertisement inviting applications to fill up the management quota seats for the said session. On 29.9.2003, the State Government also allotted students for the State quota seats through C.P.M.T. counseling. It is noteworthy that it was only on 25.9.2003 that the Chancellor of the University granted affiliation to the Medical College, collectively for the sessions 2002-03 and 2003-04. It needs to be mentioned here, that despite the recommendation of the Registrar of the Agra University dated 11.9.2003 for granting permanent affiliation to the Medical College with effect from 1.7.2003, this affiliation was again granted but only for two years, with retrospective effect, as the earlier session had nearly come to an end.

8. Such was the position with regard to the recognition/affiliation of the Medical College from the time of its inception, which was in the session 2000-01, till the session 2003-04. On some occasions the affiliation was granted after the admissions had already been made, whereas in other years, the Chancellor had accorded affiliation, prior to the admissions made by the Medical College. It may also be noted here that each year, the sanction of the Chancellor for granting affiliation was itself considered sufficient and taken as affiliation accorded to the Medical College, without there being any specific resolution in this regard passed by the Agra University. The Agra University also conducted examinations and after declaration of the results, the successful candidates were promoted to the next year course.

9. Now we come to the current session 2004-05, which is under dispute in this writ petition.

10. On 9.7.2004, a Government Order was issued, which related to the admissions of students, for the session 2004-05, in the three private medical colleges of the State of U.P. (which included the petitioner-Medical College). In the said G.O. it was specified that for the session 2004-05, the students of the management quota should be granted admission on the basis of merit, through a transparent procedure, which would be governed by "Pravesh Prakriya Me Nispakshata Va Paardarshita Samiti" (Impartiality and Transparency Committee

for Admission Procedure). After the issuance of the said Government Order, the Medical College issued an advertisement on 14.7.2004, inviting applications for filling up the management quota seats of the Medical College for the session 2004-05. In the said advertisement it was specified that the admission would be made on merits on the basis of the 10 + 2 results; that the fee would be subject to the approval of Fee Fixation committee; and that the admissions to the M.B.B.S. course would be subject to renewal of permission by the Central Government, which had till then not been granted. No mention of affiliation to any University had been made. The applications were to be filed by 29.7.2004 and the candidates were required to appear for interview on 30.7.2004. However, after receipt of the applications and the interview, the Medical College did not declare the select list until the Medical College received the renewal of permission from the Central Government for the session 2004-05, which was vide order dated 24.9.2004. After receipt of the said permission, which according to the petitioners was received by them only on 28.9.2004, the Medical College communicated the same to the Director General, Medical Education, U.P. and the Chancellor, as well as the Registrar, of the Agra University and thereafter made a request to the State Government to allot students in the State quota from C.P.M.T. counseling. However, since according to the petitioners, as per the directions of the Supreme Court and subsequent directions issued by the Medical Council of India, the last date for admissions in a particular session was 30th September and since the State Government did not select and forward the list of students for admission in the State quota, the Medical College filled up all the vacant seats from the merit list as per the selection held by them on the basis of the advertisement dated 14.7.2004, issued in pursuance of the Government Order dated 9.7.2004 for the management quota.

11. Undisputedly the management quota for the academic session in dispute, i.e. 2004-05, was 50% and the remaining 50% is the State quota, which was to be filled up through the C.P.M.T. counseling.

12. Now reverting back to the events as they took place chronologically; on 30.9.2004, being the last date of admission for the session 2004-05, in the absence of the State Government having provided students from the State quota, the Medical College filled up all the seats from the management quota itself. Then on 8.10.2004, the Director General, Medical Education, U.P. wrote to the Principal Secretary, Medical Education, U.P. regarding the irregularities committed by the Medical College in the admissions for the session 2004-05. It was stated therein that all the 100 seats had been filled up by the Medical College from its management quota and no student from the State quota were admitted; and it was further mentioned that as the permission for renewal by the Central Government had been accorded only on 24.9.2004, which was communicated to the petitioner-Medical College on 28.9.2004 and information sent by the Medical College to the Principal Secretary and the Director General, Medical Education on 29.9.2004 and since 30.9.2004 was the last date for admissions, they were unable to allot students from the State quota, as no time

was then left for C.P.M.T. counselling for such purposes. On 25.1.2005 the Medical Council of India wrote to the State Government with regard to the admission of students made by the three private medical colleges of the State. It was categorically mentioned therein that all the three private medical colleges had, in the session 2004-05, filled up more than the requisite number of seats from its management quota and thus, as per the decision of the Executive Committee, wherein the members of the Adhoc Committee appointed by the Supreme Court were also present, it was decided that the State Government be requested to reduce the admissions in the management quota of the said private medical colleges in the next session 2005-06 by the number of seats which they had admitted in excess of the management quota in the session 2004-05. Thereafter, there were several communications between the Director General, Medical Education U.P.; Principal Secretary, Medical Education U.P.; Medical Council of India; and the Central Government; and ultimately on 18.8.2005, the Director General, Medical Education, U.P. wrote to the Government of India that the Supreme Court in writ petition No. 306 of 2004 Mridul Dhar v. Union of India, had issued directions that "if any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year". It was further stated in the letter that since it was not possible to allot to the petitioner-Medical College State quota seats by 30.9.2004, because of which they filled up all the seats from management quota, therefore, for the academic year 2005-06, all the 100 seats in the petitioner-Medical College had to be filled up from State quota.

13. Besides this, certain more facts with regard to the affiliation of the Medical College for the session 2004-05 may also be noted. On 11.9.2003 the Registrar of the Agra University recommended the case of the petitioner-Medical College to the Chancellor of the Agra University for according permanent affiliation with effect from 1.7.2003. Since despite the same, the affiliation was granted on 25.9.2003 only for the sessions 2002-03 and 2003-04 retrospectively and thereafter no order with regard to the affiliation for the year 2004-05 had been passed, the petitioner-Medical College filed writ petition No. 1134 of 2005 praying for a direction in the nature of mandamus to the Chancellor of the University for grant of affiliation. The said writ petition was finally disposed of on 17.1.2005 with the observation that the petitioners may make a representation before the Chancellor for grant of temporary affiliation, which was to be considered by the Chancellor at an early date. Then on 24.1.2005, the petitioners filed a representation before the Chancellor, which was followed by several reminders and ultimately, when no orders were passed, the petitioners filed another writ petition No. 2279 of 2005. Before the said writ petition could be taken up for final disposal, an order dated 22.3.2005, passed by the Chancellor, rejecting the representation of the petitioners, was produced before the Court by the learned counsel for the Chancellor and, therefore, the said writ

petition was dismissed, with liberty to the petitioners to seek appropriate remedy by challenging the said order. Thereafter petitioners filed yet another writ petition No. 26676 of 2005 challenging the order dated 22.3.2005 passed by the Chancellor refusing to grant affiliation to the petitioner-Medical College. Considering the fact that Agra University had itself made a recommendation to the Chancellor on 11.9.2003 for grant of permanent affiliation to the petitioner-Medical College with effect from 1.7.2003, while deciding the said writ petition, a Division Bench of this Court observed that "we see no reason why temporary affiliation for the session 2004-05 cannot be considered by the Chancellor on the basis of such recommendation". By a detailed Judgment and Order dated 26.5.2005, the said writ petition was allowed; the order dated 22.3.2005 passed by the Chancellor was quashed and a request was made to the Chancellor to consider the case of the petitioner-Medical College for grant of temporary affiliation from Agra University for the Academic Year 2004-05 on the basis of the recommendations made by the Agra University in its communication dated 11.9.2003 for grant of permanent affiliation with effect from 1.7.2003. Pursuant thereto, the Chancellor passed an order dated 12.8.2005, granting affiliation to the petitioner-Medical College for the session 2004-05.

14. In the backdrop of the aforesaid facts, when in spite of affiliation, the Agra University has not conducted the examination of the Medical College, in this writ petition, this Court is called upon to examine and consider the prayer for grant of a writ of mandamus commanding the respondent-Agra University to hold the examinations of 1st Professional M.B.B.S. Course for the Hatch 2004-05.

15. I have heard Sri R.N. Singh, learned Senior Counsel for the petitioners assisted by Sri Anurag Khanna, as well as Sri Shri Prakash Singh, learned Standing counsel appearing for the State-Respondent No.1 and Sri Pankaj Mithal, learned counsel appearing for the Agra University, Respondent nos. 2 and 3, at length, over the past few days. Besides this, Sarvsri V.K. Singh and D.K. Singh, learned counsel appearing for the newly added Respondent nos. 4 to 11 (students of the Medical College) have also been heard. Counter and rejoinder affidavits have been exchanged between the contesting parties and considering the urgency of the matter and with consent of the learned counsel for the parties, this writ petition has been heard and is being disposed of at the admission stage itself.

16. Sri R.N. Singh, learned Senior counsel appearing for the petitioners, has submitted that in each of the earlier years the sanction for affiliation has always been ex post facto accorded by the Chancellor towards the end of the session or even after the session had already come to an end and every year the University has held the examinations on time regularly. He further submitted that this year also the situation remained the same, but the University is wrongly refusing to hold the examinations. Sri Singh further contended that in earlier years also, even when no affiliation was initially granted at the beginning of the sessions, then too the State Government used to allot students from C.P.M.T. counseling,

who were given admission in the State quota, but this year the State Government did not allot any students to the petitioner-Medical College, despite the petitioners having informed the State Government of the permission having been accorded by the Central Government on 24.9.2004. According to the petitioners, since the allotment of students was not made by the State Government and as per the directions issued by the Apex Court in the case of Medical Council of India Vs. Madhu Singh and Others, and Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, and also as per the directions issued by the Medical Council of India in pursuance of the aforesaid decisions, the admission of the students in private Medical Colleges had to be finalized by the 30th September, 2004 and hence in the given situation, in the absence of the State of U.P. allotting students in its State quota, all the seats had to be filled up by the Management from its merit list prepared for selection of Management quota seats. It has further been submitted that the State Government, vide order dated 19.6.1996 as well as directions issued by the Apex Court in the case of Mridul Dhar (supra) and also in the case of Ram Dulari Bai and Another Vs. Madanlal Bajaj, provide for that if the State Government does not allot the students, then the management can fill up all the seats from its quota, which can thereafter be compensated in the subsequent year by reducing the number of excess seats filled up from the management quota. Lastly, it was submitted, that the admissions made for the session 2004-05 have already been regularized by the Medical Council of India vide its letter dated 25.1.2005 addressed to the Principal Secretary, Medical Education U.P. and also by the communication dated 18.8.2005 of the Director General, Medical Education U.P. to the Government of India, wherein a stipulation has been made that for the session 2005-06, all the seats would be filled up from the State quota, as 100% seats for the session 2004-05 have been filled up by the management quota.

17. Sri Pankaj Mithal, learned counsel for the Agra University, has however, submitted that Sections 7, 21 and 37 of the U.P. State Universities Act read with Chapter XII of the Agra University Statutes, provide for affiliation of colleges (including Medical Colleges) to be granted by the University. He has relied upon the provisions of Section 37(2) of the U.P. State Universities Act and has submitted that the admission could not have been granted for the current session 2004-05, as by the second proviso of Sub-section (2), there is a total bar on making such admission without affiliation having already been granted by the University. He has further submitted that Section 37(2) provides for a resolution of the Executive Council of the University to be passed before affiliation is accorded and mere sanction of the Chancellor for grant of affiliation alone would not be sufficient. Sri Mithal also urged that the sanction granted by the Chancellor on 12.8.2005 for grant of affiliation for the session 2004-05 was only prospective and not retrospective and hence the admission made by the Medical College could not be legalized. He also contended that the sanction, which has been granted, is not for admission to the new session but for the existing courses in which students had given the examination and had been promoted, so that

they could complete their courses in the Medical College. It was thus submitted that since the Medical College had granted admission prior to the affiliation, the same would be non-est, being against the provisions of the U.P. State Universities Act and thus there was no question of the Agra University holding examinations for such students. On being asked as to whether such procedure had been followed in the past years also, Sri Pankaj Mithal very fairly accepted that even though in the previous years, no such resolution of the Executive Council granting affiliation had ever been passed and admissions had also been made in the Medical College prior to the order of affiliation and examination of all such years had been held by Agra University, but he contended that merely because such irregularities had been committed in the past, the same cannot be construed to mean, or could not compel the University, to continue to do so again this year. He further submitted that after the sanction for affiliation by the Chancellor on 12.8.2005, the University had written to the Director General, Medical Education, U.P. with regard to holding of examinations for the session 2004-05. In response, the Director General, Medical Education wrote to the Agra University that in view of the sanction having already been accorded, the University may take its own decision in this regard. Sri Mithal has also pointed out that thereafter again the University has written to the Director General for appropriate orders, which are awaited and that if any such directions regarding holding of examinations were issued by the Director General, the same would then be complied with. His further contention is that direction to hold the examination should not be granted in equity, merely because the students for the 1st year course have been allowed by the Medical College to attend the classes on the basis of having been granted admission, which according to the University, were wrongly done. He urged that compassion and sympathy have no role to play when a rule of law is required to be enforced. In support of this, he has placed reliance on the decision of the Apex Court in the case of C.B.S.E. and Another Vs. P. Sunil Kumar and Others, and K.S. Bhoir Vs. State of Maharashtra and Others,

18. Sri Shri Prakash Singh, learned Standing counsel has reiterated the submissions of Sri Mithal and has further submitted that as per the Government Order and letters issued by the Government, no admission could have been granted by the Medical College without formal affiliation having been accorded by the University and thus the University would not be obliged to hold the examination for such students. It has also been contended that since the petitioner-Medical College has not fulfilled the conditions mentioned in the order of the Chancellor dated 12.8.2005 sanctioning affiliation to the Medical College, hence also no such direction can be issued to the University for holding the examinations of 1st Professional M.B.B.S. Course of Batch 2004-05. Shri Singh has also placed before me the letter of the Chancellor dated 5.7.2004 issued to all the Vice Chancellors of the Universities in the State of U.P., whereby directions had been issued that no admission should be made by the University in any of its colleges until the said college has been duly affiliated to the University for the

session in question. He has also urged that in view of the directions issued by the Apex Court in paragraph 14 of the judgment in the case of Islamic Academy of Education v. State of Karnataka JT 2003 (7) SC 1, the management on its own could not have filled up the management quota, without there being a combined entrance test having been held for all the private medical colleges of the State, either through the agency of the State Government or through an association of private medical colleges.

19. In the facts of this case and in the light of the submissions made by the learned counsel for the parties, as have been noted hereinabove, the following questions arise, which are required to be decided by this Court:-

1. Whether the Medical College was right in admitting the students for the session 2004-05, even before the Agra University renewed the affiliation for such session ?
2. Whether, after the sanction for affiliation accorded by the Chancellor, any resolution was necessary to be passed by the Executive Council of Agra University prior to the formal grant of affiliation ?
3. Whether the sanction for affiliation accorded by the Chancellor for the session 2004-05 would only be applicable for the existing students of the Medical College and not for admitting a new batch of students ?
4. Whether the admissions made in the management quota would be invalid because of non-compliance of the directions issued by the Apex Court in Islamic Academy case ?
5. What would be the effect of the State not allotting student for session 2004-05 in its quota through C.P.M.T. counselling ?
6. Should a direction in the nature of Mandamus be issued to the Agra University for holding examinations of 1st Professional M.B.B.S. Course for the Batch 2004-05 ?

20. As regards the first question, the submission of Sri Mithal is that under the second proviso of Section 37(2) of the UP. State Universities Act, it is provided that "unless all the prescribed conditions of affiliation are fulfilled by a college, it shall not admit any student in the first year of the course of study". By virtue of this provision, it has been urged that without grant of affiliation, no admission could have been made by the Medical College for the session 2004-05. In this regard, what is provided by the second proviso of Section 37(2) of the U.P. State Universities Act is that unless a college fulfills all the prescribed conditions of affiliation, no admission shall be granted. The clear case of the petitioner is that after conducting the necessary inspection of the Medical College and finding that all the conditions for affiliation had been fulfilled by the Medical College, the Agra University had itself, on 11.9.2003, recommended for grant of permanent affiliation of the Medical College with effect from 1.7.2003. The said proviso does not require that affiliation should be granted prior to the Medical College

admitting the students. The only requirement is that the said college should have fulfilled all the conditions for affiliation. In the present case, once the Agra University had already recommended for grant of permanent affiliation of the Medical College, it does not lie with the Agra University to say that the conditions for affiliation had not been fulfilled by the Petitioner-Medical College. As such the first question is answered in favour of the petitioners that in the given circumstances, since the Agra University had itself found that the petitioner-Medical College had fulfilled all the conditions for grant of affiliation, they were entitled to admit the students in the first year of study for the session 2004-05, when their case for affiliation was already pending before the Chancellor of the University.

21. As regards the second question, which is with regard to passing of the resolution by the Executive Council of Agra University prior to the grant of affiliation, Sri Mithal has placed reliance on Sub-section (2) of Section 37 of the U.P. State Universities Act which says that "the Executive Council may, with the previous sanction of the Chancellor, admit any college which fulfils such condition of affiliation, ...". It is true that as per the aforesaid provision, after the Chancellor has accorded the sanction for affiliation, the Executive Council of the University may be required to pass a formal resolution. However, the said provision does not say that after the Chancellor has accorded the sanction, the college shall not be treated as an affiliated college. Even otherwise, the Agra University admits that from session 2000-01 to 2003-04, every year the Medical College was treated as a college affiliated to Agra University only after the sanction had been accorded by the Chancellor. It has also been admitted that in none of the previous years, the University had passed any formal resolution of the Executive Council. As such, in my view, after the sanction of affiliation had been accorded by the Chancellor of the Agra University for the year 2004-05, since there was no deviation from the procedure adopted in the earlier years, this year also the Medical College ought to have been treated as affiliated to the Agra University, specially when in the past, the University had never raised any such objection and after such sanction of the Chancellor, admissions were given to students and the University also held the examinations of the Medical College. They cannot now be permitted to raise such a technical objection only with regard to session 2004-05.

22. As regards the third question that whether the grant of sanction by the Chancellor for the session 2004-05 would be valid only for the existing students of the Medical College and not for admitting a new batch of students in the first year of the course of study of the Medical College; it may be noticed that in the earlier years also, when such sanction had been accorded by the Chancellor, the same was found sufficient by the Agra University to permit the medical college to admit new students for the first year of the course of study. There being no difference in the language of sanction accorded this year and in the earlier years, the Agra University cannot now take such objection for this particular year. Even otherwise, Sri Mithal has not pressed this point very seriously.

23. The fourth question, which has been raised by the learned Standing counsel, is that since in paragraph 14 of the Islamic Academy case, the Supreme Court had given clear directions to the effect that admissions to be made in the management quota of private medical colleges should be through a combined entrance test conducted either by the State Government or by an association of private medical colleges and as the same has not been done in the present case, the admissions granted in the management quota would be invalid. With regard to this, it is relevant to note that after referring to the aforesaid directions/observations of the Apex Court, the State Government had, on 9.7.2004, issued directions to all the three private medical colleges of the State of U.P. (including the petitioner-Medical College), wherein it was provided that the seats of the management quota should be filled up through a transparent procedure which would be governed by "Pravesh Prakriya Me Nispakshata Va Paardarshita Sarniti". It is the case of the petitioners that they complied with all the directions which had been issued by the aforesaid. G.O. dated 9.7.2004 and it is not the case of the respondents that the said Committee, which had been formed by the State Government for over-seeing the admissions in the private medical colleges, had found that there was any irregularity made by the petitioner-Medical College while granting admissions in the management quota. Thus, in my view, the admissions granted by the Medical College in its management quota seats would not become invalid because of the observations made in paragraph 14 of the judgment of the Apex Court in Islamic Academy case.

24. Now coming to fifth question, which is with regard to the effect of the State Government not allotting students in its quota through C.P.M.T. counselling for the session 2004-05, the contention of the petitioner is that since the last date for granting admissions for the session in question was 30.9.2004 and the State Government had not allotted students in its quota for admission in the Medical College, the petitioner-Medical College was left with no option but to fill up the entire seats from the merit list prepared for admitting students in the management quota. In support of this, the petitioners have placed reliance on an Office Notification dated 19.6.1996 as well as the directions/observations of the Apex Court in the cases of Mridul Dhar (supra) and Himachal Institute of Engineering & Technology (supra). In the said Office Notification it has been observed that admissions in private Medical and Dental colleges will be completed within two months of declaration of C.P.M.T. results. The management of the college will be free to admit students of its own on vacant seats left after expiry of three months or the last date declared by the Director General, Medical Education, whichever is later". In the present case, since the last date for admission of the students was fixed, as 30.9.2004, by the Medical Council of India (keeping in view the directions of the Apex Court) and no students were allotted till then by the State Government, the Management filled up all the seats from its management quota. Further, in the case of State of Himachal Pradesh v. Himachal Institute of Engineering & Technology (supra) where vacancies were still remaining even after the cut off date, the Apex Court held that "since there

have been vacancies which have remained unfilled after the cut off date and it would, therefore, be open to the Management to fill them up in the manner they consider appropriate".

25. The Apex Court in the case of Mridul Dhar (Minor) and Another Vs. Union of India (UOI) and Others, has, after keeping in view the time schedule prepared by the Medical Council of India for admission to the M.B.B.S. course, held, in paragraph 11 of the said judgment, that the last date till when students can be admitted against vacancies arising due to any reason, in the first year M.B.B.S. course, would be 30th September. In paragraph 14 of the said judgment it has been observed that "However, students can be admitted against vacancies arising due to any reason by 30th September Adherence to the time schedule by everyone is paramount for the timely grant of admissions, commencement of academic session and for closure of the admission after 30th September each year". In paragraph 35 of the said judgment, the Apex Court has issued various directions. The 11th direction, which is relevant for this case, is quoted below:-

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management, quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

26. Keeping in view the aforesaid decision of the Apex Court, after noticing that for the session 2004-05, admissions in excess of the management quota had been made by all the three private Medical Colleges in the State of U.P., the Medical Council of India has already, on 25.1.2005, written to the State Government that as per the decision of Executive Council, wherein members of the Adhoc Committee appointed by the Supreme Court were also present, it was decided that the State Government be requested to reduce the management quota of the said private medical colleges in the next session 2005-06, by the number of seats which they had admitted in excess of their management quota in the session 2004-05. Accordingly, for the petitioner-Medical College it was recommended that since in the session 2004-05 they had filled up all the seats from the management quota itself, in the next session 2005-06 the entire seats should be filled up from the State quota. Even otherwise the State Government also, through Director General, Medical Education, has, on 18.8.2005, written to the Government of India that in view of the directions given by the Apex Court in Mridul Dhar's case (supra) and keeping in view that it was not possible for the State to allot the petitioner-Medical College the State quota seats by 30.9.2004 and for this reason, as they had already filled up all the seats from the management quota, therefore, for the academic year 2005-06 all the 100 seats in the petitioner-Medical College, would be filled up from the State quota.

27. Keeping in view the aforesaid position and the stand taken by the Central Government as well as the State Government by issuance of the aforesaid letters dated 25.1.2005 and 18.8.2005 respectively, the said authorities have, in a way,

washed off all the sins which had been committed by the petitioner-Medical College in making admissions for the session 2004-05, on the condition that in the next year they would fill up all the seats from the State quota.

28. Thus the fifth question is answered accordingly, that the effect of all the seats in the petitioner-Medical College having been filled up by the Medical College for the session 2004-05 would be, that in the next session 2005-06 they would not be entitled to fill up any seat from the management quota and all the vacancies for students in the petitioner-Medical College would be filled up from the State quota, through C.P.M.T. counselling.

29. Now we come to the sixth and main question that whether a writ of Mandamus, as prayed for, should be issued or not. Keeping in view the interest of the students, who have had no say in the entire dispute between the three big institutions (Medical College; Agra University and the State) and that essentially it is these students who would be the real sufferers, the answer to the last question would be in the affirmative. The submission of Mr. Mithal, is that because the students have been granted admission in the first year of the course knowing fully well that the Medical College was not affiliated to the Agra University, they would not be entitled to any discretionary relief from this Court in its equity jurisdiction merely because they were allowed by the Medical College to attend classes. The submission that compassion and sympathy have no role to play when a rule of law is required to be enforced, does not have much force in the facts of the present case. This principle of law, as has been laid down by the Apex Court in the cases of *C.B.S.E. v. P. Sunil Kumar* (supra) and *K.S.Bhoir v. State of Maharashtra* (supra) cannot be questioned. However, this Court has to apply the law in the facts of the case before it. The Apex Court has in the case of *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, observed that "Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear". By quoting the words of Lord Denning, the Apex Court observed that ""Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

30. As such, in my view, in the facts of this case where pending grant of affiliation, admissions had been made after completion of all formalities for affiliation by the Medical College and like in the previous years, permission of the Central Government and affiliation by the Chancellor of the University, had been granted subsequently, a writ of Mandamus ought to be issued in this case,

commanding the respondent-Agra University to hold the examinations of the 1st Professional M.B.B.S. Course for the batch 2004-05. Since the examinations were to be held by September, 2005, which has already passed, it would be desirable that the Agra University should hold such examinations at the earliest.

31. It is thus directed, that the Agra University shall declare the examination schedule for the 1st Professional M.B.B.S. Course for the batch 2004-05 within two weeks from today, in which the date of commencement of the examination should not be later than the 15th January, 2006 and the conclusion of examinations by 31st January, 2006. The result of the examination shall thereafter be declared at the earliest.

32. However, by issuing the writ and allowing this petition, it would not mean that the petitioner-Medical College has been exonerated. The entire facts reveal that the conduct of the Medical College has also not been above board nor have they followed the law and the procedure on all occasions.

33. Strictly speaking, initially the Director General, Medical Education, in its communication dated 8.10.2004 (which was immediately after the admissions had been finalized by the Medical College on 30.9.2004), did clearly mention of the irregularities committed by the Medical College in granting admissions and filling up all the seats from the Management quota. But later, giving the benefit of the Supreme Court judgment, the Director General on 18.8.2005, condoned the same (probably keeping in view the interest of the students) and imposed the condition that in the next year, all the seats would be filled up from the State quota. However, the facts show that immediately on having come to know of the renewal of the permission, which was granted by the Central Government on 24.9.2004, had the Medical College communicated the same to the State Government, it would have been possible that the State Government would then have allotted the students from C.P.M.T. counselling in the State quota seats. Admittedly the C.P.M.T. counselling continued till 5.00 P.M. on 28.9.2004. Although the petitioner-Medical College claims that it had come to know of the order dated 24.9.2004, only on 28.9.2004 and had then at 5.55 P.M. sent a request to the State Government on 28.9.2004 itself; but the same appears to have been deliberately delayed so that the State Government could not fill up the seats of its quota. It is quite improbable that where a private medical college is pursuing its case so diligently and following every movement of the State Government and Central Government in regard to grant of permission and sanction for affiliation, it would not come to know of the permission granted by the Central Government on 24.9.2004, for the next four days, till it became convenient to them, as the C.P.M.T. counselling had finished and it had become impossible for the State Government to allot students in its quota for admission.

34. Even otherwise, it is the duty of every private medical college (while issuing the advertisement inviting applications) to inform the applicants correctly. In most of the advertisements, which have been produced before me, which are for the sessions 2000-01 to 2004-05, the Medical College has not given complete

information. In some cases, they have even gone to the extent of stating that their college is affiliated to the Agra University whereas no such affiliation had till then been granted. In other cases, sometimes the Medical College has, in the advertisement, mentioned that their application for renewal of permission was pending before the Government of India and in some other cases, where no such permission or affiliation had been granted, they had remained silent about the same. Such conduct of the petitioner-Medical College, as well as any other private medical college, which do not provide the complete information in the advertisement, is deprecated by this Court. In my view, for not furnishing correct information in the advertisement and also for not taking timely action for filling up the State quota seats in the session 2004-05, the petitioners would be liable to payment of heavy cost because they have enjoyed the benefit of filling up all the 100 seats in the management quota in the session 2004-05.

35. However, on taking into account the conduct of the Agra University and the State of U.P. also, in my view they would not be entitled to receiving costs. The Agra University cannot be exonerated of its conduct as it did not hold the examinations of the session 2004-05 even after the affiliation had been accorded by the Chancellor, though in similar circumstances, in the earlier years, they had held the examinations. The State Government has also been shuttling the issue, of and on and not taking a positive decision in the matter, thus leaving the helpless students in a lurch.

36. Instead of holding the examinations after the Chancellor accorded affiliation on 12.8.2005, the Agra University opted to refer the matter to the Director General, Medical Education for its guidance, on 18.10.2005. The Director General then sent the ball back in the court of Agra University and wrote on 7.11.2005 that in view of the sanction having been accorded by the Chancellor on 12.8.2005, there would be no objection to the holding of the examination, but the same should be conducted in accordance with Regulations of Medical Council of India. Despite such a letter, the Agra University chose to refer back the matter to the Director General, Medical Education, vide its letter dated 20.11.2005, asking for certain other clarifications and clear directions from the said authority. The Agra University has thus failed in its duty to hold the examinations for the session 2004-05. The State Government through Director General, Medical Education had already, on 18.8.2005, vide its communication to the Government of India, made its stand clear that the irregularities committed in the admission for the session 2004-05 would be regularized by filling up all the seats of the next session through State quota. After such specific stand of the Director General, the State Government ought to have given clear directions to the Agra University for holding the examination, keeping in view the interest of the students of the Medical College. But no such clear direction had been issued and the matter kept getting passed back and forth between the State Government and the Agra University because of which the students of the 1st Professional M.B.B.S. course of the Medical College have to bear the brunt.

37. Thus, when all the three respective parties are at fault, in my view, the cost to be imposed on the petitioner should be for the benefit of the students of the Medical College, who alone have been the sufferers in the entire process. On a suggestion made by this Court, Sri R.N.Singh and Sri Anurag Khanna, learned counsel for the petitioners (after having received instructions from their clients), have agreed that the petitioner-Subharati K.K.B.Charitable Trust would be prepared to create a scholarship fund of at least Rs. 5 lacs (Rs. Five lacs), which shall be for the benefit of the students of the Medical College. Accordingly, it is directed that the Subharati K.K.B.Charitable Trust shall, within two weeks from today, form a scholarship fund and provide a sum of at least Rs. 5 lacs (Rs. Five lacs) for such purpose. Such scholarship fund shall be deposited in a nationalized bank and be kept in the maximum interest bearing fixed deposit account, the interest of which may be paid annually. The said account shall be operated jointly by the Principal of the petitioner-Medical College and the Registrar of the affiliating University (which in the present case is Agra University). From the annual interest accrued on such fund kept in fixed deposit, the scholarship shall be given to the best girl student and the best boy student of each year's 1st year Professional Course of the Medical College. The entire accrued interest for the past year shall be equally divided to comprise the two awards. Since the interest on the corpus shall accrue only after the passage of one full year after the date of creation of the corpus, the first award in this series shall be made next year; that is for the session ending in 2006. The petitioner-Medical College shall be at liberty to add to the nucleus of the fund, but the corpus amount of Rs. 5 lacs (Rs. Five lacs) plus the additional amount so added, shall not be disturbed. Such fund shall not be created from the fee received from the students of the college but shall be paid by the Trust from its own funds.

38. Before parting with this case, certain directions for corrective measures for future are required to be given, as the short-comings in the admission process of the private medical colleges, which have been noticed by this Court, should not be permitted to be perpetuated. Accordingly, it is desirable that in future, while granting affiliation to the Medical College, the time schedule as fixed by the Statute should strictly be adhered to by the concerned University. Further, it is directed that the State shall ensure that, besides other information that may be required under any provision of law, all private medical colleges of the State of U.P. shall also give the following information in the advertisement which they issue in future for inviting applications for admission to their M.B.B.S. course:-

- (a) Total number of seats approved;
- (b) Number of seats of management quota which are required to be filled up through the advertisement;
- (c) Fee to be charged;
- (d) If the Government of India has granted renewal of recognition, then give the date and details of such renewal. If not, then mention (in bold letters) that

recognition has not been granted but has been applied for and give the date of such application;

(e) If affiliated, then give the date and details of the affiliation by the University. If not, then mention (in bold letters) that application for affiliation is pending and yet not granted. In such a case, it shall also mention that till which academic session had the college remained affiliated and to which University.

39. Within three days of the issuance of any such advertisement (which may be issued more than once or even in more than one newspaper), the concerned private medical college shall send copy or copies of the same to the Registrar of the University; Director General, Medical Education; Medical Council of India; and Government of India, for information and necessary action. In case of non compliance of any of the aforesaid conditions, such private medical college shall be liable to be de-recognized by the Government of India and also be de-affiliated by the University, for which the concerned authorities shall take immediate steps.

40. With the aforesaid observations/directions this writ petition stands allowed.

41. Let a copy of this judgment be given to the learned counsel for the parties by Monday, 12th December, 2005, on payment of usual charges.