

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

Writ Petition (C) No.40 of 2018

Saraswati Educational Charitable Trust & Anr.

.... Petitioners (s)

Versus

Union of India & Ors.

.... Respondent (s)

With

Writ Petition (C) No.291 of 2019

J U D G M E N T

L. NAGESWARA RAO, J.

1. Writ Petition (C) No.40 of 2018 has been filed by Saraswati Educational Charitable Trust challenging the notice dated 29th September, 2017, issued by the second Respondent-Medical Council of India by which the Saraswati Medical College (hereinafter referred to as “the College”) was directed to discharge 132 out of 150 students admitted in the first year Bachelor of Medicine, Bachelor of Surgery (MBBS) course for the academic year 2017-2018.

2. Writ Petition (C) No.291 of 2019 has been filed by 71 students who have been admitted in first year MBBS course for the academic year 2017-2018 in Saraswati Medical College to permit them to continue with their studies and to direct the Registrar, Uttar Pradesh Medical Council, the seventh Respondent herein to declare their results of the first year MBBS course.

3. Saraswati Medical College was established by Saraswati Educational Charitable Trust in the year 2016. The College applied for grant of renewal of permission for admission of 150 students for the academic year 2017-2018. An inspection was conducted in November, 2016 followed by a second surprise inspection by the assessing team on 21st and 22nd November, 2016. Renewal of permission was not granted by an order dated 10th August, 2017 which was challenged by the Petitioner in Writ Petition No.515 of 2017 before this Court. This Court by its judgment dated 1st September, 2017 directed the Respondents therein to permit the College to take part in the counselling process for the year 2017-2018. The cut-off date for completion of admission in respect of the College was extended till 5th September, 2017. The Respondents were directed to make available students willing to take admission in the College

through central counselling in order of merit. The Petitioner No.2 requested the Director General of Medical Education and Training- Respondent No.3 herein to provide a list of students from the National Eligibility-cum-Entrance Test (NEET), 2017 merit list to enable the College to make admission before 5th September, 2017. An email was sent by the College to the third Respondent with the same request for providing the list of students at 6:41 p.m. on 1st September, 2017. On 4th September, 2017, the Management of the College reiterated the request of allotment of students for admission into first year MBBS course.

4. The third Respondent informed all eligible students about the order passed by this Court in Writ Petition No.515 of 2017 and asked them to apply/register themselves for admission to first year MBBS course in the College from 4th September, 2017, 6:00 p.m. to 5th September, 2017, 1:00 p.m. 735 students applied/registered within the time schedule for admission to 150 students in the College. On 5th September, 2017, the third Respondent forwarded a list of 150 students on the basis of their merit amongst 735 students. Only 9 out of 150 students reported and completed their admission formalities by 7:00 p.m. on 5th September, 2017, according to the College. A letter was

written by the College at 7:00 p.m. on 5th September, 2017 to the third Respondent requesting the third Respondent to provide students from the list of 735 students. Without waiting for a response from the third Respondent, at 7:32 p.m. on 5th September, 2017 the College issued an urgent notice informing all the 735 candidates who opted for admission pursuant to the notice issued by third Respondent on 4th September, 2017 to avail the opportunity of admission in the College. It was stated in the said notice that admissions will be made in the order of merit from amongst 735 students and the admissions would be completed by 11:59 p.m. on 5th September, 2017. In the meanwhile, 9 more students from the original list of 150 students sent by the third Respondent were admitted by the College. The College filled up 132 seats on 05.09.2017. On receipt of information about the admission of 132 students by the Petitioner-College on its own without being recommended by the third Respondent, the Medical Council of India by a letter dated 29th September, 2017 directed the Principal, Saraswati Medical College to discharge the 132 students who were admitted in violation of the Medical Council of India Regulations on Graduate Medical Education, 1997 (hereinafter, 'the Regulations'). This Writ Petition has been

filed challenging the letter dated 29.09.2017 in which notice was issued on 25.01.2018. The students continued to study and were permitted to take the examinations for the first year MBBS course by the Chhatrapati Shahu Ji Maharaj University, Kanpur, Uttar Pradesh.

5. Thereafter, this Court by an order dated 22th July, 2019 directed the result of the first year MBBS course to be declared provisionally, subject to the outcome of the Writ Petition. It was made clear in the said order that the students shall not claim any equities on the declaration of the result. I.A. No.14176 of 2021 has been filed by the students seeking a direction to permit them to appear in the second year MBBS examinations.

6. We have heard Mr. P.S. Patwalia, Mr. Ranjit Kumar and Mr. Gaurav Bhatia, learned Senior Counsel appearing for the College, Mr. Neeraj Kishan Kaul and Mr. Nikhil Nayyar, learned Senior Counsel, Mr. Trideep Pais, learned counsel for the students and Mr. Gaurav Sharma, learned counsel for the Medical Council of India. The contention of the College is that 132 students were admitted on 5th September, 2017 from the list of 735 candidates who have applied pursuant to a notice dated 4th September, 2017, strictly on the basis of merit amongst those who approached the College under

extraordinary circumstances. It was argued on behalf of the College that the third Respondent was lethargic in not allotting sufficient number of students for admission to first year MBBS 2017-2018 till 4th September, 2017 though he was informed about the order passed by this Court on 1st September, 2017 itself. On 5th September, 2017, the third Respondent allotted only 150 students out of whom initially 9 and thereafter 9 students took admission. The third Respondent was informed about the fact that only a few students took admission. However, the third Respondent did not allot students from the list of 735 students. Having no other alternative, the College made admissions from the list of 735 candidates who have applied pursuant to the notice issued by the third Respondent on 4th September, 2017. It was also argued on behalf of the College that the admissions were based on merit of the candidates who have applied and till date there is no complaint from any student that he/she was ignored in spite of being more meritorious than the students who were admitted.

7. The students pleaded ignorance about any illegality or irregularity in the matter of their admission to the first year MBBS course for the year 2017-2018. They responded to the notice issued by the third Respondent on 4th September,

2017. They were hopefully waiting for their admission, in case the 150 students who have been allotted to the College do not join. Only 18 from the list of 150 students sent by the third Respondent joined the College. Pursuant to the urgent notice, they participated in the selection process conducted by the College and were admitted on the last date fixed by this Court i.e. 5th September, 2017. As they cannot be held responsible for any violation of the Regulations, if any, they request this Court to permit them to complete the course as they are all NEET qualified candidates and their names were in the list of 735 students who applied pursuant to the notice issued by third Respondent on 4th September, 2017.

8. The learned counsel for the Medical Council of India relied upon Regulation 5 A of the Medical Council Regulations on Graduate Medical Education, 1997 to argue that all admissions to the MBBS course shall be on the basis of the merit list of the NEET. Admissions shall be made from the list sent by the Director General Medical Education on the basis of ranking of the students in NEET. The College can make admissions of students allotted by the Director General Medical Education. In case students from the list of 150 did not join before the last date, the College should have approached this Court for extension of time and for a

direction to the Director General Medical Education to allot more students. It was argued on behalf of the Medical Council of India that the students who were admitted contrary to the Regulations are not entitled to claim any equity and the College which acted in blatant violation of the Regulation is liable to be penalized suitably.

9. Regulation 5 A of the Regulations provides for counselling for admission to MBBS course in all medical educational institutions on the basis of merit list of NEET. According to the said Regulations, no admissions can be made by the Petitioner-College on its own. (See: ***Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors.***¹ and ***State of Maharashtra and Others v. D.Y. Patil Vidyapeeth and Others***²). By an order dated 22nd September, 2016 in ***State of Madhya Pradesh v. Jainarayan Chouksey & Ors.***³, this Court held that all admissions to medical colleges shall be made only as per the centralized counselling done by the State Governments.

10. The College ought not to have admitted 132 students by conducting a selection on its own without requesting the

1 (2016) 7 SCC 353

2 (2016) 9 SCC 401

3 (2016) 9 SCC 412

third Respondent to send more candidates. The third Respondent cannot be blamed for any delay on his part in carrying out the directions issued by this Court by its order dated 1st September, 2017 in Writ Petition No.515 of 2017. The College sent an email to the third Respondent at 6:32 p.m. on 1st September, 2017. Admittedly, 2nd and 3rd September were not working days. The third Respondent acted swiftly on 4th September 2017 and sought for applications from interested students for admission to the college in the first-year MBBS course. 735 students made applications. 150 meritorious students out of 735 were allotted to the College for admission to the first-year MBBS course for the academic year 2017-2018. Only 9 out of 150 students, according to the College took admission. The third Respondent cannot be said to have been negligent. On the other hand, the College ought not to have issued a notice at 7:30 p.m. on 5th September, 2017 and admitted 132 students in four hours. Admissions were made by the College from students who have approached the college after 7:30 p.m. on 5th September, 2017. It is very difficult to accept the submission on behalf of the College that students who were not in the list of 150 students, sent by the Director General Medical Education were all waiting for their admission after

7.30 p.m. on 5th September 2017. We reject the submission of the College that there was no other alternative, except to make admission from the list of 735 students who have applied pursuant to the notice dated 4th September, 2017 issued by the third Respondent.

11. The students who have secured admission cannot be said to be innocent as they knew fully well that their names were not recommended by the Director General Medical Education. We also do not agree that students and their parents were not aware that their admissions in College are contrary to the Regulations. In spite of the letter dated 29th September, 2017 issued by the Medical Council of India, the College did not discharge the students. The said direction issued by the Medical Council of India was not stayed by this Court. In spite of this, the students continued their first year MBBS course and managed to write the first year MBBS course examinations after being permitted by the University. Thereafter, they approached this Court for declaration of their results for the first year MBBS course examinations which was granted. 6 students out of 132 students failed in their first year examination. At present, 126 students have completed their second year MBBS course and are seeking

permission to appear and write the examination for second year MBBS.

12. The admission of 132 students in the College for the academic year 2017-2018 being completely contrary to the Regulations, the Writ Petitions are liable to be dismissed. However, taking note of the fact that the students have completed the second year MBBS course, cancelling their admissions at this stage would not serve any useful purpose. The students who joined the College knowing fully well that their admissions are contrary to the Regulations are directed to do community service for a period of two years after completing their MBBS course. The National Medical Commission shall decide the details and workout the modalities of the community service to be rendered by the 132 students. The Respondent No.6-University is directed to conduct the second year MBBS examination for 126 students admitted in the Petitioner-College and who completed their second year course at the earliest and declare their results. They shall be permitted to complete the MBBS course. This direction is issued only to save the students from losing three academic years in the peculiar facts and circumstances of this case and shall not be treated as a precedent.

13. Being aware of the fact that admissions cannot be made from students not allotted by the third Respondent, the College admitted 132 students on its own. Thereafter, the College permitted the students to continue their studies in spite of the direction by the Medical Council of India to discharge the students not being stayed. Intentional violation of the Regulations by the Petitioner-College while granting admission to 132 students in the first year MBBS course for the academic year 2017-2018 cannot be condoned. The Petitioner-College is directed to deposit an amount of Rupees Five Crores in the Registry of this Court within a period of 8 weeks from today. The Petitioners are directed not to recover the amount from the students in any manner whatsoever. We direct the National Medical Commission to constitute a Trust which shall include the Accountant General of the State of Uttar Pradesh, an eminent educationist and a representative of the State of Uttar Pradesh as Members of the Trust. The Trust constituted to manage the amount of Rupees Five Crores to be deposited by the Petitioner-College shall extend financial assistance to needy students seeking admission to medical colleges in the State of Uttar Pradesh. An Action Taken Report along with the copy of the Trust-Deed

shall be filed by the National Medical Commission within a period of 12 weeks from today.

14. The Writ Petitions are disposed of with the above directions.

.....J.
[L. NAGESWARA RAO]

.....J
[S. RAVINDRA BHAT]

**New Delhi,
February 24, 2021.**