

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

**CIVIL APPEAL NO.4437 OF 2021
(Arising out of SLP(C) No.33643/2018)**

MEDICAL COUNCIL OF INDIA

... APPELLANT(S)

VERSUS

RITWIK & ORS.

... RESPONDENT(S)

WITH

**CIVIL APPEAL NO. 4438 OF 2021
(Arising out of SLP(C) No. 7105/2021)**

**CIVIL APPEAL NO.4439 OF 2021
(Arising out of SLP(C) No.7078/2021)**

**CIVIL APPEAL NO.4440 OF 2021
(Arising out of SLP(C) No.7281/2021)**

ORDER

Civil Appeal No.4437 OF 2021 @ SLP(C) No.33643/2018

Leave granted.

The Medical Council of India (now The National Medical Commission) has filed this appeal challenging the judgment of the High Court by which a direction was given to admit respondent No.1 in the first year MBBS course. The first respondent applied for admission to the first year MBBS course for the academic year 2018-2019. Though he had been selected in the counselling, he

was not granted admission due to his inability to pay the fee before the last date i.e. 31.08.2018. By way of implementation of the judgment of the High Court, the 1st respondent was admitted to the first year MBBS course. The learned counsel for the 1st respondent informed this Court that he was also permitted to appear in the second semester examinations of the first year MBBS course pursuant to the interim order passed by this Court on 13.05.2019.

Learned senior counsel for the first respondent submits that he has completed second year MBBS course.

In the facts and circumstances of this case, we are not inclined to interfere with the judgment of the High Court. This order shall not be treated as a precedent. The appeal is, accordingly, dismissed.

Pending applications, if any, stand disposed of.

Civil Appeal No.4438 of 2021 @ SLP(C) No.7105/2021, Civil Appeal No.4439 of 2021 @ SLP(C) No. 7078/2021 & Civil Appeal No.4440 of 2021 @ SLP(C) No.7281/2021:

Leave granted.

Respondents No.1 in Civil Appeals appeared in the National Eligibility-cum-Entrance Test (Under Graduate) (NEET-UG) examination held on 05.05.2019. They were not admitted to the course after the completion of the counselling. They preferred representations to the concerned authorities that students with lesser merit have been given admission to the MBBS course for the academic year 2019-2020. As their pleas went unheeded, they approached the High Court

by filing a writ petition seeking admission to the first year MBBS course. The High Court directed the respondents in this writ petition to admit the students to the first year MBBS course for the year 2020-2021 in the vacant seats that existed for the academic year 2019-2020. The first year MBBS course for the academic year 2020-2021 commenced on 01.02.2021. The respondents No.1 in these appeals have been admitted in February, 21 pursuant to the order passed by the High Court and they have been attending classes since then.

The National Medical Commission has filed these appeals challenging the order dated 09.02.2021. The learned counsel appearing for the Commission submitted that the High Court committed an error in directing the admission of respondents No.1 in these appeals in the vacancies that arose in the academic year 2019-2020. He submitted that the judgment of the Calcutta High Court in ***Kaunain Nawaz Raza v. Union of India & Ors.*** in MAT 1202 of 2019 is in the peculiar facts of that case and that it could not have been taken as precedent by the High Court to pass an order in favour of respondents No.1. He further submitted that the judgment of this Court in ***S. Krishna Sradha v. The State of Andhra Pradesh & Ors. reported in 2019 SCC Online SC 1609*** cannot come to the rescue of the respondents as they approached the High Court one and a half year after the last date of admission for the academic year 2019-2020.

Mr. P.V. Surendranath, learned senior counsel appearing for the students in Civil Appeal 4438/2021 arising out of SLP (C) No. 7105/2021 and Civil Appeal 4440/2021 arising out of SLP (C) No. 7281/2021 submitted that the vacant seats which existed for the year 2019-2020 were not notified even during the mop-up counselling. The students were not aware about the vacant seats. Having learnt

that vacant seats were available, the students approached the authorities by preferring representations which were not considered. As there was no other alternative, the students approached the High Court by filing a writ petition seeking admission in those vacant seats for the academic year 2019-2020. He further argued that there is no dispute that students who were less meritorious have been given admission in the first year MBBS course for the academic year 2019-2020.

Mr. Navare, learned senior counsel appearing for the respondents in Civil Appeal 4439 of 2021 arising out of SLP (C) No. 7078/2021 took us through the writ petition filed in the High Court to demonstrate that the writ petitioner is much more meritorious than those students who had been granted admission to the first year MBBS course for the academic year 2019-2020. Therefore, the High Court was right in directing the admission of Respondent No.1.

The submission of the learned senior counsel appearing for the students is that they should be permitted to continue their course and appear in the first year examination, especially when there is no dispute about the existence of vacant seats for the year 2019-2020.

Mr. Subhasish Bhowmick, learned counsel appearing for the University submitted that there were vacant seats for the academic year 2019-2020 which were unfilled. The students have been admitted pursuant to the judgment of the High Court.

It is clear from the above facts that the students filed writ petitions for admission to the first year MBBS Course for the academic year 2019-2020 only

in January, 2021. It is true that a few vacant seats were available for admission for the year 2019-2020. It is also correct that students who were less meritorious than the writ petitioners have been granted admission in the year 2019-2020. In ***S. Krishna Sradha v. The State of Andhra Pradesh & Ors.*** (supra), this Court highlighted the need for providing restitutorial remedy in rare cases. However, the conditions for grant of relief or for seeking admission to the available courses after the last date have been mentioned in para 33 of the judgment. One crucial condition is that the student has to approach the Court at the earliest and without any delay. It was further mentioned in the judgment that in case admission is directed to be given to the students, the number of seats allotted in the management quota for the next year has to be reduced.

The direction given by the High Court pertains to the admission for the academic year 2019-2020. The High Court ought not to have shown indulgence to the writ petitioners by directing admission in the vacant seats that arose in the year 2019-2020 and permit the students to start their course in the academic year 2020-2021. We are aware that the interference by this Court would cause loss of an academic year to the students. However, we cannot support the judgment of the High Court in granting admission for the year 2020-2021 as it is contrary to the judgment of this Court in ***S. Krishna Sradha*** (supra) case. The students approached the High Court almost one and a half year after the last date of admission of the first year MBBS course for the academic year 2019-2020.

In the aforesaid facts and circumstances of the case, the appeals are allowed and the judgment of the High Court is set aside.

Pending applications, if any, stand disposed of.

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

.....J.
[ANIRUDDHA BOSE]

**NEW DELHI;
26th JULY, 2021**

ITEM NO.36 Court 6 (Video Conferencing) SECTION XVI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 33643/2018

(Arising out of impugned final judgment and order dated 11-10-2018
in WP No. 20592/2018 passed by the High Court at Calcutta)

MEDICAL COUNCIL OF INDIA Petitioner(s)

VERSUS

RITWIK & ORS. Respondent(s)

([ONLY IA NOS. 78338/21, 78664/21, 78675/21 IN SC. 7105/21, 7281/21
AND 7078/21 RESPECTIVELY TO BE LISTED.])

WITH

SLP(C) No. 7105/2021 (XVI)
(IA No. 78338/2021 - APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 7078/2021 (XVI)
(IA No. 78675/2021 - APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 7281/2021 (XVI)
(IA No. 78664/2021 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 26-07-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE ANIRUDDHA BOSE

For Petitioner(s) Mr. Gaurav Sharma, AOR
Mr. Prateek Bhatia, Adv.
Mr. Dhawal Mohan, Adv.

For Respondent(s) Mr. Sudhansu Palo, AOR

Mr. P. V. Surendranath, Sr. Adv.
Mr. Vinay Navare, Sr. Adv.
Mr. Jenis V. Francis, Adv.
Mr. Anupam Mishra, AOR

Mr. Subhasish Bhowmick, AOR
Ms. Manisha Pandey, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal No.4437 OF 2021 @ SLP(C) No.33643/2018:

Leave granted.

The civil appeal is dismissed in terms of the signed order.

Pending applications, if any, also stand disposed of.

Civil Appeal No.4438 of 2021 @ SLP(C) No.7105/2021, Civil Appeal No.4439 of 2021 @ SLP(C) No. 7078/2021 & Civil Appeal No.4440 of 2021 @ SLP(C) No.7281/2021:

Leave granted.

The civil appeals are allowed in terms of the signed order.

Pending applications, if any, also stand disposed of.

(SWETA BALODI)
COURT MASTER (SH)

(ANAND PRAKASH)
BRANCH OFFICER

(Signed order is placed on the file)