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W.P.No.17527, etc. of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Orders :
01.02.2022

Date of Pronouncing Orders :
29.04.2022

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.Nos.17527, 17556, 25062, 25066, 25216, 27121, 27284, 27506, 30375 of 2017

W.M.P.Nos.19053, 26469, 26476, 26662, 27121, 28977, 29402, 33117, 33118 of 2017

and

W.P.Nos.5985, 17015, 17346 & 21816 of 2018

and

W.M.P.Nos.7366, 7367 20269, 20607, 25593 and 25594 of 2018

W.P.No.17527 of 2017 :-

Sri Manakula Vinayagar Medical College & Hospital,

(Sri Manakula Vinayaga Educational Trust)

rep. by its Dean Dr.K.Karthikeyan.

No.41, Vellallar Street, Puducherry – 1.

...Petitioner

Vs.

1. The Government of Puducherry,

rep. by its Secretary,



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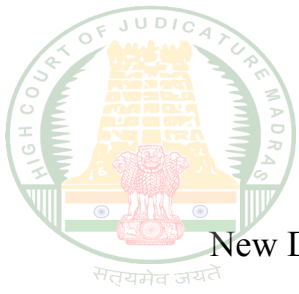
Department of Health,
Health Secretariat, Puducherry – 605 001.

2. The Vice Chancellor,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry – 605 014.

3. The Deputy Registrar (Academic)
Academic Section,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry – 605 014.

4. Controller of Examinations (i/c)
Pondicherry University,
Examination Wing,
R.V.Nagar, Kalapet,
Puducherry – 605 014.

5. The Secretary,
Medical Council of India
Pocket-14, Sector -8,
Dwarka Phase- 1,



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New Delhi – 110 077.

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6. The Puducherry Union Territory,

All CENTAC Students Parents Association,

rep. by its President, No.10, 9th Cross,

Krishna Nagar, Lawspet,

Puducherry – 605 008.

(R-6 suo moto impleaded as per order, dated 23.10.2017,

in W.P.Nos.25062, 25066, 17527, 17556 & 17573 to 17577/2017)

7. School and Higher Education Parents Students

Welfare Association (Regd) Rep. By

Mr.S.Subramanian, Founder President, 447-D Block,

Janani Blossam Apartment, 12 Cross Krishna Nagar,

Lawspet, Pondicherry – 605 008.

(R-7 suo moto impleaded as per order, dated

02.11.2021, made in W.M.P.No.31196/2017, in

W.P.No.17527 of 2017.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records, relating to the order of the fourth respondent, dated 05.07.2017, in his proceedings



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No.PU/CE/ES/2017/273, insofar as it imposes the restriction on the petitioner College, stating that "for the remaining students admitted under management Quota (NEET, 2016) examination will be conducted on receipt of recognition order from Academic Section, Pondicherry University" and to quash the same and to direct the first respondent to grant recognition to 95 students admitted under management quota in the I Year MBBS for the year 2016-17, Batch (List Annexed).

Appearance of the counsels :-

Counsel for Petitioners in W.P.No.17527

& 27506/2017 & } **Mr.B.Balavijayan**

Counsel for R-7 in W.P.No.27121/2017

Counsel for Petitioners in W.P.No.17556

& 27284/2017 Counsel for R-4 in W.P.No. } : **Mr.Abishek Jenasenan**

25062/2017, R-5 in W.P.Nos.25066 and

30375 of 2017.

Counsel for Petitioners in W.P.No.25062/2017 : **Mr.N.L.Rajah, Senior Counsel for Mr.Arun Anbumani.**

Counsel for Petitioners in W.P.No.25066/17 & 17015/18 : **Mr.P.H.Aravind Pandian, Senior Counsel for Mr.C.V.Shailandran**

Counsel for Petitioners in W.P.No.25216/2017

and R-4 in W.P.No.30375 of 2017 : **Mr.T.V.Lakshmanan**

Counsel for Petitioners in W.P.27121/2017 : **Mr.N.U.Pressanna**



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Counsel for Petitioners in W.P.No.30375/2017 : **Mr.V.B.R.Menon**

WEB COPY R-8 in W.P.No.25062/17

Counsel for Petitioners in W.P.No.17346/2018 : **Mr.S.Thankasivan**

Counsel for Petitioners in W.P.No.5985/2018 : **Ms.Monesha for Mr.S.Prem-anand**

Counsel for Petitioners in W.P.No.21816/2018 : **M/S.D.Nagasila**

Counsel for Respondents

1. Ms.Shubharanjani Ananth, Standing Counsel

R-5 in W.P.No.17527 of 2017,

R-3 in W.P.No.17556 of 2017,

R-1 in W.P.Nos.25062, 25066, 25216, 27121, 27284,

27506, 30375 of 2017 and 17015, 17346 and

21816 and 5985 of 2018.

2. Mr.C.T.Ramesh, Additional Government Pleader (Pondicherry)

R-1 in W.P.No.17527 and 17556 of 2017

R-2, 3 and 6 in W.P.No.25062 of 2017

R-2 and R-3 in W.P.Nos.25216 of 2017 and 21816 of 2018.

R-2 to 4 in W.P.No.25066, 27284 of 2017 and 17346 of 2018



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R-2 to 5 & 9 in W.P.No.27121 of 2017 and R-2 to R5 in W.P.No.17015 of 2018.

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R-2, 3 and 7 in W.P.No.30375 of 2017.

R-2 in W.P.No.5985 of 2018.

R-2 to R-6 in W.P.No.27506 of 2017

3. Mr.P.R.Gopinathan, Standing Counsel

R-6 in W.P.No.17015 of 2018.

4. M/s.A.V.Bharathi, Standing Counsel

for R-2 to R-4 in W.P.Nos.17527 of 2017,

and R-2 in W.P.No.17556 of 2017, R-5 in W.P.No.25062 of 2017

and 17346 of 2018, R-6 in W.P.No.27121 of 2017 and 30375 of 2017.

5. Mr.M.Ravi, R-7 in W.P.No.17015 of 2018

6. Mr.L.Swaminathan R-8 in W.P.No.17015 of 2018, R-6 in W.P.No.17346 of 2018, R-4 in W.P.No.21816 of 2018

7. Mr.Panchapakesan, Party-in-Person



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R-6 in W.P.No.17527 and 25066 of 2017,

R-4 in W.P.No.25216 and 17756 of 2017,

R-7 in W.P.No.27506 and 25062 of 2017,

R-8 and R-10 in W.P.No.27121 of 2017

8. Mr.S.Subramanian, Party-in-Person

R-7 in W.P.No.17527 and 25066 of 2017,

R-5 in W.P.N.17556 and 25216 of 2017,

R-9 in W.P.No.25062 of 2017.

9. Mr.K.Kumaresh Babu

R-3 and R-4 in W.P.No.5985 of 2018

10. Mr. P.S.Raman, Senior Counsel for M/s.T.Gowthaman

for R-7 to R-9 in W.P.No.17346 of 2018

COMMON ORDER

Before this Court proceeds to venture into the factual aspects of the matter, it would like to record its anguish here that, the present litigation is



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nothing but a reflection of a confabulation arisen due to the impulsive decision taken by the Medical Council of India and the second fiddle played by Government of Puducherry, whereby, the future of students, who aspired to become great Doctors/Physicians/Medical Practitioners, and so on in their life, is at stake and uncertainty.

2. Since the issue involved in these Writ Petitions is common and interconnected to one another, they were taken up together and disposed of vide this common order.

3. For the sake of brevity and easy reference, parties in these Writ Petitions, viz., i) Sri Manakula Vinayagar Medical College & Hospital, **(SMVMC)** ii) Pondicherry Institute of Medical Sciences **(PIMS)** ; iii) Sri Venkateshwara Medical College and Research Centre **(SVMC)**; iv) Sri Lakshmi Narayana Institute of Medical Sciences **(SLIMS)** and v) Mahatma Gandhi College and Research Institute **(MGC)**, Medical Council of India **(MCI)**; Government of Puducherry **(GOP)**; Controller of Examination **(COE)**; Permanent Admission Committee **(PAC)** shall be referred to as



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such throughout this judgment and order.

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4. Totally, 13 Writ Petitions have been filed, and except, the first two Writ Petitions, viz., W.P.Nos.17527 of 2017 and W.P.No.17556 of 2017, wherein, the challenge is to the impugned communication, dated 05.07.2017, whereby, the Controller of Examinations informed the Colleges that, examination for I Year MBBS will be conducted for the students, who were admitted under the management quota on receipt of recognition from Academic Section, Pondicherry University, in remaining all 11 Writ Petitions, the challenges are to both the communication issued by MCI, dated 07.09.2017, whereby, GOP was directed to discharge the students admitted other than by CENTAC for the MBBS Course for the academic year 2016-17, and the consequential order passed by GOP, dated 14.09.2017.

5. A) Three Colleges/Institutions have filed five Writ Petitions voicing out the grievance of their students :-

i) and ii) W.P.Nos.17527 and W.P.No.27506 of 2017,



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is filed by Sri Manakula Vinayagar Medical College &
Hospital (**SMVMC**).

iii) and iv) W.P.No.17556 and 27284 of 2017 are filed
by Pondicherry Institute of Medical Sciences (**PIMS**).

v) W.P.No.25216 of 2017 is filed Sri Venkateshwara
Medical College and Research Centre (**SVMC**).

B) The following are the Writ Petitions filed by the students
belonging to the aforementioned Colleges/Institutions respectively :-

i) W.P.No.25062, 25066 of 2017, is filed by the
students of the PIMS.

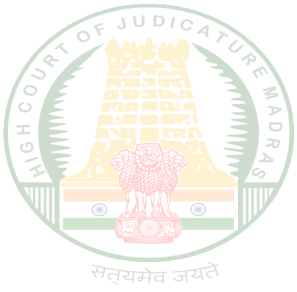
ii) W.P.No.27121 of 2017 is filed by the students of
the SVMC.

iii) W.P.No.5985 of 2017 is filed by the students of
the SLIMS

and

iv) W.P.Nos.17015, 17346 and 21816 of 2017 are
filed by the students of the MGMC.

v) W.P.No.30375 of 2017 is filed by the students of



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PIMS.

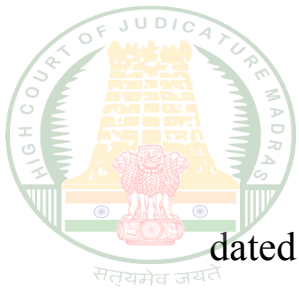
WEB COPY 6. Before going to the merits of the case, it is just and necessary

to state the facts briefly as under:-

i) The petitioners before this Court are both Colleges viz., i) SMVMC, ii) PIMS, iii) SVMC, iv) MGMC v) SLIMS and students, who are pursuing their MBBS Course for the academic year 2016-17, in the respective Colleges.

ii) Notices were issued by GOP to four Deemed to be Universities and three Private Medical Colleges to discharge the students and submit a compliance report on or before 19.09.2017.

iii) MCI introduced NEET for the first time in India during the academic year 2016 – 17. Subsequent to the order passed by the Hon'ble Supreme Court of India in the case of *Sankalp Charitable Trust & Anr. Vs. UOI and others*, dated 28.04.2016, in I.A.2 of T.C.No.7/2013



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dated 09.05.2016, NEET become mandatory through out India for admissions in Medical and Dental Colleges.

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iv) Therefore, MCI introduced Section 10-D by virtue of amendment in Indian Medical Council (Amendment) Act, 2016 and the same was notified in the Official Gazette on 05.08.2016. In terms of Section 10-D, all Medical Educational Institutions both the Under Graduate and Post Graduate level shall conduct uniform entrance examination. However, a request was made from various State Governments to exempt them from NEET Examination. Based on such request, a Notification was issued by the Central Government on 24.05.2016, exempting State Government at their option for admission of students in the State Government quota seats in Government Medical Colleges and in Private Medical Colleges. However, the said exemption will not be applied for management quota seats. Therefore, all the management quota seats shall be filled based on NEET marks.



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v) On 09.08.2016, Ministry of Health and Family Welfare,

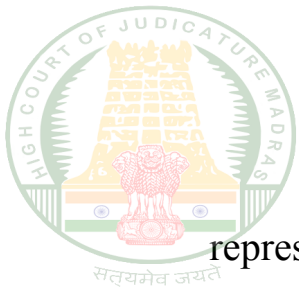
Government of India sent a letter to all the States/Union Territory Governments stating that they shall preferably go for combined counseling for admission to MBBS/BDS Courses in all Medical and Dental Colleges including Deemed to be Universities. The time schedule for completion of admission for MBBS/BDS Courses for the academic year 2016–17 is also enclosed along with the said letter. However, on 15.09.2016, the University Grants Commission (UGC) sent a clarification to all Medical Institutions Deemed to be Universities that, in the event, for any reason, common counseling is not being held by the State Government or the Deemed to be Universities are not covered in the State Government common counseling, Deemed to be Universities of that State should put up a transparent system of admission, under which, no student should be denied or deprived from applying for admission in that Deemed to be Universities and admission should be done based on purely *inter-se* merit amongst the applicants based on marks obtained in NEET.



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vi) The Government of Puducherry has not conducted any common counseling for the academic year 2016-17, for admission of students in 7 Medical Colleges situated in the State. By virtue of the notice, dated 26.08.2016, Government of Puducherry has stated that PAC will oversee the admission process in the Medical Colleges. On 07.09.2016, a schedule was also issued by the Director of Health and Family Welfare Services, Puducherry, for the purpose of admission in the Medical and Dental Colleges. PAC conducted its meeting on 07.09.2016, wherein, the representatives of the respective Colleges and the Deemed to be Universities had given representation to the Chairman, PAC along with the Court order and stated that the Deemed to be Universities do not come under the purview of PAC. The admission to the Colleges under the Deemed Universities are to be done by the University itself by following the guidelines of the UGC. The Chairman, PAC has stated that the Committee is aware of the rule position in respect of Deemed Universities and accepted the



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representation of the Colleges and the same was recorded.

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vii) The Government of Puducherry filed a counter before the Hon'ble Supreme Court of India in W.P.(C).No.939 of 2016, on 06.03.2017, wherein, it had admitted that the PAC oversees the common entrance test conducted by Private self financing Medical Colleges, excluding Colleges under Deemed Universities. Further, in Para No.15 of the said counter also stated that, purview of PAC will exclude the Colleges under Deemed Universities. Subsequent to the meeting conducted by PAC with the self financing Colleges, Colleges have furnished all the details as sought by PAC. PAC directed all the self financing colleges as well as the Deemed Universities to fill up the management quota seats on or before last cut-off date, i.e. 30.09.2016, based on which, the Colleges filled up seats, and no admission was made subsequent to the said date and all the details with regard to the admission made by the respective Colleges have been uploaded in the MCI website and the MCI also approved the same and they have not



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find any fault on the statement uploaded by the respective Colleges.

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viii) On 10.03.2017, a Notification was issued for common counseling, whereby, Section 5A was introduced to Regulations on Graduate Medical Education 1997, by virtue of Regulations on Graduate Medical Education (First Amendment) 2017. Therefore, before introduction of Section 5A, for common counseling, there was no regulation, which mandate the Colleges to conduct the common counseling.

ix) On 19.10.2016, the Chairman of PAC sent a report to the Chief Secretary to the Government of Puducherry. Subsequently, on 27.10.2016, a letter was issued by the Under Secretary to Government (Health), Government of Puducherry, to all Medical Colleges, based on PAC report. On 12.07.2017, Governor of Puducherry, Dr.Kiran Bedi, sent a letter attaching PAC report to the President, Medical Council of India. On 07.09.2017, MCI passed the impugned discharge order



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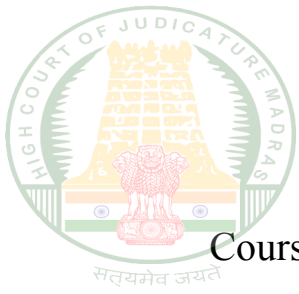
marking a copy to all the Colleges and the Government of Puducherry, based on which, Government of Puducherry, passed the consequential impugned order dated 14.09.2017, to discharge students, who are not admitted through CENTAC for the academic year 2016-17 and also students, who were admitted after the last date of admission i.e., 30.09.2016 in the respective institutions and to submit a compliance report on or before 19.09.2017, without fail. Insofar as impugned order, dated 05.07.2017, is concerned, the same is passed by Puducherry University stating that, I year MBBS Exam would be conducted only for those students, whose qualification are recognized and registered as matriculates of their University for the academic year 2016-2017 and for the remaining students admitted under the management quota (NEET 2016), examination will be conducted on receipt of recognition from Academic Section, Pondicherry University. Aggrieved over the impugned orders dated 07.09.2017, 14.09.2017 and 05.07.2017, the respective colleges and students have filed the present writ petitions.



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**Submissions made by the respective learned Senior Counsel and
counsel appearing for petitioners/Colleges/Students:-**

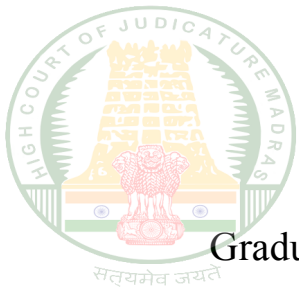
7. The learned Senior Counsel appearing for the petitioners would submit that there is no dispute with regard to the applicability of NEET for admission under the Management Quota for all the private Medical Colleges as well as the Deemed to be Universities situated in the Government of Puducherry. The Government of India introduced NEET and the Hon'ble Supreme Court also upheld the introduction of the NEET in the judgment rendered in *Sankalp Charitable Trust & Anr. Vs. UOI and others* judgment (referred supra). All the learned counsel would submit that the respective Institutions have admitted students, as per the meritorious marks obtained in NEET exam and based on merit list, all admissions have been made on or before 30.09.2016. MCI, by virtue of letter dated 09.08.2016 addressed to all the States and Union Territory have stated that the States/Union Territory Governments shall preferably go for combined counseling for admission to MBBS/BDS



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Courses in all Medical/Dental Colleges including Deemed to be

Universities. However, there was no regulation with regard to the conduct of common counseling, that is the reason why, the Colleges opted for common counseling. In few States there are certain regulations for the common counseling. Therefore, those States conducted the common counseling, based on NEET Marks. The Hon'ble Supreme Court also in the case of *Modern Dental College and Research Centre Vs. State of Madhya Pradesh* reported in 2016 (7) SCC 353 upheld the common counseling conducted by the State Governments with reference to state laws. By referring the above said judgment, the learned Senior counsel for petitioners would submit that, whichever States have regulation for conducting the common counseling, the judgment of the Hon'ble Supreme Court would apply, whichever States does not have any provision or regulation to conduct the common counseling, Universities have to conduct the counseling in a transparent manner. Since there was no provision for conducting the common counseling, MCI introduced Section 5A to the Regulations of



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Graduate Medical Education 1997, on 10.03.2017. Therefore, this regulation would apply for admissions in the academic year 2017 - 18.

Before the academic year 2017-18, there was no regulation for conducting the common counseling. As stated above, the learned Senior counsel also reiterated that the law laid down by the Hon'ble Supreme Court with regard to the common counseling in respect of those States, which have regulation for common counseling and would not apply to those States, which does not have any regulation for common counseling.

7.1 It is further submitted by the learned Senior Counsel appearing for petitioners that for the academic year 2016 – 17, for admissions in the Medical Colleges/Dental Colleges, Government of Puducherry does not have any regulation for conducting the common counseling. Therefore, the Government of Puducherry appointed the Chairman of PAC to monitor the admission process. Accordingly, a Notification was issued on 07.09.2016 and PAC also conducted a



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meeting on 07.09.2016. Referring to the mandates of PAC, the learned

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Senior counsel would contend that, mandates of PAC is as to how, admission should be made and what are the information the Colleges needs to be furnished. But, in the said mandates, it has categorically recorded that the representation of the Deemed to be Universities that it would not come under the purview of PAC and PAC also stated that it was aware of the said position and accordingly, it has accepted the representation of petitioners/Colleges. The Government of Puducherry also filed a counter affirming the said stand before the Hon'ble Supreme Court, in W.P.(C).No.939 of 2016, wherein, it has categorically stated that Deemed to be Universities would not come under the purview of the PAC.

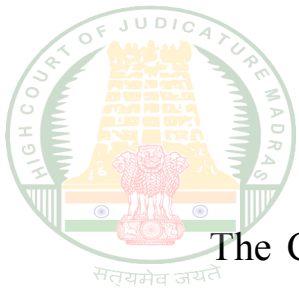
7.2 The learned Senior counsel appearing for the Deemed to be Universities also referred to Letters of MCI dated 15.09.2016 and the Government of Puducherry, dated 29.09.2016, wherein it has confirmed that, if, for any reason, common counseling is not being held



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by the State Government or Deemed to be Universities are not covered in the State Government common counseling, then, admission should be done purely on *inter-se-merit* amongst the applicants based on marks obtained in NEET. However, PAC complained of stating that the Colleges have not furnished the date of birth and other details, as sought by them and therefore, PAC was not in a position to find out the genuinity of the list furnished by the respective colleges.

7.3 The learned Senior counsel further submitted that admissions in both private colleges and Deemed to be Universities have been made purely on the basis of *inter-se-merit* based on NEET Examination amongst the students, who applied and they have also furnished the entire list to PAC. That apart, they have also uploaded the entire list containing the names of students, who were selected and admitted by the respective colleges in the MCI website, which is inclusive of the details, as sought by PAC. In fact, MCI has not at all raised any issue with regard to the mode of admissions made by the respective Colleges.



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The Chairman of PAC, who was a retired Judge of the Madras High Court has merely stated that she contacted the Colleges over the telephone, for which, there was no proper response. If at all, if there is anything, that requires clarifications from the Colleges, PAC ought to have to sought the same, in the form of writing, addressed to the Colleges. Had Chairman of PAC has sent any letter to the Colleges, seeking for any clarifications, the Colleges would have, perhaps, furnished those details, and the issue would have been sorted out long before the students complete their 1st year course, instead of doing so, Chairman of PAC has sent her opinion to the Chief Secretary to Government of Puducherry, which was forwarded to the Lieutenant Governor Dr.Kiran Bedi, who, in turn, forwarded the same to MCI on 12.07.2017. MCI, based on the letter of Dr.Kiran Bedi report along with the alleged complaint stated to have been made from President, Puducherry UT All CENTAC Students Parents Association (Regd.) regarding alleged illegal admission process in MBBS Courses at Puducherry for the academic year 2016 -17, passed the impugned

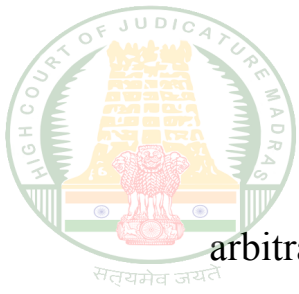


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discharge order dated 07.09.2017, resulting in GOP passing the consequential impugned order dated 14.09.2017, to discharge the students those who are not admitted through the CENTAC and admitted after 30.09.2016.

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7.4 The learned Senior Counsel further submitted that, in the impugned order, there is reference to the letter of Dr.Kiran Bedi, Lieutenant Governor, report of PAC, dated 19.10.2016, and also the complaint of CENTAC Students Parents Association, but, what was the allegation levelled against the Colleges in the so-called complaint, what prompted the PAC to take reliance on such complaint, what was gist of the Letter of the Lieutenant Governor have not been stated in the impugned order. Similarly, the consequential order passed by the Government of Puducherry also did not contain any such materials and they have also not given any opportunities to explain the case of the petitioners. Therefore, it is submitted that, in the absence of furnishing those particulars, a harsh decision was taken by MCI, which is



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arbitrary, and before taking such harsh decision, it is the duty of MCI to give an opportunity to the petitioner Colleges and the Students enabling them to give reply.

7.5 The learned Senior Counsel for petitioners/Colleges submitted that main allegation raised by the Chairman of PAC is that, Colleges have failed to furnish the date of birth, and hence, there were not in a position to find out the genuinity of the list furnished by the respective colleges, when PAC is abreast of those details, as the Colleges have admittedly uploaded those details in MCI website itself. At least, MCI or its Sub-Committee could have taken an effort to find out the date of birth of students, who were admitted in the Colleges, in the event of suspicion raised by PAC. Therefore, the learned Senior Counsel submitted that, when the report of PAC itself, is based on suspicion, the same cannot be relied upon and form a ground to pass any drastic order, that too, without giving opportunity to Colleges and students, to putforth their contentions/reply. Therefore, the learned



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Senior Counsel submitted that the elementary principles of providing an opportunity to the opposite party, before passing the impugned order was not followed and hence, the impugned order suffers from violation of principles of natural justice.

7.6 By referring to the judgment of the Hon'ble Supreme Court in **Modern Dental College and Research Centre Vs State Of M.P.**(referred supra) the learned Senior counsel submitted that the said case will not apply to the case on hand for the simple reason that the Hon'ble Supreme Court has passed the order, where, the respective State Government have already passed the regulations for conducting the common counseling and when the same was put to challenge, the Hon'ble Supreme Court upheld the Regulations/Act passed by the respective State for conducting the common counseling. Therefore, it is submitted that the said judgment will not apply to the present case, since the Government of Puducherry does not have any regulation for conducting the common counseling.



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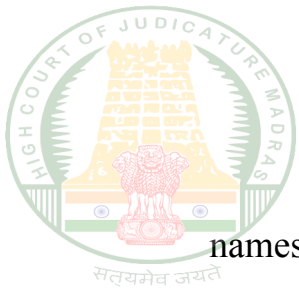
7.7 Further, the learned Senior counsel submitted that MCI proceeded to pass impugned order under the impression that all admissions can be made only through CENTAC, without knowing, what is the role of CENTAC. The role of CENTAC was to admit the students for the State Government seats. As far as the Management quota seats are concerned, CENTAC has no role to play. On the other hand, the impugned order was passed, as if, the admission process through CENTAC would apply even for the Management quota seats. Therefore, it is submitted that the impugned order is passed, on account of lack of understanding on the part of the officials of the MCI. Had MCI understood the role of the CENTAC, they would not have passed the impugned order, thereby, putting the students in trouble. Further, the impugned order, dated 05.07.2017, passed restraining the participation of the examination of the students for the first year MBBS Course also will not stand on the way, since the impugned order itself is liable to be quashed, for the simple reason that the MCI has



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passed the impugned order only on misunderstanding that the CENTAC would apply. That apart, they have not given any opportunities to the petitioners to put forth the case by furnishing the copies of the report of the PAC and letter of the Lieutenant Governor and also the complaint of the Association. Therefore, the learned Senior Counsel submitted that the impugned order dated 07.09.2017 and the consequential order dated 14.09.2017 and the order, dated 05.07.2017 are liable to be quashed.

7.8 Mr.V.B.R.Menon, one of the learned counsel appearing for the petitioners would submit that, the respondents, viz., MCI, GOP, or PAC have written to the petitioners/students within a reasonable time pointing out that, their admission is illegal. The learned counsel submitted that the impugned order, other than stating that no combined merit list was prepared, has not stated as to how, the norms relating to fairness and transparency have been violated. For this reason alone, the impugned communication is arbitrary and deserves to be set aside, for, in respect of transparency, the



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names of the students, who have been selected as well as their marks obtained in NEET have been uploaded by the respective Colleges on the website of MCI, therefore, the norms relating to transparency have not been violated. As far as fairness aspect is concerned, the impugned communication do not indicate how exactly fairness has been overlooked. The learned counsel submitted that the directions issued by MCI, in its impugned order are disproportionate, vis-a-vis the alleged deficiencies and consequently, arbitrary and it also discloses that, MCI has not independently applied their mind to see whether all non-meritorious candidates have been admitted, when the fact remains that students were all admitted only on the basis of NEET scores. Therefore, the learned counsel submitted that the impugned communications are illegal, as they are bereft of essential particulars and are vague.

7.9 The learned counsel further submitted that, going by the impugned communication of MCI itself, it is transpired that MCI themselves did not choose to act on the report of PAC, dated 19.10.2016 for nearly a year. In November, 2016, MCI is stated to have directed the



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admissions of a number of students to be cancelled. However, no such direction was passed in respect of 778 students, whose admissions are sought to be cancelled by virtue of the impugned orders. The learned counsel further submitted that none of the petitioners/students are responsible for any of the alleged deficiencies, assuming that there are. It is only an issue of inability of three principal players, viz., MCI, GOP and PAC to work out a concerted action plan with regard to admission of students for the academic year 2016-17, for which lapse, the petitioners/students cannot be put to any disadvantage or suffering, as, by this point of time, the petitioners/students have completed four years study and are undergoing fifth year in the MBBS Course and have fully involved themselves in the course.

7.10 In support of their submissions, learned Senior counsel for the petitioners relied on the following decisions of the Hon'ble Apex Court:

- (i) *Sankalp Charitable Trust & Anr. Vs. UOI and others;***
- (ii) *Modern Dental College and Research Centre Vs. State of Madhya Pradesh reported in 2016 (7) SCC 353;***



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(iii) State of Madhya Pradesh Vs. Jainarayan Chouskey

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(iv) Mohinder Singh Gill and Others vs. The Chief

Election Commissioner, New Delhi and Others reported in

1978(1) SCC 405;

Submissions made on behalf of the respondents/MCI/GOP/COE/PU:-

8. Mr.C.T.Ramesh, the learned Additional Government Pleader appearing for the respondent/GOP submits that, batch of these Writ Petitions have been filed with a similar prayer to call for the records of MCI and the consequential order of the GOP, Puducherry and to quash the same and to direct the respondents to approve and permit the students admitted in the MBBS course under the management Quota for the academic year 2016-17.

8.1 The learned Additional Government Pleader referred to a decision of the Hon'ble Supreme Court, in **Sankalp Charitable Trust & Anr. Vs. UOI** and submitted, the Hon'ble Supreme Court, in the said



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decision held that the admission to MBBS course is on the basis of merit secured in NEET for the academic year 2016-17. In the Union territory of Puducherry, there are 7 private Medical Colleges, including 4 Deemed to be Universities Medical Colleges and total seats for MBBS course for the year 2016-17 is '1050'. The Private Medical Colleges, by consensus have agreed to allocate 283 seats for Government Quota and 767 for management Quota seats. The State of TN and UT of Puducherry have obtained an exemption from NEET for admission to Government Quota seats for the academic year 2016-17.

8.2 The learned Additional Government Pleader further submitted that the Centralized Admission Committee (CENVAT), constituted by the Government of Puducherry had entrusted to conduct a counseling for admission to MBBS course to Government Quota seats based on the Higher Secondary marks and the GOP requested the PAC to oversee the admission for the management Quota seats on NEET merit for the same academic year 2016-17.



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8.3 The learned Additional Government Pleader submits that,

PAC conducted a meeting with the representatives of all Private Medical Colleges and Deemed to be Universities, viz., I) PIMS, II) SMVMC, III) SVMC, IV) MGMC, V) Aarupadai Veedu Medical College, Puducherry and VI) Vinayaka Missions Medical College, Karaikkal, where, consensus was arrived at for the time schedule for admission of students in first year MBBS course and was directed to follow the said schedule for admission process subject to the following conditions:-

(a) On receipt of the filled in application forms within the time prescribed, the institutions shall prepare the rank list based on the performance of the candidates in NEET examinations and sent it to the Committee for approval, before its publication. The Institutions shall also along with the rank list, furnish necessary details, such as names of the candidates, register number and percentile score in NEET and marks obtained in the qualifying examination, community of the candidate and the status of the Institution whether minority or not, along with the nature of the minority status, to the Committee in quadruplicate.



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(b) On approval of the rank list by the Committee, the Institutions shall publish the rank list in respective institutions. The approved list of selected candidates shall likewise be submitted to the Committee's office. The Institutions shall also host the rank list in its official website.

(c) Subject to the guidelines issued from time to time by MCI, GOI and GOP, the 1st Round of Counseling/Admission shall begin on 11.09.2016 after the Publication of the rank list as per the merit of the candidates and shall be completed on or before 16.09.2016. On completion of admission, the list should be furnished to the Committee by the Institutions.

(d) The minority institution shall admit students of its community/language on the basis of which minority status was conferred on the Institutions, based on the inter-se merit among the minority students. If the seats cannot be filled up from among the students of the community/language as the case may be, then the unfilled seats shall be filled up



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admitting students of other communities or other languages as the case may be on the basis of merit list of the institutions on getting approval from the Committee.

(e) The list of students admitted, their rank number, the category under which admission were made and other related particulars and details shall be forwarded to the Committee forthwith.

(f) The Committee hereby directs the Institutions not to collect capitation fee in any form from the students, since it is strictly prohibited as per the SC judgments."

8.4 The learned Additional Government Pleader submits that proceedings of PAC meeting was circulated by the Health Secretariat, GOP, vide letter dated 09.09.2016. While so, complaints have been received from various aggrieved parents, individuals as well as through Associations that, Private Medical Colleges have denied admission to meritorious candidates and have demanded exorbitant fee against the fee fixed by the Fee Committee, which is against the principles of admission, which reads as



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follows :-

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1. Triple Test : As for as admission - Transparency, Merit & Fairness.
2. Regulation at the inception and not as post audit.

(As per the Judgements of Supreme Court).
3. G.O.No.41, dated 29.03.2004 issued by the Chief Secretary (Education),
4. GOP to constitute Fee Committee.

All the Colleges accepted and not challenged.

8.5 The learned Additional Government Pleader submits that, the Chairman of PAC had sent two letters, (i.e., one relating to admission at Self financing Private Medical Colleges and another one relating to Deemed to be Universities, dated 19.10.2016) to the Chief Secretary of GOP for further course of action. The Chairman, PAC has made the following observations in the letters are as follows :-

Self financing Private Medical Colleges:

- *In the current academic year, contrary to the earlier consortium based admission procedure on NEET based admission, the private*



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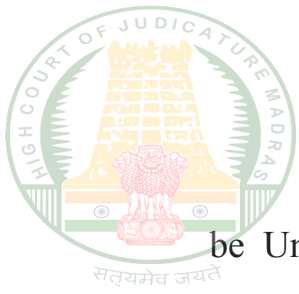


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Medical Colleges preferred to go for individual procedure calling for an application in their respective colleges, they informed the same in the first Committee meeting held on 07.06.2016.

- The private Medical Colleges never submitted the admission list as per the schedule agreed despite being the reminders sent by the Government to submit the same to the PAC for its verification, the private Medical Colleges on many occasions failed to submit relevant data at the stipulated time hindering the very purpose of upholding transparency and direction given by the MCI/SC.*
- A general complaint was made by all the candidates represented by the parents/parents association for denial of admissions unjustly demanded excess fee with high NEET percentile in three colleges because excess fee was demanded contrary to the Fee Committee directions. The complaint also included four NEET disqualified candidates. Thus the colleges merit has become a casualty.*
- While dealing with admission of NEET successful candidates, the Hon'ble Supreme Court directed strict compliance on merit alone and any deviation would have to be dealt with severely.*

8.6 The learned Additional Government Pleader submitted that, consequent to the directions of the Hon'ble Supreme Court, the Deemed to



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be Universities also come under the supervision of State Committee on admission on NEET Eligibility candidate. The Health Secretariat issued Circular(s), dated 29-09-2016 and the Reminder-I, dated 30.09.2016, to the Deemed to be Universities to be part of common counseling conducted by the State/Central Government and as directed by the Chairman of the PAC, they were called upon to furnish the list of students admitted in the Institutes, containing the name of the candidate, NEET Register No., DOB, NEET Rank, NEET percentile etc, pursuant to which, the following response were received from the Medical Institutes Deemed to be Universities/Minority Institutions:-

- *Mahatma Gandhi Medical College and Research Institute, Puducherry, furnished the list of students admitted in the 1st year MBBS course under management quota and through CENTAC. But in the list they have not furnished the DOB of the candidates, hence, it is not possible to cross verify the NEET score/percentile in the CBSE website.*

Further, it is stated that, the college has mentioned that the cut-off date for admission of students has been extended by MCI till 7th October, 2016. Hence, the final list of candidates, the drop outs, and



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the lapsed seat should have been submitted on or before 7th October, 2016, as on date, the Office is yet to receive the final list.

- *Arupadaiveedu Medical College and Research Institute, Puducherry and Vinayaka Mission's Medical College and Hospital, Karaikal, stated that the above two colleges are constituent colleges of Vinayaka Mission University, Salem, and the combined counseling for the above two colleges were conducted in the University Head Office located at Salem, TN. Since they were in receipt of the direction of the PAC about the details regarding the admission of 1st Year MBBS students was being complied at University Administrative Office at Salem. Hence, it was assured that the final list of candidates admitted would be submitted in due course.*
- *In the case of Sri Lakshmi Narayana Institute of Medical Sciences, Puducherry, no response has been received from the College, regarding furnishing of final list of students admitted in their college despite several telephonic calls been made, there was lack of co-operation in sharing the information on admission of students based on NEET percentile.*

The Committee is not aware of the total number of seats lying vacant as on 30-09-2016, nor is it in the knowledge of the number of admitted candidates as per NEET percentile. The Committee can only



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observe that the entire exercise by the Deemed Universities is in total violation of the Hon'ble SC order.

8.7 The learned Additional Government Pleader submits that, the GOP, on receipt of the report from the Chairman of PAC called for the explanation from the Private Medical Colleges for violations of the directives of the Hon'ble Supreme Court and non adherence of the instructions of the PAC. The learned Additional Government Pleader further submits that, the MCI vide letter, dated 07.09.2017 has stated that the Monitoring Sub-Committee of the MCI accepts the observations made by the Chairman of PAC in her report dated 19.10.2016 and also finds that there are some deficiencies apparent on the face of record as follows :-

Deemed University Medical Colleges :-

- *No combined merit list of the NEET qualified candidates was made by the above named Medical Colleges.*
- *Prima facie this indicates that the direction of the Hon'ble Supreme Court to maintain transparency and fairness in the admission process has been totally and blatantly disregarded. Further, more a*



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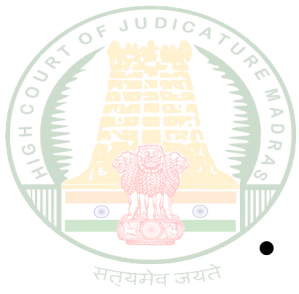


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letter dated 15.09.2016 was sent by the UGC to the VC of all deemed Universities that they shall be part of Common counseling for admission in medical courses organized either by a State Government or through agency based on the marks obtained in NEET. The above Medical Colleges have not followed the process even for admission made after this date. This reinforces the observation of the Monitoring Sub-Committee that transparency and fairness were probably last thing in the minds of the authorities of these colleges.

Private Medical Colleges

- The admission to the private Medical Colleges were to be made through CENTAC but these colleges also have given admission only to a limited number of students through CENTAC the remaining students (management quota) were admitted on the basis of NEET. However, they have also not demonstrated any evidence of fairness and transparency in the admission process, because, no combined merit list was prepared.*
- In the light of the above observations the MSC recommends that all students except those who were admitted through CENTAC for the Academic year 2016-17 should be discharged.*



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- *Further, any admission that has been made in MBBS course as alleged in the complaint from President, Puducherry UT All CENTAC Students Parents Association(Regd.) after 30/09/2016 are irregular. Hence, these candidates should also be discharged.*

8.8 The learned Additional Government Pleader further submitted that the Executive Committee approved the recommendations of the Monitoring Sub-Committee, consequently, GOP vide impugned notice dated 14.09.2017 directed to discharge all the students, who were not admitted through CENTAC for the Academic Year 2016-17 and also those admitted after last date of admission i.e., 30.09.2016 and submit compliance within two weeks from the date of dispatch of this letter to Committee and by 19.09.2017 to GOP, failing which, necessary action will be taken in the matter. Therefore, the learned Additional Government Pleader submits that the Private Medical Colleges have denied admission to meritorious candidates and admitted students without following the order of merit in NEET and the admission was not done in a transparent manner and also not furnished the list of admitted students in time to the PAC to oversee the admission process, and thereafter, violated the directives and instructions of



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the Hon'ble Supreme Court. Therefore, the learned Additional Government

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Pleader submitted that, all the Writ Petitions deserves to be dismissed and also sought for imposition of heavy penalty to the Private Medical Colleges and Deemed to be Universities.

8.9 The learned Additional Government Pleader submits that in the Writ Petition Nos. 17346 & 21816 of 2018 and W.P.No.13251 of 2019 filed by MGMC, the PAC stated that, “neither the Committee is aware of total no. of seats lying vacant as on 30.09.2016 nor is it in the knowledge of the number of admitted candidates as per NEET percentile. The Committee can only observe that the entire exercise by the Deemed to be Universities is in total violation of the Hon'ble Supreme Court's Order. Hence, the admission done by the Deemed to be University is *prima facie* in violation of the Hon'ble Supreme Court order and did not subject themselves to PAC.

Submissions of the Standing Counsel for MCI

9. Ms.Shubharanjani Ananth, the learned Standing Counsel for MCI submits that, pursuant to a complaint received from the Students Parents



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Association regarding illegal admissions granted in the MBBS course for

the academic year 2016-17, an enquiry has been conducted. The MCI also received a letter, dated 12.07.2017 from the Hon'ble Lieutenant Governor of Puducherry and reports, dated 19.10.2016, from Hon'ble Ms. Justice Chitra Venkataraman (Retd.) being the Chairman of the PAC and GOP. In the reports, dated 19.10.2016, it is stated that, in view of the directions of the Honourable Supreme Court, admissions in MBBS course for the academic year 2016-17, has to be made on the basis of merit list prepared from NEET UG, without any exception and that admissions were to be granted on the basis of the common counseling conducted by CENTAC, GOP, but, no combined merit list was prepared of the NEET qualified candidates, and only a limited number of candidates were granted admissions to private Medical Colleges on the basis of the common counseling conducted by CENTAC.

9.1 Therefore, the learned Standing Counsel submitted that, since the direction of the Hon'ble Supreme Court to maintain transparency and fairness in the admission process had been totally and blatantly disregarded,



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the Monitoring Sub-Committee constituted by MCI, after due discussion

and deliberation had accepted the reports, dated 19.10.2016, that there was a

blatant violation of the directions of the Hon'ble Supreme Court, in respect

of the manner of granting admissions to MBBS course, and decided that all

the students, except, those, who were admitted in MBBS course through the

counseling conducted by the CENTAC, GOP, for the academic year 2016-

17 should be discharged and in view of the law laid down by the Hon'ble

Supreme Court, in **Mridul Dhar vs. Union of India (supra)** students

admitted beyond 30th, September, 2016 were also bound to be discharged.

The recommendation of the Monitoring Sub-Committee was considered by

the Executive Committee of MCI at its meeting held on 30.08.2017, and

after discussion, recommendations were approved and MCI has been

directed to submit a compliance report in this regard within two weeks.

Accordingly, impugned order is passed. In the typed set filed in support of

W.P.No.17015 of 2018 and set out in the additional typed set, dated

12.01.2022, filed by respondent No.7/MGMC, the list of such candidates,

who have been admitted beyond 30th, September, 2016 is set out together

with the particulars of such candidates with due reference to the Petition



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Number and Writ Petition on record before this Hon'ble Court, but, no affidavit in denial and/or material in denial has been produced before this Hon'ble Court to show that the students were not admitted beyond the last date of admission, i.e. 30.09.2016.

9.2 The learned Standing Counsel further submitted that, Regulation 7(6B) of the Graduate Medical Education Regulations, 1997 (hereinafter, referred to as 'GMER') specifically provides that students admitted beyond 30th, September, 2016 are supposed to be discharged and nothing contained in the MCI Act and/or Regulations imposes any fetter on the power of the MCI to direct the Institution/College to identify the student admitted beyond the cut-off date and/or other otherwise illegally admitted for the purpose of discharge and only the University/College has all relevant data for this purpose. The petitioners before this Hon'ble Court, both Colleges and students of respective Colleges have also not been able to provide the statutory basis in support of their contention that only MCI ought to have directly identified individual students, who were wrongly admitted and when such a task could not have been done through the University/College.

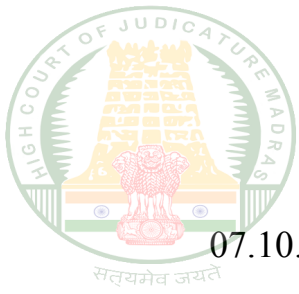


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9.3 The learned Standing Counsel further submitted that PAC was the appropriate designated authority in the Union Territory of Puducherry to oversee the admission process for medical Institutions in Puducherry and all meetings, processes and actions of such PAC have legal sanctity and purpose. MCI was right in appreciating the role of PAC as the Admission Overseeing Body, which had the duty to ensure that the Triple Test of Transparency, Fairness and Non-Exploitativeness was effectuated in the Admission Process and that, when such validly constituted PAC submitted reports with adverse observations and comments on the conduct of Institutions, MCI rightly acted upon such reports and placed the matter before its own Sub- Monitoring Committee for consideration.

9.4 The learned Standing Counsel further submitted that the Central Government, vide letter, dated 09.08.2016, directed that the counseling for admission to MBBS Course and allotment of Medical Colleges shall be conducted by the respective State/UT Government for the academic year 2016-17. The MCI sent a circular, dated 05.10.2016 and reminder, dated



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07.10.2016 to all the Medical Colleges/Medical Institutions to fill up the

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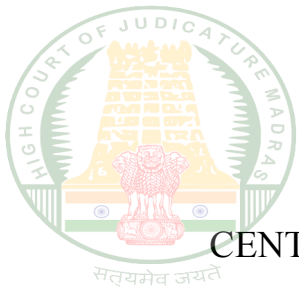
details of the students admitted for MBBS course for the academic year 2016-17, through MCI software till 07.10.2016 and also to send printouts of the details of the candidates admitted in the said course through the software duly signed and stamped by the Dean/Principal of the Colleges/Institutions along with the letter from the Director of Medical Education/State/UT Government fixing the ratio of Government and management quota latest by 15.10.2016. The letter also clearly states that onus of furnishing true, correct and authentic information is upon the College concerned, and in case of furnishing wrong/incorrect information, it is open to MCI to initiate action as is permissible in law. In response to the clarification sought for, the Dean/Principal of the respective Institutions furnished list of candidates, who were admitted in the 1st year MBBS course for the academic year 2016-17, and upon scrutiny of the same, it is found that there was no consensual agreement with the Union Territory of Puducherry for the seat distribution and MCI sought for clarifications in this regard from the respective Universities. In the meanwhile, since a complaint received from the Students Parents Association regarding illegal



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admissions granted in the MBBS course for the academic year 2016-17, MCI, vide letters, dated 23.05.2017, reminder, dated 02.06.2017, has requested the GOP, to send its clarification with regard to the allegation of illegal admissions granted, which is in violation of direction of the Hon'ble Supreme Court. The GOP, vide letter, dated 27.06.2017, submitted clarification in this regard, wherein, it is admitted that selection of candidates under government quota was made on higher secondary marks, whereas, selection of students in management quota with respect of private Medical Colleges was made by management of the Colleges without any centralized counseling conducted by the UT, Government.

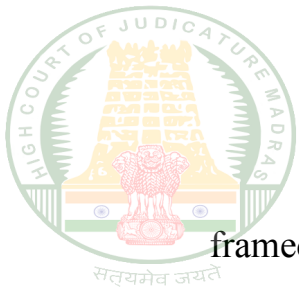
9.5 The learned Standing Counsel further submitted that the UGC had issued a notification to all the Deemed to be Universities, which had mandated that, all Deemed to be Universities should be a part of common counseling to be organised by the State Government or its agencies. Neither petitioners-students nor the respondent-Institutions have been able to produce any document on record to show that the students, who were admitted by the Colleges had appeared for common counseling before



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CENTAC. Therefore, it is amply clear that the students had been directly admitted by the Institutions in contravention to the procedure of counseling and granting admission for the academic year 2016-17. Since the petitioners/students had taken admission in the Institutions illegally, they cannot be granted any relief in these Writ Petitions.

9.6 The learned Standing Counsel submitted that MCI is a statutory authority created and consulted by the Central Government under an Act of Parliament, viz., Indian Medical Council Act. MCI is constituted under the provisions of the Act and has been given the responsibility of discharging the duty of maintenance of highest standard of medical education. In discharge of its statutory obligation towards maintenance of highest standards in medical education in the Country, by virtue of provisions of Section 33 of the Act, MCI has been empowered with the prior approval of Central Government to frame regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of medicine courses. The learned Standing Counsel further submitted that, in exercise of powers conferred by Section 33 of the MCI Act, MCI has



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framed regulations on Graduate Medical Examination and such regulations framed by MCI are statutory in character, and it is binding and mandatory on all concerned Universities and Colleges conducting medicine courses.

9.7 The learned Standing Counsel further submits that the Regulation 5 of GMER pertains to the criteria for selections of candidates to MBBS courses, which has to be adopted uniformly throughout the Country. An aspiring candidate, seeking admission to MBBS course must satisfy the requirement of Regulations, 1997, in terms of securing requisite marks in the given percentages/percentiles at both the qualifying examination as well as the NEET examination. Any admission to MBBS course, in contravention of the minimum requirement as stipulated in the Regulations, 1997, is not a valid admission. MCI cannot be a silent spectator or a static instrument but must initial activist steps to make Indian medical education. In fact, the Honourable Supreme Court has been pleased to reiterate the binding character of the regulations of the Council, through the following judgments:-



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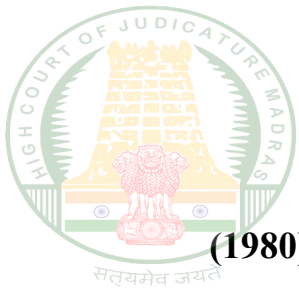
I) **Dr.Narayan Sharma and Another Vs. Dr.Pankaj Lehtar and Ors. (2000) 1 SCC 44.**

II) **State of Punjab Vs. Dayanand Medical College (2001) 8 SCC 664.**

III) **State of MP and others Vs. Gopal D.Tirthani and others (2003) 7 SCC 84.**

IV) **Harish Verma and others Vs. Ajay Srivastava and another (2003) 8 SCC 69.**

9.8 Therefore, the learned Standing Counsel submitted that MCI was legally empowered to pass discharge orders as per statute as well as, as per the judgments of the Hon"ble Supreme Court and such discharge orders were liable to be passed in case of admission of students beyond 30th September,2016, as per material produced before this Hon'ble Court of 106 students, for which, there is no denial by the Institution and such discharge orders were liable to be passed in all cases, where, admission is contrary to law as per Section 33 (1) of the MCI Act and as per the judgment of the Hon'ble Supreme Court, in **Dr. Jagadish Saran Ors. Vs Union of India**



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(1980) 2 SCC 768, every student admitted contrary to the Triple Test laid

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down by the Hon'ble Supreme Court is, therefore, liable to be discharged.

Therefore, the learned Standing Counsel submitted that the Writ Petitions lacks *bona fide*, and are filed by students only to gain undue sympathy from this Hon'ble Court and are basically a facade for the illegalities of the Universities/Colleges. The students, who have not secured admission on the strength of their merit but only on the ability to afford high fees do not deserve any sympathy.

9.9 The learned Standing Counsel submitted that, insofar as the allegation of the students and the Colleges/Institutions that impugned orders suffers from violation of principal of natural justice is concerned, the same is totally misconceived, because, the direction to discharge contained in the impugned order is directed towards College/Institutions, which, in turn, ought to have issued individual discharge letters, after identifying such students and compliance of principles of natural justice could have been only at the stage by the respective Institutions/Colleges. In any event, the students could have never justified the failure of the Institutions to have



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followed the admission Process and/or their non-cooperation with the PAC,

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Therefore, any opportunity of being heard to such students was nothing but a useless formality. The learned Standing Counsel further submitted that Colleges had ample opportunity to present their stand, however, they deliberately chose not to exercise the same. It is also be seen from the reports of the PAC that all Institutions were invited for a meeting with students on 07.09.2016 and the grievances were commonly shared amongst the attendees, but the Institutions did not choose to respond to the grievances and simply chose to leave the meeting and did not attend the same. In such circumstances, principles of natural justice could not have been said to be violated.

9.10 The learned Standing Counsel, in support of her contention that there is no violation of principles of natural justice relied on the following judgements of the Hon'ble Supreme Court;-

- i) In *Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise, (2005) 8 SCC 519*



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(at para.40) had held that, "the principles of natural justice has to be tested on touchstone of prejudice and in the absence of any prejudice caused; the same was only an empty formality, there could be no application of principles of natural justice."

ii) In instances of mass copying and fraud in the conduct of exams, the Hon'ble Supreme Court has held in ***Bihar School Examination Board vs. Subhas Chandra Sinha & Ors.,(1970) 1 SCC 648*** at para.13 & 14 "that individual notices to aggrieved parties were not required before cancelling the exams".

iii) In ***Abhishek Kumar Singh vs. G.Pattanaik, (2021) 7 SCC 613*** at Para.72 & 73, the Hon'ble Supreme Court had recently upheld the cancellation of selective process of candidates after finding that cancellation of the selection process even though no individual notices were sent to the candidates before such cancellation.



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9.11 The learned Standing Counsel, therefore, submitted that, the current discharge orders are all pursuant to the PAC Reports (Expert Committee) and the same had recorded large scale flouting of regulations and norms, and the reports were independently assessed by MCI and the impugned discharge orders were passed with due application of mind in the backdrop of law laid down by the Hon'ble Supreme Court from time to time and same requires no individual notices.

Submissions made by Mr.M.Ravi, learned counsel and Mr.Pancharakesan, Party-in-Person on behalf of respondent-All CENTAC Students Parents Association:-

10. The Party-in-person appearing on behalf of respondent CENTAC-Association, in the Writ Petitions, viz., WP Nos: 17527, 17556, 25062, 25066, 25216, 27121 and 27506 of 2017, Mr.M.Ravi, learned counsel appearing for the All CENTAC Students Parents Association in W.P.No.17015 of 2018 (hereinafter both the counsel and the party-in-person would be referred to as counsel for the Association) submits that, he has



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been suo moto impleaded as a party respondent to this writ proceedings, in

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view of the earlier orders of this Hon'ble Court. The counsel for the

Association submits that, the basis for passing the impugned orders is two-fold; viz. (i) the petitioners/students were not admitted through CENTAC for the academic year 2016-17; and (ii) the petitioners/students have been admitted after the last date of admissions i.e. 30.09.2016.

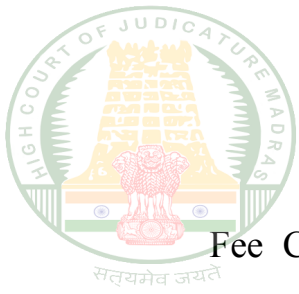
10.1 Insofar as the 1st fold is concerned, it is accepted and agreed by both the petitioners and the respondents in unison that neither CENTAC nor the PAC ever conducted a counseling for filling up of the management quota seats in the Private Medical Colleges. That being the case, what forced the Monitoring Sub Committee of the MCI to take the gravest step of discharging the students. The counsel for the Association submits that he is duty bound to explain to this Court, the manner, in which, the admissions was not done in a fair and transparent manner, as, it is his complaint, which formed the basis for issuance of the impugned order. In this connection, the counsel for the Association relies not only upon the compilation of several documents that have been submitted to various statutory governing bodies'



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including the MCI but also the observation, findings and Orders given by certain Sitting and Retired Judges of this Court and the said compilation forms part of the Typed Set of Documents submitted before this Court. The counsel for the Association would submit that PAC, which was entrusted to oversee the conduct of counseling to fill up the management quota seats in Private Medical Colleges, after discussions with the representatives of the Private Medical Colleges and arriving at a consensus on the counseling schedule, released a detailed schedule for the conduct of the counseling on the 07.09.2016. The said schedule starts with the release of advertisement by the Private Medical Colleges on 08.09.2016 and ends with the last date, up to which, the students can be admitted against vacancies arising due to any reason, which is 30.09.2016.

10.2 The counsel for the Association is also duty bound to reiterate the fact that any counseling should adhere to the triple test of Merit, Transparency and be Non-exploitative, and in this context, party-in-person would like to bring to the notice of this Court the letter written by Justice Mr.S.Rajeswaran, (Retd) Madras High Court in the capacity of Chairman,



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Fee Committee to the then Chief Justice of the Madras High Court, a portion of which, is extracted under:-

“.....But, I am sorry to state my Lord, that despite the clear and categorical notice/instruction issued by the Government as well as the Fee committee, the three above mentioned colleges are said to be still collecting exorbitant fees, as mentioned above, from the students, which is in total violation of the orders of the Honble Supreme Court.

Therefore, I am constrained to bring this overcharging of the students by the above mentioned three Medical Colleges, for appropriate action and to alleviate the sufferings of the parents and the students. The carious attitude of the colleges has resulted in a good student, who has passed the “NEET” examinations, not being able to get admitted in a college of his choice. I am told that many students, who seek admission in these colleges, with NEET marks have been sent out of the colleges without admission as if, they decline to accept the offer made. But the fact is, the students / parents have been sent back as they could not pay the exorbitant amount of fees that are being demanded by the above said Institutions. By collecting fees at the rate of



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about Rs.20 lakhs from a student, these three colleges collect roughly around Rs.80 lakhs in four years, which is nothing but the collection of Capitation Fee. This profiteering should be curbed immediately by the orders of this Hon'ble Court, as these three colleges, disregarding the orders of the Hon'ble Supreme Court and the subsequent orders that are being passed by the Fee Committee and the Government of Puducherry are collecting very high fees.

Therefore, the indulgence at this juncture by this Hon'ble Court would be of immense value to the student community, who toiled hard to qualify in the NEET examinations conducted by the CBSE. Your lordship may pass appropriate orders.”

8. The above observations were ratified by way of orders in WP Nos: 35895 8& 35923 of 2016 by the Honorable Justice Mr. T.S.Sivagnanam (as he then was) and WAP Nos: 996 8& 997 of 2017 by the Honorable Mr. Justice Rajiv Shakder and the Honorable Mr. Justice Abdul Quddhose filed by aggrieved students. After the pronouncement of the above orders, as an afterthought a batch of students who got admission jumping merit in the academic



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year 2016-2017 by submitting a declaration that they would pay the Fee fixed by the colleges, filed Writ Petition Nos: 23732 of 2017, 9472, 10550, 13039, 16924 of 2018. The Honourable Mr. Justice R.Subbiah and the Honourable Justice C.Saravanan were pleased to pass orders which reiterate the fact that the colleges had collected excess fees. A portion of the order is extracted herein under:

“ 74. Excess fee paid by the students admitted against the Management Quota so far should be adjusted against the fees payable by them for the succeeding academic years and if any there is any surplus after adjustment should be refunded back to them by the respective colleges without further delay.

75. In view of the above, we are of the view that the fee fixed by the fee committee headed by Mr. Justice S.Rajeswaran (Retd.) High Court, Madras for the academic year of 2015-16, 2016-17 and 2017- 18 shall be applicable to the students admitted during the academic years 2016-17 and excess fees paid by the Petitioners if any shall be refunded to



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the petitioners.”

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10.3 The counsel for the Association would submit that, a reading of the above orders would disclose the fact that meritorious students were not able to get admission to MBBS courses due to their incapacity to pay the illegally demanded exorbitant fees by the Private Medical Colleges, while students who were lower in merit were able to get admission because of their financial capacity to meet the demands of the colleges. The counsel for the Association would also like bring to the notice of the Court the observation made by Mrs. Justice(Retd.)Chitra Venkatraman, Chairman, Permanent Admission Committee, in her report, dated on 19.10.2016 to the Chief Secretary, Government of Puducherry, which is extracted herein under:-

“... 35. The Committee is not aware of the total number of seats lying vacant, till this date, nor is it in the knowledge of the number of admitted candidates as per NEET percentile. The committee can only observe that the entire exercise by the Private Medical Colleges is in total violation of the Hon'ble Supreme



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Court order.”

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10.4 The counsel for the Association would like to bring to the knowledge of this Court the orders passed by Justice G.Rajasuria, (Retired) High Court Judge, Madras, in the capacity of Chairman, Police Complaints Authority, Puducherry, in a petition filed by Thiru Dilip Daulatrao Jagdale against Sri Venkateswara Medical College. The above order copy forms part of the additional typed set of documents filed in this Court, the operative portion of the Order is extracted herein under:-

“ ...It is glaringly clear from the records placed before us that the college gave admission to the candidates over and above the sanctioned strength of 150...”.

Therefore, the counsel for the Association submits that the above findings would wrap up the contention that the counseling for admission of students in the MBBS course for the academic year 2016-17 was not conducted in a fair and transparent manner.



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WEB COPY 10.5 Insofar as the 2nd fold is concerned, the counsel for the Association submits that, it is apparently clear from the documents submitted by the Colleges to various authorities regarding the list of admitted candidates, which would clearly prove that admissions were made even well beyond 07.10.2016, leave alone the cutoff date of 30.09.2016, thereby, making a mockery of the Honorable Apex Court Orders. He also filed documents submitted by the Colleges to various authorities, which forms part of the Typed Set of Documents. The counsel for the Association further states that meritorious students were left in the lurch, because, merit took a back seat in the said counseling that had taken place. PAC was flooded with complaints from various genuine meritorious candidates, who were deprived of admissions, despite their eligibility and afford ability to pay the prescribed fees and only in order to prune the protests, the Association was formed. The bulk of complaints and various other records were all destroyed in one small office on account of heavy rainfall and are unable to be filed, that is the reason, the spate of complaints are unable to be filed herewith. On any event, the PAC as well as MCI have referred to such

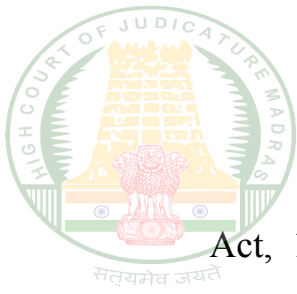


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complaints, and hence, it is clearly established that it was only at the cost of meritorious students, the alleged admissions had been done. The counsel for the Association, therefore, submits that the petitioners herein, both students and Colleges, who suppressed the above mentioned facts to this Court need no reprieve from the discharge order issued by the MCI (presently NMC) and prays for dismissing all the Writ Petitions.

Submissions made by Mr.P.R.Gopinathan, Standing Counsel for respondent-UGC:-

11. The learned Standing Counsel submits that, the sixth respondent, in W.P.No.17015 of 2018, filed a detailed counter affidavit, dated 25.09.2018 along with a copy of UGC (Institutions Deemed to be Universities) Regulations, 2016 in full, and while reiterating the averments set out thereunder, the learned Standing Counsel submitted that, an "Institution Deemed to be University" means an Institution for Higher Education so declared, on the recommendation of UGC, New Delhi, by the Central Government under Section 3 of the University Grants Commission,



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Act, 1966. He further submitted that, presently, all the Deemed to be

Universities are governed by UGC Regulations, 2016 and he referred to the

relevant clauses of UGC, which are reproduced as hereunder :-

Clause 1.0 Title, Application and Commencement

1.1 These Regulations may be called the UGC (Institutions Deemed to be Universities) Regulations, 2016.

1.2 These Regulations shall apply to every institution seeking declaration as an institution deemed to be university under the Act as also, albeit prospectively, to an institution which has been declared as an institution deemed to be university under Section 3 of the UGC Act, 1956.

1.3 They shall come into force with effect from the date of their notification in the Official Gazette.

1.4 These Regulations shall replace the UGC (Institutions Deemed to be Universities) Regulations, 2010 and its subsequent amendments.

The above Regulations have come into force on 11th July 2016.

Admissions and Fee Structure :-

6.1 No Institution deemed to be university shall, for admission in respect of any course or programme of study conducted in such institution,



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accept payment towards admission fee and other fees

and charges:-

(a) Which is a capitation fee or donation in whatever nomenclature or form;

(b) Other than such fee or charges for such admission, which has been declared by it in the prospectus for admission against any such seat, and on the website of the institution,

Provided, if there are any fees prescribed in accordance with the Fee Regulations framed by the Government or by the Commission from time to time, then the fees or other charges for admission shall not exceed the same.

(c) Without a proper receipt in writing issued for such payment to the concerned student admitted in such Institution.

6.3. Admission of students to an institution deemed to be university, public or private, shall be made in the following manner.

(i) In case, the appropriate statutory authority has specified the process of selection for admission to any course, or programme of study in any institution which includes conducting competitive admission test for ascertaining the competence of any person to pursue such course or programme of study, in that case, no person shall be admitted to such course or programme of study in such institution, except, through an admission test conducted by a recognized



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body or such institution or a group of institutions if such institution or group of institutions have been so authorized by the Central Government or a State Government or any statutory authority.

(ii) In case the process of selection for admission to any course or programme of study in any institution including conducting competitive admission test has not been specified under sub-clause (i) in that case, no person shall be eligible for admission to such course or programme of study in such institution except through inter se merit to be specified in the prospectus of each institution and the inter se merit so arrived at shall be published on the website of the institution, along with the scores attained by all individuals in each of the parameters taken into reckoning for arriving at such inter-se list.

Provided that admission of Non-Resident Indians (NRI)/Persons of Indian Origin (PIO)/Foreign students to institutions deemed to be universities shall be governed by the Guidelines/Regulations framed by the Commission In this behalf from time to time.

6.4 Every institution deemed to be university shall

- (a) maintain the records of the entire process of selection of candidates and preserve such records for a minimum period of five years;
- (b) exhibits such records on its website; and



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(c) be liable to produce such record, whenever called upon to do so by any statutory authority or by the Government under any law for the time being in force.

6.5 Every institution deemed to be University shall publish, before expiry of sixty days prior to the date of the commencement of admission to any of its courses or programmes of study, a prospectus containing the following for the purposes of informing those persons intending to seek admission to such Institution and the general public, namely:-

i) each component of the fee, deposits, and other charges payable by the students admitted to such institution for pursuing a course or a programme of study, and the other terms and conditions of such payment;

ii) the percentage of tuition fee and other charges refundable to a student admitted in such institution, in case, such student withdraws from such institution before or after completion of course or programme of study and the time within, and the manner in, which such refund shall be made to the student;

(iii) the number of seats approved in respect of each course or programme of study for the academic year for which admission is proposed to be made;



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(iv)the conditions of eligibility including the minimum and maximum age limit of persons for admission as a student in a particular course or programme of study, where so specified by the institution;

(v)the educational qualifications specified by the relevant statutory authority/body, or by the institution, where no such qualifying standards have been specified by any statutory authority.

(vi)the process of admission and selection of eligible candidates applying for such admission, including all relevant information in regard to the details of test or examination for selecting such candidates for admission to each course or programme of study and the amount of fee to be paid for the admission test;

(vii)details of the teaching faculty, including therein the educational qualifications and teaching experience of every member of its teaching faculty and also indicating therein whether such member is on regular basis or visiting basis;

(viii)the minimum pay and other emoluments payable for each category of teachers and other employees.

(ix)The ranking of the Institution under National Institutional Ranking Framework for the last three years (if available)

(x)Information in regard to physical and academic infrastructure and other facilities including hostel accommodation, library, hospital or industry wherein the practical training to be imparted to the students and in particular the facilities accessible by students on being admitted to the institution, broad outline of the syllabus specified by the appropriate statutory body or by institution, as the case may be, for every course of



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programme of study, including the teaching hours, practical sessions and other assignments;

(xi) all relevant instructions in regard to maintaining the discipline by students within or outside the campus of the institution, and, in particular, such discipline relating to prohibition of ragging of any student or students and the consequences thereof and for violating the provisions of any regulation in this behalf made under the University Grants Commission Act, 1956 or any other law for the time being in force. '

Provided that the institution deemed to be university shall publish information referred to in items (i) to (xi) of this clause on its website, and the attention of the prospective students and the general public shall be drawn to such publication on the website through advertisements displayed prominently in the different newspapers and through other media;

Provided further that the institution deemed to be university may publish prospectus in accordance with this clause at any time before the expiry of sixty days specified under this clause.

6.11 No institution deemed to be university shall, issue or publish-

(a) any advertisement for inducing students for taking admission in the institution, claiming to be recognized by the appropriate statutory authority where it is not so recognized; or

(b) any information, through advertisement or otherwise in respect of its infrastructure or its academic facilities or its faculty or standard of



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instruction or academic or research performance, which the institution, or person authorized to issue such advertisement on behalf of the institution knows to be false or not based on facts or to be misleading.

11.1 The learned Standing Counsel submitted that the Government of India, Ministry of Human Resource Development, vide its letter, No.12-3/2016-U.3A (Part.III), dated 15.09.2016 had requested the UGC to issue clarification to all the deemed to be Universities with regard to the authorized body of the Central Government to conduct admission test for MBBS/BDS course in accordance with Clause 6.3(i) of the UGC (Institutions Deemed to be Universities) Regulations, 2016. He further submitted that the Government of India, Ministry of HRD, vide letter referred to in para 3 above had issued directions for UGC under Section 20(i) of the UGC Act, 1956. The directions are reproduced as under;

(i) All Deemed Universities shall be part of common counseling for admission in medical courses organized either by State Government/ Central Government or through its agencies based on the marks obtained in MEET.



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(ii) If for any reason common counseling is not being held by the State Government or deemed to be universities are not covered in the State Government common counseling, the deemed universities of that state should put up a transparent system of admission under which no student is denied or deprived from applying for admission in that deemed university and the admission should be done based purely on inter-se merit amongst the applicants based on marks obtained in NEET.

11.2 The learned Standing Counsel submitted that, accordingly, respondent/UGC, vide its letter No.F. 1-6/2016 (CPP-I/DU) dated 15.9.2016, had issued clarifications to all the Deemed to be Universities that, CBSE which is conducting NEET for admission of students in MBBS/BDS shall be considered as authorized body of Central Government for the purpose of Clause 6.3(i) of the UGC (institutions Deemed to be Universities), Regulations, 2016. He further submitted that respondent/UGC, in pursuance to the directions issued by the Central Government under section 20(i) of the UGC Act, 1956 vide letter, referred

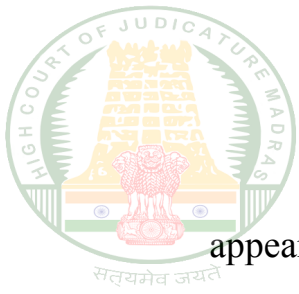


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in para 3 above and in exercise of the power conferred under clause 10.E of the UGC (institutions Deemed to be Universities), Regulations, 2016 had directed all the Deemed to be Universities to follow the directions issued by the Central Government for admission in the Medical Colleges/Institutions. It is respectfully submitted that, once the process of admissions to the Medical Institutions by the Deemed to be Universities, for the academic year, 2016 - 2017 is over, strictly, as per the clauses incorporated in the Regulations, cited supra, approval / validity of the admitted students are mandated in law by the concerned Statutory Body, in the present case, the MCI. Therefore, the learned Standing Counsel prays for appropriate orders of this Court.

Submission made by Mr.S.Subramanian, Party-in-Person, on behalf of respondent-School and Higher Education Parents Students Welfare Association:-

12. The School and Higher Education Parents Students Welfare Association has been impleaded as party respondent in the above Writ Petitions, by an order of this Court, dated 02.11.2021 and granted leave to



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appear and conduct the case as party-in-person, by its order, dated

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19.01.2022, as he is the founder president of the aforesaid Association. The

party-in-person would submit that, from the very beginning of NEET based counseling in 2016-2017, there was a lot of confusion and wrong methods adopted by the respondents officials, self financed colleges and Deemed to be Universities in conducting the admission process. Hence, the respondent-Welfare Association filed a Writ petition on 14.09.2016 (civil) PIL No. 724 of 2016 before the Hon'ble Supreme Court to issue a writ of mandamus or any other appropriate direction, directing the Director (Health), Welfare Services, Directorate of Medical & Family, Union Territory of Puducherry to conduct counseling and fill up the medical seats in the private medical/dental Colleges, including Deemed to be Universities in the Union Territory of Puducherry on receipt of 85% NEET eligible candidates in State merit list from CBSE and (b) issue a writ of mandamus or any other appropriate direction, directing the Director (Health), Welfare Services, Directorate of Medical & Family, Union Territory of Puducherry, to prevent the private medical/dental colleges including Deemed to be Universities in the Union Territory of Puducherry from issuing advertisement, calling for



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applications, collecting exorbitant fees, from conducting counseling on their

own and filling up the medical seats. On the date of hearing of the said

Writ petition, the Puducherry Government Council entered its appearance

through a Senior Counsel and made an oral submission that the Puducherry

Government has formed a PAC headed by Mrs.Chitra Venkataraman

(retired Judge) and that said Committee will conduct a common counseling

for all NEET based Management Quota seats in the private medical/dental

colleges including Deemed to be Universities in the Union Territory of

Puducherry and the grievances expressed by the Association will be

rectified in the remaining counseling process or even after the completion of

the admission process of the Committee and if the respondent-Welfare

Association found any irregularities in the admissions, they may be heard in

a fresh Writ. The Hon'ble Supreme Court accepted the submission of the

Puducherry Government and dismissed the Writ Petition on 21.09.2016 as

pre mature and made an oral statement that "if the petitioner-Association

found any irregularity after completion of the admission process, the

petitioner is at liberty to approach the Supreme Court for appropriate

reliefs".



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WEB COPY 12.1 The party-in-person would further submit that the Puducherry

Government failed to follow the directions of the Hon'ble Supreme Court and the directions of several statutory authorities or comply with its undertaking made before the Hon'ble Supreme Court. Hence, the respondent-Welfare Association filed another Writ Petition (civil) PIL No. 939 of 2016 on 18.10.2016 before the Honorable Supreme Court to issue a Writ of Mandamus or any other appropriate direction, directing the respondent-Authorities to cancel the MBBS and BDS admissions directly made by all Deemed to be Universities and private medical colleges in Union Territory of Puducherry, without any counseling or scrutiny, where required to be done by admission authority; and (b) to issue writ of mandamus or any other appropriate direction, directing the respondent-Authorities to recover exorbitant or capitation fees collected by the Deemed to be Universities' Medical Colleges and private medical colleges in Union Territory of Puducherry from the students and return the said collected amount to the respective students, amongst other prayers.



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12.2 The party-in-person would submit that the Honorable Supreme

WEB COPY Court admitted the said Writ Petition and ordered notice to the respondent-officials and other authorities also to file their counter statement in the matter, in the month of December 2016 itself. Under these circumstances, MCI and some other authorities initiated actions to discharge the students, who secured admissions illegally. Challenging the discharge orders of some of the respondents, the students, claiming themselves as aggrieved students approached this Court for relief on September 2017, but the respondent-Association had already filed a Writ Petition on the same subject matter before the Hon'ble Supreme Court bearing Writ Petition (civil) PIL No. 939 of 2016 (on 18.10.2016 itself), hence, on the date of filling the present writ petitions, the said disputed issue was seized of by the Hon'ble Supreme Court.

12.3 The party-in-person also submitted that, he had filed implead petitions in several of the above Writ Petitions on 3th November 2017. In the implead Petition, party-in-person has mentioned about the pendency of the Writ Petition before the Hon'ble Supreme Court. However, this Court



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was pleased to pass an order on 10.07.2017 in the batch of W.P. Nos. 17527 of 2017 and the same was challenged before the Honorable Supreme Court in I.A No. 57416 of 2017 and the same is pending till today. In the meantime, implead petitions were allowed only in the month of November 2021.

12.4 Therefore, the party-in-person submitted that the subject matter in the present Writ petitions are pending before the Honorable Supreme Court and he has also taken steps to file transfer petitions and stay petitions before the Honorable Supreme Court to transfer all the pending Writ Petitions from the file of this Court to the file of Hon'ble Supreme Court and to stay all further proceedings in the present Writ Petitions. However, owing to Supreme Court Christmas vacation, which was from 18.12.2021 to 04.01.2022, it was not possible to list the transfer petitions and stay petitions before the Hon'ble Supreme Court before the holidays and at the earliest date, on which, the matter is likely to be listed on 10.1.2022.



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12.5 The party-in-person also filed additional written submission,

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inter alia, stating that the impugned discharge order of MCI, dated 07.09.2017 and the impugned discharge order of the Under Secretary to Government (Health) dated 14.09.2017 is common to all the self financed and Deemed to be Universities Medical Colleges i.e.,

1. Mahatma Gandhi Medical College & Research Institute (MGMC/petitioner)
2. Pondicherry Institute of Medical Sciences (PIMS//petitioner)
3. Sri Lakshmi Narayana Institute of Medical Sciences (SLIMS//petitioner).
4. Sri Manakula Vinayagar Medical College & Hospital (SMVMC//petitioner)
5. Sri Venkateswara Medical College & Research Centre (SVMC//petitioner).
6. Aarupadi Veedu Medical College
7. Vinayaka Medical College.

12.6 The party-in-person submitted that out of seven Medical Colleges, only five Medical Colleges have challenged the said impugned orders, the other two Medical Colleges viz., (1) Aarupadi Veedu Medical College (2) Vinyaka Medical College have not challenged the said impugned orders. Under these circumstances, neither the Under Secretary to Government (Health) Pondicherry nor the Medical council of India have



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taken any steps to implement the said impugned orders and this Court also has not passed any order to the respondent-Officials to implead those two Medical Colleges. Therefore, the party-in-person would submit that, if this Court passes any adverse order to the Medical Colleges only the petitioner colleges and its students before this Court would face the consequences and the remaining two Medical colleges will be free from any consequences. As stated above, the aforesaid two medical Colleges have committed the same mistake like other Colleges. Hence, he submitted that, in the interest of justice, it is necessary to re-open all the Writ Petitions and to implead those two medical Colleges or otherwise, it would not be possible to meet the ends of justice. Therefore, the party-in-person sought for rejection of the contentions of the writ petitioners herein and dismiss the Writ Petitions and to pass appropriate orders against the writ petitioners as a veil as to uphold the orders of Honorable Supreme Court orders and in terms of MCI.

Submissions made by Mr.L.Swaminathan, learned Standing Counsel for respondent-MGMC:-



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WEB COPY 13. The learned Standing Counsel submitted that for admission to MBBS Course across India, common NEET came into vogue from the academic year 2016 - 2017 and only eligible NEET qualified students were to be admitted to the MBBS Degree Courses by the Medical Colleges. The Union Territory of Puducherry had followed the Central Government Ordinance No. 4 of 2016, dated 24-5-2016, in filling up the government seats in private Medical and Dental Colleges by following the existing procedures that was prevalent upto the academic year 2015 - 2016 of admitting MBBS students purely based on the marks obtained in +2 examinations for the academic year 2016 -2017. During the academic year 2016-2017, out of total intake of 250 students in MGMC College, 49 seats were allocated to be sponsored by CENTAC, Puducherry, based on +2 marks and the students opting for the Medical Colleges of the Deemed to be Universities had to pay the fees, as prescribed by the concerned Deemed to be Universities and the Fee Committee constituted by the Government of Puducherry has no role in fixation of the Fees to the Medical Colleges of the Deemed to be Universities.



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13.1 The learned Standing Counsel submitted that, pursuant to the Circular, dated 29-9-2016 of the GOP, which is one day prior to the cut-off date of admission (30-9-2016), MGMC, as directed, forwarded the list of admitted students upto 29-9-2016 through letter, dated 30-9-2016 and the final list of students, who were admitted on 30-9-2016 were uploaded in the MCI website and details were furnished to the GOP and PAC through letter, dated 2-11-2016. For admission of students to the remaining 201 MBBS seats, the MGMC had admitted students on or before 30-9-2016 based only on NEET percentile/score and the final admitted students list were uploaded in MCI website-<http://www.mciindia.org> (now NMC) before 7-10-2016 and the said website/unique login ID will not permit to enter the details of the admitted students, which fact were neither denied nor 201 seats admitted by the MGMC through NEET percentile/score were questioned by MCI (now NMC) till date. The copy of the entire admission list of 250 students with all the details were forwarded to the Government of Puducherry and to the Chairman of PAC on 2-11-2016 along with screenshots of all the e-mails

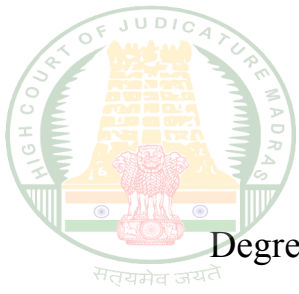


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and details as requested through Letter dated 27-10-2016, which was acknowledged.

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13.2 The learned Standing Counsel submitted that neither the PAC nor GOP had disputed the admission of 250 students ranging from 19-9-2016 to 30-9-2016. Neither the Statutory Authorities nor the GOP had found fault with the MBBS admissions in the respondent-MGMC for the academic year 2016-2017 till date. No students were either issued with Order of Notice or Order of Discharge for their admissions in the respondent-Medical College neither by MCI (now NMC) nor by the Government of Puducherry, which is an undisputed fact. This apart, none of the students have approached this Court till date alleging denial of admission by the MGMC for the academic year 2016-2017. Therefore, the arguments of the so-called Puducherry UT All CENTAC Students Parents Association (regd.,) of admitting students by the respondent-Mahatma Gandhi Medical College after 30-9-2016 (cut -off date) is without substance, sounds illogical and only portrays their perversion under certain illusionary pretext for discharging the students after 4 years of their MBBS



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Degree Course, which is highly condemnable and the said CENTAC-

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Association had no *locus-standi* to dispute the admission of students in the respondent-MGMC for the academic year 2016 – 2017.

13.3 The learned Standing Counsel for the respondent-MGMC submitted that, impugned letter, dated 7-9-2017 of the MCI (NMC) addressed to the Secretary (Health), Government of Puducherry and the Director of Health Services, Puducherry, reveals about the complaint received from the President, CENTAC-Association regarding illegal admission process in MBBS Course at Puducherry, for the year 2016-2017, which was placed before the Monitoring Sub-Committee (MSC) at its meeting held on 8-8-2017. The impugned letter, dated 07-9-2017 also mentions about the MSC perusing the letter, dated 12-7-2017 of the then Lt. Governor to the then President of MCI.

13.4 The learned Standing Counsel submitted that the MCI (now NMC) before forwarding the copy of the impugned letter, dated 7-9-2017, had not chosen to serve the copy of the complaint received from the



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CENTAC-Association and the copy of the letter, dated 12-7-2017 of the Lt.

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Governor of Puducherry, which Sub-Committee of MCI (NMC) placed before the Monitoring Committee and hence, the respondent-MGMC is not aware about the contents of the complaint (including date of the Complaint) till date. Even during the course of hearing, neither MCI nor the Association had filed the copy of the complaint before this Court. The MCI had neither issued any show-cause notice by enclosing the so-called complaint nor any reply was called from the respondent-MGMC regarding the allegations mentioned in the complaint, and, on the contrary, the copy has been forwarded for necessary action which tantamounts to predetermining the issues based the complaint / the Letter dated 12-7-2017, which the respondent-MGMC was not put to notice before the issuance of the impugned order, dated 7-9-2017. Therefore, the learned Standing Counsel submitted that the respondent-MCI Had not followed the principles of audi altrem partem (no one should be condemned unheard) in entirety before issuing the Impugned order dated 7-9-2017. Hence, the principles of natural justice were glaringly violated by the MCI (now NMC) and therefore, the impugned order dated 7-9-2017 is sham, vitiated, void-ab-nitio and deserves



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to be quashed.

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13.5 The learned Standing Counsel further submitted that, in the Union Territory of Puducherry, there are 7 Medical Colleges (3 private self - financing medical Colleges and 4 - medical colleges of 3 Deemed to be Universities) and 283 seats were allotted by the 7 medical colleges to fill the said seats by CENTAC, Puducherry, following +2 marks only. The MGMC College had parted away with 49 seats to be filled by CENTAC and the remaining 201 seats were filled by the respondent-MGMC based on NEET scores. The Chief Secretary to the GOP, in the counter affidavit filed in W.P. (Civil) No. 939 of 2016 had clearly affirmed that the Medical Colleges coming under the ambit of Deemed to be Universities will neither come under the PAC nor the Fee Committee constituted by the Government of Puducherry. This apart, the Pondicherry Private Professional Educational Institutions (Provision of Reservation, Admission of Students and Fixation of Fees) Regulations, 2006 excludes the Medical Colleges coming under the ambit of Deemed to be Universities. The conduct of Common Counselling by CENTAC, Puducherry was not in force for the academic year 2016 -



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2017 and admissions to 201 seats were filled by the respondent-MGMC

based on NEET Percentile as the concept of common counseling came into effect only from 10-3-2017, vide MCI Gazette Notification, dated 10-3-2017. On 7-9-2016, Sri Balaji Vidyapeeth - Deemed to be University had submitted a representation to the Chairman of the PAC clearly highlighting the fact that admission to first year MBBS course (2016 - 2017) in the Medical Colleges of the Deemed to be Universities cannot be compelled to come under the purview of PAC. The proceedings of the Chairman of the PAC, dated 7-9-2016 would reveal the fact that the representation, dated 7-9-2016 of the respondent-MGMC has been accepted. Therefore, the conduct of common counseling by CENTAC, Puducherry for the remaining 201 seats of the respondent-MGMC is meaningless, superfluous and further the PAC had clearly accepted that the respondent-MGMC will not come under its ambit. It is not the case as though the respondent-MGMC had not participated in the so - called conduct of common counselling and it is an admitted fact that there was no common counselling conducted by CENTAC and only 49 seats were sponsored by CENTAC based on +2 marks. Hence, the contents of the impugned letter, dated 7-9-2017 is a



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clear case of non-application of mind by MCI (now NMC) and fault cannot

be attributable even remotely on the part of the respondent-MGMC. After

issuance of the unilateral impugned letter, dated 7-9-2017 which is without

notice and violative of the principles of natural justice, respondent-MGMC

had submitted a detailed representation on 18-9-2017, highlighting the

entire facts of admission of students to the first year MBBS degree course

for the academic year 2016-2017, which though acknowledged is yet to see

the light of the day. Even in Para No. 33 of the Confidential Report, dated

19-10-2016 of the Chairman of the PAC addressed to the Chief Secretary to

Government does not allege even a single irregularity in the admission of

students for the First year MBBS course at Mahatma Gandhi Medical

College & Research Institute, Puducherry, for the academic year 2016 –

2017, which undisputed fact is not considered in the impugned letter, dated

7-9-2016. Therefore, it is submitted that this Court may quash the

impugned letter, dated 7-9-2017 of the MCI (NMC) addressed to the

Secretary (Health), Government of Puducherry and the Director of Health

Services, Puducherry, as violative of natural justice.



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14. This Court has heard the rival submissions made by the learned respective counsel appearing for all the parties and perused the materials placed on record.

15. Having heard the learned respective Counsel and on consideration of the pleadings and materials available on records, this Court would emerge the following issues for consideration:-

Issue Nos.1 to 9:-

1) Whether the MCI has power to discharge the students those who were admitted in the medical colleges situated in Government of Puducherry?

2) Whether the medical colleges situated in the Government of Puducherry is required to conduct Common Counseling to admit students in undergraduate and postgraduate for the academic year 2016-17?

3) Whether discharge of students in spite of



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approval of PAC with a specific direction to the respective Educational Institutions to admit all the 99 students on or before 30.09.2016 is correct ?

4) Whether the students can be penalized for administrative lapses, if any, on the part of the Colleges/Institutions, vis-a-vis, GOP and COE?

5) Whether the impugned orders are sustainable in law, on both the grounds, viz.,i) Non-furnishing of complaint of the Parents and Students Welfare Association and the report of PAC, (which formed the basis for issuance of impugned discharge orders against the students and when the veracity of the said complaint and report were not enquired into by the MCI) and ii) on account of violation of principles of natural justice ?

6) Whether CENTAC is the only Authority, through which, medical admissions can be made in the Government of Puducherry, irrespective of the difference in criteria for granting admissions in the



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State quota and management quota seats and what is the role of PAC?

7) Whether the petitioners-Institutions/Colleges have violated the norms setforth by the Hon'ble Supreme Court by not maintaining the the fairness and transparency in the admission process?

8) Whether COE is right in postponing I year MBBS Exam for students on the ground that the qualification of the students, who got admission under the management quota has to be recognized by the Pondicherry University?

9) Whether the deemed to be Universities will come under the purview of the PAC, as there was a vast confusion over the power of PAC to monitor the



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admission process of the deemed to be Universities?

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16. The core issue revolves round the impugned order, dated 07.09.2017 of MCI, directing GOP to discharge all students, who were not admitted through CENTAC for the academic year 2016 -17 and also those who were admitted after last date of admissions i.e., 30.09.2016.

17. Issue No.I

Whether the MCI has power to discharge the students those who were admitted in the medical colleges situated in Government of Puducherry?

17.1 The petitioners before this Court are both Colleges (viz.i) SMVMC, ii) PIMS, iii) SVMC, iv) MGMC and SLIMS) and students, who



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are pursuing their MBBS Course for the academic year 2016-17, in the respective Colleges. They have approached this Court challenging the orders, dated 05.07.2017, 07.09.2017 and 14.09.2017, as by virtue of the said three impugned orders, a) petitioners/students were not allowed to write their first year exam, b) petitioners/students were ordered to be discharged by respective Colleges by MCI and c) GOP passed the consequential discharge order against the petitioner/students.

17.2 In order to deal with the present issue on hand in a proper perspective, let me first examine the power of the MCI to discharge the students.

Power of MCI to discharge the students:-

17.3 Regulation 7(6A) and (6B) of MCI Regulations on Graduate Medical Education, 1997, which empowers MCI to discharge students, is extracted hereinbelow :-

“(6A) There shall be no admission of students in



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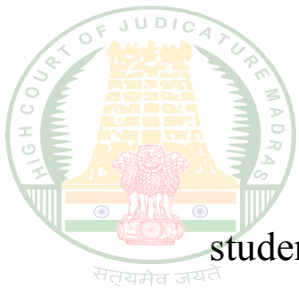
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respect of any academic session beyond 30th September under any circumstances. The Universities shall not register any student admitted beyond the said date.

(6B) the Medical Council of India may direct, that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study, or any medical qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956.

The institution which grants admission to any student after the last date specified from the same shall also be liable to face such action as may be prescribed by MCI including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year”.

17.4 Thus, it is clear that in terms of Regulation 7 (6A), no student can be admitted beyond 30.09.2016 under any circumstances. Further, the said Regulation enumerates that Universities shall not register any student, who was admitted beyond the said date. Regulation 7 (6B) states that, in the event of MCI identifying any



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student having got admission after the last date for closure of the admission, shall be discharged from the course of study or any medical qualification granted to such a student shall not be a recognised qualification for the purpose of the Indian Medical Council Act, 1956. As on the date of admission done for the academic year 2016 - 17, the aforementioned Regulations were in force.

17.5 Therefore, it is clear that, in terms of the aforementioned Regulations, MCI has power to discharge only the admissions made after the last date of closure of the admission and whatever admission made up to 30.09.2016, MCI does not have any power to discharge the students on suspicion for any reasons. Further, in terms of Regulation 7 (6B), if MCI identified any student, who was admitted after the last date for closure of the admission, he/she shall be discharged from the course of study. Therefore, it is clear that, only if any student is admitted beyond 30.09.2016, for the relevant academic year, the said student will be discharged, other than that, MCI has no power to



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discharge any student under any circumstances.

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17.6 In the present case, it is seen that MCI, by means of impugned order, directed to discharge students on two grounds viz., (i) those who are not admitted through CENTAC for the academic year 2016 - 17 (ii) and also those who were admitted after the last date of admission i.e., 30.09.2016. Even assuming if any of the students needs to be admitted through the CENTAC, MCI has no power to discharge those students.

17.7 On a perusal of the impugned order, dated 07.09.2017, it is seen that, neither MCI has undertaken the exercise of identifying students, who were admitted beyond 30.09.2016 and nor does GOP, which passed consequential order reflects anything about such exercise of identification and admission of students beyond 30.09.2016. Therefore, without doing any exercise for identification of students



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those who are admitted beyond 30.09.2016, in terms of Regulation 7 (6B), MCI cannot pass any order of discharge, much less, the impugned order, discharging the students, as the power of MCI is restricted only to the extent to discharge the students only for the admission beyond 30.09.2016. Therefore, this Court is of the view that there is a serious lapse on the decision making process by the MCI and without application of mind, thus, the impugned order came to be passed and the same is liable to be quashed.

17.8 The learned Standing Counsel for MCI has submitted that, by way of amendment to the Regulations on Graduate Medical Education (Amendment) 1997, on 22.01.2018, Regulation 7 (7) has been introduced, which is extracted herein below:

“No authority/Institution shall admit any candidate to the MBBS Course in contravention of the criteria/procedure as laid down by these regulations and /or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be



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discharged by the Council forthwith. The authority/institution which grants admission to any student in contravention/violation of the Regulations and / or the judgments passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.”

17.9 As per the above regulation, which came into effect from 22.01.2018, if any candidate admitted to MBBS Course in contravention of the criteria/procedure as laid down by these Regulations etc., the candidate will be discharged, but, it has to be noted that, before this amended regulation came into force, as stated above, Regulation 7 (6A) and (6B) was in operation and the same is only applicable to the present case, inasmuch as, admittedly, the admission of students had taken place during the academic year 2016-17. **Accordingly, issue No.1 is answered.**



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18. Issue No.2:

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Whether the medical colleges situated in the Government of Puducherry is required to conduct Common Counseling to admit students in undergraduate and postgraduate for the academic year 2016-17?

Common counseling:

18.1 The learned counsel appearing for the respondents extensively referred the judgment rendered by the Hon'ble Apex Court in "*Sankalp Charitable Trust & Anr. Vs. UOI and others*" as cited supra. By referring to the said judgment, the learned counsel submitted that the common entrance test as well as the common counseling came into force. This citation has been referred extensively with reference to the common counseling. Therefore, let me examine the relevant provisions applicable to the common counseling, subsequent to the common entrance test conducted by the MCI. Subsequent to the judgment rendered by the Hon'ble Supreme Court in "*Sankalp Charitable Trust & Anr. Vs. UOI and others*" (cited *supra*), it was decided by MCI to conduct the common entrance test through



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out the Country for the admission of MBBS/BDS Course.

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18.2 Section 10-D was introduced to the Indian Medical Council Act, 1956, on 05.08.2016, which states as follows :-

“10D. There shall be conducted a uniform entrance examination to all medical educational institutions at the undergraduate level and post-graduate level through such designated authority in Hindi, English and such other languages and in such manner as may be prescribed and the designated authority shall ensure the conduct of uniform entrance examination in the aforesaid manner:

Provided that notwithstanding any judgment or order of any court, the provisions of this section shall not apply, in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination.”

18.3 A perusal of Section 10-D is very clear that a uniform entrance examination will be conducted through out the country for the



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admission in the Medical Educational Institutions at the undergraduate level as well as postgraduate level by the designated authority.

18.4 A proviso to Section 10-D envisages that, notwithstanding any judgment or order of any Court, the provisions of this Section shall not apply in relation to the uniform entrance examination at the undergraduate level for the academic year 2016-17 conducted in accordance with any regulations made under this Act, in respect of the State Government seats, (whether in Government Medical College or in a private Medical College) where such State has not opted for such examination.

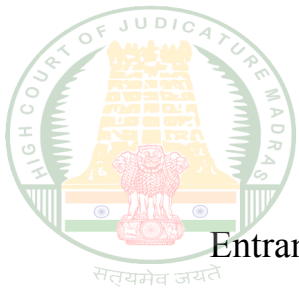
18.5 Therefore, as far as the State Government seat is concerned, liberty was granted to the State to opt out from such examination and to follow its own admission, which they have followed for earlier years. Therefore, this provision talks about only with regard to the admission to be made through the common entrance examination and it does not say anything about the conducting of the common counseling subsequent to the uniform entrance examination.



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WEB COPY 18.6 In the case of *Sankalp Charitable Trust & Anr. Vs. UOI and others*, the Hon'ble Supreme Court has declared that it is mandatory to conduct single entrance examination through out the country to all Medical Educational Institutions at the undergraduate level and postgraduate level and it does not mention anything about the conducting of the common counseling. With regard to the common counseling, a reference also made by the learned counsel appearing for the MCI to the judgment rendered by the Hon'ble Apex Court in the case of *Modern Dental College and Research Centre Vs. State of Madhya Pradesh* reported in *2016 (7) SCC 353* and *State of Madhya Pradesh Vs. Jainarayan Chouskey and Others* reported in *2016 (9) SCC 412*.

18.7 The main challenge in the Modern Dental College before the Supreme Court was the judgment of the High Court of Madhya Pradesh repelling the challenge made by certain private medical colleges to the legislations passed by the State Legislature to the Admission Rules, 2008 and the Madhya Pradesh Private Medical and Dental Postgraduate Course



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Entrance Examination Rules, 2009. The judgment of the High Court as well

as these legislations were upheld by the Hon'ble Supreme Court holding that the State has the legislative competence to enact the impugned legislation to hold common entrance test for admission to professional educational institutions and to determine the fee.

18.8 Jainarayan Chouskey's case (*cited supra*) was a contempt arising out of the judgment rendered in Modern Dental College. The Hon'ble Supreme Court has clarified that the mandate of their judgment in Modern Dental College was not only to have centralised entrance test followed by centralised State counseling by the State to make it one composite process. Therefore, the Hon'ble supreme Court only referred to the situation pertaining to the State of Madhya Pradesh and the Act and Rules of that States, which were under challenge before the Court and nothing more.

18.9 The State of Madhya Pradesh has enacted a law for the purpose of common counseling and the said Act was upheld by the High Court as

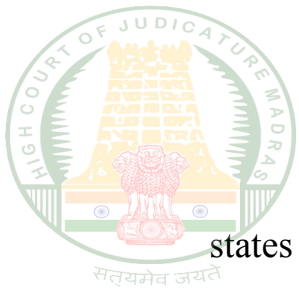


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well as the Hon'ble Supreme Court. In the light of the said particular Act in the State, the judgment of the Hon'ble Supreme Court was passed. The said judgment was with reference to the State Act. If any other State have a similar provision, the judgment of the Hon'ble Supreme Court would apply. If any other State does not have any regulation or any other statutory provision for conducting the common counseling, then, this judgment would not apply for those States.

18.10 As far as the present case is concerned, there was no regulation or provision, rules for conducting the common counseling. It is for the respective colleges to conduct the common counseling to the students, based on the NEET percentage in a fair and transparent manner. For this purpose only, the Government of Puducherry appointed PAC only to monitor the admission process.

18.11 As there was no Central Act for conducting the common counseling, Regulation 5-A *Common Counseling* was introduced to the Regulations on Graduate Medical Education 1997, on 10.03.2017, which



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states as follows:

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5A Common Counseling

“(1) There shall be a common counseling for admission to MBBS course in all Medical Educational Institutions on the basis of merit list of the National Eligibility Entrance Test.

(2) The Designated Authority for counseling for the 15% All India Quota seats of the contributing States shall be the Directorate General of Health Services.

(3) The counseling for all admission to MBBS Course in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority Institutions/Corporations or a Company shall be conducted by the State/Union Territory Government. Such common counseling shall be under the over-all superintendence, direction and control of the State/Union Territory Government.”

18.12 The Regulation 5-A mandates all the States/Union Territories to conduct the common counseling without fail. Hence, common counseling



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has become mandatory for the State level with effect from 10.03.2017,

otherwise, from the academic year 2017-18 onwards, this provision will come into effect. Therefore, it is made clear that there was no provision for conducting common counseling for the academic year 2016 - 17. The MCI also well aware of this fact. That is the reason why on 15.09.2016, the University Grants Commission sent a Letter to the Deemed to be Universities stating as follows:

“1. All the Institutions Deemed to be Universities shall be part of common counseling for admission in medical courses organised either by State Government/Central Government or through its agencies based on the marks obtained in NEET.

2. If for any reason common counseling is not being held by the State Government or the Deemed to be Universities are not covered in the State Government common counseling, the Deemed to be Universities of that State should put up a transparent system of admission under which no student is denied or deprived from applying for admission in that deemed to be University and the admission should be done based purely on inter-se - merit amongst the applicants based on marks obtained in NEET.”



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18.13 The Government of Puducherry also on 29.09.2016

stated as follows:

“As per the letter of Government of India referred above, all Medical Institutes of Deemed to be Universities are to be part of common counseling conducted by State/Central Government or through its agencies based on the marks obtained in NEET.

2.As per the letter above, of the University Grants Commissions referred (2) all the Institutions Deemed to be Universities shall be part of common counseling for admission in Medical courses organized either by the State Government/Central Government or through its agencies based on the marks obtained in NEET. If for any reason common counseling is not being held by the State Government or the Deemed to be Universities are not covered in the State Government common counseling, the Deemed to be Universities of that State should put up a transparent system of admission under which no students is denied or deprived from applying for admission in that Deemed to be Universities and the admission should be done based on purely on inter-se-merit amongst the



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applicants based on marks obtained in NEET.

3. So, as directed by the Chairman, Permanent Admission Committee you are directed to furnish the list of students applied and admitted to your Institute containing the name of the candidate, NEET Register No., Date of birth, NEET rank, NEET percentile etc. The particulars should reach this office by 4.00 PM either in person or through e-mail address jeevaarputham@gmail.com of the Undersigned.”

18.14 A reading of the above would clear that, in the event, the State Government has no statutory regulations for conducting common counseling, Deemed to be Universities is allowed to conduct common counseling in a transparent manner, on the basis of *inter-se-merit* amongst the applicants, based on the marks obtained in NEET.

18.15 Therefore, this Court is of the considered view that the common counseling in the State/Union Territories would not apply for the academic year 2016 - 17. The Hon'ble Apex Court also has not made it mandatory to conduct the common counseling for the States those who does not have any specific rules and regulations. Therefore, this Court is also of



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the considered view that CENTAC is not the only Authority, through which, medical admissions can be made in the Government of Puducherry, when the criteria for granting admissions in the State quota and management quota seat is different per se.

18.16 In the case of Modern Dental College, the Hon'ble Apex Court has upheld the State Legislature for conducting the common counseling. As stated supra, this was passed only with reference to the State Act. By referring to this judgment, it cannot be forced that all the State Governments, which does not have relevant rules and regulations to conduct the common counseling.

18.17 The learned Senior counsel extensively referred to the judgment of the Hon'ble Supreme Court, in the case of "*Modern Dental College and Research Centre Vs. State of Madhya Pradesh*" reported in *2016 (7) SCC 353* as well as "*State of Madhya Pradesh Vs. Jainarayan Chouskey and Others*" reported in *2016 (9) SCC 412* , wherein, the issue



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regarding conducting of common counselling was elaborately discussed

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and the said judgments were passed, in the light of the enactment of the separate legislation for conducting the common counseling by the State of Madhya Pradesh. The judgment was rendered in the context of the legislative competence of the State for conducting the common counseling and this judgment will be applicable, in the event of States have not passed any separate legislation and this judgment would be of no assistance. In the present case, Government of Puducherry have no legislation for conducting the common counseling. Therefore, the principles of law laid down by the Hon'ble Supreme Court in the above judgment would not be extended for the Government of Puducherry, in the absence of separate legislation for conducting the common counseling.

18.18 MCI's reliance on the recent judgment of the Hon'ble Supreme Court of India dated 17.08.2021 passed in **Abdul Ahad and others Vs Union of India and Others, reported in (2021) SCC Online SC 627**, is also untenable. In the said case, the State of Uttar Pradesh issued a Notification dated 31.08.2016 directing conduct of centralised counseling



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for admission to MBBS/BDS course in all Colleges/Universities in the State of Uttar Pradesh, including private colleges and minority institutions.

Another Notification dated 02.09.2016 was issued directing 50% of the sanctioned intake of private institutions shall be reserved for students who had domicile of State of Uttar Pradesh. The Notification dated 02.09.2016 came to be challenged before the High Court of Allahabad and the order passed therein came to be challenged before the Supreme Court. In the interregnum, the colleges conducted their private counselling despite Notifications issued by the State for common counselling. On 27.01.2017, MCI issued a discharge letter to the college to discharge 67 students admitted by it, whose names did not figure in the list supplied by the DGME. The said letter was challenged before the Courts but were dismissed with liberty to file an application for intervention in the pending Special Leave Petition before the Supreme Court. The I.A. so filed came to be dismissed along with the Special Leave Petition. The Review Petition filed therein was the subject matter in the above case. The Supreme Court held that the private counselling conducted by the College was contrary to the Notification issued by the State of Uttar Pradesh, which Notification, in



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turn, was based on the Judgment in Modern Dental College, and that the

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Division Bench of the Allahabad High Court vide Judgment dated 15.09.2016 had negated the challenge to the Notification. In light of the said position, the Supreme court held that it was not permissible for the college to have conducted private counselling and that the admissions through the said private counselling were illegal. It is in these circumstances that the Supreme Court held that though they have all the sympathies with the students, they will not be in a position to do anything to protect the admissions which were done in a patently illegal manner and dismissed the Review Petitions.

18.19 However, in the present case, no such illegality has been identified. There is no direction by the Government of Puducherry, CENTAC or PAC to conduct any Common Counselling. Even otherwise, Common Counseling could be held only by the Government, for which there is no regulation or rules etc. In the absence of any such rules or regulation etc., in the Government of Puducherry, the question of conducting the common counseling does not arise. **Accordingly, issue No.2**



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is answered.

WEB COPY **19. Issue No.3:**

Whether discharge of students in spite of approval of PAC with a specific direction to the respective Educational Institutions to admit all the 99 students on or before 30.09.2016 is correct?

19.1 There were several complaints received from students that the Medical Colleges did not follow NEET. All these complaints were brought to the notice of the Chairman of PAC for taking appropriate action. The PAC conducted a meeting on 07.09.2016 and thereafter, issued notice to the respective colleges and also directed to submit their grievance on or before 24.09.2016. Accordingly, Colleges furnished their replies. Thereafter, the Chairman of PAC, vide proceedings dated 27.09.2016, directed the Secretary to Government (Health) to get the details of admission made with the individual marks of the students from all the Private Medical Colleges immediately and compare the same with those students/parents who have complained about their denial of admission. In the event, the Chairman had also directed that if any admissions have been made for the students who



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have obtained lesser marks than who had complained about denial of admissions, then, it is a case of serious consideration and the Health Secretary may pass appropriate orders, directing the Colleges to admit those students first.

19.2 In terms of the said order of PAC, notice also issued on 27.09.2016 by the Secretary to Government of Puducherry to the Colleges to furnish immediately the list of students along with NEET rank admitted in respect of MBBS/BDS courses in their respective colleges for the academic year 2016 -17 today 27.09.2016 by 4.00 p.m. without fail. Further, as per the direction of the Chairman, PAC, based on the complaints received from the students with regard to the denial of admission for MBBS/BDS courses in three private self financing medical colleges/institutions, notices were issued to all the three colleges separately enclosing the name list of the candidates ie., 20_candidates in Sri Manakula Vinayagar Medical College & Hospital, Sri Manakula Vinayaga Educational Trust, Puducherry – 1, 55 candidates in Pondicherry Institute of Medical Sciences, 74 candidates in Sri Venkateshwara Medical College and



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Research Centre, who were denied admissions in the respective colleges,

with a direction to submit their explanations for denial of admissions in respect of MBBS/BDS courses in their colleges, as alleged by the students by 28.09.2016.

19.3 In response to the letter dated 28.09.2016, the respective colleges furnished their reply to the Government of Puducherry. On 29.09.2016, the PAC held its meeting as it has received 99 complaints from the students, who were denied admissions in the respective colleges. This was also informed to the respective colleges. After going through the complaints received from students, PAC, after obtaining preference/choice from the candidates with regard to the Colleges, prepared a list by incorporating the names of the candidates as per NEET ranking and directed the colleges to incorporate the names of the meritorious candidates in the provisional admitted list and to send final list to the Committee by 4.00 p.m. on 30.09.2016. The same was communicated to all the Colleges. Therefore, it is clear that as far as 99 students are concerned, it is the duty of the respective Colleges to comply with the directions of PAC to admit them



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on or before 30.09.2016, without fail and their names should have been

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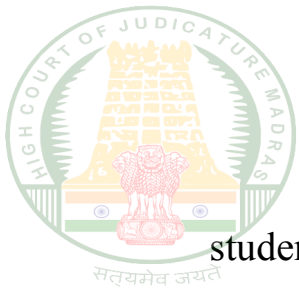
included in the list of admission. If at all, their names were not included in the list, fault lies on the part of the Colleges/Institutions and for the said fault of the colleges, no students can be mulcted. It can be treated as non-compliance of order of PAC alone and for all practical purposes, the admission for those 99 candidates those who are willing to join have been completed. The order has been passed by PAC on 29.09.2016. Therefore, I do not find any justifiable reason to discharge these 99 students by this MCI vide its order dated 07.09.2017 and through the consequential impugned order of the Government of Puducherry dated 14.09.2017. Hence, the impugned order to discharge 99 students is liable to be quashed.

Accordingly, issue No.3 is answered.

20. Issue No.4:

Whether the students can be penalized for administrative lapses, if any, on the part of the Colleges/Institutions, vis-a-vis, GOP and COE?

20.1 As rightly contended by the learned counsel appearing for



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students, at any cost, if at all, there is any fault on the part of the

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Institutions, the students should not be punished. If any adverse order is passed by PAC or MCI or the Government of Puducherry, the same should be only against the Institution and not against the students, without giving an opportunities. Further, Regulation 5(7) of the MCI Regulations on Graduate Medical Education, 1997 prescribes for discharge of the students for any violation in the admission etc., and it does not have any power to discharge students, whose admissions were made before 30.09.2016. In the present case, according to the learned Senior counsel, no admission was made subsequent to that 30.09.2016 in any of the colleges and all the admissions have been made only within 30.09.2016. Therefore, the impugned order is legally not sustainable and the same is liable to be quashed. **Accordingly, Issue No.4 is answered.**

21. Issue No.5:

Whether the impugned orders are sustainable in law,

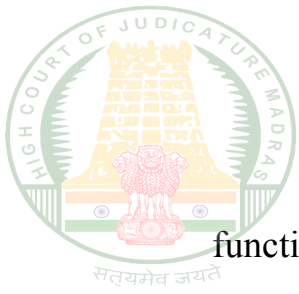


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on both the grounds, viz., i) Non-furnishing of complaint of the Parents and Students Welfare Association and the report of PAC, (which formed the basis for issuance of impugned discharge orders against the students and when the veracity of the said complaint and report were not enquired into by the MCI) and ii) on account of violation of principles of natural justice ?

21.1 One of the rules which constitutes a part of the principles of natural justice is the rule of *audi alteram partem* which requires that no man should be condemned unheard. It is indeed a requirement of the duty to act fairly which lies on all quasi-judicial authorities and this duty has been extended also to the authorities holding administrative enquiries involving civil consequences or affecting rights of parties. The aim of the rules of natural justice is to secure justice or to put it negatively, to prevent miscarriage of justice' and justice, in a society which has accepted socialism as its article of faith in the Constitution is dispensed not only by judicial or quasi-judicial authorities but also by authorities discharging administrative



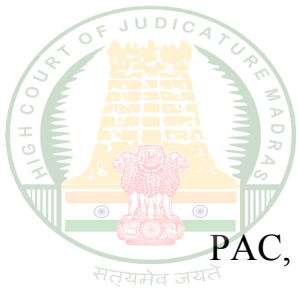
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functions.

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21.2 It is an admitted fact that before issuing the impugned proceedings no opportunity of hearing whatsoever was afforded to the petitioners students/ colleges etc. In fact, the impugned proceedings were also not addressed to any of the students/colleges or communicated to them individually.

21.3 A perusal of the impugned proceedings, it is clearly depicts that the MCI has not at all taking any steps to identify the students independently and how their admissions were made against the rules and regulations. In fact, all the details were uploaded by the respective colleges with regard to the admissions made for the academic year 2016 – 17 in the MCI website and also provided to the Government of Puducherry. Further, the impugned proceedings said to have passed on the strength of the PAC's report, letter received from Lieutenant Governor, Puducherry, and the complaint said to have received from the President, Puducherry UT all CENTAC and Students Parents Association. Admittedly, the report of the



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PAC, letter received from the Lieutenant Governor of Puducherry and the complaint received from the President, Pondicherry UT all CENTAC Students Parents Association also not served to any of the petitioners to reply.

21.4 A stand was taken by the MCI stating that identifying the students is the role of the University and it is not the role of the MCI. However, the MCI claimed that they have the power to discharge the students, then it is only the MCI has to provide opportunities to the petitioners to offer their comments, because they are the only person going to be affected, particularly the students. In the present case, no such opportunity was granted to the petitioners. It is the duty of MCI to provide all the materials to the concerned students and the Universities and after getting their reply, they must hear all the persons those who are getting affected by virtue of the impugned orders and thereafter they have to identify and pass any order. But, in the present case, all these aspects have not been considered, which is clear violation of the principles of natural justice. On this score alone, the impugned orders and the consequential



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orders passed by the respective authorities are liable to be set aside.

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21.5 The requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities. But, in the present case, no justifiable reasons are provided by the MCI before passing the impugned orders and merely they have relied upon the report of the PAC and some of the alleged complaint even the said complaint is not at all available before this Court and the letter of the Lieutenant Governor. Unless and until without providing an opportunity, receiving any reply and hearing the opposite party, the authority is not at all empowered to pass any orders. In the present case, the impugned orders were passed by violating the principles of natural justice.

21.6 The procedure prescribed must be just, fair and reasonable even though there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken



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against an individual, which affects the right of that individual. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice. In the present case, all these aspect are lapsed.

21.7 As stated above, no opportunity of hearing whatsoever was afforded to the petitioners and in fact, the impugned proceedings also not addressed either to them or communicated to them individually. The arguments of the respondents in particular the MCI to the effect



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that even the opportunities of hearing was afforded to the students, the situation would not have changed etc., is unsustainable and deserves to be rejected. Such submissions and claims made by MCI only reflect the scant regard one as to the rule of law and principles of natural justice. Similarly, the claim of the MCI that any such opportunities would have been a useless formality is wholly untenable and in fact an incorrect interpretation of the judgment of the Hon'ble Supreme Court of India.

21.8 At this juncture, it would be appropriate to deal with the judgment referred on behalf of the MCI as follows:

(i) MCI's reliance on the Judgement of the Hon'ble Supreme Court of India passed in **The Bihar School Examination Board Vs Subha Chandra Sinha and others, reported in (1970) 1 SCC 648**, is also untenable. In the said case, the results of the examinees of a certain examination centre were not released as it was found by the Board that unfair means were practiced on a large scale at that centre. There was a



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finding in the said case that the examination was vitiated by adoption of unfair means on a mass scale, in the centre the whole body of students received assistance and managed to secure success in the neighbourhood of 100% when others at other centres are successful only at an average of 50%, etc., and in such circumstances the Court held that there was no violation of the principles of natural justice. However, in the present case, there is no finding of any kind by MCI and all that MCI says in its impugned proceedings is 'Prima facie this indicates that.....'. The petitioners cannot be discharged from their course on the basis of any such prima facie indication. What is required when such a draconian action is sought to be taken is the availability of clear, undeniable, undisputable and unquestionable materials resulting from a proper and detailed enquiry which were lacking in the case.

(ii) MCI's reliance on the Judgement of the Hon'ble Supreme Court of India passed in **Dharampal Satyapal Limited Vs Deputy Commissioner of Central Excise, reported in (2015) 8 SCC 519**, to claim that affording of an opportunity of hearing to the students/Petitioners by MCI before issuing the impugned proceedings was a useless formality, is



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wholly untenable and is an incorrect interpretation of the Judgement of the Hon'ble Supreme of India.

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21.9 What has been held by the Supreme Court in the said Judgment is actually contrary to the submissions and claims made by MCI before this Hon'ble Court. In paragraph 42 of the said Judgment, the Supreme Court categorically held that it is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The relevant extracts of the said Judgment are as follows:

“42. So far so good. However, an important question posed by Mr. Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? **To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the**



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compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such thing cannot be presumed by the authority."

21.10 The Supreme Court however found that the aforesaid enunciation of law was not the same when it came to the Courts. In paragraph 44 of the said judgment, the Supreme Court held that:

" 44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken."

21.11 In view of the above position of law, the submissions and claims to the contrary made by the MCI are unsustainable and deserve to be rejected by this Hon'ble Court.

21.12 MCI's reliance on the Judgment of the Hon'ble Supreme



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Court of India passed in **Abhishek Kumar Singh Vs G.Pattnaik and**

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others, reported in (2021) 7 SCC 613, is also untenable. The said case was a batch of Contempt petitions, Writ petition and Transfer Petition before the Supreme Court dealing with certain issues pertaining to issuing termination order without giving opportunity of hearing. The Court observed that the termination order was a speaking order, it was crystal clear after due enquiry and taking into consideration all aspects in particular the enquiry reports and the opinion of the experts, including the final report of SIT, the respondents were of the opinion that it was not possible to segregate tainted from the untainted candidates for the reasons recorded in that order. The Supreme Court held that they are not inclined to go into the correctness of the said reasons because it is the subject matter of challenge before the High Court and was pending. The Hon'ble Supreme Court therefore requested the High Court to expeditiously dispose the Writ Petitions.

21.13 However, in the present case, it is not as though MCI could not segregate the so called students who are said to have been admitted after 30.09.2016 from the students who were admitted prior to 30.09.2016 in



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colleges. Moreover, there is no finding by any authority that any of the

Petitioners herein were admitted in any of the colleges after 30.09.2016.

While so, it was not open to MCI to issue the impugned proceedings directing discharge of all the students by speciously alleging admission after 30.09.2016 together with the reason that the students were not admitted through CENTAC.

21.14 Thus, the impugned orders are not free from arbitrariness, unreasonableness or unfairness and accordingly it violates the principles of natural justice. In the result, the impugned orders dated 05.07.2017, 07.09.2017 and 04.09.2017 are liable to be set aside. **Accordingly, issue No.5 is answered.**

22. Issue No.6:-

Whether CENTAC is the only Authority, through which, medical admissions can be made in the Government of Puducherry, irrespective of the difference in criteria for granting admissions in the State quota and management quota seats and what is the role of PAC?



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22.1 It is seen that impugned communication proceeds on a presumption that CENTAC is the only plausible body, through which, medical admissions can be made in the Government of Puducherry, irrespective of the difference in criteria for granting admissions in the State quota and management quota seats. It is pertinent to mention here that pursuant to a Public Interest Litigation filed by one Sankalp Charitable Trust, Hon'ble Supreme Court held that, admission to MBBS/BDS courses should be based on marks obtained in NEET, and hence, as per the directions issued by the Hon'ble Supreme Court and norms prescribed by MCI, which is in consonance with UGC regulations, petitioner-Colleges admitted students, who got qualified in NEET examination. Hence, a candidate, who has qualified in NEET has been duly admitted into a MBBS course, cannot be prevented by any authority, including the Pondicherry University from pursuing the MBBS course on the only ground that his/her basic qualification is yet to be recognized by Pondicherry University.

22.2 As far as the power of CENTAC is concerned, it is an



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admitted position that CENTAC role is only to accord admission in respect of State Government quota seats. When such being the position, without understanding the role of CENTAC, the impugned order came to be passed, as if, CENTAC is the only authority to make admission to all private medical colleges and the deemed to be Universities, which shows only the lack of understanding of the MCI about the role of the CENTAC for the academic year 2016 – 17. Therefore, the MCI has no power to discharge any student admitted for the academic year 2016-17 on the ground that the admissions were not made through the CENTAC.

22.3 The State of Pondicherry constituted PAC as a State Government Mechanism to set forth guidelines and oversee the admission process in the Medical Colleges, which had to be filled based on NEET score.

22.4 PAC, after having recorded in its minutes, dated 30.08.2016



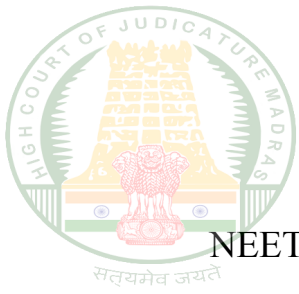
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that they have no role in the admission process after introduction of NEET,

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it is held in another meeting on 07.09.2016, where, notice was also issued to all Medical and Dental colleges to be present before the Committee to decide the modalities to be followed in the selection of admission of students to the MBBS and BDS courses for the academic year 2016-17. In the minutes of PAC, dated 07.09.2016, it is recorded *inter alia* that the Deemed to be Universities do not come under the purview of PAC, and consequently the admission to the Colleges under Deemed to be Universities were to be done by the University itself by following the University Grants Commission (UGC) regulations.

22.5 That apart, UGC, vide its communications, dated 15.09.2016, to the Vice Chancellors of all the Institutions and Deemed to be Universities, pointed out that admission to the Deemed to be Universities was to be made in consonance with clause 6.0 (admission and Fee Structure of UGC Institutions Deemed to be Universities, Regulations, 2016). Since MCI is the appropriate statutory authority to all admission to Medical Colleges, all admissions in Medical Colleges have to be made through

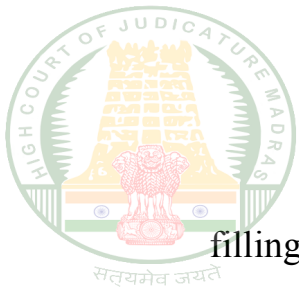


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NEET, which is prescribed by MCI, and by this communication, Deemed to be Universities were also brought under the purview of NEET. Therefore, the contention of the learned Standing Counsel for MCI that, UGC had issued a notification to all the Deemed to be Universities, which mandated that, all Deemed to be Universities should be a part of common counseling to be organised by the State Government or its agencies and that the petitioners-students nor the respondent-Institutions have been able to produce any document on record to show that the students, who were admitted by the Colleges had appeared for common counseling before CENTAC is untenable. Further, CENTAC counseling candidates are in no way different from Colleges counseled candidates, inasmuch as, common counseling was conducted by the Government to fill up its quota, as like individual College did for filling up its management quota, as there was no regulation in the UTP to conduct State Level Common Counseling to fill up management quota seats.

22.6 Thus, students having secured meritorious marks in NEET Examination, having duly participated in the process set up by UTP for



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filling up management quota seats, having paid fees already and when the admissions of students, in this case, were, in fact, done through PAC, which has been set up for this very purpose, which Committee was involved at all stages from preparation of rank list to admission, impugned communications, which have been issued without noticing the fact that the Government of Puducherry had obtained exemption from NEET for state quota seats and hence, there could not have been a common set of norms applied across the board for all seats, when the very criteria for filling up the seats were different per se, is not sustainable and are liable to be quashed, as, grave prejudice would be caused to the petitioners/students as they cannot be punished for no mistake of theirs, which may result in five years of education becoming meaningless.

22.7 Therefore, this Court holds that CENTAC is not the only Authority, through which admissions can be made, as the very criteria for filling up seats in both categories (viz., management quota and government quota) are different and in the absence of any specific provisions to conduct common counseling, the management quota seats have to be filled up by the



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respective private Unaided/self-financed Medical Colleges in the Union

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Territory of Pondicherry, on their own from the NEET qualified students on

All India Ranking Score based on *inter se* NEET percentile and the

Government quota seats have to be filled by **CENTAC** based on +2 marks

and not based on NEET score and that CENTAC is the authority that has to

administer the admission to Professional Colleges in the Government of

Puducherry for the government quota seats, which includes seats in

government Colleges and Private Self Financed Colleges. The role of PAC

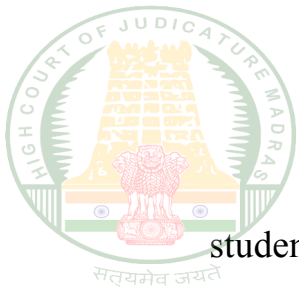
is only to monitor the admission process in unaided/private medical

colleges. **Accordingly, Issue No.6 is answered.**

23. Issue No.7:-

Whether the petitioners-Institutions/Colleges have violated the norms set forth by the Hon'ble Supreme Court by not maintaining the fairness and transparency in the admission process?

23.1 It is seen that, subsequent to the order, dated 05.07.2017, MCI passed the impugned order, dated 07.09.2017, discharging 778



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students from MBBS course, that too, after completion of their first year course, all of a sudden. As rightly pointed out by the learned Senior Counsel appearing for the petitioners, before passing the impugned order, MCI ought to have sought for a first hand report from GOP and Director of Health Service, GOP, as they were well aware of entire admission process, instead, MCI issued a direct instructions to discharge the students, and GOP and Director of Health Service, mechanically, issued the consequential impugned order, which makes the situation much more worse.

23.2 The impugned order proceeds on the footing that, Colleges have not demonstrated any evidence of fairness and transparency in the admission process, and that, no combined merit list of NEET qualified candidates was prepared by Colleges. It is the main contention of the petitioners that, without stating as to how, the norms relating to fairness and transparency have been violated, simply observed in the impugned order that there is no demonstration of any evidence of fairness and transparency in the admission process, which is completely unfair on the part of MCI. MCI is the primary authority for conduct over medical education, and



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therefore, MCI is duty bound to seek explanation from students or their respective Institutions about the mode of admission with GOP and Director of Health Service, who acted as a supervising authorities in the admission process, but, without enquiring them and without giving any opportunity of explanation and completely ignoring the fact, the Colleges, having forwarded the rank list of applicants to the UTP, who is part of PAC, and thereby, the Colleges have fulfilled its responsibility and only the MCI or PAC, which has the details of all the Colleges and that the Colleges, on its own, cannot prepare a combined merit list, has issued the impugned communication, which is disproportionate, vis-a-vis alleged deficiencies and it also discloses that, MCI has not independently applied their mind to see whether all non-meritorious candidates have been admitted, when the fact remains that students were all admitted only on the basis of NEET scores.

23.3 Therefore, the contention of learned Standing Counsel for MCI that the direction of the Hon'ble Supreme Court to maintain transparency and fairness in the admission process had been totally and



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blatantly disregarded by the Colleges, and that, the Monitoring Sub-Committee constituted by MCI, after due discussion and deliberation had accepted the reports, dated 19.10.2016, that there was a blatant violation of directions of the Hon'ble Supreme Court, in respect of the manner of granting admissions to MBBS course, and decided that all the students, except, those, who were admitted in MBBS course through the counseling conducted by the CENTAC, GOP, for the academic year 2016-17 should be discharged and in view of the law laid down by the Hon'ble Supreme Court, in **Mridul Dhar vs. Union of India (supra)** students admitted beyond 30th, September, 2016 were also bound to be discharged, is not tenable. **Issue No.7 is answered accordingly.**

24. **Issue No.8:-**

Whether COE is right in postponing I year MBBS Exam for students on the ground that the qualification of the students, who got admission under the management quota has to be recognized by the Pondicherry University ?



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24.1 In the Union Territory of Pondicherry, there are 7 private

Medical Colleges, including 4 Deemed to be Universities and total number of seats for MBBS course for the year 2016-17 is '1050'. Private Medical Colleges, by consensus, have agreed to allocate 283 seats for government quota and 767 for management quota. It is an undisputed fact that there were two categories of seats available with different qualifications being required, namely, government quota, for which, NEET is not required and marks secured in XII is suffice, and for management quota seats, eligibility is NEET. For filling up the seats under management quota for private colleges, Pondicherry Government, vide proceeding, bearing Ref.No.C27209/H5/Health/2016-17/PF, constituted a Committee, called 'PAC' to set out guidelines to enable admission of students to MBBS and BDS courses in Self-financing Colleges. So far as seats to be filled up under the government quota is concerned, CENTAC has to administer admission to Professional Colleges in the Government of Puducherry, which includes seats in government Colleges and Private Self Financed Colleges.

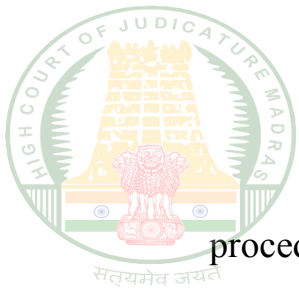
24.2 The Colleges, as per the strength, that can be accommodated in



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their Institutions have properly surrendered quite number of seats to GOP to be filed up through common counseling conducted by the Government through CENTAC and advertised for seats available under management quota, via Paper publication. Students, who got qualified in NEET exam applied for admission to MBBS course under management quota and the list of students, who were allocated by MCI were uploaded in MCI portal well within the time and so far as the students admitted under management quota, the list containing such details were furnished to GOP for grant of recognition. The Pondicherry University has stated that, on verification of forms and original certificates of students, it is found that qualification of students allotted by the Government and admitted in I Year MBBS course alone are recognized and remaining students admitted under the management quota was withheld for reply from PAC, and consequently, impugned order, dated 05.07.2017, restraining students from appearing for the first year MBBS exam has been issued.

24.3 According to petitioners/Colleges, only candidates, who qualified in NEET alone have been admitted, and as such, there is no



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procedure contemplated, wherein, the qualification of students has to be recognized separately by University. Whereas, Puducherry University, restrained the students, who have secured seats under the management quota from writing their 1st year examination. Aggrieved over which, students approached this Court, by way of filing Writ Petitions and this Court granted an interim order, permitting the students to write their examination, with a proviso that the results be withheld until further orders from the Court and thus, the students wrote their examinations on the strength of the interim order.

24.4 As rightly submitted by the learned counsel appearing for the petitioners, for committing no default by the students, they have been deprived opportunity from writing their exams in time, and this will not only affect their First year prospects but also affect their entire course, as they can be allowed to go for II year MBBS only on successful completion of I year MBBS. Therefore, action of COE, for having not permitted the students to appear for the I year MBBS Exam is in total violation of Article 14 of the Constitution of India, as it discriminates students, whom were



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admitted through management quota and the action of the COE, in conducting examination for same batch of students at two different times is unknown to law, and even in future, recognition is granted, students will be put to irreparable loss, as the act of COE will ruin the career of the students and therefore, the impugned order, dated 05.07.2017 is arbitrary and is set aside. **Issue No.8 is answered accordingly.**

25. Issue No.9:-

Whether the deemed to be Universities will come under the purview of the PAC, as there was a vast confusion over the power of PAC to monitor the admission process of the deemed to be Universities?

25.1 As discussed above, conducting of common counseling would not apply for the academic year 2016 -17 to the admissions in the medical colleges. That is the reason why, UGC has issued a Letter, dated 15.09.2016 with regard to the conducting of common counseling. The relevant portion of the Letter is as follows:-

“1. All the Institutions Deemed to be Universities shall



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be part of common counselling for admission in medical courses organised either by State Government/Central Government or through its agencies based on the marks obtained in NEET.

2. If for any reason common counselling is not being held by the State Government or the Deemed to be Universities are not covered in the State Government common counselling, the Deemed to be Universities of that State should put up a transparent system of admission under which no student is denied or deprived from applying for admission in that Deemed to be University and the admission should be done based purely on inter-se-merit amongst the applicants based on marks obtained in NEET.”

25.2 The Government of Puducherry have also issued a Letter on 29.09.2016.

25.3 A perusal of the above Letter would clearly state that the Deemed to be Universities have to conduct the common counseling, as per the *inter se* merit, based on the NEET percentage. Therefore, the same has to be intimated to the respective States/ Union Territories and also needs to be uploaded in the MCI website.



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WEB COPY 25.4 The PAC also conducted meeting on 07.09.2016, wherein, the representatives of the Deemed to be Universities also participated. In Paragraph Nos.1 and 2 of Page No.2 of the minutes of the PAC dated 07.09.2016, it was stated as follows:

“WHEREAS, the Committee appraised the procedure to be followed in selection and admission of students to the number of seats available under management quota in respect of the MBBS/BDS Courses in the respective institutions for the academic year 2016-17.

WHEREAS, representatives of the colleges under deemed University has given a representation to the Chairman, Permanent Admission Committee along with Court orders and stated that the deemed Universities do not come under the purview of the Permanent Admission Committee. The admission to the Colleges under the deemed Universities are done by the University itself by following guidelines of the University Grant Commission. The Chairman, Permanent Admission Committee has stated that the Committee is aware of the rule position in respect of deemed Universities and



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accepted the representation of the Colleges.

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25.5 Therefore, a perusal of the above minutes would reveal that the Chairman of the PAC accepted the rule position and recorded that the Deemed to be Universities do not come under the purview of PAC.

25.6 A challenge was made against PAC, in W.P.(C).No.939 of 2016 before the Hon'ble Supreme Court. In the said writ petition, the Chief Secretary to the Government of Puducherry filed a counter, wherein, at Para No.15, it is stated as follows:-

“15. I respectfully submit that, the Medical/Dental Colleges, which are coming under the purview of the Permanent Admission Committee, excluding the Colleges under Deemed Universities, followed the procedures approved by the Committee and furnished the merit list of NEET cleared candidates provisionally selected in each institution separately to the Chairman, Permanent Admission Committee for approval.”

Further, at Para No.8 of the counter, it is stated as follows:-

“I further respectfully submit that, the Government



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of Puducherry vide G.O.(Ms.)No.63 dated 25.05.2006, had notified The Pondicherry Private Professional Educational Institutions (Provision of Reservation, Admission of students and Fixation of Fees) Regulations 2006, and constituted two Committees viz., Permanent Admission Committee and Fee Committee under the Chairmanship of two separate retired Judges of Hon'ble High Court, Madras. The Permanent Admission Committee oversees the Common Entrance Test conducted by Private Self Financing Medical Colleges excluding colleges under Deemed Universities. Fee committee approves the fee structure for the Private self financing colleges excluding Deemed University Colleges.”

25.7 A conjoint reading of UGC Letter, dated 15.09.2016 and Government of Puducherry Letter dated 29.09.2016, the Chief Secretary to the Government of Puducherry filed a counter in W.P.(C)No.939 of 2016 and the mandates of the PAC dated 07.09.2016 would reveal that the Deemed to be Universities would be outside the purview of the PAC. The deemed to be Universities have conducted counseling as per the UGC regulations and forwarded admission list to the Government of Puducherry and thereafter, they have also uploaded the various details of the candidates



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admitted up to 30.09.2016 in the MCI website, for approval. Therefore, the

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PAC would only monitor the admission process of the private medical colleges excluding Deemed to be Universities. **Accordingly, issue No.9 is answered.**

26. Every executive decision of the Government Order has to survive based on its own reasoning. The authority / any other person who is supporting the order passed by the authority cannot be permitted to add or supplement fresh reasons in the shape of affidavit or otherwise, when the proceedings are challenged by filing counter affidavit and explaining the scope of defence. *'The orders are not like old wine becoming better as they grow older.'*

27. In the present case, the authorities and the impleading respondent / Students Parents Association attempted to add or supplement by way of fresh reasons which were not discussed in the impugned orders.



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WEB COPY 28. A mere glance of the impugned orders dated 05.07.2017, 07.09.2017 and 14.09.2017 would clear that they are arbitrary, unreasonable and not an innocuous orders, which refers only the report of the PAC, complaint of the Students Parents Association, letter received from the Lieutenant Governor and the report received from the Sub Committee constituted by the MCI. Except these, the impugned orders did not reflect anything about the allegations leveled in the report and how these allegations are justified. No such details are available in the impugned orders passed by the public authorities, which would affect largely the interest of the students as well as the institution.

29. The public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public



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authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Therefore, except the authorities assigned in the order, the authorities or any other person cannot expand the scope of the order by adding or by providing fresh reasons.

30. This Court would like to refer the judgment of the Hon'ble Supreme Court rendered in ***Mohinder Singh Gill and Ors. vs. the Chief Election Commissioner, New Delhi and Ors.*** reported in ***1978(1) SCC 405*** held at Para No.8 as follows:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional grounds later brought out.”

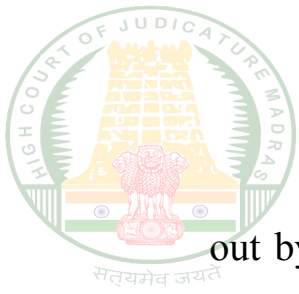


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31. This Court also pressed into service of the judgment of the Hon'ble Supreme Court rendered in *Commissioner of Police, Bombay vs. Gordhandas Bhanji* reported in *AIR 1952 SC 16*. The public authorities cannot play fast and loose with the powers vested in them, and persons to whose detriment orders are made are entitled to know with exactness and precision what they are expected to do or forbear from doing and exactly what authority is making the order.

32. In view of the above settled law by the Hon'ble Apex Court, the MCI, the Government of Puducherry and the University including the party-in-person appeared for the Student Parents Association, who are all provided very many reasons to supplement the impugned orders, which the authorities have not dealt with in the impugned orders, which is not permissible. If it is allowed to, then it would amount clearly the orders, which were passed in the beginning would be treated as bad, but the same get validated by providing an additional ground brought



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out by the respondents later. Therefore, all the additional grounds and fresh reasons which were provided by the authorities by way of counter affidavit and by the party-in-persons those who supported the impugned orders by way of additional and fresh reasons, cannot be construed by this Court and the same is rejected.

33. The learned Senior counsel appearing for the petitioners also referred to the judgments rendered by the Hon'ble Apex Court in *Chowdhury Navin Hemabhai vs. The State of Gujarat* reported in (2011) 3 SCC 617 and in *Medical Council of India vs. Kalinga Institute of Medical Sciences* reported in (2016) 11 SCC 530. It is relevant to extract the following paragraphs in *Chowdhury Navin Hemabhai case*:

“4.The appellants had secured 40% marks in the qualifying examination in Physics, Chemistry and Biology as prescribed in the notification issued under Section 12 of the State Rules, 2008. The appellants also appeared in the common entrance test conducted for Gujarat for 2008-2009, but secured less than 40% marks in Physics, Chemistry and



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Biology in the common entrance test. As the appellants were placed in the merit list in the common entrance test, they were admitted to the MBBS course in Pramukhswami Medical College, Karamsad (for short “the College”).

5. After collecting information from the College, the MCI sent a communication dated 10-2-2009 to the College to discharge the seven appellants and one more student as

they had secured less than 40% marks in Physics, Chemistry and Biology in the common entrance test and were not eligible for admission in the MBBS course as per the MCI Regulations. The College entered into some correspondence with the MCI and the Admission Committee of the State Government and on 1-7-2009 cancelled the admission of the appellants on the insistence of the MCI in its letter dated 27-3-2009. The State Government addressed a communication to the MCI saying that the students were admitted in accordance with the State Rules, 2008 as per their merit and they may be allowed to pursue the medical education as they were not at fault. On the request of the appellants, the College permitted the appellants to appear in the preliminary examination for First MBBS in July 2009 subject to the final decision of the MCI.

13. Mr Maulik Nanavati, appearing for the State of Gujarat, submitted that while making the State Rules, 2008, Clause 5.5(ii) of the MCI Regulations was lost sight of and as a result admissions in academic year 2008-2009 to the MBBS course in different colleges in the State of Gujarat were made



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only in accordance with the State Rules, 2008 and some candidates who did not fulfil the eligibility criteria mentioned in Clause 5.5(ii) of the MCI Regulations got admitted to the MBBS course during the year 2008-2009. He submitted that for the subsequent years i.e. 2009-2010 onwards, the State Government has provided in the Rules that students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must obtain 40% marks in Physics, Chemistry and Biology in the qualifying examination as well as in the common entrance test for admission into the MBBS course as prescribed in the MCI Regulations.

19.This is, however, a clear case where the admissions of the seven appellants took place due to the fault of the rule-making authority in not making the State Rules, 2008 in conformity of the MCI Regulations. For this fault of the rule-making authority if the appellants are discharged from the MBBS course, they will suffer grave injustice. On the peculiar facts of the case, we are thus of the view that this is a fit case where this Court should exercise its power under Article 142 of the Constitution to do complete justice between the parties.

22.In the facts of the present case, we have found that the appellants were not to be blamed for having secured admission in the MBBS course and the fault was entirely of the rule-making authority in making the 2008 Rules and the



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appellants have gone through the pains of appearing in the common entrance test and have been selected on the basis of their merit and admitted into the MBBS course in the College in accordance with the State Rules, 2008 and have pursued their studies for a year. Hence, even though under the MCI Regulations the appellants were not eligible for admission to the MBBS course in academic year 2008-2009, for the purpose of doing complete justice in the matter before us, we direct that the admissions of the appellants to the MBBS course in the College during academic year 2008-2009 will not be disturbed. This direction shall not, however, be treated as a precedent. The appeal is disposed of accordingly with no order as to costs.”

34. In the above said judgment, the Hon'ble Apex Court has held that the appellants were not to be blamed for having secured admission in the MBBS course and the fault was entirely of the rule-making authority in making the 2008 Rules and the appellants have gone through the pains of appearing in the common entrance test and have been selected on the basis of their merit and admitted into the MBBS course in the College in accordance with the State Rules, 2008 and have pursued their studies for a year. Hence, even though under the MCI Regulations the appellants were

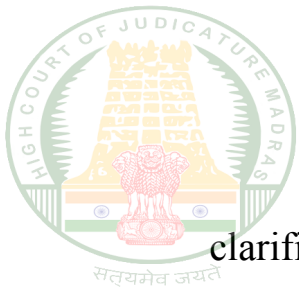


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not eligible for admission to the MBBS course in academic year 2008-2009,

for the purpose of doing complete justice in the matter before us, we direct that the admissions of the appellants to the MBBS course in the College during academic year 2008-2009 will not be disturbed.

35. In the present case also, petitioners have participated in the common entrance examination and based on the NEET percentage, they have been admitted in the respective institutions and nobody has been admitted in the medical colleges without participating in the NEET Examination. It is only some of the information that have not been furnished to the PAC which was appointed as to administer the admission process for the medical colleges. In the report of the Chairman of the PAC, she has merely stated that she contacted the Colleges over phone, for which, there was no proper response. If at all if there is anything that requires clarifications from the Colleges, the PAC ought to have sought the same in the form of writing, addressed to the Colleges. Had the Chairman of the PAC has sent a letter to the Colleges, seeking for any



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clarifications, the Colleges would have, perhaps, furnished those details and the issue would have been sorted out too long before the students complete their 1st year course, instead of doing so, the Chairman of the PAC has sent her opinion to the Chief Secretary to the Government of Puducherry, which was subsequently forwarded to the Lieutenant Governor Dr.Kiran Bedi and the same was forwarded to the MCI on 12.07.2017. A perusal of the report of the PAC would clear that the report was prepared on the basis of suspicion and fully reliance on the said report, the impugned orders were passed, which is not at all permissible.

36. The case of the medical colleges and the students was that when they have passed the discharge order, no opportunity has been provided to give an explanation and without giving an opportunity, the MCI has passed the discharge order. In the present case, the case of the respective medical colleges is that all the students have been admitted on or before 30.09.2016 and no students have been admitted beyond 30.09.2016 and in the impugned



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order also it has not been revealed about the identity of the students those who are admitted beyond 30.09.2016 and this impugned order is not an innocuous order. Therefore, the order passed by the MCI dated 07.09.2017 is not sustainable and consequential order passed by the Government of Puducherry dated 14.09.2017 and the order passed by the Pondicherry University, dated 05.07.2017 are liable to be set aside.

37. Therefore, this Court is of the view that, the impugned order, discharging 778 students from MBBS course, that too, after completion of their first year, by totally carried away by the complaint made by the PUT, without analyzing the genuineness and as well as misjudging observations of PAC, without giving due considerations to the procedure adopted by the Colleges during the admission, is not sustainable. Further, passing such draconian directions by virtue of its impugned proceeding dated 07.09.2017, at this stage by MCI is not only arbitrary and implementation of the same would turn out to be disastrous to the petitioners/students. It is only an issue of inability of three principal players, viz., MCI, GOP and PAC to work out a concerted action plan with regard to admission of students for



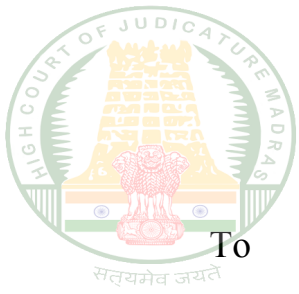
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the academic year 2016-17, for which lapse, the petitioners/students cannot be put to any disadvantage or suffering, as, by this point of time, the petitioners/students have completed a four years study and are undergoing fifth year in the MBBS Course, and nurtured thoughts about their noble profession and have fully involved themselves in the course. Even assuming that there has been error in the procedure followed by Colleges, same is not sufficient to set aside the admissions of the petitioners/students by the MCI, and GOP. Hence, the impugned order of MCI, dated 07.09.2017 and the consequential order of GOP, dated 14.09.2017 are liable to be set aside on this ground also.

38. In the result, all these Writ Petitions are allowed, the impugned orders, dated 05.07.2017, 07.09.2017 and 14.09.2017 are quashed. Consequently, connected Miscellaneous Petitions are closed. No costs.

29.4.2022

Sd/suk/akv
Internet : Yes
Issue on 06.05.2022.



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To

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1. The Government of Puducherry,
rep. by its Secretary,
Department of Health,
Health Secretariat, Puducherry – 605 001.
2. The Vice Chancellor,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry – 605 014.
3. The Deputy Registrar (Academic)
Academic Section,
Pondicherry University,
R.V.Nagar, Kalapet,
Puducherry – 605 014.
4. Controller of Examinations (i/c)
Pondicherry University,
Examination Wing,
R.V.Nagar, Kalapet,
Puducherry – 605 014.
5. The Secretary,
Medical Council of India
Pocket-14, Sector -8,
Dwarka Phase- 1,
New Delhi – 110 077.
6. The Puducherry Union Territory,
All CENTAC Students Parents Association,
rep. by its President, No.10, 9th Cross,
Krishna Nagar, Lawspet,
Puducherry – 605 008.

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7. School and Higher Education Parents Students Welfare Association (Regd) Rep. By Mr.S.Subramanian, Founder President, 447-D Block, Janani Blossam Apartment, 12 Cross Krishna Nagar, Lawspet, Pondicherry – 605 008.



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Krishnan Ramasamy,J.

sd/suk/akv

Pre-delivery common order in
W.P.Nos.17527, 17556, 25062, 25066, 25216,
27121, 27284, 27506, 30375 of 2017
and
W.P.Nos.5985, 17015, 17346 & 21816 of 2018

29.4.2022

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