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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of Decision: 09.09.2021**

% **LPA 581/2019**

**DEEPANSHU BHADORIYA & ORS** ..... Appellants

Through: Mr. Nidhesh Gupta, Senior Advocate  
with Mr. Mrigank Prabhakar,  
Advocate.

Mr. Prashant Mehta & Ms. Divita  
Vyas, Advocates for appellant No.5.

versus

**MEDICAL COUNCIL OF INDIA & ORS** ..... Respondents

Through: Mr. T. Singhdev, Ms. Michelle B.  
Das, Mr. Abhijit Chakravarty,  
Ms.Sumangla Swami and Mr. Bhanu  
Gulati, Advocates for respondent  
No.1.

Mr. Sunny Choudhary &  
Mr.Abhimanyu Singh, Advocates for  
respondent No. 2 & 3/ the State of  
Madhya Pradesh.

Mr. Nishit Agrawal & Mr. Harsh  
Mishra, Advocates and Dr. D.K.  
Satpati (representative of the  
respondent), for respondent No.4.

Mr. Rakesh Kumar, CGSC, for  
respondent No.5/ Union of India.

**CORAM:**

**HON'BLE MR. JUSTICE VIPIN SANGHI**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**VIPIN SANGHI, J. (ORAL)**

**C.M. Nos.14820/2021 & 15797/2021**

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

**LPA 581/2019 and C.M. Nos.40061/2019, 14730/2021 & 15796/2021**

3. We have heard submissions of learned senior counsel for the appellants, as well as learned counsel for the Medical Council of India (MCI); State of MP, and the respondent Medical College/ university, and we proceed to decide the present appeal.

4. This appeal is directed against the judgement dated 07.08.2019 passed by the learned Single Judge in W.P. (C) 10933/2018 titled *Deepanshu Bhadhoria and Ors. Vs. Medical Council of India and Ors.* The said petition had been preferred by the appellants herein. The learned Single Judge, vide impugned judgement, did not find merit in the petition, and the same was dismissed.

5. We would refer to the appellants, as petitioners, in the present judgement.

6. The petitioners participated in the NEET conducted by the CBSE for admission to the under-graduate medical courses in the year 2016. The Constitution Bench of the Supreme Court vide its judgement rendered on 02.05.2016 in *Modern Dental College & Research Centre & Ors. Vs State of Madhya Pradesh & Ors.*, (2016) 7 SCC 353, held that admissions to all Government and Private Medical Colleges in the country would be held

through the centralized counselling system on the basis of the result of the NEET examination. The petitioners were eligible and qualified to participate in the centralized counselling conducted by the respondent State Government, i.e. the State of Madhya Pradesh, for admissions to undergraduate medical courses in the said State. The respondent Medical College i.e. the L.N. Medical College Hospital and Research Centre, Bhopal is also one of the Medical Colleges, wherein admissions for the Academic Year 2016-17 had to be made through the centralized counselling. The centralized counselling was to be conducted by the Department of Medical Education (DME).

7. It appears that despite the aforesaid judgement, admissions were being made contrary to the said decision by the Medical Colleges, through private counselling. The Supreme Court took note of the same, and vide order dated 22.09.2016 – while dealing with the Contempt Petition titled “*State of Madhya Pradesh Vs. Jainarayan Chaouksey and Ors.*”, (2016) 9 SCC 412 held as follows :-

*“ We have heard the learned counsel for the parties at length. We observe that mandate of our judgment was to hold centralised entrance test followed by centralised state counselling by the State to make it a one composite process. We, therefore, direct that admission to all medical seats shall be conducted by centralised counselling only by the state Government and none else.*

*If any counselling has been done by any College or University and any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per centralised counselling done by the State Government.*

*We may note at this stage that the State Government has done the first counselling.- However, the learned Additional Solicitor , General has made a statement at the Bar that the State Government is ready to undertake the entire process afresh and assures that it would be completed by 30<sup>th</sup> September, 2016 which is the last date for admission. We also feel that it is a proper course of action inasmuch as it will enable the private institutions to send their representatives at the place of counselling as per the information which may be displayed by the counselling authority forthwith at its website. We place on record an assurance given by the learned ASG that all seats, whether of Government Colleges or the private institutions, shall be filled up and no seat shall remain vacant.*

*However, in so far as the prayer of the Applicant/State Government to take action against the contemnor (s) is concerned, we do not intend to proceed further and discharge the contempt notice.*

*The contempt petition stands disposed of on the aforesaid terms.*

*I.A. No. 83 in C.A. No. 4060/2009 also stands disposed of accordingly.” (emphasis supplied)*

8. Thus, all admissions granted by Medical Colleges in contravention of the judgement in ***Modern Dental College*** (supra) i.e. through counselling done by the college or university privately/ directly, were cancelled. The assurance given by the State Government was also recorded, that the centralized counselling would be completed by 30.09.2016 – which was, at that point of time, the last date of admission. We may note that the last date of admission was subsequently extended to 07.10.2016 by the Supreme Court.

9. After the process of admission was closed, the statement furnished by the respondent college, as well as by the State of M.P. to the MCI was

reconciled, and it was found that the 5 petitioners herein had been granted admission by the respondent Medical College without their undergoing the centralized counselling conducted by the DME. Consequently, the MCI issued letters of discharge in respect of the 5 petitioners, firstly, on 26.04.2017. This communication was followed by 7 subsequent communications issued on 19.07.2017, 23.08.2017, 06.09.2017, 30.12.2017, 13.02.2018, 25.08.2018, and 21.09.2018. Neither the petitioners, nor the respondent Medical College, apparently, paid any heed to these communications. The respondent Medical College continued to treat the petitioners as their students, and allowed them to attend the course, appear in the examinations; and; get promoted.

10. The petitioners, eventually, preferred the writ petition – which has also now been dismissed by the impugned judgement, seeking quashing of the aforesaid discharge communications issued by the MCI, and for direction that they be permitted to continue their studies in the respondent Medical College as regular medical students. As aforesaid, the learned Single Judge has dismissed the said writ petition.

11. The submission of Mr. Gupta – learned senior counsel appearing for the petitioners, is that the petitioners were more meritorious than those granted admission in the respondent Medical College through the centralized counselling process. No one higher in merit in the NEET examination has been denied admission at the respondent Medical College due to grant of admission to the petitioners. He further submits that the respondent Medical College had not been sent, by the State Government, 127 names, who could be granted admission in the Academic Year 2016-17. Admittedly, the DME

had forwarded only 125 names. That apart, on 07.10.2016 – which was the last date by when the admissions could be made and were closing, three students had either not taken admission, or withdrawn their candidature from the respondent college. Thus, there were five vacancies in all. He submits that the respondent Medical College had sent communication on the same date, i.e. on 07.10.2016 to the State Government/ DME seeking further 5 candidates, who could be granted admission. However, since they were not forthcoming, at the very last moment – so as to ensure that the 5 seats do not go waste, the respondent Medical College granted admission to the petitioners, and that is how they got admission in the respondent college.

12. Mr. Gupta submits that though the petitioners have not undergone through the process of centralized counselling conducted by the DME, no prejudice has been suffered by any aspiring student or candidate, since none has come forward with any grievance, and, in any event, petitioners would have secured admission in the respondent Medical College on account of their better performance in NEET, than compared to those students who have been granted admission in the said college through the centralized counselling.

13. Mr. Gupta submits that the assurance given to the Supreme Court – when it passed the order dated 22.09.2016, that the State Government would send names to fill up all vacancies by the last date of admission – which then was 30.09.2016, and had been extended to 07.10.2016, was also breached by the State Government, inasmuch, as, admittedly, the State Government/ DME had sent only 125 names as against 127 vacancies, and despite the communication by the respondent college on 07.10.2016, they failed to send

further names to fill up the remaining 5 vacancies. In these circumstances, there was no illegality in the respondent college granting admission to the petitioners, and the petitioners getting admission in the respondent college. He further submits that in the facts and circumstances of this case, the petitioners are entitled to the relief of their being permitted to continue with, and finish their course.

14. Mr. Gupta has also drawn our attention to the Two-Judge Bench judgment passed by the Supreme Court in the case of the *Saraswati Educational Charitable Trust and Anr. Vs. Union of India and Ors.* in W.P. (C) No. 40/18 decided on 24.02.2021. In this case as well, the medical students had been granted admission outside the central counselling system by the Medical College, on its own. The MCI had – in the said case as well, discharged the students. The Supreme Court held that even though the college ought not to have admitted the students by conducting the selection process on its own – without requesting the State Government to send more candidates, the students could not be held responsible for the delay on the part of the State Government in sending the names for admission to the Medical College. The Supreme Court rejected the averment made before it that the admissions were granted only at the last minute, and that there was no other alternative but to make admissions from the list of students who had applied in pursuance to the notification issued by the 3<sup>rd</sup> respondent (Department of Medical Education). Despite the aforesaid findings, the Supreme Court allowed the students to continue with their studies, under the condition, that they shall perform community service for two years. The Medical College had also been fined for its breach of the judgement of the

Supreme Court in *Modern Dental College* (supra). Mr. Gupta, therefore, seeks parity with the students in that case.

15. Learned counsel representing the respondent Medical College has also supported the case of the petitioners. He submits that the State Government had breached the assurance given to the Supreme Court that names of students would be sent after counselling, so as to fill up all the vacancies in the College by the last date, which was not done. He submits that the expenditures incurred by the private Medical College are substantial, and the seat which goes vacant, does not generate any revenue for the Medical College, and remains vacant for five years. Therefore, the Medical College had granted admissions on the last moment, from amongst the meritorious candidates, who had cleared the NEET. He further submits that the students were granted admission, on the condition, that if any more meritorious candidate seeks admission, then they would have to make way for such candidate.

16. The appeal is opposed, primarily, by the MCI, and the State of MP has also supported the case of the respondent MCI.

17. Mr. Singhdev – learned counsel for the MCI, submits that despite discharge of the petitioners by the MCI – as early as on 26.04.2017, the same was not acted upon – either by the respondent Medical College, or by the petitioners, and they have continued to ignore the same, even after repeated communications taken note of hereinabove. He submits that there was no interim order obtained by the petitioners – either in their writ petition, or in any other proceedings. Despite that, the petitioners continued

to take admissions in subsequent years and undertake examinations at the respondent College. He submits that this was done by them at their own peril, and they cannot claim equity in their favour. He submits that the admitted position is that the petitioners did not undergo the centralized counselling and they were well aware from day one, that their admission in the respondent college were irregular and illegal – being in the teeth of the judgement of the Supreme Court in *Modern Dental College* (supra).

18. Mr. Singhdev has drawn our attention to the list of medical students granted admission at the respondent Medical College for the Academic Session 2016-17, which was prepared and contemporaneously provided by the respondent Medical College itself. From the said tabulation, he points out that the dates on which the five petitioners were granted admission by the respondent Medical College, were as follows:-

Petitioner No. 1 – 24.09.2016

Petitioner No. 2 – 27.09.2016

Petitioner No. 3 – 28.09.2016

Petitioner No. 4 – 04.09.2016

Petitioner No. 5 – 28.09.2016

19. He, therefore, submits that the claim made by the petitioners and the respondent College that admissions were granted to the petitioners on 07.10.2016 – i.e. at the very last moment, is not correct. He submits that the respondent College, evidently did not communicate the vacancy position and, consequently, the DME could not send further names of candidates to

seek admission, post the counselling, in the respondent Medical College.

20. He also disputes the claim made by the respondent Medical College that it sent a communication on 07.10.2016 – informing the DME about existence of five vacancies, and calling for names to fill up those vacancies. The communication dated 07.10.2016 – relied upon by the petitioners and the respondent Medical College, reads as follows:-

*“Ref:- LNMC/Dean/2016/ Dated 07/10/2016*

*To,*

*Director Medical Education,  
Satpura Bhawan,  
Bhopal (M.P.)*

*Subject: Regarding filling up of the vacant seats in the college in MBBS during the Session 2016-17.*

*Sir,*

*On the aforesaid subject, it is stated that after the first, second and final round of counseling organized by the DME in this college for MBBS for the Session 2016-17, there remained 2 seats vacant and further at the request of three students who had been allotted seats and had got admission, their admission was cancelled. In this regard the students had submitted an application to the college for the cancellation of their admission.*

*Therefore, after again making allotment against five vacant seats, a list of such allotment be provided so that the seats of MBBS students sanctioned by the MCI can be filled up by the college.*

*Dean*

*Sd/-*

*L.N. Medical College,  
Bhopal (M.P.)”*

21. In this regard, Mr. Singhdev has drawn our attention to another communication sent by the Medical College on 11.05.2017. This communication mentions that the DME, Bhopal had allotted 125 students for admission to the respondent Medical College through NEET Counselling at last hours. It stated that 125 students out of 127 names had been sent by the DME towards 85% seats out of 150 seats in all. The relevant portion of this communication reads as follows:-

*“2. The Director Medical Education Bhopal allotted 125 students for admission at L.N. Medical College Bhopal through NEET Counseling at last hours. Though, the DME has to allot 85% seats out of 150 i.e. 127 in place of 125. Due to this problem two seats are filled by the college through NEET Qualified Students in view of Hon'ble Supreme Court decision that No seat will left vacant up to last date has fixed by Supreme Court for the year which is last date of admission College has filled these two vacant seats which were not filled by DME through NEET students who were available at the counseling centre.”* (emphasis supplied)

22. Mr. Singhdev submits that the respondent college does not disclose how the communication dated 07.10.2016 was allegedly sent. However, the communication dated 11.05.2017 shows that the same was sent through Regd. Post. He submits that, firstly, there is no whisper in this communication dated 11.05.2017, of the purported communication dated 07.10.2016, claimed to have been sent by the respondent Medical College. It was not claimed by the respondent Medical College in this communication, that even on 07.10.2016, it had asked the DME to send names of five students – who could be granted admission against five

vacancies. In fact, a perusal of this communication shows that the respondent Medical College claimed that as against 127 vacancies, 125 names had been sent and, therefore, the Medical College had filled up two seats through the NEET qualified students, in view of the decision of the Supreme Court that no seat would be left vacant up to the last date fixed by the Supreme Court.

23. Mr. Singhdev further submits that reliance placed by the petitioners on the decision of the Supreme Court in *Saraswati Educational Charitable Trust* (supra) is inappropriate, inasmuch, as, the said decision itself observed that it has been passed in the peculiar facts and circumstances of the case, and that it would not constitute a binding precedent.

24. Moreover, later a Three-Judge Bench decision of the Supreme Court – which Bench was also headed by the same learned Judge who headed the Bench which decided *Saraswati Educational Charitable Trust* (supra), has clearly held that in the case of backdoor entries, i.e. grant of admissions in Medical Colleges by bye-passing the central counselling system, the Court would not allow the students to continue their course on equitable considerations.

25. In this regard, he has drawn our attention to the judgment of the Supreme Court in Review Petition (Civil) Nos. 1835-1836/2020 in I.A. No. 183249/2019 in Special Leave Petition (Civil) Nos. 31037-31038/2016, *Abdul Ahad and Ors. Vs. Union of India and Ors.* alongwith other cases, decided on 17.08.2021. Mr. Singhdev submits that the facts of this case dealt with by the Supreme Court, were much better for the petitioner before

it inasmuch, as, the students were permitted – under interim orders, to continue with the course, which is not the case in hand. He has specifically placed reliance on the following passages of the said decision, which was preceded by consideration of several earlier decisions of the Supreme Court on the aspect of grant of equitable/ sympathetic relief to students/ candidates who took admissions to academic institutions irregularly. The decisions considered were: *Guru Nanak Dev University v. Parminder Kr. Bansal*, (1993) 4 SCC 401; *Gurdeep Singh Vs. State of J&K*, 1995 Supp (1) SCC 188; *K.S. Bhoir v. State of Maharashtra*, (2001) 10 SCC 264; *Mahatma Gandhi University v. GIS Jose*, (2008) 17 SCC 611; and *National Council for Teacher Education v. Venus Public Education Society*, (2013) 1 SCC 223. The conclusion drawn by the Supreme Court after discussing the aforesaid decisions, reads as follows:-

*“35. In the backdrop of this legal position laid down in various judgments of this Court, it will not be possible to consider the cases of the review petitioners sympathetically. The Notification issued by the State of Uttar Pradesh on the basis of the law laid down by this Court clearly provided that the admissions were to be done only through the centralized admission process. Glocal Medical College in contravention of the said Notification conducted private counselling, which was not at all permissible in law. The students cannot be said to be ignorant about the Notification issued by the State of Uttar Pradesh.*

*36. In such a situation, no sympathies can be shown to such students who have entered through backdoor. Apart from that, MCI vide order dated 27.1.2017 had discharged the said students, who were not admitted through centralized admission process. It is pertinent to note that 25 students admitted in the same college, who were admitted through the centralized admission process, were very much absorbed by the DGME in*

*other colleges. As such, the contention of the review petitioners that they came to know about the discharge order dated 27.1.2017 issued by MCI only when they had filed a petition in the High Court in 2019 does not stand to reason.*

*37. Insofar as the contention with regard to the interim order passed by this Court dated 20.3.2017 is concerned. The same would clearly show that though the students were permitted to appear in the examination, their results were directed not to be published. There is no other order modifying the said order.*

*38. It is difficult to appreciate as to how the results of the students were declared for the 1<sup>st</sup> year MBBS examination, how they were admitted in the 2<sup>nd</sup> year MBBS course and how they cleared the 2<sup>nd</sup> year MBBS examination, despite the fact that MCI had discharged the students vide order dated 27.1.2017.*

*39. Insofar as the observations of this Court in order dated 18.9.2017 in the writ petition filed by Glocal Medical College challenging the discharge order is concerned. The observation could not be construed to have vacated or modified the specific directions issued by this Court on 20.3.2017.*

*40. In the result, the Review Petitions are without merit and as such dismissed. Consequently, all pending applications including the application(s) for intervention/impleadment shall stand disposed of.”*

26. Mr. Singhdev has also relied upon the decisions discussed in the impugned judgment on the aspect of MCI's jurisdiction to issue the discharge letters to the petitioners and the respondent college. He has also argued that the MCI is bound to act “*in aid of the Supreme Court*” under Article 144 of the Constitution, and the MCI was, thus, empowered to direct discharge of the petitioners. We may, at his stage itself note that Mr. Gupta has not advanced any submission to dispute or challenge the authority of the MCI to issue directions to the petitioner and the respondent college to discharge the petitioners. We are, therefore, not required to go into the said

issue. Even otherwise, we are satisfied that the MCI was empowered to issue the directions for the discharge of the petitioners and that direction was binding on all concerned. The discussion in the impugned judgment on this aspect is exhaustive and does not call for interference.

27. In rejoinder, both Mr. Gupta – who appears for the petitioners, and Mr. Agrawal – who appears for the respondent Medical College, submit that the dates of admission mentioned in the tabulation, relied upon by the respondent MCI – qua the petitioners, are not correct. They insist that admission was granted to the petitioners only in the late hours of 07.10.2016, and not before that.

28. In response to our query, whether the respondent College had ever disputed its tabulation as contemporaneously provided to the authorities, which shows the dates of admission of the petitioners falling between 04.09.2016 to 28.09.2016, learned counsel for the respondent College states that the said tabulation was never sought to be disputed, or withdrawn by the respondent College, and it was not substituted by any subsequent tabulation indicating any other dates of admission of the petitioners. Therefore, in these proceedings, we would proceed on the basis of the said tabulation only, and we see no reason to discard the same.

29. Mr. Gupta submits that the decision of the Supreme Court in *Abdul Ahad* (supra) is distinguishable, and cannot be invoked in the facts of the present case inasmuch, as, the petitioners were higher in merit in the NEET examination than even those admitted by the respondent Medical College through centralised counselling. He submits that this special feature should persuade this Court to grant the equitable relief to the petitioners – as

granted by the Supreme Court in *Saraswati Educational Charitable Trust* (supra).

30. Learned counsel for the respondent College has also submitted that the fact that the respondent College had issued the communication dated 07.10.2016 to the DME – requiring them to forward the names of the five candidates against five vacancies, has not been disputed in the pleadings before the learned Single Judge.

31. We have heard submissions of learned counsel for the parties and considered their respective submissions.

32. It appears to us that the petitioners, and particularly the respondent College – which has granted admission to these petitioners, are taking shifting stands. While they claim that admissions to the petitioners were granted at the last minute on the last date of admission, i.e. 07.10.2016, this is not borne out from the record. As noticed hereinabove, the information/tabulation provided by the respondent Medical College contemporaneously to the MCI, itself, enlisted the dates on which admissions were granted by the respondent Medical College to all the students, including the petitioners herein which fell between 04.09.2016 to 28.09.2016. Admittedly, this tabulation was never sought to be withdrawn by the respondent Medical College. They did not claim that there was any typographical error in the tabulation as provided by them on the basis of their record. The conduct of the respondent College to now renege from their own tabulation speaks volumes, and in these proceedings, we shall not permit the same to be done as this itself would raise a serious disputed question of fact, which cannot be gone into in writ proceedings.

33. Moreover, the stand of the petitioners and the respondent Medical College that all the five petitioners were granted admission on 07.10.2016, is also contrary to the stand taken by the respondent Medical College in their communication dated 11.05.2017. In the said communication, they clearly stated that as against 125 vacancies, the DME had sent 125 names and there were 2 unfilled vacancies. They had gone on to state that they had filled the two vacancies on the last date, i.e. 07.10.2016. This stand taken by the respondent Medical College on 11.05.2017 is contrary to their stand that they provided admission to the five petitioners in the closing hours of 07.10.2016.

34. The grievance made by the petitioners as well as the respondent Medical College that the DME did not send sufficient names after conduct of centralised counselling to fill up all the vacancies in the respondent Medical College, also does not appear to be justified. This is for the reason that while passing the order dated 22.09.2016 in *Jainarayan Chaouksey* (supra), the Supreme Court had observed that the proper course of action would be that the private institutions send their representatives at the place of counselling. This was done only to ensure that there was complete coordination and flow of information with regard to the number of seats sanctioned; the number of seats filled on the basis of centralised counselling, and ; the number of vacancies for which the DME should send further names post counselling. It is not the case of the petitioners that on 07.10.2016, they presented themselves before the DME for their counselling to fill up the remaining vacancies in the Medical Colleges, including the vacancies in the respondent Medical College. It is also not the case of the respondent

Medical College, that their representative presented himself before the DME on 07.10.2016 to inform them that there were any vacancies remaining, for which the DME should send names post counselling.

35. We also find merit in the submission of Mr. Singhdev that it is doubtful that the respondent College sent the communication dated 07.10.2016 – as claimed by them. The manner in which the said communication was allegedly sent has not been disclosed. The said communication is in contrast to the communication dated 11.05.2017. Firstly, the communication dated 11.05.2017 clearly shows that it was sent through recorded delivery. One would have expected the respondent Medical College to send the communication dated 07.10.2016 by hand looking to the urgency, and to get it acknowledged. However, nothing has been placed on record to show the delivery/ receipt of the said communication to/ by the DME. Moreover, the contents thereof are in contradiction with what is claimed to have been communicated by the respondent Medical College in their communication dated 07.10.2016.

36. In any event of the matter, the admissions granted to the petitioners were, admittedly, outside the centralised counselling conducted by the DME of the State of Madhya Pradesh. If the vacancies position had been communicated to the DME by the respondent Medical College on, or before 07.10.2016, the DME could have sent the names of candidates post counselling. However, it appears that was not done by the respondent Medical College, which proceeded to grant admission to the five petitioners much earlier, i.e. between 04.09.2016 and 28.09.2016. Obviously, these admissions were granted to the petitioners collusively. They are in the teeth

of the judgment of the Supreme Court in *Modern Dental College & Research Centre* (supra). Pertinently, even after the Supreme Court passed the order dated 22.09.2016 in *Jainarayan Chaouksey* (supra), the respondent Medical College appears to have brazenly gone ahead to grant admission to petitioners No.1, 2, 3 & 5 between 24.09.2016 and 28.09.2016. The conduct of the petitioners and the respondent Medical College is, in fact, in gross contempt of not only the judgment in *Modern Dental College & Research Centre* (supra), but also the order dated 22.09.2016 in *Jainarayan Chaouksey* (supra).

37. The distinction sought to be drawn by Mr. Gupta in the case of the petitioners by contending that they ranked higher in the NEET examination than even those who were granted admission through the central counselling conducted by the DME in relation to the respondent Medical College, and therefore, they should be shown leniency as in the case of *Saraswati Educational Charitable Trust* (supra), and the decision in *Abdul Ahad* (supra) should not be invoked in their case, also has no merit. This is for the reason that, if the respondent Medical College had informed the vacancy position to the DME on time, the DME would have conducted further counselling and sent names on merit on the basis of the NEET examination conducted in 2016. It is quite possible that the names of other candidates, more meritorious than the five petitioners, may have been sent. Since the respondent Medical College does not appear to have informed the DME of the vacancy position, and they proceeded to grant admissions to the five petitioners much before the close of the date of admission on 07.10.2016, the other meritorious students, obviously, remained unaware that they could

stake a claim against a seat in the respondent Medical College on the basis of their merit. Thus, to say that no other meritorious candidate has showed up, is neither here nor there.

38. It is high time that such backdoor entries in educational institutions, including Medical Colleges, should stop. Lakhs of students all over the country work hard and toil to secure admissions to educational institutions on the basis of their merit. To permit any backdoor entry to any educational institution would be grossly unfair to those who are denied admission, despite being more meritorious, on account of the seats being taken and blocked by such backdoor entrants. The petitioners have only themselves to blame for the mess that they find themselves in. Had they acted in terms of the discharge letter dated 26.04.2017, they would have saved four years of their lives. But they did not, and acted recklessly. Despite not having any interim orders in their favour in their writ petition, they continued to attend the course – obviously, at their own peril.

39. In our view, the later 3-Judge Bench decision of the Supreme Court in *Abdul Ahad* (supra) is squarely attracted in the facts of this case. *Saraswati Educational Charitable Trust* (supra) cannot be cited as a precedent when the said decision, itself, states that it shall not constitute a precedent.

40. For the aforesaid reasons, we find no merit in the present appeal and the same is dismissed leaving the parties to bear their respective costs.

**VIPIN SANGHI, J**

**JASMEET SINGH, J**

**SEPTEMBER 09, 2021/kd/aks**