

Neutral Citation No. - 2023:AHC-LKO:72528-DB

Court No. - 3

Case :- WRIT - C No. - 30268 of 2017

Petitioner :- Shri Ram Murti Smarak Institute Of Medical Sciences Lko.

Respondent :- State Of U.P.Through Secy.Medical Education Lko.And
Ors.

Counsel for Petitioner :- Gaurav Mehrotra,Ambrish Singh Yadav,Amit
Jaiswal-Ojus Law,Mrs. Komal Jaiswal-Ojus L

Counsel for Respondent :- C.S.C.,A.S.G.,Anendra Kumar
Srivastav,Gyanendra Kumar Srivastav,K.D. Nag,Kirti Kar Tripathi,Sanjay
Bhasin,Shrikant Tripathi

and

Case :- WRIT - C No. - 31072 of 2017

Petitioner :- G.S. Medical College And Hospital Thru. Secy. Ankit
Sharma

Respondent :- State Of U.P. Thru. Secy. Medical Education And Others
Janpat

Counsel for Petitioner :- Gaurav Mehrotra,Ambrish Singh Yadav,Mrs.
Komal Jaiswal-Ojus L

Counsel for Respondent :- C.S.C.,A.S.G.,Gyanendra Kr.
Srivastava,Gyanendra Kumar Srivastav,Sanjay Bhasin,Waseeq Uddin
Ahmad

and

Case :- WRIT - C No. - 31447 of 2017

Petitioner :- Career Institute Of Medical Sciences And Hospital Thru.
Chairm

Respondent :- State Of U.P. Thru. Secy. Medical Education And Others
Janpat

Counsel for Petitioner :- Gaurav Mehrotra,Ambrish Singh Yadav,Mrs.
Komal Jaiswal-Ojus L

Counsel for Respondent :- C.S.C.,A.S.G.,Akhilesh Kumar

Srivastava,Gyanendra Kr. Srivastava,Gyanendra Kumar Srivastav,Sanjay
Bhasin,Shobhit Mohan Shukla

and

Case :- WRIT - C No. - 31418 of 2017

Petitioner :- Subharti Medical College Thru. Principal Dr. A.K.

Srivastava

Respondent :- State Of U.P. Thru. Secy. Medical Education And Others
Janpat

Counsel for Petitioner :- Gaurav Mehrotra,Ambrish Singh Yadav,Mrs.

Komal Jaiswal-Ojus L

Counsel for Respondent :- C.S.C.,A.S.G.,Gyanendra Kr.

Srivastava,Gyanendra Kumar Srivastav,Sanjay Bhasin

and

Case :- WRIT - C No. - 30254 of 2017

Petitioner :- Rama Medical College Hospital And Research Centre Thru.
Prin.

Respondent :- State Of U.P. Thru. Secy. Medical Education And 5 Ors.

Counsel for Petitioner :- Ambrish Singh Yadav,Gaurav Mehrotra,Mrs.

Komal Jaiswal-Ojus L

Counsel for Respondent :- C.S.C.,A.S.G.,Anand Dwivedi,Anurag

Verma,Gyanendra Kumar Srivastav,Sanjay Bhasin

and

Case :- WRIT - C No. - 31046 of 2017

Petitioner :- K.D. Medical College Hospital And Research Centre Thru
Chairma

Respondent :- State Of U.P. Thru. Secy. Medical Education And Others

Counsel for Petitioner :- Gaurav Mehrotra,Ambrish Singh Yadav,Komal

Jaiswal

Counsel for Respondent :- C.S.C.,A.S.G.,Anurag Verma,Gyanendra Kr. Srivastava,Gyanendra Kumar Srivastav,Sanjay Bhasin
and

Case :- WRIT - C No. - 21521 of 2018

Petitioner :- Megha Pant And Anr.

Respondent :- State Of U.P. Thru. Secy. Medical Education And Ors.

Counsel for Petitioner :- Laltaprasad Misra

Counsel for Respondent :- C.S.C.,A.S.G.,Gyanendra Kumar Srivastav,K.D. Nag,Kirti Kar Tripathi,Sanjay Bhasin
and

Case :- WRIT - C No. - 24480 of 2017

Petitioner :- Mayo Institute Of Medical Sciences Thru Director

Respondent :- State Of U.P Thru Prin Secy Medical Edu Lko And Ors

Counsel for Petitioner :- Ram Raj,Chetna Singh

Counsel for Respondent :- C.S.C,Gyanendra K. Srivastava,Gyanendra Kumar Srivastav,Sanjay Bhasin
and

Case :- WRIT - C No. - 22122 of 2018

Petitioner :- Ayush Agarwal And Anr.

Respondent :- State Of U.P. Thru. Secy. Medical Education Lucknow And Ors.

Counsel for Petitioner :- Vikas Vikram Singh

Counsel for Respondent :- C.S.C.,A.S.G.,Amit Jaiswal,Arpit Kumar,Gyanendra Kumar Srivastav,K.D. Nag,Sanjay Bhasin
and

Case :- WRIT - C No. - 31409 of 2017

Petitioner :- Rajshree Medical Research Institute Thru. Chairman Rajendra

Respondent :- State Of U.P. Thru. Secy. Medical Education And Others
Janpat

Counsel for Petitioner :- Gaurav Mehrotra, Ambrish Singh Yadav, Mrs.
Komal Jaiswal-Ojus L

Counsel for Respondent :- C.S.C., A.S.G., Gyanendra Kr.
Srivastava, Gyanendra Kumar Srivastav, K.D. Nag, Kirti Kar
Tripathi, Sanjay Bhasin, Shrikant Tripathi

and

Case :- WRIT - C No. - 24580 of 2017

Petitioner :- T.S. Misra Medical College And Hospital Thru Prin.
Brigadier R

Respondent :- U.O.I. Thru. Secy. Ministry Of Health And Family
Welfare And Ors

Counsel for Petitioner :- Sunil Kumar Chaudhary, Ram Saran Awasthi

Counsel for Respondent :- C.S.C., A.S.G., Anand Dwivedi, Gyanendra
Kr. Srivastava, Gyanendra Kumar Srivastav, Sanjay Bhasin

Hon'ble Vivek Chaudhary, J.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the parties including the counsels, who have filed their vakalatnamas in different writ petitions today, which have been taken on record.

2. Aforesaid writ petitions have been preferred by the private medical colleges except the Writ C Nos. 21521 of 2018 and 22122 of 2018, which have been preferred by the students.

3. All these writ petitions involve the same question for consideration, hence, they are being decided by this common judgment. The leading case being Writ C No. 30268 of 2017.

4. By the impugned order dated 25.10.2017 the admissions given by the petitioner institutions have been cancelled on the grounds that

petitioners had admitted the students in violation of Graduate Medical Education Regulations, 1997. By another impugned order dated 29.09.2017, the petitioners have been directed to discharge the said students immediately and submit a compliance within a period of two weeks. Further by two other impugned orders dated 20.11.2017 and 21.11.2017, the petitioners have been required to furnish their explanation.

5. The brief facts of the cases contained in the present bunch are that the State of Uttar Pradesh opted not to conduct C.P.M.T. but to fill the M.B.B.S. seats on the basis of N.E.E.T examination in academic session 2017-18. The State Government on 03.07.2017 issued an order with regard to the admission policy for M.B.B.S./B.D.S. Courses for academic Session 2017-18 for all the medical colleges in the State of U.P.

6. In pursuance of the policy, the brochure/guidelines were issued by the designated authority i.e. D.G.M.E. which provides that first round of counseling was to be held on 15.07.2017 and 16.07.2017. Likewise second round of counseling was to be held on 18.08.2017 and 19.08.2017. For the remaining vacant seats, after two rounds of counseling a MOP-UP round was fixed from 26.8.2017 to 31.08.2017.

7. In the Government Order dated 03.07.2017, it has been provided that in case any seats are left vacant, the competent authority shall provide list of candidates for admission in the ratio of 1:10 on each vacant seats in compliance of the order dated 09.5.2017 passed by the Hon'ble Supreme Court in the case of ***Dar-us-Slam Educational Trust and Others Vs. Medical Council of India and others*** reported in ***2017 SCC OnLine SC 2119*** and other connected matters including the S.L.P. No. 31427 of 2017.

8. The learned counsel for the petitioners have submitted that after the completion of MOP-UP counseling, the D.G.M.E. did not provide the list of students for admission in the ratio of 1:10 as directed by Hon'ble Supreme Court and in the Government Order dated 03.07.2017 issued in pursuance of the same.

9. It is further submitted that the Hon'ble Supreme Court in the case of *Ashish Ranjan Vs. Union of India (2016) 11 SCC 225* has fixed the last date of admission as 31.08.2017. In absence of any list provided by the D.G.M.E., the petitioner institutions had given admission to the students on its own against the vacant seats after MOP-UP round. The details of vacant seats in the respective colleges are as follows:-

Sl. No.	Name of Institution	No. of vacant seats
1.	G.S. Medical College	6
2.	Career Institute of Medical Sciences	4
3.	Rajshree Medical Research Institute	2
4.	Subharti Medical College	9
5.	Rama Medical College	2
6.	K.D. Medical College	2
7.	T.S. Mishra Medical College	40
8.	Mayo Institute of Medical Science	6
9.	S.R.M.S. Institute	2

10. It is further submitted that the students were given admission and they had appeared in the examinations but their results have not

been declared and at present all the students have completed their courses including the internship.

11. It is further submitted that for the same academic session 2017-18 and in similar facts and circumstances, one institution namely Saraswati Educational Charitable Trust had also given admission to 131 students against the vacant seats after the MOP-UP round and the matter went up to the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its judgment dated 24.02.2021 has held that cancelling of the admission of students, who have started pursuing their studies, at this stage, would not serve any useful purpose.

12. It is further submitted that a Division Bench of this Court in the case of *Pranjal and others Vs. Union of India and others (Writ C No. 2994 of 2018)*, has observed that role of the colleges & the students in the entire process cannot be approved of. The names of students who had secured admission were not forwarded by the D.G.M.E., but as the students have continued studies of their 5 years M.B.B.S Course, the college was directed to declare the result of the students/petitioner of each year examination of M.B.B.S. Course. Hence the students studying in the petitioner institutions are entitled for the same relief as was granted by Hon'ble Supreme Court and the Division Bench of this Court.

13. On the other hand, learned Standing Counsel and Shri Sanjay Bhasin, learned Senior Advocate appearing on behalf of D.G.M.E. have submitted that admission made by the petitioner institutions is against the Government Order/Policy issued time to time in compliance of the judgment of the Hon'ble Supreme Court in the case of *Dar-us-Slam (supra)*. The petitioner institutions have not been given any right to fill the vacant seats after the MOP-UP round on their own hence these petitioner institutions are not entitled for

any relief and the writ petitions are liable to be dismissed. Although learned counsels for the respondents are not in a position to dispute the parity claimed by the petitioner institutions in the light of the judgment of Hon'ble Supreme Court in the case of ***Saraswati Educational Charitable Trust (supra)*** and the judgment rendered by this Court at Allahabad in the case of ***Pranjal(supra)***.

14. After hearing learned counsel for the parties and going through the judgment of Hon'ble Supreme Court as well as by this Court, it cannot be denied that the institutions and students, who have preferred writ petitions before this Court, took the admission/got the admission against the judgment of Hon'ble Supreme Court in the case of ***Dar-us-Slam (supra)***.

15. The Hon'ble Supreme Court has directed in the case of ***Dar-us-Slam (supra)*** that after completion of counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward it in order of merit equaling to 10 times to the numbers of vacant seats to the medical colleges. The said list was never provided by the D.G.M.E. in the ratio of 1:10. The relevant para of the said judgment is quoted hereinbelow for convenience :-

" In order to ascertain the number of seats that still remain vacant after the counseling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list. "

16. A similar controversy wherein admissions were given by the Saraswati Educational Charitable Trust in the academic session 2017-18 against the procedure, guidelines, policy and the regulation, the case went up to the Hon'ble Supreme Court in the case of ***Saraswati Educational Charitable Trust (supra)*** wherein Hon'ble Supreme Court has permitted the students to continue their studies but at the same time imposed a cost of Rs. 5 crore upon the petitioner college. The relevant paras of the said judgment is extracted hereinbelow:-

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

13. Being aware of the fact that admissions cannot be made from students not allotted by the

third Respondent, the College admitted 132 students on its own. Thereafter, the College permitted the students to continue their studies in spite of the direction by the Medical Council of India to discharge the students not being stayed. Intentional violation of the Regulations by the Petitioner-College while granting admission to 132 students in the first year MBBS course for the academic year 2017-2018 cannot be condoned. The Petitioner-College is directed to deposit an amount of Rupees Five Crores in the Registry of this Court within a period of 8 weeks from today. The Petitioners are directed not to recover the amount from the students in any manner whatsoever. We direct the National Medical Commission to constitute a Trust which shall include the Accountant General of the State of Uttar Pradesh, an eminent educationist and a representative of the State of Uttar Pradesh as Members of the Trust. The Trust constituted to manage the amount of Rupees Five Crores to be deposited by the Petitioner-College shall extend financial assistance to needy students seeking admission to medical colleges in the State of Uttar Pradesh. An Action Taken Report along with the copy of the Trust-Deed shall be filed by the National Medical Commission within a period of 12 weeks from today."

17. Following the order of Hon'ble Supreme Court in the case of ***Saraswati Charitable Trust*** and the decision of a division bench of this Court in the case of ***Pranjal (supra)***, the order is passed with the consent of parties as follows:-

1. All the petitioner institutions are directed to declare the result of each and every semester/year of the students.
2. Petitioner institutions are directed to deposit an amount of Rs. 4 Lakh per student admitted by them in their colleges in the Registry of this Court within a period of two months from today and

the same shall not be recovered by the colleges from the students concerned in whatsoever manner.

3. The said amount deposited by the petitioner institutions in the Registry shall be transferred to the trust created as per the judgment of Hon'ble Supreme Court in the case of *Saraswati Charitable Trust (supra)*.

18. With the observations and in the terms and directions hereinabove, writ petitions stand finally disposed off.

(Manish Kumar,J) (Vivek Chaudhary,J)

Order Date :- 3.11.2023

Ashish