

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO.5474 OF 2015

Reema Riyaheen Abdul Hafeez
Shaikh, Aged 18 years, Occ.
Student, R/o City Plaza, Court Road,
Old Jalna, Tq. and Dist.Jalna. ... Petitioner.

Versus

1. Medical Council of India,
through its Secretary,
Pocket-14, Sector-8,
Dwarka Phase-1,
New Delhi-110077.

2. Directorate of Medical
Education and Research,
through its Director,
St.George Hospital Compound,
Dental College Building,
4th floor, Mumbai.

3. Maharashtra University of
Health Sciences, through
its Registrar, Mhasrul,
Dindori Road, Nashik.

4. Indian Institute of Medical
Sciences and Research,
through its Dean/Principal
Warudi, Tq. Badnapur,
Dist.Jalna.

5. Pravesh Niyantran Samiti,
through its Chairman,
305, Govt. Polytechnic
Building, 49, Kherwadi,
Ali Yawar Jung Marg,

Bandra(E), Mumbai.

6. State of Maharashtra,
through its Secretary,
Medical Education and Drug
Department, Mantralaya,
Mumbai.

...Respondents.

...

Mr.V.J.Dixit, Senior advocate holding for
Mr.S.V.Dixit, advocate for the petitioner.
Mrs.V.N.Patil, A.G.P. for the State.
Mr.S.K.Kadam, advocate for Respondent No.1.
Mr.K.C.Sant, advocate for Respondent No.3.
Mr.L.V.Sangit, advocate for Respondent No.4.
None appeared for Respondent No.5.

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**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 16.12.2016.

ORAL JUDGMENT (Per S.V.Gangapurwala, J.)

1. Heard.

2. The petitioner herein assails the
action of cancelling her admission pursuant to
the communication dated 19.5.2015, so also the
decision of Executive Committee of Respondent
No.1 dated 13.5.2015.

3. The petitioner applied for admission
with the Respondent No.4 College for M.B.B.S.

Course. The Respondent No.4 institution had admitted 100 students as per its intake capacity. On 30.9.2014, a student namely Shabnam bano Mohammed Shabbir, who was selected for admission, cancelled her admission at about 7-30 in the evening. On 30.9.2014 at about 10-00 in the evening, the petitioner was admitted by the Respondent No.4. The Respondent No.1 directed the institution to cancel the admission of the petitioner purportedly on the ground that the same is not as per the Rules. The Respondent No.4 on or about 2.3.2016 communicated the compliance of the directions of Respondent No.1. The petitioner requested to restore her admission. The same was not done. Aggrieved thereby, the present Writ Petition.

4. The Learned Vacation Judge passed interim order on 22.5.2015 in terms of prayer clause (C) to the effect that the petitioner be permitted to appear for the first year M.B.B.S. course which is scheduled on 28.5.2015. The said interim order was thereafter continued.

5. Mr.Dixit, learned Senior advocate for the petitioner strenuously contends that by following proper procedure the petitioner was given admission with the Respondent No.4 institution to the Ist year M.B.B.S. Course. The petitioner's name appeared in the list of successful candidates of MHCET examination. The Respondent No.4 had given admission to 100 students as the intake capacity of Respondent No.4 is 100 students. On 30.9.2014, one student in the said list of 100 students namely Shabnam bano Mohammed Shabbir had cancelled her admission. The same was communicated by the institution to the D.M.E.R. and further sought the name of the candidate to be given admission. The institution also recommended giving admission to the petitioner. D.M.E.R. Verbally permitted the Respondent No.4 to admit the petitioner and after at about 10-00 in the evening, the petitioner was given admission. That was the last day for giving admission. No other students were present for being admitted in the Respondent No.4 institution. On 1.10.2014, the Respondent No.4 communicated to the Respondent No.3, list of 100

students, wherein the name of the petitioner stood at serial 100. Similar communication was made by Respondent No.4 to Respondent No.2 and Respondent No.5. On 22.10.2014, Respondent No.4 sent proposal to Respondent No.3 for registering and granting eligibility to admitted students including the petitioner. The Respondent No.5 communicated its decision of meeting dated 31.10.2014 along with minutes of the meeting. The learned Senior advocate submits that abruptly on 30.12.2014, Respondent No.1 communicated to the Respondent No.4 to discharge petitioner due to lack of record from the College authorities about the petitioner and non-inclusion in the D.M.E.R. List. In pursuance of the letter from Respondent No.1, the Respondent No.4 requested the Respondent No.2 to grant approval to the admission of the petitioner. The Respondent No.4 in compliance of the communication by the Respondent No.1 discharge the petitioner under letter dated 13.1.2015. On 21.2.2015, the Respondent No.2 communicated to the Respondent No.4 about approval granted by the Respondent No.5 in its meeting dated 18.2.2015 to the list

of 100 students submitted by the Respondent No.4 to Respondent No.5. In light of the approval granted by the Respondent No.5 to the admission of the petitioner, the petitioner requested the Respondent No.5 to restore the admission. On 12.3.2015, the petitioner was allowed to pay the examination fees. Thereafter, communication took place between Respondent No.1 on one hand and Respondent Nos.3 and 4 on the other. The petitioner has appeared in all internal examinations conducted by Respondent No.4 College, however, was not issued the admit card for the examination of the Ist year M.B.B.S.course. On 19.5.2015, the Respondent No.1 communicated the Respondent No.4 to reconfirm that the petitioner has not been readmitted after discharge with immediate effect.

6. The learned Senior advocate further submits that the said action of the Respondent No.1 is without jurisdiction and without authority. The Pravesh Niyantaran Samiti is the body who has to consider the legality of the admissions and have to approve the admissions

which are given by the institution. Under the statute, Respondent No.1 does not have any authority to direct discharge of any candidate. The learned Senior advocate further contends that Pravesh Niyantaran Samiti has approved the admission of the petitioner and once the Pravesh Niyantaran Samiti approves the admission then Medical Council of India can not sit over the said decision. The same tantamounts to usurping the powers vested with the Pravesh Niyantaran Samiti, which is not permissible. The learned Senior advocate submits that no illegality has been committed while giving admission to the petitioner. Due procedure was followed. The name of the petitioner appeared in the merit list of MHCET. Considering the fact that in the evening at 7-30 on the last date i.e. 30.9.2013, one of the student had cancelled the admission, the same was also communicated by the Respondent No.4 to D.M.E.R. There was no time left for communicating the other candidates as they were not present. The petitioner was the only candidate who was present, the admission was given to the petitioner at about 10-00 p.m. No

other candidate has ever made any grievance about the admission given to the petitioner. Even Pravesh Niyanttran Samiti has observed that the expert Committee has pointed out that 100 candidates of Respondent No.4 are selected for academic year 2014-15 by central admission process of D.M.E.R., Mumbai and the petitioner is selected against the vacancy at the institute level and she has secured requisite marks in MHCET. After deliberations, the Samiti decided to approve 100 admissions of the selected candidates in the Ist year M.B.B.S. for the academic year 2014-15 with Respondent No.4. This would show that complete procedure was followed.

7. The learned Senior advocate further contends that even Respondent Nos.2 and 6 have filed affidavit, wherein they have also suggested that Respondent No.4 College is fulfilling eligibility criteria required for M.B.B.S. admission and no one has challenged that the merit was compromised, further that there is no fault on the part of the petitioner and the admission be regularised. The Respondent No.5

Pravesh Niyanttran Samiti has also filed affidavit suggesting that the petitioner has secured the requisite marks in the MHCET and after considering the expert Committee report i.e. of Directorate of Medical Education and Research, approved the 100 admissions. The learned Senior advocate further submits that the petitioner has already appeared for the Ist year M.B.B.S. examination and has cleared the said examination and is now in 2nd year M.B.B.S. course.

8. Mr.Kadam, learned counsel for Respondent No.1 strenuously opposes the petition and submits that the admission of petitioner is against the rules and the dictum of the Apex Court in Writ Petition (Civil) No.469/2014 with connected Writ Petitions and SLPs. The Hon'ble Apex Court under order dated September 18,2014 directed that admission shall be given to the students from the merit list prepared by the State. The Directorate of Medical Education and Research of the respective States shall send students in order of their merit to the Medical Colleges run by the petitioners. The said

student shall be admitted to the M.B.B.S. course in accordance with the Rules and Regulations of M.C.I. and also Regulations dated 16.4.2010, framed by Medical Council of India. The institutions were also given directions to give undertaking and no admission shall be given after 30.9.2014. The learned counsel further submits that under order dated September 25, 2014, the Apex Court directed that for the current academic year, there shall be only one list and that the same shall be the State quota alone. There shall not be any Management quota list to be sent to the private Colleges or institutions taking the benefit under the earlier order. The Management quota also shall be filled from the State list. The learned counsel submits that the 100 candidates were selected and appointed by Respondent No.4 institution as per the merit and one candidate i.e. Shabnam bano Mohammed Shabbir, assuming had cancelled her admission, the student should have been sent by the D.M.E.R. The same is not done in the present case. In absence thereof, the petitioner could not have been admitted at the institute level, the same would

not be in compliance with the order of the Apex Court. In view of that the Respondent No.1 had directed the Respondent No.4 to discharge the petitioner and the petitioner was discharged in January. When the petitioner was discharged in January 2015, the Pravesh Niyantaran Samiti thereafter in February 2015 could not have approved the admission of the petitioner.

9. According to the learned counsel, the Respondent No.1 has correctly acted in directing Respondent No.4 to discharge the petitioner. The admission made by the Respondent No.4 and later ratified by Respondent No.2 are in violation of the orders dated 18.9.2014 and 25.9.2014, passed by the Hon'ble Apex Court and as such Respondent No.4 was directed to discharge the petitioner. The Medical Council of India is constituted under the Medical Council Act, 1956, as an expert body to control minimum standards of medical education and to regulate their observance. It has implicit power to supervise the qualifications or eligibility standard for admission into the medical institution. There is overall

invigilation by the Medical Council to prevent sub-standard entrance qualification for medical courses.

10. Mr.Sangit, learned counsel for the Respondent No.4 institution submits that institution has followed proper procedure while giving admission. No objection has been taken in respect of 99 candidates admitted and only in respect of the petitioner, the objection is taken. The petitioner had applied for admission to the Respondent No.4 College. One Shabnam bano Mohammed Shabbir, who was at serial No.2061 of the State merit list was selected and later cancelled her admission on 30.9.2014 at 7-45 p.m. By sending SMS. Immediately, the Respondent No.4 College sent email to Respondent No.4 i.e. Director of Medical Education and Research. It was also communicated through mail that eligible candidate from merit is not ready to accept the admission and the Respondent No.2 authority may communicate any other candidate from the merit list. No written communication was received from Respondent No.2 and only oral instructions were

given for permitting the Respondent College to grant admission to petitioner. The emails filed on record are self-explanatory. The present petitioner was admitted on the vacant seat of Shabnam bano Mohammed Shabbir, on 30.9.2014 at about 10 p.m. The learned counsel further submits that the list of 100 students including the petitioner was immediately submitted to the Medical Council, so also to the D.M.E.R. And also to the advocate of the Supreme Court and the University. By letter dated 9.4.2015, the Respondent No.1 asked for exact date of admission of the petitioner with documentary evidence within seven days. On 15.4.2015, all the documents including the fees receipt No.300 dated 30.9.2014 with other documents were submitted to the Respondent No.1. Even the minutes of the meeting of the Pravesh Niyantran Samiti dated 18.2.2015 was also submitted. The learned counsel submits that no illegality has been committed.

11. The learned A.G.P. submits that mail was received from Respondent No.4 at about 9 p.m.

in the night by DMER about cancellation of admission of one student i.e. Shabnam bano Mohammed Shabbir, however, it is denied that any oral instructions were given for admission of petitioner. The Respondent No.2 is only responsible for conducting the examination, finalising the merit list and displaying list of eligible candidates to each College. The actual admissions to the private medical Colleges are governed by Pravesh Niyamtran Samiti i.e. Respondent No.5.

12. We have considered the submissions canvassed by the learned counsel for respective parties. The Apex Court had passed orders permitting the Colleges to admit the student on September 19, 2014 in W.P.No.469/2014 with connected Writ Petitions. The present Respondent No.4 was one such institute in the said group of Petitions. Some of the relevant directions of the Apex Court are reproduced herein below :

*“Notwithstanding any
direction given in the case of Priya*

Gupta (supra) if undertakings as stated hereinabove are filed by the institutions managing medical colleges for the academic year 2014-15, admissions shall be given to the students from the merit list prepared by the States and they shall be charged fees prescribed by the Government Medical Colleges of their respective States. The State Authorities, i.e. the Directorate of Medical Education and Research, of the respective States shall send students, in order of their merit, to the medical colleges run by the petitioners, which are situated within their States, within one week from the date of receipt of a copy of this order and the said students shall be admitted to the MBBS Course in accordance with the rules and regulations of the MCI and also regulations dated 16.4.2010 framed by the Medical Council of India,

provided undertakings as mentioned above are filed on behalf of the concerned institutions.

It is also clarified that there would be no further counselling in respect of the students who are to be given admission, even if it might result into some heart burning among other students, but in the peculiar facts of the case, we give this direction.

In no case, the admission shall be given after 30th September, 2014. This order shall also apply to all the institutions which had filed their petitions earlier for renewal of their recognition for the academic year 2014-15, but their petitions were rejected or withdrawn for whatever reason, provided undertakings as stated hereinabove are filed by President/Chairman and the Secretary of those institutions."

Further orders are passed on September 25, 2014. The following relevant directions are reproduced hereinbelow :

"5. In cases where two separate lists are prepared and sent by the State agencies one relating to State quota and the other relating to management quota in private institutions, we clarify that for the current academic year there shall be only one list and that shall be the "State quota" alone. There shall not be any management quota list to be sent to the private colleges or institutions taking the benefit under our order dated 18th September, 2014. The Management quota shall also be filled through the State list and the fees chargeable for the management quota shall also be charged at the same levels and rates as applicable to State quota list."

13. The Apex Court in its order has

categorically stated that for the academic year 2014-15 there would be only State quota and there shall not be any Management quota. The Management quota shall also be filled in through State list. So also it is stated that the admissions shall be given to the students in the order of their merit from the merit list prepared by the State.

14. The factual matrix that Respondent No.4 institution had given admission to 100 students as per its intake capacity as per the list prepared on 26.9.2014 is not disputed. It is also not disputed by any of the party that one student from the said list of 100 students i.e. Shabnam bano Mohammed Shabbir, had cancelled her admission at about 7-30 in the evening on 30.9.2014. It is also not disputed by D.M.E.R. That at 9 p.m. it had received email from the Respondent No.4 institution communicating it that one student Shabnam bano Mohammed Shabbir had cancelled her admission. D.M.E.R. Had not sent any student for admission and at about 10 p.m. on 30.9.2014, the petitioner was given admission. No

admission could have been given after mid-night of 30.9.2016. The Pravesh Niyantran Samiti after considering the report of the expert i.e. Directorate of Medical Education and Research (D.M.E.R.) has approved the admission of the petitioner.

15. The Expert Committee i.e. the Directorate of Medical Education and Research, Mumbai in its report has pointed out that 100 candidates of the Indian Institute of Medical Sciences and Research Centre, Jalna (Respondent No.4) are selected for the academic year 2014-15 by central admission process of D.M.E.R., Mumbai. Out of these one candidate's admission i.e. Shahnam bano Mohammed Shabbir is cancelled and one candidate Reema Riyaheen Abdul Hafeez Shaikh (petitioner) is selected against the vacancy at institute level and she secured requisite marks in MHCET. The competent authority and the Director of Medical Education and Research, Mumbai, as such communicated the Respondent No.4 on 21.2.2015 that the Pravesh Niyantran Samiti has decided to approve the 100 admissions of

selected candidates in Ist year MBBS course for the academic year 2014-15 of Respondent No.4. The Pravesh Niyantran Samiti has approved the admission of the petitioner also.

16. It is not a matter of debate that Pravesh Niyantran Samiti is the competent authority either to approve or disapprove the admission and the Pravesh Niyantran Samiti has already approved the admission of the petitioner on 21.2.2015. The Respondent Nos.2 and 6 have also filed affidavit to the effect that the petitioner is admitted by Respondent No.4 College and is fulfilling the eligibility criteria required for MBBS admission and nobody has challenged that merit was compromised. The affidavit further states that there is no fault of the petitioner and that the Hon'ble Court may take a compassionate view and may direct Medical Council of India to regularise the admission of the petitioner.

17. The Respondent No.5 has also filed affidavit stating that the Director of Medical

Education and Research submitted its verification report on 10.2.2015 to the Respondent No.5 and the Respondent No.5 Pravesh Niyantran Samiti in its meeting dated 10.2.2015, considering the report of the Expert Committee i.e. DMER approved 100 admissions of the selected candidates in Ist year MBBS course for the academic year 2014-15 of Respondent No.4 and that the petitioner has secured requisite marks in MHCET.

18. The DMER and the Pravesh Niyantran Samiti have approved the admission of the petitioner. We have asked the learned counsel for Respondent No.1 as to the powers of the Respondent No.1 to direct cancellation of admission of a particular student. It was candidly accepted by the learned counsel for Respondent No.1 that no such powers explicitly exist in the statute.

19. As observed supra, the Pravesh Niyantran Samiti is the final authority to approve and/or disapprove the admissions of the student. The Pravesh Niyantran Samiti upon

consideration of the report of the DMER approved the admission of the petitioner. It is not the case that the petitioner was admitted after the cut off date i.e. 30.9.2014. The name of the petitioner also appeared in the merit list of MHCET. There were some names between the last candidate admitted as per the said list and the petitioner. The Respondent No.4 institute at about 9 p.m. had communicated about cancellation of admission of Shabnam bano Mohammed Shabbir, at 7-45 p.m. on 30.9.2014 to the DMER. Even if we disbelieve the case of petitioner and Respondent No.4 that on oral instructions admission was given, still, there is nothing on record to even remotely suggest that DMER had suggested the admission of a particular student and that student was not admitted by the Respondent No.4. No student from the merit list in between the last candidate admitted and the petitioner were available for admission and the petitioner was given admission at 10-00 p.m. on 30.9.2014. We could have even appreciated the stand of Respondent No.1, had some other candidate standing in between the last candidate admitted

and the petitioner in the MHCET list would have made some grievance. No grievance is made by the candidate to the effect that the merit has been compromised. It also needs to be considered that the petitioner has been admitted on 30.9.2014 and has completed two years of course. The interim order was passed by the learned Vacation Judge on 22.5.2015, by virtue of which the petitioner appeared for Ist year examination. The petitioner has cleared the Ist year examination and is admitted to the 2nd year MBBS course and is to appear for 2nd year final examination from tomorrow i.e. 17.12.2016. The petitioner has almost completed two and half years course i.e. more than the half course.

20. Considering the aforesaid conspectus of the matter i.e. the petitioner's name appeared in the merit list of MHCET, the admission of the petitioner is approved by the Pravesh Niyantaran Samiti upon recommendation of the expert i.e. Director of Medical Education and Research. The petitioner being eligible, so also no name of other candidate was recommended by DMER, so also

the fact that Respondent No.1 could not show any powers under the Statute to direct cancellation of admission and further that the petitioner has completed more than half of the course, we quash and set aside the impugned order. The Respondent shall permit the petitioner to prosecute her further studies of MBBS course as a regular student.

21. Though we have found no fault on the part of the petitioner/student and considering the facts discussed above, her admission deserves to be treated as regular. However, the Respondent No.4 could not show that DMER had at relevant time instructed the Respondent No.4 to admit petitioner, we impose a penalty of Rs.2,00,000/- (Rupees two lacs) on Respondent No.4. The said amount be deposited with Medical Council of India, within a period of six (6) weeks.

(K.L.WADANE, J.)

(S.V.GANGAPURWALA, J.)

