

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P. No. 36066 of 2016

and

WMP No. 30990 of 2016

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***Mrs. S. Manimangai**

.. Petitioner

Versus

1. Medical Council of India
rep. by its Secretary
Pocket-14, Sector-8
Dwaraka Phase-1
New Delhi - 110 077
 2. Directorate of Medical Education
rep. by its Director
No.162, E.V.R. Periyar High Road
Kilpauk, Chennai - 600 010
 3. The Selection Committee
rep. by its Secretary
Directorate of Medical Education
No.162, E.V.R. Periyar High Road
Kilpauk, Chennai - 600 010
 4. Dr. M.G.R. Medical University
rep. by its Registrar
No.69, Anna Salai
Guindy, Chennai - 600 032
 5. Madha Medical College & Hospital
rep. by its Dean
Madha Nagar
Somangalam Road, Kundrathur
Chennai - 600 069
 6. Annai Medical College and Hospital
rep. by its Dean
College Road, Pennalur
Sriperumbadur, Chennai - 602 117
- (R-6 impleaded as per order dated 18.10.2016
made in WMP No. 31375 of 2016 in WP No.
36066 of 2016)

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second and third respondents to forward the name of Ms. Mathuri, S, having A.R. No. 17610 to be admitted to any of the Private Medical Colleges under the second respondent in the State of Tamil Nadu, including the fifth respondent college by following the admission process contemplated under the proviso to Section 10 (d) of the Indian Medical Council (Amendment) Act, 2016.

For Petitioners : Mr. V.T. Gopalan, Senior Advocate
for Mr. A.R. Suresh

For Respondents : Mr. V.P. Raman for R1
Mr. R. Muthukumarasamy
Advocate General
assisted by Mr. A.N. Thambidurai
Special Government Pleader for RR2, 3 and 4
Mr. N. Anand Venkatesh for R6

ORDER

The petitioner is the mother of Minor ***S. Madhuri**. The petitioner belonged to Backward Class community. The petitioner's daughter has got admission in Government quota for pursuing Bachelor of Dental Science (B.D.S.) course for the academic year 2016-2017. Her grievance is that she has originally applied for getting admitted in M.B.B.S. course. The application submitted by her is a common application meant for admission to both B.D.S. as well as M.B.B.S. course. On the basis of such application submitted by her and on the basis of the cut off marks fixed for admission to medical courses, by a communication dated 29.09.2016, she was called only to attend a counselling for admission to B.D.S., course and that too in the last counselling held on 05.10.2016. As per the directions of the Dental Council of India, the admission date for admission to B.D.S. course has been extended from 30.09.2016 to 07.10.2016.

2. According to the petitioner, even at the time of admission of her daughter in B.D.S. course on 05.10.2016, there were unfilled seats for M.B.B.S. course in the fifth respondent college but it was not disclosed to her. After getting admission in B.D.S. course, the petitioner came to know that there are three seats of M.B.B.S. course remain un-filled in the fifth respondent college with a view to fill up those seats by the private medical colleges on their own whims and fancies. At any rate, at the time of admission of her daughter in B.D.S. course on 05.10.2016, the petitioner was not aware of the three

unfilled M.B.B.S. seats remaining vacant in the fifth respondent college. Therefore, immediately on coming to know about the vacant seats, the petitioner has filed the writ petition on 07.10.2016, which happened to be the last date for admission for B.D.S. courses in Tamil Nadu and also the last date for admission for M.B.B.S. courses not in Tamil Nadu but in five others States in India as has been ordered by the Honourable Supreme Court of India by the order dated 29.09.2016.

3. When the above writ petition was taken up for hearing on 7th October 2016, learned counsel, who has taken notice for the fifth respondent, has informed this Court that there is no lapsed seat in the fifth respondent college, as alleged by the petitioner. At that time, the learned Senior counsel for the petitioner brought to the notice of this Court a communication received through e-mail from the sixth respondent college (now impleaded) that there are seats vacant but as they are not parties to the writ petition, the respondents sought time for verification of the same. In such view of the matter, the alleged transfer sought for by the petitioner need not be considered by this Court. In view of such submission, the writ petition was adjourned to 17.10.2016 after the impending pooja holidays from 07.10.2016.

4. When the writ petition was taken up for hearing on 17.10.2016, the learned Senior counsel for the petitioner brought to the notice of this Court, an e-mail to show that there are vacant seats for M.B.B.S. course in existence in the sixth respondent college. Therefore, in order to implead the sixth respondent also as a party to this writ petition, the petitioner has filed W.M.P. No. 31775 of 2016 and it was allowed by this Court on 18.10.2016. On being impleaded, the learned counsel appearing for the sixth respondent has filed an affidavit of the Administrative Officer of the sixth respondent college confirming that there are 4 M.B.B.S. seats in government quota remains vacant in their college. It is also stated that such existing vacancy was intimated by them to the Medical Council of India even on 07.10.2016 by uploading the status in their Website. It is also stated in the affidavit that the sixth respondent college is prepared to accommodate the daughter of the petitioner on the basis of order, if any, passed by this Court as the cut off date for M.B.B.S. admission in so far as the State of Tamil Nadu is fixed as 30.09.2016 by the Medical Council of India. It is also stated that even though the Honourable Supreme Court has extended the time for M.B.B.S. admission till 07.10.2016, such order was confined only in so far as the five States are concerned and no such extension has been given to the State of Tamil Nadu as the Government has not filed any application seeking extension of time to fill up the lapsed seats.

5. The learned Senior counsel for the petitioner would contend that the colleges where there are unfilled M.B.B.S. seats did not intimate the same to the Government or to the authorities concerned in time and this had created serious impediment to eligible persons like the daughter of the petitioner in securing the M.B.B.S. seats. Rather, the Private Medical Colleges in the State are attempting to misuse the lapsed M.B.B.S. seats for obvious reasons. When the petitioner came to know that there are three seats of M.B.B.S. course remain un-filled, in the fifth respondent college, she has thought it fit to seek for transfer of the B.D.S. course to M.B.B.S. course in the fifth respondent college and immediately she has filed the writ petition on 07.10.2016. The learned Senior counsel for the petitioner would vehemently contend that the curriculum or syllabus for both M.B.B.S. and B.D.S. course are one and the same for the first year and therefore, there may not be any impediment for the petitioner's daughter to seek for transfer of the course. Inasmuch as seats are remaining vacant, the petitioner's daughter can be accommodated in one such vacant seats that too by transfer of the stream from B.D.S. Course to M.B.B.S. course. When there is no fault attributable on the part of the petitioner's daughter in seeking admission to M.B.B.S. course at the earliest point of time and such fault is attributable only towards the Colleges or Government without disclosing the vacancy position at the appropriate time, necessary direction can be given to the sixth respondent as well as the respondents 1 to 4 to accommodate the petitioner in the vacant M.B.B.S. seat.

6. The learned Senior counsel appearing for the petitioner brought to the notice of this Court several decisions rendered by the Honourable Supreme Court to contend that the curriculum or syllabus for the first year M.B.B.S. and B.D.S. course are one and the same, while so, there is no embargo or impediment for considering the claim of the petitioner's daughter for transfer from B.D.S. course to M.B.B.S. course. The learned Senior counsel for the petitioner brought to the notice of this Court that in some cases, transfer was ordered to be made by the Honourable Supreme Court in the lapsed seat even during the month of December mainly on the ground that the syllabus for both B.D.S. and M.B.B.S. courses are one and the same. It was also held by the Honourable Supreme Court that when there is no fault attributable on the part of the student and the mistake is only committed either by the College or Government, appropriate direction can be issued for admitting the student by transfer de hors the cut off date fixed for such admission.

7. The learned Senior counsel for the petitioner relied on the the order dated 26.11.2012 passed in L.P.A. No. 763 of 2012 (Manoj Kumar Dhaka vs. Union of India and others) as well as the

order dated 05.04.2016 in WP (C) No. 1529 of 2016 (Parul Kodan vs. Union of India and another) passed by the Delhi High Court to contend that in identical circumstances, the Delhi High Court has held that instead of allowing wasting one M.B.B.S. seat, a meritorious student can be accommodated in such vacant seat.

8. By placing reliance on the above decisions, the learned Senior counsel for the petitioner would contend that the sixth respondent has been impleaded in this writ petition and an affidavit has also been filed by the sixth respondent indicating the left over seats. At the time of admission of the daughter of the petitioner in B.D.S. course, such vacancy position has not been intimated to her. Had it been intimated, the petitioner would have opted for M.B.B.S. course in the sixth respondent. Since it was stated that there are no vacant seats available to accommodate the daughter of the petitioner, she confined herself to get accommodated in B.D.S. course. Thus, there is no fault attributable on the part of the daughter of the petitioner in opting for B.D.S. course at the relevant time. At any rate, the petitioner is only seeking for transfer of the B.D.S. course to M.B.B.S. course on coming to know about the vacancies exist in the sixth respondent college. Therefore, in the interest of justice, notwithstanding the cut off date stipulated by the Honourable Supreme Court, appropriate direction can be issued to accommodate the daughter of the petitioner in the sixth respondent college especially when the petitioner is only seeking for transfer of the course pursued by her daughter from B.D.S. to M.B.B.S.

9. The learned counsel appearing for the Medical Council of India would contend that the various decisions cited by the learned Senior counsel for the petitioner pertains to cases where there was an error committed either by the colleges or government or authorities concerned in allotting the medical seats. Further, such orders came to be passed on noticing that the seats have been allotted to persons who are less meritorious or less qualified. In such circumstances, in order to avoid injustice being caused to the students, the Honourable Supreme Court as well as the Delhi High Court has passed those orders and it cannot be cited as a precedent to be followed in this case. However, the learned counsel for the first respondent admitted that the syllabus for first year B.D.S. and M.B.B.S. are one and the same. It is also submitted that in certain cases, the Honourable Supreme Court permitted transfer of students. However, in so far as the State of Tamil Nadu is concerned, the cut off date has been fixed by the Honourable Supreme Court for medical admission as 30.09.2016 and it was not extended. Of course, the cut off date was extended to five other States in India till 07.10.2016 and it was not extended to the State of Tamil Nadu. In such view of the matter, even though the petitioner's daughter has secured admission to B.D.S.

course in a government quota, a separate counselling cannot be conducted exclusively for her to accommodate her by transfer in M.B.B.S. course.

10. The learned Advocate General appearing for the respondents 2 to 4 would only contend that earlier, there was one M.B.B.S. seat left vacant in the national quota and pursuant to a direction issued by the Honourable Supreme Court, the one seat in the national quota has also been filled up based on the order dated 07.10.2016 passed by this Court. In that view of the matter, when the present writ petition was listed for hearing on 07.10.2016, alleging that there are M.B.B.S. seats vacant in the fifth respondent college, to ascertain the same, the writ petition was adjourned to 17.10.2016. On 17.10.2016, contending that there are vacant seats available in the sixth respondent college, a petition was filed to implead the sixth respondent as a party to the writ petition and on 18.10.2016, the implead petition was allowed. On being impleaded, the sixth respondent has informed that there are 4 seats remains unfilled in their college. It is also stated that such vacancy position has been intimated by them to the first respondent on 07.10.2016 itself. The learned Advocate General further stated that upto 30.09.2016, they did not receive any intimation from any of the colleges regarding the vacant seats especially from the fifth or sixth respondent. The last counselling was conducted on 30.09.2016 and on that date, definitely, the vacancy position could not be disclosed and the vacancy position will be known only after 30.09.2016. Even on the last date, one seat in the national quota was filled up pursuant to the direction issued by this Court. At any rate, even though the petitioner's daughter seeks for transfer, it cannot be permitted when the vacancy position has not been intimated by the concerned college to the Government at the relevant point of time. Therefore, the learned Advocate General would only contend that in so far as the vacancy position is concerned, the sixth respondent college has intimated it to the select committee only on 13.10.2016. Even though the sixth respondent intimated the vacancy position to Medical Council of India on 07.10.2016, it was informed to the Government only on 13.10.2016. Further, the daughter of the petitioner was called for counselling only for admission to B.D.S. course and not for M.B.B.S. course. The petitioner's daughter, knowing fully well about her entitlement to get admitted in B.D.S. course, is estopped from seeking transfer to M.B.B.S. course. Merely because there are M.B.B.S. seat lying vacant in the sixth respondent college she cannot be accommodated in such lapsed seat beyond the cut-off date.

11. I heard the learned counsel on either side and perused the materials placed on record. By their consent and due to paucity of time besides taking note of the urgency expressed before this Court, the main writ petition itself is taken up for

final disposal.

12. Before dealing with the rival contentions urged on behalf of the counsel on either side, it is just and necessary to deal with the various orders passed by the Honourable Supreme Court. The Honourable Supreme Court has categorically stated in their order dated 29.09.2016 that there may not be extension of time for admission to medical courses in the State of Tamil Nadu after 30.09.2016. However, in various decisions, the Honourable Supreme Court has held that only in rarest of rare cases and in exceptional circumstances, the Court can interfere with the admission process of the students for pursuing medical course.

13. The learned Senior counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of (Asha vs. Pt. B.D. Sharma University of Health Sciences and others) reported in AIR 2012 SC 3396. In that case, the Honourable Supreme Court framed three questions for consideration and they are (i) Is there any exception to the principle of strict adherence to the Rule of Merit for preference of courses and colleges regarding admission to such courses? (ii) Whether the cut off date of 30th September of the relevant academic year is a date which admits any exception? (iii) what relief the courts can grant and to what extent they can mould it while ensuring adherence to the rule of merit, fairness and transparency in admission in terms of rules and regulations? and (iv) what issues need not to be dealt with and finding returned by the Court before passing orders which may be more equitable, but still in strict compliance with the framework of Regulations and judgments of this Court governing the subject?. Of the four questions framed by the Honourable Supreme Court indicated above, the question No. (ii) will be relevant for this case. While answering the questions, it was held by the Honourable Supreme Court in Para No.31 as follows:-

"31. There is no doubt that 30th September is the cut-off date. The authorities cannot grant admission beyond the cut-off date which is specifically postulated. But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merit stands completely defeated in the facts of the present case.

The appellant was a candidate placed higher in the merit list. It cannot be disputed that candidates having merit much lower to her have already been given admission in the MBBS course. The appellant had attained 832 marks while the students who had attained 821, 792, 752, 740 and 731 marks have already been given admission in the ESM category in the MBBS course. It is not only unfortunate but apparently unfair that the appellant be denied admission. 27 Page 28 Though there can be rarest of rare cases or exceptional circumstances where the courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and that there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal treatment of the candidate, it would be completely unjust and unfair to deny such exceptional relief to the candidate. [Refer *Arti Sapru and Others v. State of J & K and Others* [(1981) 2 SCC 484]; *Chavi Mehrotra v. Director General Health Services* [(1994) 2 SCC 370]; and *Aravind Kumar Kankane v. State of UP and Others* [(2001) 8 SCC 355].

14. In yet another order dated 01.12.2014 passed by the Honourable Supreme Court of India in Writ Petitions Civil Nos. 941 of 2014 dated 01.12.2014 (*Shreya Baranwal vs. State of U.P. and others*) the Honourable Supreme Court finding that the syllabus for the first year of B.D.S. and M.B.B.S. course are one and the same and the students are already undergoing studies for B.D.S. course by that time, posted the matter for consideration as to whether the petitioner therein can be given admission to M.B.B.S. course even after 30.09.2014.

15. In yet another order passed by the Honourable Supreme Court on 08.12.2014 in Writ Petition Civil No. 930 of 2014 (*Sahithya K. and another vs. State of Tamil Nadu and another*) it was noticed that there were seats lying vacant to be filled within the 69% reservation conferred to medical admission in the State of Tamil Nadu. It was ultimately directed that it is for the State to consider whether change of stream of the student can be granted from B.D.S. to M.B.B.S. course. In that case it was observed that such order has been passed after finding that there is no fault attributable, whatsoever, against any of the authority. Therefore, the Honourable Supreme Court has remitted the matter back to the respondents-State for fresh consideration.

16. In another order dated 20.01.2015 passed by the Honourable Supreme Court in WP Civil No. 1001 of 2014 dated 20.01.2015 (M. Monika Priya and others vs. The Director of Medical Education and others) it was observed that the learned counsel appearing for the State has submitted that he has instructed to state that the petitioner Nos. 1 and 3 are prosecuting their B.D.S. course. Having regard to such submission, it was directed that the petitioners, who are prosecuting B.D.S. course, would be permitted to change the stream to M.B.B.S. course and be admitted to Chennai Medical College Hospital & Research Centre, Trichy and to complete the formalities for admission within a period of two weeks. It was also stated that such order has been passed taking note of the special circumstances and special features of the case.

17. The learned Senior counsel for the petitioner placed reliance on the order dated 17.11.2015 of the Punjab and Haryana High Court at Chandigarh passed in CWP No. 21411 of 2015 (Sukhmeen Madaan vs. Punjab University and others) wherein the Court has relied on the decision of the Honourable Supreme Court in (Asha vs. Pt.B.D. Sharma University of Health Sciences and others) (2012) 7 SCC 389, wherein it was held as follows:-

"30."But where no fault is attributable to a candidate and she is denied admission for arbitrary reasons, should the cut-off date be permitted to operate as a bar to admission to such students particularly when it would result in complete ruining of the professional career of a meritorious candidate, is the question we have to answer.

31. Having recorded that the appellant is not at fault and she pursued her rights and remedies as expeditiously as possible, we are of the considered view that the cut-off date cannot be used as a technical instrument or tool to deny admission to a meritorious students. The rule of merits stands completely defeated in the facts of the present case...."

32. Though there can be rarest of rare cases or exceptional circumstances where the Courts may have to mould the relief and make exception to the cut-off date of 30th September, but in those cases, the Court must first return a finding that no fault is attributable to the candidate, the candidate has pursued her rights and legal remedies expeditiously without any delay and there is fault on the part of the authorities and apparent breach of some rules, regulations and principles in the process of selection and grant of admission. Where denial of admission violates the right to equality and equal

treatment of the candidate, it would completely unjust and unfair to deny such exceptional relief to the candidate".

18. To add strength to such conclusion, the learned Judge of the Punjab and Haryana High Court relied on the decision of the Honourable Supreme Court in Aravind Kumar Kankane vs. State of UP and others (2001) 8 SCC 355) and (Arti Sapru and others vs. State of J & K and others) (1981) 2 SCC 454. Ultimately, in para No.9, the Punjab and Haryana High Court held as follows in para No.9, it was held as follows:-

"Resultantly, the present writ petition is allowed. The respondent-University is directed to give admission to the petitioner, immediately, on the deposit of requisite fees, within one week from today. Due to the shortage of lectures, respondent No.2 shall ensure that extra classes of the petitioner are held to make up to for the shortage of lectures so that the petitioner also gets the practical experience. However, the petitioner shall not be burdened with the cost of the extra classes."

19. It is evident from the above orders that when a person seeks for transfer of stream from B.D.S. course to M.B.B.S. course, and if the student is eligible for such transfer, transfer can be granted de hors the cut off date fixed for medical admission as 30.09.2016. It is also evident and as rightly pointed out by the learned Senior counsel for the petitioner and the learned Advocate General that the academic curriculum or syllabus for the first year of M.B.B.S. and B.D.S. are one and the same and therefore if transfer is effected, it will not affect the curriculum of the student in any manner during the first year of the course. In fact, in the aforementioned decisions, the Honourable Supreme Court entertained such request for transfer even after the cut off date especially even during the month of December of that particular year on noticing the aforesaid facts that curriculum for both B.D.S. and M.B.B.S. course are one and the same during the first year of the course.

20. In this case, the petitioner's daughter got admitted in government quota in B.D.S. course on 04.10.2016. The course has also commenced with effect from 03.10.2016. The petitioner has filed this writ petition on 07.10.2016 purportedly on the reasoning that there are vacant seats exists in the fifth respondent college for M.B.B.S. course in which she can be accommodated by transfer. However, the learned counsel for the fifth respondent reported that there is no such seat exists. The writ petition was therefore adjourned to 17th October 2016 after the intervening pooja holidays. It is to be pointed out that 8th and 9th October 2016 happened to be Saturday and Sunday

respectively. The Government observed pooja holidays between 10th to 12th October 2016. Thereafter, again, 15th and 16th happens to be Saturday and Sunday. Thus, there were only two working days in between namely 13th and 14th October 2016. On 17th October 2016, the learned Senior counsel for the petitioner brought to the notice of this Court the availability of left over M.B.B.S. seats in the sixth respondent institution and therefore, the sixth respondent was impleaded on 18.10.2016. The sixth respondent also filed an affidavit before this Court stating that they are prepared to accommodate the petitioner's daughter if appropriate direction is issued by this Court. In the meantime, on 05.10.2016, in yet another case, on behalf of the Government of Tamil Nadu, a statement was made that there was no seats remain unfilled and there was only one seat available for M.B.B.S. course in national quota. Even that was also subsequently filled on the basis of the direction of this Court. Thus, the petitioner's daughter, at the time of her admission to B.D.S. course, has no knowledge about the vacant seat and when subsequently she came to know about it, the present writ petition has been filed on 07.10.2016. Thus, there was no fault attributable towards the petitioner.

21. On the other hand, the sixth respondent filed an affidavit indicating that they have uploaded the vacancy position in the website of the first respondent even on 07.10.2016. Admittedly, on 07.10.2016 when the vacancy position was uploaded by the sixth respondent in the website of the first respondent, the writ petition was pending before this Court. Admittedly, the sixth respondent has not intimated the vacancy position to the Government. Therefore, if at all, the mistake is attributable only on the part of the sixth respondent college in not intimating the vacancy position to the Government at the appropriate time and this has led to the petitioner's daughter and others missing a chance to get admitted in the M.B.B.S. course even though she participated in the counselling only for the same. By reason of such error, it is not only the petitioner's daughter who could not be accommodated in the coveted M.B.B.S. course, but three other meritorious students similarly placed like the daughter of the petitioner have lost such an opportunity to pursue the course.

22. This is a peculiar circumstances where mistake has been committed by the sixth respondent in not disclosing the vacancy position. Further, as per the order passed by the Honourable Supreme Court transfer from B.D.S. stream to M.B.B.S. course has been considered even during December of that particular year. At any rate, when there is no mistake attributable on the part of the petitioner, could she be denied an opportunity to pursue M.B.B.S. course and thrown out merely because the cut off date for medical admission has been over? The answer would be an emphatic 'No'. The Honourable Supreme Court, in the above

decisions, has repeatedly held that in exceptional and rarest cases to sub-serve the interest of justice, if the Court is satisfied that there is no mistake attributable on the part of the candidate in swiftly pursuing the legal remedy available, then the Court can issue appropriate direction. Further, in this case, the petitioner's daughter was already admitted in B.D.S. course and she is only seeking for transfer from B.D.S. stream to M.B.B.S. course, the syllabus and curriculum for both the course in the first year is admittedly one and the same. Therefore, this Court feels that as per the dictum laid down by Honourable Supreme Court to issue appropriate direction notwithstanding the cut off date, interest of justice demands that appropriate direction has to be given to the respondents to accommodate the petitioner's daughter and three other students in M.B.B.S. course in the unfilled seats.

23. The learned Senior counsel for the petitioner also relied on the order passed by the Delhi High Court on 05.04.2016 in (Parul Kodan vs. Union of India and another). In the said the Delhi High Court dealt with grant of admission to super speciality course under DM (Infectious Disease) course. In that case, the Delhi High Court, following the Division Bench order of the Delhi High Court in Rajnish Kumar vs. Guru Gobind Singh Indraprastha University and others, 2014 SCC Online Del.6468 wherein it was held as under:-

"8. This Court also finds it perplexing that though a vacancy had occurred before the cut off date had expired, the college and the University had not taken any steps to fill the same. Agreed that the vacancy arose at the last minute, but this Court is of the view that the respondent owed a duty to have put in place a mechanism to ensure that such a valuable seat does not go waste. Consequently, in the opinion of this Court, there has been a lapse on the part of the respondents in filling up a vacancy in a super specialty course.

9. This Court is also of the view that a valuable seat in a super speciality course cannot be allowed to go waste for the next three years merely for the reason that about two months have elapsed after the cut off date. In fact the Division Bench of this Court in Manoj Kumar Dhaka v. Union of India, LPA No. 763/2012, in similar circumstances, has after considering the entire law on the subject held as under:-

"16. The present is an equally hard case. The Super Specialty Course of DM (Cardiology) in PGIMER is not only prestigious but highly competitive. To secure admission therein is no mean task. The need of the country and the public

at large for the doctors with said Super Specialty cannot be over emphasized. The course, we are informed is of three years duration out of which three months are admittedly over.

17. What falls for consideration is as to whether the aforesaid can fall in the category of rarest of rare cases as spelled out by the Supreme Court.

18. The appellant, for the delay, cannot be faulted with in any manner whatsoever. Though the learned Single Judge has observed that the appellant made out a wrong case than what emerged before the Court but the appellant could not be expected to have knowledge thereof. Though on the basis of the infrastructure available in the Department of Cardiology in PGIMER, four seats ought to have been allocated by GGSIPU, but GGSIPU on a wrong interpretation of Regulation 12(4) supra which was supported by MCI also before this Bench till 23rd November, 2012, allocated only three seats. We are unable to digest that such valuable seat should be allowed to go waste for the next three years merely for the reason of three months having elapsed.

19.The loss of three months in gaining hands-on practical-experience, we are sure, can always be compensated by extra hours put in by the candidate. It cannot be lost sight of that the appellant approached this Court without any delay and the writ petition was drafted on 5th July, 2012 itself and filed immediately thereafter, i.e. well before the last date prescribed for admission. Unfortunately the correct facts came to be revealed only through recording of the statement of the Registrar of PGIMER by the learned Single Judge. Had the view, as we have taken, been taken immediately, the appellant would have been admitted well within the prescribed time.

20. We are further of the opinion that the decision of the GGSIPU to reject the request of PGIMER for the four seats in terms of amended Regulation 12(4) was wrong. Though PGIMER did not pursue the case but it cannot be lost sight of that it is a Government Institute with none being personally interested and it is ultimately the

students who are the beneficiary of the courses which are being imparted and in our view they would have a cause of action against the wrongful denial/reduction of seats.

21. We are thus of the opinion that the facts of the present case justify admission at this stage." (emphasis supplied)

24. In the above decision of the Delhi High Court, mentioned supra, the Delhi High Court referred to the order passed by the Division Bench in Manoj Kumar Dhaka vs. Union of India LPA No. 763 of 2012. As against the said order passed by the Division Bench of the Delhi High Court, an appeal has been preferred before the Honourable Supreme Court of India in Special Leave to Appeal (Civil) No(s). 5367 of 2013. The Honourable Supreme Court, by order dated 29.07.2013, passed the following order:-

"Learned counsel appearing for the petitioner-University on instructions submits that the University is ready to give one vacant seat to respondent No.1 within three days in the DM (Cardiology) in the Post Graduate Institute of Medical Education and Research (PGIMER), Dr. R.M.L. Hospital, New Delhi.

In view of the above statement, we are of the opinion that nothing further survives in this petition for our consideration and decision.

The I.A. No. 1 is disposed of accordingly.

25. This it is evident from the order passed by the Honourable Supreme Court that the order passed by the Delhi High Court in Manoj Kumar Dhaka has not been interfered with.

26. It is also brought to the notice of this Court that the Division Bench decision of the Delhi High Court in Manoj Kumar Dhaka mentioned supra has been followed by the Delhi High Court in the order dated 19.11.2014 in WP (C) No. 7452 of 2014 & CM No. 17461 of 2014

27. Having regard to the above decisions of the Punjab and Haryana High Court and Delhi High Court, this Court is of the considered opinion that a mistake was committed by the sixth respondent college in not intimating the vacancy position at the relevant point of time to the Government which has in fact resulted in denial of a coveted medical admission not only to the petitioner's daughter but to three other meritorious student who are similarly placed. In that context, whether the relief sought for by the petitioner can be considered or not has to be seen. Of course, the petitioner's daughter is the only student

who has knocked the doors of this Court seeking transfer from the B.D.S. course pursued by her to M.B.B.S. stream, the syllabus for both the courses in the first year are admittedly one and the same. It is also brought to the notice of this Court by the learned Advocate General appearing for the respondents that there is no other petition pending before this Court seeking such transfer of course from B.D.S. to M.B.B.S. on the ground that there are left over seats. In any event, this Court considers this as a rarest of rare case where there is no fault attributable on the part of the petitioner's daughter in pursuing her legal remedy expeditiously, while so, the claim of the petitioner's daughter can definitely be directed to be appropriately considered for admission by transfer.

28. In such view of the matter, yet another point arises for consideration of this Court. Though the petitioner's daughter alone seeks for transfer from B.D.S. to M.B.B.S. stream, whether this Court can still direct the respondents to fill up the three other left over seat without wasting it. In this context, I am fortified by an order dated 24.08.2008 of this Court in the case of (J. Gracelin Vinil vs. Christian Medical College, rep. by the Registrar, Christian Medical College and others) passed in WP No. 25110 of 2008 wherein an identical issue has been dealt with by this Court. Useful reference to the order dated 24.08.2008 is extracted hereunder:-

"12. At this juncture, the learned counsel for the respondent, on instructions from the Registrar of the first respondent submitted that they would resolve this dispute by promising the petitioner a seat in this academic year, if there is drop out by any student or a seat in the next academic year, provided he goes through the admission process. While making this promise, the learned counsel for the respondent also expressed his reservations, since there are other students above the petitioner in the order of merit. In similar circumstances, the learned Single Judge of this Court in Dobson Dominique vs. The State of Tamil Nadu MANU/TN/0340/1999 : 2000 (3) Law Weekly 121 has held as follows:

The other candidates who are above the petitioner at the national level have not chosen to come and challenge their non-selection. It is quite possible that the other candidates would have been selected in other professional courses or are not interested in the selection at all. In such an event, to direct the Selection Committee to conduct a fresh selection will be unnecessary. The Supreme Court in State of Orissa and others vs. Pragnaparamitha Samanatha (1998) 7

SCC 106, held that it is only those who are diligent and approach this Court in time, who can be given such relief.

13. In view of this assurance, the merits of the matters are not gone into. It is also made clear this case will not be cited as precedent by other students."

29. In such view of the matter, can the claim made by the petitioner be rejected merely because the petitioner's daughter has been admitted in B.D.S. without considering the fact that she is only seeking for transfer from B.D.S. course to M.B.B.S. as per the dictum laid down by the Honourable Supreme Court mentioned supra. The claim of the petitioner has to be considered as she was the one who has come to this Court at the appropriate time and brought to the notice of this Court as well as the Government the availability of four seats in the sixth respondent college. Thus, the petitioner is a whistle blower. Thus, by applying the ratio laid down by the Honourable Supreme Court in the above decision, it is only the petitioner who has approached this Court at the earliest point of time and it is she who has to be given the relief when there is no one else is before this Court seeking such a relief.

30. Of course, this Court can only issue direction to the Selection Committee and the Government to take necessary steps to ensure that the three other seats are not wasted especially when the Honourable Supreme Court itself has directed that there may not be any embargo to consider granting transfer of the student pursuing B.D.S. course to M.B.B.S. course. Here, as mentioned above, the petitioner alone seeks for transfer for her daughter. As mentioned above, the petitioner's daughter has already secured admission to B.D.S. course in a government quota and now it is brought to the notice of this Court that there are totally four seats lying vacant in the sixth respondent institution in which the petitioner's daughter and three other meritorious candidates can be accommodated. It is needless to mention that the meritorious candidates can be accommodated in the remaining three unfilled seats only by resorting to transfer from B.D.S. course to M.B.B.S. course and not otherwise who have opted for the course. In other words, the selection committee or the Government cannot fill up the three remaining seats by resorting to fresh selection process and only transfer of stream is permissible so that valuable four medical seats should not go waste during the current academic year. In such view of the matter, a direction is given to the Selection Committee as well as the Government to consider the claim of the petitioner for accommodating her daughter in M.B.B.S. course by transfer in one of the existing vacant seats in the sixth respondent college and also as observed above, consider filling up the three remaining left over seats by transfer from B.D.S. stream to M.B.B.S.

course only. In such process, it is for the Government to get necessary approval from the Medical Council of India, if necessary.

31. With the aforesaid direction, the writ petition is ordered. The Selection Committee as well as the Government can consider the claim of the petitioner to accommodate her daughter in the existing left over vacancy in the sixth respondent institution for transfer from B.D.S. stream to M.B.B.S. course and also to fill up the vacant seats in the sixth respondent college. Such an exercise shall be completed within a period of ten days from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar
Dated:25/10/2016

*As per order of this Court
dated 26.10.2016 in
W.P.No.36066 of 2016

Sd/-

Assistant Registrar(CS-VII)
Dated:26/10/2016

True Copy

Sub-Assistant Registrar

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To

1. The Secretary
Medical Council of India
Pocket-14, Sector-8
Dwaraka Phase-1
New Delhi - 110 077
2. The Director
Directorate of Medical Education
No.162, E.V.R. Periyar High Road
Kilpauk, Chennai - 600 010
3. The Secretary
The Selection Committee
Directorate of Medical Education
No.162, E.V.R. Periyar High Road
Kilpauk, Chennai - 600 010

To be substituted the
order already
despatched on 25.10.2016

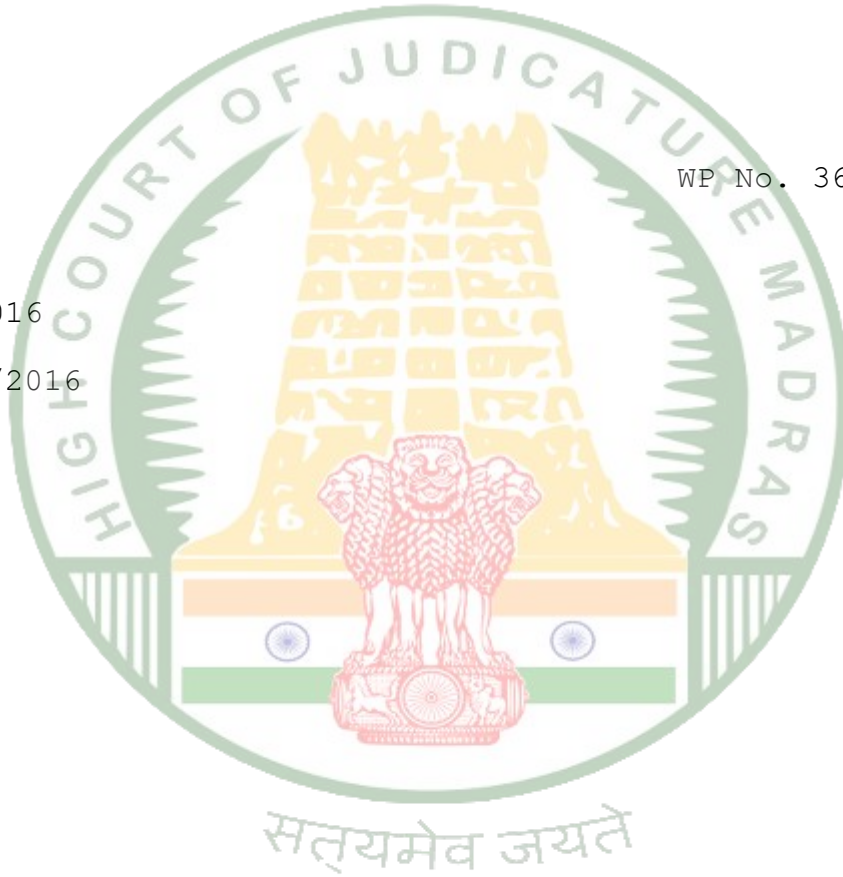
4. The Registrar
Dr. M.G.R. Medical University
No.69, Anna Salai
Guindy, Chennai - 600 032

+2 ccs to M/s.A.R.Suresh Advocate sr 59987
+1 cc to N.Anand Venkatesh Advocate sr 60043
+1 cc to V.P.Raman Advocate sr 60077
+1 cc to Government Pleader sr 60589

WP No. 36066 of 2016

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