

*** HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

**+ WRIT PETITION No.31371 of 2015 and
WRIT APPEAL NO.1101 OF 2015**

%20.04.2016

WPN0.31371 of 2015:

Mohammadiya Educational Society, rep.by its
President, Ramarajupally Post, Pulivendula Road,
YSR Kadapa District, Andhra Pradesh and another.

... Petitioners

Vs.

\$ Union of India, rep.by its Under Secretary to
Government, Ministry of Health and Family Welfare
Department, Nirman Bhavan, New Delhi and
others.

.... Respondents

!Counsel for the petitioners : Sri Guru Krishna Kumar, senior counsel for
Pillix Law Firm, petitioners, in WP No.31371 of
2015;

Sri S.Niranjan Reddy, counsel representing
for Sri Vivek Chandrasekhar, counsel for
appellant in WA No.1101 of 2015

Counsel for the Respondents: Sri B.Narayana Reddy, Asst.Solicitor
General for respondent No.1;
Sri Nimmagadda Venkateswarlu,
standing counsel for respondent No.2;
Sri T.Nageswar Rao, standing counsel for
Respondent No.3;
Government Pleader for Medical Health
(AP) for respondent No.4 in WP No.31371 of 2015

Sri Guru Krishna Kumar, Sr. Counsel for Pillix Law
Firm for respondents 1 and 2;
Sri B.Narayana Reddy, Asst.Solicitor General for
Respondent no.3;
Sri T.Nageswar Rao, standing counsel for respondent
no.4 ;
Government Pleader for Medical Health (AP) for
Respondent No.5 in W.A.No. 1101 of

2015

<Gist :

>Head Note:

? Cases referred:

1. (2008) 12 SCC 481
2. (2010) 2 SCC 114
3. (2004) 7 SCC 166
4. (2007) 6 SCC 120
5. (2007) 8 SCC 449
6. 1990 Supp SCC 336
7. (1917) 1 K.B. 486

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ORDER:

At the outset, Mr. S. Niranjana Reddy, learned counsel for the respondent – Medical Council of India (for short, 'MCI') raised a preliminary objection as to maintainability of writ petition. He submitted that the writ petition deserves to be dismissed at the threshold without considering merits of the claim not only for suppression of material facts, but for misleading the Court and/or for simultaneously pursuing parallel writ petitions in two High Courts under Article 226 of the Constitution of India, without disclosing that they have filed a writ petition for similar relief and it is pending before other High Court. He invited our attention to both writ petitions and orders passed by Delhi High Court in support of the preliminary objection. On perusal thereof, we noticed that though a writ petition was filed and pending in Delhi High Court, a statement on affidavit was made in the instant writ petition, that was filed subsequently, that no other efficacious remedy is available to the petitioners and that they have not filed any other writ petition for the reliefs sought therein. We, therefore, have heard learned counsel for the parties at considerable length only on the preliminary objection.

2. The petitioner–institution, in the writ petition under Article 226 of the Constitution, seek a writ of *mandamus* declaring the action of 2nd respondent, rejecting to grant recognition/approval to the 2nd petitioner-

college, run by the 1st petitioner institution, vide its letter dated 17.08.2015 as illegal, arbitrary, unconstitutional and violative of

the principles of natural justice. The petitioners have also prayed for a direction to the respondents to grant necessary recognition/approval to their college by setting aside the communication dated 17.8.2015 or other subsequent communications in this regard, if any, of the 2nd respondent.

3. This writ petition was filed on 23.09.2015. On 29.09.2015, the writ petition as well as WPMP No.40556 of 2015, filed therein, were came up for hearing before learned Single Judge when the following order was passed:

“Heard learned senior counsel for the petitioners and learned Government Pleader for R5. There is no appearance on behalf of respondents 2 and 3.

The impugned order dated 17.08.2015 passed by the second respondent is questioned in the writ petition, primarily, on the ground that previous deficiencies pointed out on two occasions were fully complied with and in spite of that, under the impugned order fresh set of deficiencies are again pointed out.

Learned senior counsel for the petitioners contends that so far as first deficiency pointed out is concerned, it is contrary to regulation 8 (3) (1) (b) of MCI Regulations wherein it is provided that deficiency of more than 20% will disentitle renewal of permission whereas in the present case the deficiency is stated to be only 7.92%. Similarly, with regard to other deficiencies also it is stated that they are contrary to the record and refusal to grant permission is accordingly questioned.

Prima facie, the impugned order appears to be arbitrary. Hence, Rule Nisi. Call for records.
Notice returnable in four (4) weeks.

There shall be interim direction on par with the order passed by the Division Bench of the Kerala High Court in W.A.No.1879 of 2015 dated 15.09.2015 as under:

1. Respondents 1 and 2 are directed to grant provisional permission to the petitioners to conduct the course for the academic year 2015-2016 subject to further orders of this Court.
2. Petitioners shall be permitted to admit students for the academic year 2015-2016 for first year MBBS course subject to further orders of this Court.
3. **Any allotment and admissions made by the petitioners, accordingly, shall be notified to each of the admitted student that the admission is based on provisional permission and subject to further orders of this Court and no equities can be claimed by any student.**

Let respondents file counter affidavit.
List WPMP after four (4) weeks.”

(emphasis supplied)

4. This order is challenged by MCI in Writ Appeal, under Clause-15 of the Letters Patent, bearing W.A.No.1101 of 2015. The Division Bench presided over by one of us (Dilip B. Bhosale, ACJ) after hearing learned counsel for the parties on 20.1.2016 passed the following order.

“Heard learned counsel for the parties.

Sri Niranjan Reddy, learned counsel for the appellant, in view of the peculiar facts and circumstances of this case, prays for clubbing of Writ Petition No.31371 of 2015 with the writ appeal.

Learned counsel for the respondents have no objection for clubbing writ petition with the instant appeal and its hearing by this Bench.

Registrar (Judicial) is directed to obtain necessary orders from the Acting Chief Justice on administrative side for clubbing Writ Petition No.31371 of 2015 also with the writ appeal.

It is made clear to learned counsel for the parties that on the next date the writ appeal as well as the writ petition will be heard for final disposal.

Stand over to 22.01.2016. To be taken up immediately after ‘for orders’ matters.

In the meanwhile, Registrar (Judicial) is directed to submit status report of memo dated 28.09.2015 filed in Writ Petition No.31371 of 2015.”

Then, on 25.1.2016 the following order was passed:

“We have heard this matter for about two hours till 4.30 pm and we wanted to continue the hearing on 27.01.2016. Sri Kumar, learned Senior Counsel coming from Delhi, however requested to keep it for further hearing on 03.02.2016. Though learned counsel for the appellant and respondent Nos.3 to 5 are reluctant to give consent for adjournment, we are keeping it on 03.02.2016, in order to give fair opportunity to the respondent – writ petitioner. Stand over to 03.02.2016. To be taken up after fresh admission matters.”

5. Thereafter, there was a change in the roster and in view thereof the writ petition and the writ appeal have come up for hearing before this Bench, when we heard it afresh.

6. Though we are not dealing with merits of the case, it would be

relevant to state the background facts against which the petitioner-institution filed writ petition in brief for the reliefs as prayed therein. The first petitioner-Mohammadiya Educational Society has established the second petitioner-college-Fatima Institute of Medical Sciences in Ramarajupally (Post) in YSR Kadapa District. Subject matter of the writ petition concerns grant of renewal of permission to admit students to MBBS course for the academic session 2015-16. It appears that on 26/27.02.2015, the Medical council of India (MCI), 2nd respondent herein, carried out physical assessment of the respondent medical college. In the compliance verification assessment report dated 6.5.2015, the 2nd respondent pointed out various deficiencies. On 04.06.2015, 2nd petitioner submitted compliance report on the deficiencies pointed out by 2nd respondent. The 2nd respondent-MCI again carried out verification of 2nd petitioner medical college on 09.07.2015 and submitted compliance verification assessment report. Both reports were considered by the Executive Committee of Medical Council of India in the council meeting held on 5.8.2015 and having come to the conclusion that the petitioners have not complied with deficiencies pointed out in the Compliance Verification Assessment Report, the council resolved to recommend to the Government of India not to accord recognition/ approval to the 2nd petitioner medical college. The said decision was communicated to Government of India vide letter No. MCI-34(41) (RG-2)/2015-Med./127197-127198, dated 17.8.2015. On 27.08.2015, 2nd petitioner medical college submitted further report showing compliance of the deficiencies pointed out by the 2nd respondent. Taking note of the statement of petitioners that the objections raised in compliance verification report are complied, Central Government by proceedings No.U.12012/507/2015-ME.1, dated 01.09.2015 requested the Medical Council of India to reconsider the matter by duly taking note of the compliance report. In due regard to the Central Government request, on 12.09.2015 the 2nd respondent carried out compliance verification assessment of the 2nd petitioner medical college and was not satisfied with the compliance of deficiencies. On 21.09.2015, the Executive Committee of the Medical Council of India considered the compliance verification

assessment report based on the inspection conducted on 12.09.2015 and the previous compliance verification assessment reports and resolved not to recommend according recognition/approval to the 2nd petitioner medical college to admit students to prosecute MBBS course for the academic year 2015-16. Accordingly, the resolution of the MCI was forwarded to the Central Government vide letter No. MCI-34(41) (RG-2)/2015-Med./139618, dated 05.10.2015. However, even before 2nd decision was communicated, petitioners challenged the recommendation made by the Medical Council of India to the Central Government in its letter dated 17.08.2015 advising the Central Government to reject the grant recognition/approval for the academic year 2015-16.

7. It would be relevant to mention at this stage that feeling aggrieved by the interim order dated 29.1.2015 passed in W.P.No.31371 of 2015, the 2nd respondent–MCI had filed SLP (C) No.29246 of 2015 before the Supreme Court. The SLP was, however, withdrawn with liberty to MCI to challenge the said order before the Division Bench of this High Court. The leave as sought was granted. Consequently, MCI has filed the instant writ appeal (W.A. No.1101 of 2015).

8. In this backdrop, we have heard the learned counsel Sri S.Niranjan Reddy for MCI, learned senior counsel Sri Guru Krishna Kumar for the petitioners and learned Assistant Solicitor General for the Central Government on the question of maintainability of the writ petition.

9. Sri S Niranjan Reddy submitted that petitioners have come to this Court with unclean hands. The petitioners have filed two writ petitions simultaneously, one before this court and the other before Delhi High Court. They have misled this Court, the High Court of Delhi and, it seems, even their counsel on record by deliberately suppressing the true and relevant facts and made false statements on affidavits filed before both the High Courts.

9.1 He submitted that aggrieved by the resolution of the Medical Council of India communicated to the Central Government vide the letter

dated 17.08.2015 recommending to the Government of India not to accord renewal to admit the students for the academic year 2015-16, petitioners in the writ petition have invoked the jurisdiction of the High Court at Delhi by filing W.P.(C).No. 9215 of 2015 on 22.09.2015. Even before the said writ petition was considered by High Court at Delhi, petitioners filed instant writ petition on 23.9.2015.

9.2 Elaborating on his objection on maintainability he submitted that the same person deposed on behalf of the petitioners, to the affidavit filed before the Delhi High Court in W.P.(C) No.9215 of 2015 and the affidavit filed in the instant writ petition. In the affidavit filed in support of the instant writ petition the deponent declared that he has no efficacious alternative remedy except to seek redress before this Court and to seek indulgence of the Court to exercise extraordinary jurisdiction under Article 226 of the Constitution of India. He further declared that the petitioner has not filed any other writ petition, suit or other proceedings for the relief or reliefs sought herein.

9.3 In paragraphs 8 and 9 of the affidavit filed in support of the writ petition filed before the Delhi High Court, the deponent has given similar declaration. In paragraph 7, he has averred that Delhi High Court has jurisdiction to entertain, try and dispose of the writ petition, inasmuch as entire cause of action had arisen in New Delhi, where the offices of the respondents are situated and within the jurisdiction of the Delhi High Court. Having made such averment, he has not explained before this Court as to how the instant writ petition for substantially very same relief is maintainable in this Court. By referring to the averments in paragraphs XII to XXIV in the petition filed before the Delhi High Court and Paragraphs IX to XVIII in the affidavit filed in support of the instant writ petition, he contends that the averments are verbatim same.

9.4 It is contended that before the Delhi High Court, in addition to the prayers sought in the instant writ petition initially the petitioners sought additional prayer challenging clause 8(3)(1) of the Establishment of Medical College Regulations, 1999. When the writ petition was listed before the Division Bench of Delhi High Court on 28.09.2015, permission was sought not to press the challenge to clause 8(3)(1). Accordingly, leave was granted

to withdraw prayer (a) and the matter was relegated to a single Judge bench as per roster. As per request made, the writ petition was listed before the single Judge on 29.09.2015. Thus, on 29.09.2015 both the writ petitions for the same relief were listed before Delhi High Court and this Court. From the record, it appears that this Court was not informed about the pending writ petition before the Delhi High Court. The matter was argued as if the instant writ petition alone was pending on the issue. By misleading this Court, interim order was obtained. Under the guise of interim order obtained, petitioners admitted the students for the academic session 2015-16. After interim order was granted by this Court, the writ petition filed before the Delhi High Court was withdrawn.

9.5 He contended that a memo was filed before this Court, as if Court was sought to be informed about the filing of writ petition in Delhi High Court. A reading of the memo would disclose that deponent was misleading the counsel on record as well as this Court regarding pending writ petition before the Delhi High Court. In this memo, deponent stated that cause of action and prayer in the writ petition pending before the Delhi High Court is different from the cause of action and the prayer sought in the instant writ petition. However, even this memo was not brought to the notice of the learned single Judge when the matter was heard. Learned counsel pointed out that by this time prayer (a) in the W.P.(C).No.9215 of 2015 before Delhi High Court was withdrawn and thus, prayers as they stand in both writ petitions, are same. Court was kept in the dark about true facts and court was misled to believe that this was the sole writ petition pending consideration of the writ court. Under the guise of interim orders, students were made to believe that college has valid permission to run the MBBS course for the academic year 2015-16 and students were admitted to the course.

9.6 Having regard to the factual statements and averments, learned counsel contended that petitioners have not come to this Court with clean hands. Their hands are tainted. The conduct of the petitioners disentitles them to seek any relief from this Court. They cannot be permitted to do 'forum shopping'. The remedy under Article 226 of the Constitution of India being

discretionary, even assuming that there is merit in the claim of the petitioners, the conduct of the petitioners in coming to this Court under Article 226 of the Constitution of India with unclean hands disentitles them to seek any relief and the Court has to reject such petition in *limini*. It is the purity of the justice delivery system which is paramount than the individual grievance of a litigant.

9.7 In support of his contention, learned counsel placed reliance on the following decisions of the Supreme Court:

i) **K.D.Sharma v. Steel Authority of India Limited and others**^[1]

ii) **Dalip Singh v. State of Uttar Pradesh and others**^[2]

10. Learned senior counsel Sri Guru Krishna Kumar appearing for petitioners submitted that the writ petition is maintainable and the objection raised by the MCI is not tenable. He submitted that cause of action to institute writ petition in Delhi High Court is different from the cause of action to file instant writ petition and therefore instant writ petition is maintainable. In the writ petition instituted before the High Court at Delhi, petitioners assailed the validity of regulation 8(3)(1) of Medical Council of India Establishments of Medical College Regulations, 1999. The prayers in paragraphs (b) to (d) are incidental to the said challenge. In the instant writ petition, petitioners have only challenged the letter of the MCI, dated 17.08.2015 and sought for consequential relief. He further submitted that 30.09.2015 was the deadline for obtaining permission for admission of students to MBBS course of study for the academic year 2015-16 and, therefore, petitioners were under tremendous pressure to receive legal remedy on or before 30.09.2015. The writ petition was instituted in Delhi High Court on 22.09.2015 and the instant writ petition was instituted in this Court on 23.09.2015. He further submitted that 24.09.2015 was originally declared as Court holiday on the eve of “Bakrid” festival. However, 25.09.2015 was also declared as holiday and thus, the Court was not in session from 24.09.2015 to 27.09.2015. When the writ petition was listed on 24.09.2015 before the 1st Division Bench of Delhi High Court presided by the Hon’ble Chief Justice, the matter was directed to be listed before another bench. Accordingly, writ petition was listed before another Division Bench on 28.09.2015. He further submitted that having

realized that no purpose would be served in prosecuting both writ petitions, petitioners instructed counsel on record to withdraw the writ petition filed in Delhi High Court. However, the senior counsel who appeared for petitioners sought leave of the Court not to prosecute prayer (a) only and accordingly, the leave was granted and since there was no challenge to the regulation, the writ petition was directed to be assigned to single bench having the roster. Accordingly, the matter was listed before the single Judge on 29.09.2015. Having come to know that the writ petition was not withdrawn, whereas the intention of the petitioners was to withdraw the writ petition, further request was made to the counsel on record and accordingly, the writ petition was dismissed as withdrawn on 29.09.2015. Having regard to above chronology of events, learned senior counsel submitted that there was no intention on the part of the petitioners to mislead this Court. He further submitted that in fact this Court was also apprised of the writ petition filed before the Delhi High Court and the intention of the petitioners to withdraw the said writ petition, by way of Memo filed by the counsel on record dated 28.09.2015.

10.1 Though, learned senior counsel was candid in recognizing the fact that ordinarily two writ petitions could not have been instituted in two High Courts simultaneously concerning the same issue and on the same cause of action, in stout defense of petitioners, he contended that by the time writ petition was considered on 29.09.2015 and at any rate by this time, only instant writ petition is pending and is therefore maintainable. He contended that crucial issue for consideration on maintainability of writ petition is whether on the day when writ petition is considered for hearing any other legal proceedings including another writ petition is pending and not when the writ petition was filed.

10.2 By placing reliance on two decisions of the Supreme Court in **S.J.S. Business Enterprises (P) Ltd., v. State of Bihar and others**^[3] and **Arunima Baruah v. Union of India and others**^[4], he would submit that non-disclosure of filing of the writ petition before the Delhi High Court while instituting this writ petition 'is not a material fact' affecting the merits of the

case and, therefore, the objection of the MCI is not valid. He further submitted that in view of the principle laid down by the Supreme Court in the above decisions, whether simultaneous filing of civil suit and writ petition or two writ petitions in two different High Courts, the approach of the Court has to be the same and once other writ petition or civil suit is withdrawn, by the time the writ petition has come up for consideration by the court, the same cannot be dismissed on the ground as urged by the MCI.

10.3 Learned senior counsel submitted, in other words, petitioners cannot be alleged to be indulging in 'forum shopping'. Such allegation is valid only in case the petitioners continue to prosecute two different cases simultaneously. Since by the time the writ petition was considered by this Court on 29.09.2015 and by this date, other writ petition is not alive, the allegation of 'forum shopping' is not attracted. Learned senior counsel, therefore, prayed the Court to consider the writ petition on merits.

11. In reply, Sri Niranjan Reddy, submitted that admittedly the petitioner filed two writ petitions on same relief in this Court and High Court of Delhi and was 'riding on two horses' 'by taking chance'. He was waiting till last minute and having obtained the order from this Court, he withdrew the writ petition. If the intention of the petitioners was not to prosecute the writ petition before the Delhi High Court, they ought to have withdrawn the writ petition on the first day of its listing before the division bench i.e., on 24.09.2015. Even when the matter was listed before another division bench, the only request made was to record the request of petitioners not to prosecute relief in prayer (a) and as a consequence further request was made for listing of the writ petition before the single Judge on the next day, in view of the urgency. On their request, writ petition was listed on 29.09.2015 before the learned single Judge. This would clearly show that there was no intention on the part of the petitioners to withdraw the writ petition before the Delhi High Court. The petitioners just waited for decision of this Court and having been successful in getting interim order, the writ petition was withdrawn. He further contended that even when the writ petition was withdrawn on 29.09.2015, the Delhi High Court was not informed about the filing of the instant writ petition. Request

made before the Delhi High Court to grant leave to withdraw the writ petition was with liberty to seek “**to approach the appropriate forum**”. Therefore, there was no *bona fide* on the part of the petitioners and petitioners were only taking a chance by prosecuting two writ petitions simultaneously and the action of the petitioners would certainly amount to ‘riding two horses at the same time’.

11.1 By referring to the observation of the Supreme Court in para-15 in **S.J.S. Business Enterprises** (supra), Sri Niranjan Reddy contended that the Supreme Court carved out exception in the given facts of that case and the decisions relied upon by the senior counsel have no application to the facts of this case.

12. We have given anxious consideration to the rival submissions and perused the material on record. We have also gone through the judgments relied upon by learned counsel for the parties.

13. The instant writ petition was filed a day after the institution of the writ petition before the Delhi High Court. The affidavit filed in support of the writ petition before this Court and the affidavit filed in support of the writ petition before the Delhi High Court is deposed by Javvad Ahmed Qureshi, s/o. late Abdul Qadir Jeelani, working as Secretary and Correspondent of Fathima Institute of Medical Sciences, Ramarajupally Post, YSR Kadapa District (2nd petitioner institute). He has signed the verification statement before this court.

14. To appreciate the rival contentions, we deem it proper to extract the contents of the letter of MCI dated 17.08.2015, prayers sought in two writ petitions filed before the Delhi High Court and this Court respectively.

14.1 The letter dated 17.08.2015 of the Medical Council of India, impugned in both the writ petitions, reads as under:

“I am directed to inform you that an assessment to verify the compliance submitted by the college authorities on the deficiencies pointed out in the compliance verification assessment report (6th May, 2015) with regard to recognition/ approval of Fathima Institute of Medical Sciences, Kadapa, Andhra Pradesh for the award of MBBS

degree (100 seats) granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh u/s 11 (2) of the IMC Act, 1956 was carried out by the Council Assessors on 9th July, 2015. The compliance verification assessment report (9th July, 2015) along with previous compliance verification assessment report (6th May, 2015) was considered by the Executive Committee of the Council at its meeting held on 05.08.2015 and it was decided as under: -

“The Executive Committee of the Council considered the compliance verification assessment report (9th July, 2015) along with previous assessment report (6th May, 2015) and noted the following:-

1. Shortage of Residents is 7.92% as detailed in the report.
2. Case sheets of some patients showed admission dates which did not match with the actual details provided by the patients regarding dates of admissions, treatment records also did not match with the actual treatment given to some patients.
3. Only 3 Minor Surgeries, 1 Cataract surgery, 1 ENT operation & 2 LSCS were in progress at the time of verification. No Major Surgery was in progress at time of verification.
4. Histopathology workload is NIL on day of assessment.
5. MRD is partly computerized. Deficiency remains as it is.
6. Many Residents were not familiar with the details of patients admitted in the wards or in OPD and emergency days / duties assigned to them.
7. Other deficiencies as pointed out in the assessment report.

In view of the above, the Executive Committee of the Council **decided to recommend not to** recognize/approve Fathima Institute of Medical Sciences, Kadapa, Andhra Pradesh for the award of MBBS degree granted by Dr. NTR University of Health Sciences, Vijayawada, Andhra Pradesh u/s 11 (2) of the IMC Act, 1956 and further decided that the Institute be asked to submit the compliance for rectification of the above deficiencies within 01 month for further consideration of the matter.”

A copy of assessment report is enclosed herewith.

Sd/-
(S.Savitha)
Asstt.Secretary

14.2 The prayer sought in W.P.(C).No.9215 of 2015 on the file of Delhi High Court reads as under:

“In the particular facts and circumstances of this case, it is humbly prayed that this Hon'ble court may graciously be pleased to:-

- a) declare clause 8(3)(1) of the MCI Establishment of Medical College Regulations, 1999 as unconstitutional and ultra vires the Indian Medical Council Act, 1956;
- b) quash orders/reports of MCI – respondent no.2 herein vide **communications/orders dated 18.3.2015, 14.5.2015 and 17.8.2015** contained in letter Nos.MCI-34(41)(RG-2)/2014- Med/166800, No.MCI-

34(41)(RG-2)/2014-Med./etc.,

c) direct the respondents Nos. 1 & 2 herein to consider and recognize petitioner no.2 medical institute for award of MBBS Degree (100 seats) granted by Dr. N.T.R. University of Health Science Vijayawada, Andhra Pradesh – respondent No.3 herein,

d) **pass orders directing respondent no.1 to grant provisional permission to petitioners to conduct courses for the academic year 2015-16;**

e) pass orders directing Govt. of Andhra Pradesh as well as respondent no.3 to initiate and complete the process of examination within the stipulated period;

f) issue rule nisi in terms of prayer (a) to (e) above;

AND

g) pass any other further order or orders and / or direction or directions as this Hon'ble Court deems fit and proper.

(emphasis supplied)

14.3 The prayer clause (a) was subsequently deleted by the petitioners with permission of the Division Bench of the Delhi High Court.

14.4 The prayer sought in the instant writ petition reads as under:

“To issue an order or orders or direction or a writ one in the nature of Writ of Mandamus **declare the action of Respondents particularly Respondent No.2 in rejecting to grant recognition/ approval to the 2nd Petitioner's college Vide its letter dated 17.08.2015 is illegal, arbitrary, unconstitutional and violation of principles of natural justice** and consequently direct the Respondents to grant necessary recognition/approval to the Petitioner's college by setting aside the communication dated 17-08-2015 or other subsequent communications in this regard (if any) of the 2nd Respondent and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

It is further submitted that as the cut-off date for closure of admissions in respect of MBBS/BDS courses is 30-09-2015 approaching fastly and it is just and necessary to pass immediate interim orders in favour of the petitioners as otherwise petitioners will face irreparable loss and hardship.

It is also just and necessary that this Hon'ble Court may be pleased to **direct the respondents to permit the petitioner's college to make admissions for the academic year 2015-16 (6th batch) by treating the institution as approved institute** pending disposal of the above writ petition and pass such other order or orders may deem fit and proper in the circumstances of the case. ”

(emphasis supplied)

15. At this stage, we also deem it necessary to extract the relevant averments made by the deponent before the Delhi High Court and this Court.

15.1 Paragraphs 7 to 9 of the affidavit filed in W.P.(C).No.9215 of 2015 read as under:

“7. This Hon’ble High Court has jurisdiction to entertain, try and dispose of this Writ Petition, inasmuch as the entire cause of action had arisen at New Delhi, where the office of respondents is situated and within the jurisdiction of this Hon’ble Court.

8. Petitioner states that no other efficacious speedy remedy is available for them and for the said reason, writ jurisdiction of this Hon’ble Court is invoked.

9. Petitioners state that they had not filed any other writ petition either before this Hon’ble Court or before any other Court challenging action of respondents in not considering their bid. ”

15.2 The statement made by the deponent in the instant writ petition (W.P.No.31371 of 2015) immediately after the ground (H) in paragraph 6 reads as under:

“In the circumstances stated above, **the petitioner has no efficacious alternative remedy, except to seek the redressal before this Hon’ble Court** seeking the indulgence of this Hon’ble Court to exercise the extraordinary original jurisdiction vested in this Hon’ble Court by virtue of Article 226 of the Constitution of India.

The petitioner has not filed any writ petition, suit or other proceedings for the relief or relieves sought herein. “

(emphasis supplied)

16. We have carefully gone through the averments in the two writ petitions, the prayers sought and the declarations made before this Court and before the Delhi High Court. It is seen that the averments made from paragraphs XII to XXIV of writ petition before the Delhi High Court and the averments made in paragraphs IX to XXVIII of the writ petition filed in this Court are *parimateria* same. We would also like to observe that almost all averments/statements made in both the writ petitions are line to line and pages to pages are identical.

17. The extracted portions of the prayers, declarations made and the averments filed in support of the writ petitions leaves no doubt that petitioners with eyes wide open simultaneously intended to prosecute two writ petitions before two different High Courts on the same cause of action and neither the Delhi High Court nor this Court was informed about prosecuting the other writ

petition. Admittedly, learned Single Judge, who passed the interim order was not informed about the writ petition that was filed before Delhi High Court at any point of time. From a bare perusal of the prayers sought before the Delhi High Court in paragraphs (b), (c) and (d), it is clear as crystal that they are similar to the prayers sought in the instant writ petition.

18. In this background, contentions of the learned senior counsel for the petitioners are considered. Learned senior counsel sought to impress upon this Court by contending that there was no deliberate and willful suppression of relevant facts by the petitioners. Petitioners were in *bona fide*, prosecuting two writ petitions under the impression that two writ petitions are maintainable. However, having realized that it is not permissible to prosecute two writ petitions simultaneously for the same relief, steps were taken to withdraw the writ petition in Delhi High Court and accordingly, the writ petition was withdrawn even before the instant writ petition was considered by this Court.

19. Learned senior counsel sought to contend, by referring to the memo dated 28.09.2015 filed on behalf of the petitioners by the counsel on record in the instant writ petition, that there was no intention to suppress. We cannot appreciate such contention. No such inference can be drawn from the reading of the memo. In this memo, it was stated that the W.P.(C).No.9215 of 2015 was filed before the Delhi High Court for '**some relief not sought for in the present writ petition**', which statement was contrary to record. It appears from the reading of this memo that even the Advocate on record in this writ petition was kept in dark about the filing of the writ petition before the Delhi High Court and the relief sought in the Delhi High Court.

20. We are not, on the *prima facie* consideration or in detail examination of record, persuaded by the contention of Sri Guru Krishna Kumar. On careful consideration of the chronology of events, the pleadings and prayers extracted above, there is no element of doubt that petitioners knowingly prosecuted two writ petitions simultaneously and there was clear suppression of factum of prosecuting two writ petitions simultaneously. As contended by Sri Niranjan Reddy, it appears that the petitioners were riding

on two horses simultaneously. The petitioners were prosecuting two writ petitions and withdrew the writ petition in Delhi High Court, probably after the interim order was granted in the instant writ petition. The order passed by this Court does not disclose the fact that this Court was apprised of the writ petition filed before the Delhi High Court. We are sure that this Court would not have entertained the writ petition and granted the interim order if the Court was apprised of filing of another writ petition before Delhi High Court on the same cause of action. We are also informed, though memo was filed on 28.09.2015 the same was not brought to the notice of this Court when writ petition was considered. Furthermore, as rightly contended by Sri Niranjan Reddy, the reason assigned before the Delhi High Court for withdrawing the writ petition was '**to approach the appropriate forum**'. At that stage also, the petitioners did not inform the Delhi High Court about the pending writ petition before this Court.

21. If there are any *bona fides* in the claim of petitioners in not intending to prosecute two writ petitions simultaneously, a request ought to have been made to withdraw the writ petition on 24.09.2015 when it was listed for the first time before the 1st Court of the Delhi High Court. The order of the Division Bench dated 28.09.2015 discloses that there was no intention to withdraw the writ petition. No material is brought on record to show that instructions were furnished to the counsel on record in Delhi High Court to withdraw the writ petition itself when it was listed on 28.09.2015, but erroneously it was not withdrawn. This statement that counsel on record was instructed to withdraw the writ petition when it was listed on 28.09.2015 appears to be an after thought. This is also clear from the reading of the above extracted portion of memo filed by the Advocate on record in this writ petition on 28.09.2015.

22. The 2nd petitioner institute is located in YSR Kadapa district in the State of Andhra Pradesh. The grievance of the petitioners emanate from the decision of the MCI in recommending against granting of renewal of permission for the academic year 2015-16. On earlier occasion when no such permission was granted to the petitioners for the academic year 2014-

15, petitioners filed W.P.No.22922 of 2014, whereas this time petitioners chose to file the writ petition before the Delhi High Court. If what is stated in paragraph-7 of the writ petition filed before the Delhi High Court is the correct stand of the petitioners regarding the jurisdiction, then this Court does not have jurisdiction and petitioners ought to have prosecuted the writ petition before the Delhi High Court. In spite of repeated enquiry from the Bench, learned senior counsel could not answer this issue.

23. Furthermore, deponent averred in both petitions that the petitioners have not availed any other remedy. This is deliberate misstatement/suppression of material fact. Petitioners were conscious, as fairly submitted by learned senior counsel when he informed the Court that petitioners instructed not to prosecute writ petition in Delhi High Court since the cause of action is same and two writ petitions are not maintainable. The institution of another writ petition on the same cause of action is a 'material fact' having direct bearing on maintainability of another writ petition.

24. The brief analysis of the facts and chronology of events noted above would disclose that petitioners were not acting *bona fide* when they instituted this writ petition and prosecuted both writ petitions till they obtained interim orders from this Court. They have suppressed the material facts which are germane to consideration on maintainability of the writ petition. No person can simultaneously prosecute two writ petitions before same High Court or before two different High Courts on the same cause of action and for the same reliefs. The cause of action to invoke extraordinary jurisdiction of High Court under Article 226 of the Constitution is the recommendation made by MCI in their letter No.MCI-34(41)(RG-2)/2015-Med./127197-127198 dated 17.8.2015 to Government of India not to accord permission to admit students in the MBBS course for the academic year 2015-16. Further, initially, when the writ petition was filed before the Delhi High Court, they challenged constitutional validity of Regulation 8(3)(1) and sought for consequential prayers. Once writ petition was instituted before the Delhi High Court praying to grant comprehensive relief including prayer sought in the writ petition before this Court, this writ petition is not maintainable. Furthermore, after the

petitioners' leave not to prosecute prayer (a) was granted by the Division Bench in its order dated 28.09.2015, the prayer in the writ petition as it stood after the leave was granted on 28.09.2015 is the same as sought in the instant writ petition.

25. In **S.J.S. Business Enterprises** (supra), the appellant filed suit on 04.04.2002 in the Court of Sub-Judge, Patna challenging the action of BICICO. An application for grant of interim relief to restrain BICICO from selling the hotel was also filed. The Sub-Judge refused the prayer in the interim injunction application by his order dated 08.04.2002. On 09.04.2002, the appellant filed writ petition before the High Court at Patna for the same relief as sought in the suit. High Court granted interim order on 09.04.2002. When the writ petition was heard finally, the writ petition was dismissed on the ground that the appellant suppressed the fact that he had filed the suit prior to institution of the writ proceedings and such conduct verged on fraud and the appellant was disentitled to any relief in the extraordinary prerogative writ jurisdiction. The Division Bench of the High Court confirmed the said decision of the learned single Judge.

25.1 Supreme Court observed that since availing alternative remedy ordinarily is not a bar to entertain writ petition and that by the time the writ petition came up for consideration for final disposal, the suit was already withdrawn, it would amount to the appellant opting to pursue the remedy under Article 226. It was observed that the High Court erred in rejecting the writ petition on that ground and that it ought to have considered the writ petition on merits.

25.2 In paragraph-13 of **S.J.S. Business Enterprises** (supra), Supreme Court observed that “***as a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief***”.

26. The facts in **Arunima Baruah** (supra) are also similar to the facts in **S.J.S Business Enterprises**. In **Arunima Baruah** (supra) also, the appellant filed suit in the District Court on 28.03.2001. On the application for grant of injunction, only notice was ordered and no *ad interim*

injunction was passed. The appellant filed writ petition before the High Court on 10.04.2001. In the said writ petition, the pending suit was not disclosed. An application for withdrawal of the suit was moved on 12.04.2001, much before the writ petition was taken up for consideration. Due to lawyers proceeding on strike, the said application was not taken up by the District Court before the writ petition came up for preliminary hearing on 18.04.2001. The District Court permitted the appellant to withdraw the suit by order dated 30.04.2001. The Delhi High court dismissed the writ petition by order dated 29.11.2002 primarily on the ground that the appellant suppressed the factum of institution of the suit before the District Court and the same amounts to gross concealment of fact by the petitioner and petitioner was doing nothing more than forum-hunting and having failed to obtain interim injunction in the civil suit, the petitioner has resorted to filing the said writ petition. In intra-court appeal the said decision of the learned single Judge was confirmed.

26.1 Before the Supreme Court reliance was placed on the decision in **S.J.S. Business Enterprises** (supra). Supreme Court observed that access to justice is a human right. For every person who has a grievance against the State, a forum must be provided to redress such grievance. The Court therefore observed that jurisdiction to determine the *lis* between the parties should be viewed from the human rights concept of access to justice.

26.2 It is pertinent to note following observations of Supreme Court:

“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. ***What would be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case.*** Material fact would mean material for the purpose of determination of the *lis*, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the *lis* between the parties, the court may not refuse to exercise its discretionary jurisdiction. ***It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.***” (emphasis supplied)

26.3 Supreme Court posed the following questions for consideration:

“18. There is another doctrine which cannot also be lost sight of. ***The court would not ordinarily permit a party to pursue two parallel remedies in respect of the same subject-matter.*** (See *Jai Singh v. Union of India* [(1977) 1 SCC 1]. But, where one proceeding has been terminated without determination of the *lis*, can it be said that the disputant shall be without a remedy?

19. xxxxxx

26.4 In Paragraph 20, Supreme Court observed,

“Existence of an alternative remedy by itself, as was propounded in *S.J.S. Business Enterprises (P) Ltd.*¹ may not be a relevant factor as it is one thing to say that there exists an alternative remedy and, therefore, the court would not exercise its discretionary jurisdiction but it is another thing to say that the court refuses to do so on the ground of suppression of facts.”

26.5 While upholding the decision of the Delhi High Court, the Supreme Court only observed that if the appellant approaches the Delhi High Court with “*a pair of clean hands*”, the Court at that point of time is entitled to determine the case on merits, having regard to the human rights of the appellant to access to justice and keeping in view the fact that judicial review is a basic feature of the Constitution of India.

27. Having regard to the peculiar facts of the case in **S.J.S.Business Enterprises**, the relief was granted to the appellant therein. In the facts of this case, the decisions relied by learned senior counsel do not come to the aid of the petitioners.

28. Remedy under Article 226 of the Constitution is an extraordinary remedy available to an aggrieved person. Such remedy can be availed even if a person has an alternative remedy, whether it is by way of civil suit or before the Tribunal or the other authorities created by the statutes. Availability of such alternative remedy is not a bar to invoke jurisdiction of the writ Court under Article 226 of the Constitution. However, as a matter of principle, ordinarily, the writ Court does not entertain the writ petition if a person has an effective and efficacious alternative remedy and compels such person to first avail such remedy before availing the extraordinary remedy under Article 226 of the Constitution. In two cases relied upon by the learned senior counsel, the issue relates to availing civil remedy and thereafter availing the writ

remedy under Article 226 of the Constitution during the pendency of the suits before the competent Court. As noted above, in both cases the suits were withdrawn by the time writ petitions have come up for consideration. In the instant case, petitioners have availed the writ remedy simultaneously before two different High Courts. Availing two writ remedies simultaneously cannot be equated to other remedies available to an aggrieved person vis-à-vis writ remedy. An aggrieved person can avail extraordinary remedy under Article 226 of the Constitution before any one of the High Courts. In addition to availing the writ remedy before two High Courts simultaneously on the same cause of action, the conduct of the petitioners, as discussed in this order, also disentitles them to obtain equitable remedy under Article 226 of the Constitution of India.

29. Remedy under Article 226 of the Constitution is an extraordinary remedy available to every aggrieved person. In exercise of this power, writ Court stretches its hand to reach out wherever injustice is caused and in whatever manner injustice is meted out. The remedy under Article 226 is equitable and discretionary. The writ Court has no bounds in issuing prerogative writs except self imposed restraint. To exercise such extraordinary remedy, the Court expects the person coming before it to be fair and frank in stating the facts which constitute cause of action to ventilate his grievance, leaving it to Court to decide whether relief can be granted and if so, what relief. Thus, the minimum that is required by petitioner, knocking the doors of the High Court under Article 226 of the Constitution, is to state the true and correct facts and project the grievance.

30. Court would be disinclined to lean in favour of a petitioner to grant equitable relief who do not disclose the true facts, tries to mislead the Court or suppress true facts deliberately in order to gain undue advantage while invoking the writ Court to exercise extraordinary jurisdiction under Article 226 of the Constitution.

31. In the case on hand, if petitioner had disclosed filing of writ petition in Delhi High Court, the learned single Judge would have first considered

maintainability of second writ petition in this Court on the same cause of action. Petitioners have not stopped there, but went further and deliberately made wrong statements.

32. In their anxiety to obtain some order to admit students for the academic session 2015-16, it appears, petitioners lost site of the fact that what is impugned was only the recommendation by the MCI and it is ultimately the prerogative of the Union of India to grant or refuse permission and by any means to admit students, filed two writ petitions in two different high courts.

33. In **K.D.Sharma**, Supreme Court observed that the party invoking extraordinary jurisdiction of writ Court is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “**hide and seek**” or to “**pick and choose**” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts” (paragraph 38).

33.1 It would be relevant to reproduce paragraphs 34 to 39 **K.D.Sharma** (supra), which read thus:

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commrs. (1917) 1 KB 486* in the following words: (KB p. 514)

“... it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—it says facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and **the applicant must state fully and fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside any action which it has taken on the faith of the imperfect statement.**” (emphasis supplied)

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. **If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “We will not listen to your application because of what you have done.”** The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

37. In *Kensington Income Tax Commrs.* Viscount Reading, C.J. observed: (KB pp. 495-96)

“... Where an ex parte application has been made to this Court for a rule nisi or other process, **if the Court comes to the conclusion that the affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the merits.** This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the true facts. **But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit.**”
(emphasis supplied)

38. The above principles have been accepted in our legal system also. As per settled law, **the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible.** The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because “the court knows law but not facts”.

39. If the primary object as highlighted in *Kensington Income Tax Commrs.* is kept in mind, **an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”.** Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed

further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court. *(emphasis supplied)*

33.2 In **Prestige Lights Limited v. SBI**^[5] the Supreme Court observed that *“in exercising power under Article 226 of the Constitution of India the High Court is not just a ‘Court of Appeal’, but it is also a ‘Court of Equity’ and a person who invokes the High Court’s jurisdiction under Article 226 of the Constitution is duty-bound to place all the facts before the Court without any reservation. The High Court would be fully justified in refusing to entertain a petition filed under Article 226 of the Constitution if there is suppression of material facts or if the facts are twisted.”*

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33.3 In **All India State Bank Officers Federation v. Union of India**^[6], the facts are similar. Federation filed WP in this Court, before High Court at Bangalore and in the Supreme Court under Article 32 of the Constitution on the issue of promotion policy and granting promotions to some officers. In the petition filed under Article 32 of the Constitution, declaration was filed stating that no other writ petition was filed in the Supreme Court or in any High Court on the same issue. Supreme Court frowned at such conduct of Federation. Supreme Court observed,

“11. Apart from misstatements in the affidavits filed before this Court, the petitioner federation has clearly resorted to tactics which can only be described as abuse of the process of court. **The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the officers of the Bank, is a practice which has to be discouraged.**” *(emphasis supplied)*

33.4 In **Dalip Singh** (supra), Supreme Court observed,

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence), Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in

litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and **it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.** *(emphasis supplied)*

33.5 It is apt to consider the further observations made in the decision of the King's Bench Division in **THE KING v. THE GENERAL COMMISSIONERS FOR THE PURPOSES OF THE INCOME TAX ACTS FOR THE DISTRICT OF KENSINGTON. Ex parte PRINCESS EDMOND DE POLIGNAC**,^[7] which decision is treated in India as an authority for the proposition on good faith required by a person applying for a writ.

“55.2. WARRINGTON L.J., observed,

“It is perfectly well settled that a person who makes an *ex parte* application to the Court — that is to say, in the absence of the person who will be affected by that which the Court is asked to do — **is under an obligation to the Court to make the fullest possible disclosure of all material facts within his knowledge, and if he does not make that fullest possible disclosure, then he cannot obtain any advantage from the proceedings, and he will be deprived of any advantage he may have already obtained by means of the order which has thus wrongly been obtained by him.**”

(emphasis supplied)

34. Though learned counsel Sri Guru Krishna Kumar sought to justify the maintainability of the instant writ petition on the ground that by the time the writ petition was taken up for consideration, the writ petition filed before the Delhi High Court was already withdrawn and since only this writ petition is pending, there is no bar in considering the writ petition on merits, we cannot appreciate such contention. The Writ Court is concerned with the fairness, honesty and sincerity of litigant coming before the court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India. The averments made in the affidavit filed in support of the writ petition and the prayers sought, are looked into as they were made when the writ petition

was instituted. Admittedly, on the date of filing of the instant writ petition, petitioners instituted W.P.(C).No.9215 of 2015 before the Delhi High Court and the cause of action for instituting both the writ petitions is the same and true and correct facts were not stated. Thus, there is clear suppression of crucial facts which have a bearing on maintainability of the writ petition. Therefore, subsequent withdrawal of one writ petition cannot absolve the tainted acts of petitioners when writ petitions were filed.

35. In the recent past, it is observed that some educational institutions, invoking the extraordinary jurisdiction of a High Court under Article 226 of the Constitution, shamelessly resort to falsehood, unethical and illegal means to achieve their goals/for seeking orders from Courts. They resort to suppression of facts and occasionally even misleading the Courts. Such institutions have converted the field of education a money making business and a commercial activity. In such cases, the Supreme Court time and again observed that the petitioners, who make false statement, suppress material facts or attempt to mislead the Courts, their petitions must be dismissed at the threshold, refusing to enter into merits of the case. It is well settled that the party who invokes the extraordinary jurisdiction of a High Court under Article 226 of the Constitution, is supposed to be truthful, frank and open. It must disclose all material facts without any reservation even if they are against it.

The petitioner cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress or not to disclose other material facts. The litigant, who pollutes the stream of justice or who touches the pure fountain of justice with tainted hands, as observed in **Dalip Singh** (supra), is not entitled to any relief, interim or final.

36. In the present case, as noticed and observed earlier, the petitioners have not only invoked the extraordinary jurisdiction under Article 226 of the Constitution by filing two writ petitions before two High Courts, but suppressed filing and pendency of other writ petition when the instant writ petition was filed in this Court. The petitioners not only suppressed but they made a false and misleading statement in the body of writ petition that they have not filed any other petition for the relief sought in the instant petition.

The sequence of events clearly reveal that the petitioners, one after another, made false and misleading statements on affidavit including in the Memo dated 28.09.2015. Further, from the facts, it is clear that the petitioners made a clear attempt to somehow snatch/obtain interim order from either of the High Courts. Though it has not come on record as to what exactly happened in Delhi High Court and in what circumstances the petition was withdrawn, we find substance in the submission of Mr. S. Niranjan Reddy, learned counsel for MCI that the petitioner tried to obtain interim order in that Court and having realized that they were not getting any order they withdrew that writ petition and prosecuted the instant writ petition further. Perhaps, this is classic case of “forum hunting” which the petitioners have indulged shamelessly. If we do not take such a view and only consider plight of the students, that would amount to overlooking shameless practice and encouraging such tactics in future. We are aware, this order would cause tremendous inconvenience to the students who are admitted in the petitioner-college, though their admissions were conditional and they were notified that their admissions would be subject to further orders of this Court and no equities can be claimed by them. But to curb such practices and to discourage institutions from resorting to any such tactics, it is necessary to pass strong/harsh order. In our opinion, it is also necessary at this stage itself to pass such order, so that those students will be able to appear for Common Entrance Tests for the next academic year or will be able to take appropriate decision in respect of their career before commencement of the next academic year.

37. Thus, guided by the principles enunciated by the Supreme Court in the decisions referred to above and the observations of the KINGS Bench Division in “**THE KING**” (supra) and on analysis of facts on record, we are of the considered opinion that when the instant writ petition was instituted, the hands of the petitioners were tainted. There was not only clear suppression of facts but clear attempt to mislead the Court. Petitioners were not entitled to file two writ petitions in two different High Courts, more so, on the same cause of action and for similar relief, by suppressing of such institution. Hence, the writ petition deserves to be dismissed. Order accordingly.

38. In view of the dismissal of the writ petition, no orders are necessary

in the writ appeal. Writ appeal is accordingly closed.

39. We are informed that as a consequence to the interim orders granted by this Court, 2nd petitioner admitted the students for the academic year 2015-16 of its own. In other words, the students admitted were not allotted to the petitioner-college by the respondents. In paragraph (iii) of the order dated 29.09.2015 of this Court, it was made clear that the students allotted and admissions made pursuant to the interim orders should be notified that the admission is based on provisional permission and subject to further orders of the Court and no equities could be claimed by any student. We direct the petitioners to refund forthwith the entire amount collected from the students towards fee and other expenses. We also make it clear that this order does not come in the way of students to work out their remedies as available in law against the petitioners, if so advised.

Miscellaneous petitions if any pending shall stand closed.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 20.04.2016
Kkm

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.31371 of 2015 and
WRIT APPEAL NO.1101 OF 2015

Date: 20.04.2016

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[\[1\]](#) (2008) 12 SCC 481

[\[2\]](#) (2010) 2 SCC 114

[\[3\]](#) (2004) 7 SCC 166

[\[4\]](#) (2007) 6 SCC 120

[\[5\]](#) (2007) 8 SCC 449

[\[6\]](#) 1990 Supp SCC 336

[\[7\]](#) (1917) 1 K.B. 486