

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17708 of 2016

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1. Adhishree, D/o Anil Kumar Tiwari C/o Shri B.N. Tiwari, Behind Sanjay Cinema, Brahmapura (New Colony), P.S. - Brahmapura, Post - MIT, District - Muzaffarpur.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Health, Govt. of India, New Delhi.
2. The Chairman, Central Board of Secondary Education, Education Centre - 2, Community Centre, Preet Vihar, Delhi.
3. The Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi.
4. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi.
5. The Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat, Patna, Bihar.
6. The Chairman, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna - 14.
7. The Controller of Examination, Bihar Combines Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna - 14.
8. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman
9. Arvind Choudhary, the then Controller of Examination. BCECEB, IAS Association Building, Near Patna Airport, Patna-14
10. Akbar Kabir, son of Humayun Kabir, SKMC, Muzaffarpur
11. Rishu Kumar, son of Pappu Kumar Pandey, SKMC, Muzaffarpur
12. Anil Kumar Yadav, son of Umesh Yadav, DMC, Laheriasarai
13. Astha Raj, son of Raj Kishore Prasad, IGIMS, Patna

.... Respondents

WITH

Civil Writ Jurisdiction Case No. 19135 of 2016

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1. Manisha Gaurav, daughter of Sanjay Kumar, resident of behind Qr/No.-30, Road No.10, Moh- Chakbinda, Gardanibagh, P.S.- Gardanibagh, District- Patna.

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Health, Govt. of India, New Delhi.



2. The Chairman, Central Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi.
3. The Secretary, Ministry of Human Resources Development, Govt. of India, New Delhi.
4. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi.
5. The Principal Secretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat, Patna, Bihar.
6. The Chairman, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna-Airport, Patna-14.
7. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna- Airport, Patna-14.
8. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman
9. Arvind Choudhary, the then Controller of Examination. BCECEB, IAS Association Building, Near Patna Airport, Patna-14
10. Akbar Kabir, son of Humayun Kabir, SKMC, Muzaffarpur
11. Rishu Kumar, son of Pappu Kumar Pandey, SKMC, Muzaffarpur
12. Anil Kumar Yadav, son of Umesh Yadav, DMC, Laheriasarai
13. Astha Raj, son of Raj Kishore Prasad, IGIMS, Patna

.... Respondents

WITH

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Civil Writ Jurisdiction Case No. 19183 of 2016

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1. Dipty Preyasi daughter of Diwakar SDingh Bahadur Resident of Village-Nepura, P.O. + P.S.-Asthawan, District-Nalanda

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Home Affairs, New Delhi
2. The Chairman, Censtral Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi
3. The Secretary, Minsitry of Human Resources Development, Govt. of India, New Delhi
4. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi
5. The Principal Secretary, DePartment of Health and Family Welfare, Govt. of Bihar, New Secretariat Patna, Bihar
6. The Chairman, Bihar Combined Entrance Competitive Examination Board, Patna-14
7. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna- Airport, Patna-14



8. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman
9. Arvind Choudhary, the then Controller of Examination. BCECEB, IAS Association Building, Near Patna Airport, Patna-14
10. Akbar Kabir, son of Humayun Kabir, SKMC, Muzaffarpur
11. Rishu Kumar, son of Pappu Kumar Pandey, SKMC, Muzaffarpur
12. Anil Kumar Yadav, son of Umesh Yadav, DMC, Laheriasarai
13. Astha Raj, son of Raj Kishore Prasad, IGIMS, Patna

.... Respondents

WITH

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Civil Writ Jurisdiction Case No. 388 of 2017

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1. Gul Afshan Naz, D/o Shoaib Ahmad, Resident of East of Masjid Baitul Karim, isa Nagar Naya Tola, Phulwarisharif, Patna

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Health, Govt. of India, New Delhi.
2. The Chairman, Central Board of Secondary Education, Education Centre-2, Community Centre, Preet Vihar, Delhi.
3. The Secretary, Ministry of Human Resources Development, Govt of India, New Delhi.
4. The Director General, Directorate General of Health Services, Nirman Bhawan, New Delhi
5. The PrincipalSecretary, Department of Health and Family Welfare, Govt. of Bihar, New Secretariat Patna, Bihar
6. The Chairman, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna Airport, Patna-14
7. The Controller of Examination, Bihar Combined Entrance Competitive Examination Board, I.A.S. Association Building, Near Patna- Airport, Patna-14
8. Medical Council of India, Pocket 14, Sector-8, Dwarka, New Delhi, through its Chairman
9. Arvind Choudhary, the then Controller of Examination. BCECEB, IAS Association Building, Near Patna Airport, Patna-14
10. Akbar Kabir, son of Humayun Kabir, SKMC, Muzaffarpur
11. Rishu Kumar, son of Pappu Kumar Pandey, SKMC, Muzaffarpur
12. Anil Kumar Yadav, son of Umesh Yadav, DMC, Laheriasarai
13. Astha Raj, son of Raj Kishore Prasad, IGIMS, Patna

.... Respondents

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Appearance :

For the petitioners : Mr. Anshul, Advocate



For Union of India : Mr. S. D. Sanjay, A.S.G.
 Mr. Kumar Priya Ranjan, CGC
 For MCI : Mr. Kumar Brijnandan, Advocate
 For BCECEB : Mr. P. K. Shahi, Sr. Avocate
 Mr. Vikash Kumar, Advocate
 For CBSE : Mr. V. K. Tripathy, Advocate
 For the State : Mr. Birju Prasad, GP 13
 Mr. Ramadhar Singh, GP 25
 Mr. Binod Kumar Yadav, SC 18
 For Resp. Nos. 10-13 : Mr. Vinodanand Mishra

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER
C.A.V.

Date: 29-06-2017

The controversy, in the present batch of writ applications filed under Article 226 of the Constitution of India, arises out of selection of students for admission to M.B.B.S. Course in Medical Colleges in the State of Bihar based on a counselling done by the Bihar Combined Entrance Competitive Examination Board (BCECEB) on 07.10.2016, under an order passed by the Supreme Court on 06.10.2016 in **W.P.(C) No. 76 of 2015 and other analogous cases (Ashish Ranjan and Others v. Union of India and Others)**. Since the entire issue revolves around the said order, dated 06.10.2016, passed in the case of **Ashish Ranjan** (supra), the entire order is being reproduced herein below before referring to the background facts leading to filing of the present applications:-

“This Court on 13.10.2016 has passed



an order with regard to All India Quota Seats. The relevant part reads as follows:

“Ms. Pinky Anand, learned Additional Solicitor General appearing for the Union of India has filed a chart which is not complete. She will file a complete chart by 5th October, 2016.

The order interlocutory applications as well as the other matters relating to the other States shall be listed on 6th October, 2016.

It is hereby directed that the seats which are reverted to the States Quota and remain unfilled, shall not be filled up till then.”

Mr. Pinky Anand, learned Additional Solicitor General for Union of India has filed a chart which is as follows:

“GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
DIRECTORATE GENERAL OF HEALTH SERVICES
NIRMAN BHAWAN, NEW DELHI

As per the order of the Hon’ble Supreme Court of India dated 29.9.2016 and subsequent order date 03.10.2016 in Writ Petition © No. 652 of 2016- Subhash Kumar & Ors. Vs. UOI & Ors. The vacancy position of MBBS/BDS seats of 15% All India Quota-2016 received from various States of the country after 30.09.2016:

Sl. No.	States	Number of seats reverted after 15% AIQ counselling on 23.09.2016	Balance of 15% AIQ seats remaining after state		
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			counselling on 30.9.2016		
1.	Andaman & Nicobar Islands	13	0	0	0
2.	Assam	42	2	0	0
3.	Bihar	68	5	21	10
4.	Chandig- arh	5	0	0	0
5.	Chhattis garh	45	12	0	0
6.	Delhi (Delhi Universit y)	10	0	0	0
7.	Delhi (IP Universit y)	11	8	0	0
8.	Goa	12	6	0	0
9.	Gujarat	68	9	0	0
10.	Haryana	44	3	0	0
11.	Himachal Pradesh	28	8	0	0
12.	Jharkhan d	24	0	3	0
13.	Karnatak a	100	13	8	0
14.	Kerala	10	15	0	0
15.	Madhya Pradesh	60	4	0	0
16.	Maharas htra	166	35	41	27
17.	Manipur	17	6	0	0
18.	Meghala ya	6	0	0	0
19.	Orissa	31	7	1	0
20.	Pondiche rry	8	2	0	0
21.	Punjab	33	12	0	0
22.	Rajastha n	124	3	0	0
23.	Tamil Nadu	82	12	1	0
24.	Tripura	12	0	12	0
25.	Uttar Pradesh	111	6	23	0



26	Bhu Varanasi (UP)	4	5	0	0
27	Uttrakan d	36	0	0	0
28	West Bengal	121	29	3	25
	TOTAL	MBBS = 1291 BDS = 202		MBBS = 113 BDS = 65	
	GRAND TOTAL	1493		178	

Note- Admission has been held up in view of the Hon'ble High Court of Tripura."

At this juncture, it is submitted by Mr. Gaurav Sharma, that this Court has granted extension of time to the States of Kerala, Karnataka, Madhya Pradesh and Uttar Pradesh to fill up their State Quota Seats. Needless to say, the State quota also includes the seats that have been reverted from All India Quota. The rest of the seats which find mention in the chart not belonging to the four States shall be filled up by the concerned States by adopting a transparent procedure, regard being had to the criteria followed for filling up All India Quota Seats. We may hasten to clarify, the States quota from All India Quota but fill them up by taking the merits in All India Quota. Needless to say the whole thing shall be completed by 07.10.2016.

The order shall be put on the website by the DGHS and the competent authority of the Medical Council of India; and the DGHS shall inform the competent authorities of the States. Similar exercise shall be done by the States which are not covered by the extended period. No individual notice shall be given. Be it clarified our



order shall only be applicable to Government colleges with respect to All India Quota.”

2. It is apparent from the aforesaid order of the Supreme Court that after counselling for admission to MBBS/BDS seats, certain number of seats of 15 per cent of All India Quota-2016 had remained vacant in Medical Colleges of almost all the States, including the State of Bihar. Considering the said aspect and the fact that Supreme Court had granted extension of time to the States like (i) Kerala,(ii) Karnataka,(iii) Madhya Pradesh and (iv) Uttar Pradesh to fill up their State Quota Seats, the Supreme Court allowed, by the said order that rest of the seats which find mention in the chart, not belonging to the said four State,s to be filled up by the concerned States by adopting “a transparent procedure, regard being had to the criteria followed for filling up All India Quota seats”. The Apex Court, in order to avoid any scope for ambiguity, clarified that those balance of 15 per cent of All India Quota Seats remaining after said counselling shall not be treated as seats having been reverted to the State Quota from All India Quota but directed to “*fill them up by taking the merits in All India Quota merit*”. The Supreme Court also ordered that whole thing shall be completed by 07.10.2016. Evidently, the said order was applicable to



the Government Colleges with respect to All India Quota. No individual notice was required to be given for the counselling to be held on 07.10.2016 and the order of the Supreme Court was directed to be put on the website by the Directorate General Health Services (DGHS) and the competent authority of the Medical Council of India. The DGHS was required to inform the competent authorities of the States. In compliance of the Supreme Court's decision, the Directorate General of Health Services, Government of India, issued necessary communication, dated 06.10.2016, mentioning specifically, *inter alia*, that admission under the orders of the Supreme Court shall be strictly "*in accordance with the merits*". It also indicated that a list of eligible candidates for 15 per cent of All India Quota-2016, as received from Central Board of Secondary Education (CBSE), had been sent to the authorities of the States etc by the Directorate through E-mail and also uploaded on the MCC's website. Relevant portion of the said communication is being reproduced herein below:-

"The admissions shall be strictly in accordance with the merit after giving wide publicity to all the eligible 15% All India Quota candidates.

A list of eligible candidates for 15% All India quota-2016 as received from BSE has been sent to you by this Directorate through E-mail and also uploaded on MCC's



website (www.mcc.nic.in).”

3. There is specific averment made in CWJC No. 17708 of 2016 to the effect that the list of candidates, for 15 per cent of All India Quota-2016 as sent by the Directorate, contained the petitioner’s name also.

CASE OF THE PETITIONERS

4. It is common case of the petitioners that they had appeared for National Eligibility-cum-Entrance Test (NEET) (U.G.)-2016 conducted by the Central Board of Secondary Education, result of which was published on 16.08.2016. They had qualified and were found eligible for counselling against 85 per cent of State Quota Seats and 15 per cent of All India Quota Seats as well. They had participated in the counselling. They could not be allotted MBBS seats as the said seats, according to the respondents were filled up. They were accordingly allowed admission in BDS Course on the basis of upper merit. They took admission accordingly in BDS Course. They have further stated that all the original certificates of the petitioners were taken by the respondents at the time of the counselling, which is the norm. After depositing fees, they took admission in BDS Course. Once they learnt that certain MBBS seats were still vacant, they made a representation before the Principal Secretary, Department of Health and Family Welfare, Government of Bihar. As



has been noticed above, on 06.10.2016, the Supreme Court passed the order for filling up of balance of 15% All India Quota Seats remaining after counselling held up to 30.09.2016. The Director General, Health Services, Government of India made available to the BCECEB the list of eligible candidates for admission on the basis of their merit against All India Quota seats who were eligible for the purpose of counselling in terms of Supreme Court's order, dated 06.10.2016. It is their further case that the Controller of Examination, BCECEB, issued advertisement which has been brought on record by way of Annexure-10 to CWJC No. 17708 of 2016 announcing that in terms of Supreme Court's order, dated 06.10.2016, counselling for filling up of balance of 15 per cent All India Quota Seats remaining would be held on 07.10.2016 at 7 P.M. It was mentioned in the said notice, inter alia, that (i) said seats would be filled up by All India Quota Merit list (ii) those candidates, who are included in All India Quota Merit list based on NEET (UG)-2016 should reach the office at 7 P.M. along with all original certificates/documents (iii) Counselling against remaining 15 per cent All India Quota seats would be carried out strictly on merit-cum-choice basis (iv) Since admission process was to be completed on 07.10.2016 itself, presence of eligible candidates along with original documents was must.



5. The petitioners presented themselves for counselling as per the notice. It has been stated in the writ application that respondents refused to accept the counselling of these petitioners stating that production of original certificates was mandatory as per the notice. It is their further case that the petitioners were not made known result of the counselling held on 07.10.2016.

It is also their case that when every attempt made by them to present their grievance remained unsuccessful, they filed the present writ applications on 24.10.2016. CWJ No. 388 of 2017, was, however, filed in January, 2017.

CASE OF THE RESPONDENTS-BCECEB

6. A counter affidavit has been filed on behalf of the BCECEB sworn by Mr. Anil Kumar Sinha, Officer on Special Duty in BCEEB.

7. In the counter affidavit it has been stated that the whole exercise of uploading the notification on the website to carry out the counselling process was completed on 07.10.2016 itself under the supervision of the authority deputed by the Department of Health, Government of Bihar and accordingly, the matter was informed to the Department of Health, Government of Bihar on 13.10.2016. It is stated in the counter affidavit in paragraph 10 that "in the aforesaid letter it was made clear



that the candidate who presented themselves with their merit list of All India Quota and original documents have been allotted MBBS/BDS seats against 15 per cent of All India Quota. The BCECEB's attempt to justify its action of not entertaining the petitioners for the purpose of their counselling held on 07.10.2016 has been given in paragraph 11 of the counter affidavit point wise, which are as follows:-

“(i) The Hon'ble Supreme Court while passing the order dated 06.10.2016 has been pleased to direct that as the other seats have been filled up by taking into consideration NEET merits, their admission shall not be disturbed.

(ii) The Hon'ble Court has further directed that the State shall not treat the vacant AIQ seats of MBBS course as reverted back to State quota. As such in the counselling reshuffling of already allotted seats were not allowed.

(iii) As per the directive incorporated in the advertisement no. BCECE (BCECE)-2016/36 dated 07.10.2016, the petitioner did not produce the original document/certificates in the counselling held on 07.10.2016 she was not found eligible for seat allotment on 07.10.2016.”

8. In the counter affidavit, the BCECEB has not denied specifically any of the averments made in the writ



applications. There is, therefore, no denial of the fact that these petitioners had presented themselves for counselling on 07.10.2016 in terms of Supreme Court's order and subsequent advertisement issued by the BCECEB. There is also no denial of the specific averment made in the writ applications that the original certificates of the petitioners were taken by the respondents at the time of the counselling on the basis of which they were allowed admission in BDS Course. In paragraph 17 of the writ application, i.e., CWJC No. 17708 of 2016, following is the specific averment made, which has not been denied in the counter affidavit.

"17. That the petitioner was given counseling form which she duly filled up. As all her original certificates were with the respondent no. 7, taken at the time of earlier counseling in which she was given admission to BDS Course, she went to inform the authorities about the same. The officials refused to accept the counseling form stating that production of original certificates was mandatory as per the notice."

9. Pursuant to the Court's order, the BCECEB filed a supplementary counter affidavit brining on record list of 16 candidates allotted MBBS course on the basis of counselling for remaining 15 per cent All India Quota seats held on



07.10.2016 from which it appears that the petitioners ranked higher than the candidate last allotted MBBS Seat.

CASE OF MEDICAL COUNCIL OF INDIA

10. An affidavit has been filed on behalf of the Medical Council of India also, supporting the stand of the BCECEB stating that it was view of the Supreme court while passing order, dated 06.10.2016, that the candidates, who had already secured admission after second round of counselling held on 26.09.2016, shall not participate in the special counselling to be held on 07.10.2016 for all India quota seats. It has also been stated that since the petitioners were not carrying the original certificates, which was mandatory as per the notice issued for counselling, they were rightly not allowed to participate in the counselling. In the same breath, it has been stated that the petitioners had already taken admission in BDS Course on 29.06.2016 in Patna Dental College and had submitted their original certificates with the concerned authority and, accordingly, it has been argued that their candidature could not have been considered for admission to MBBS Course on the basis of counselling held pursuant to the Supreme Court's order. It has also been stated that once the petitioners had accepted admission in BDS course, they could not claim any benefit of their rank in All India quota for counselling



held thereafter. In paragraph 7 of the counter affidavit, the intention of the Supreme Court while passing the order dated 06.10.2016, has been described by the Medical Council of India to fill up the vacant seats of All India Quota in the State of Bihar from the waiting list of the candidates of the All India Quota who had been unable to take admission even in second round of counselling held on 29.06.2016. It has been stated that Hon'ble Supreme Court was of the view that students of All India Quota who have already secured admission on 29.6.2016 shall not participate in the special counselling to be held on 07.10.2016. In paragraph 48 of the counter affidavit following averment has been made by the Medical Council of India.

"48. It is most respectfully submitted that it could not have been the intention of Hon'ble Supreme Court while passing order dated 06.10.2016 in W.P. (Civil) No. 76 of 2015 that candidates like the petitioner who have already taken admission in BDS course be permitted to leave/vacate the BDS seat and be permitted to participate in the counselling held on 07.10.2016 since the same would entail giving an option to all the candidates of the All India Quota of seeking admission in various medical/dental colleges even though they had secured admission in the



earlier rounds of counselling. Thus the averment of the petitioner that candidates lower in merit than her have been granted admission in MBBS course on 07.10.2016 is entirely misconceived, erroneous and will lead to an irreversible anomalous situation which will require re- counselling of All India Quota."

11. The Court fails to understand from where the Medical Council of India gathered that the intention of the Supreme Court while passing order, dated 06.10.2016, was that the candidates who had taken admission in BDS course shall not be allowed to participate in the special counselling to be held on 07.10.2016. There is no such indication in the said order, dated 06.10.2016, wherein it has been categorically mentioned that the counselling was to be done by adopting "a transparent procedure, regard being had to the criteria followed for filling up All India Quota Seats " and fill them up by taking the merits in All India Quota".

12. Further, the Court expresses strong displeasure over the stand taken on behalf of the Medical Council of India in its counter affidavit, which has been filed on behalf of the Chairman of the Medical council of India. The court presumes that the said counter affidavit has been filed with approval of the Chairman, Medical Council of India. There



is another serious aspect in the stand taken on behalf of the Medical Council of India in the counter affidavit. As has been noticed above, the matter relates to admission to MBBS Course against all India Quota seats on the basis of counselling held on 07.10.2016, pursuant to Supreme Court's order, dated 06.10.2016. With a grievance that the petitioners were wrongly denied opportunity to participate in the counselling on 07.10.2016, they approached this Court immediately thereafter under writ jurisdiction, seeking relief, inter alia, of direction for allotment of Seats to MBBS Course for the academic Year 2016-17 on the basis that the candidates having lower rank to the petitioners were allowed admission in MBBS course. The first plea, which has been taken by the Medical council Of India in the counter affidavit is that in view of the law laid down by Supreme Court the last date for admission in MBBS course in any Medical College being 30.09.2016, no relief as sought in the writ applications, can be granted. The language used in the affidavit filed on behalf of the Chairman, Medical Council of India in paragraph 6 is offensive inasmuch as it has been stated as follows:-

"6. It is submitted that every person, officer or authority, who disobeys or fails to strictly comply with the directions of the Hon'ble Supreme Court shall be liable to be prosecuted under the provsiiosn of



the Contempt of Court Act, 1971. Thus, the petitioner in view of the authoritative pronouncements of the Hon'ble Supreme Court cannot be granted admission in MBBS course after 30.09.2016 for academic year 2016-17. The present writ petition deserves to be dismissed insofar as this aspect is concerned. It is prayer accordingly."

13. The Medical Council of India by making such statement has attempted to convey to this Court that even this court will be liable for contempt of Court if the writ petitions filed by these petitioners were to be entertained since the petitioners are apparently seeking relief from this Court and not from any other functionaries of the State. I am of the view that by making such statement, the Chairman, Medical Council of India and deponent of the affidavit, Shri Shikhar Ranjan, the Law Officer, Medical Council of India, have committed gross contempt of this Court and have thereby rendered themselves liable to be prosecuted accordingly.

14. Every order passed by the Constitutional Courts are required to be strictly adhered to and cannot be disobeyed by the authorities or the Courts which are duty bound to comply with the order, but taking plea in the counter affidavit before the High Court that if the High Court deviates from what has been decided by the



Supreme Court shall amount to contempt of Court itself in my opinion, is gross contempt. The plea has so emphatically been taken in the counter affidavit, as is evident from the statement made in paragraph 40. I am also of the view that the counter affidavit has been mindlessly drafted ignoring the basic rules of drafting.

STAND OF THE PRIVATE RESPONDENTS

15. Counter affidavits have been filed on behalf of the private respondent Nos. 10,11,12 and 13 taking the same plea that once the petitioners accepted a seat in BDS course, they could not be allowed to participate in counselling for All India Quota MBBS seats held on 07.10.2016. In the counter affidavit filed on behalf of Respondent Nos. 10,12 and 13, it has been stated that change of the Institute/course was allowed only to the candidates who had been allotted seats in first round of counselling and at the time of admission in the allotted College they exercised their option for upgradation. Since in the present case, the petitioners were not allowed seats in first round of counselling either against All India seats or State Seats, as per the criteria for filling up All India seats, the petitioners were not eligible to participate in counselling for upgradation or change of the Institute. It has also been contended in the counter affidavit that no body was allowed to participate in the counselling held



pursuant to the Supreme Court's direction who were not armed with original documents and who were already allotted either MBBS or BDS Seats. A plea has also been taken that the counselling done after the deadline of 30.09.2016 is fortuitous circumstance inasmuch as the Court had issued a direction for counselling on 06.10.2016. According to them, there cannot be a case of discrimination merely because a fortuitous circumstance arising out of some peculiar situation created disadvantage against or advantages in favour of one group or the other, although in the earlier stages they were more or less equal.

16. Almost similar plea has been taken on behalf of the Respondent No.11 in the counter affidavit filed on his behalf. It is the case of the private respondent who has been admitted MBBS course though lower in merit list, on the basis of counselling done on 07.10.2016 that there was no misrepresentation or fraud played on his part and he has been allotted seat on the basis of counselling done by the BCECEB in a transparent manner. In the supplementary affidavit filed on behalf of the BCECEB on 15.05.2017, it has been asserted that in the counselling held on 07.10.2016 only such candidates were allowed to participate who had not earlier taken admission either in MBBS Course or BDS Course and there has been no other consideration, save and except compliance of the order of



the Apex Court.

SUBMISSIONS MADE ON BEHALF OF THE PARTIES

17. Learned counsel appearing on behalf of the petitioners has submitted that the Supreme Court required the State Governments to hold counselling for admission to the aforesaid all India Quota Seats purely on the basis of merit per NEET (UG)-2016 results. The Supreme Court in the order did not debar such candidates who had taken admission to BDS Course on the basis of second counselling done for State seats to participate in the counselling to be done on 07.10.2016. It is contended that there has been a blatant infringement of the equality clause under Article 14 of the Constitution of India in denying opportunities to these petitioners to claim admission to MBBS Course on completely irrational and illogical ground. Referring to the order of the Supreme Court, dated 06.10.2016, in case of **Ashish Ranjan (supra)**, he has submitted that the observation “as other seats have been filled up by taking into consideration the NEET Merits, their admission shall not be disturbed” is in relation to a particular State, namely, State of Goa as the said order refers to filling up of remaining four seats. One sentence from the order passed on I.A. Nos. 36 and 37 in WP No. 76 of 2015 is being wrongly picked up by the respondents to justify their illegal actions of denying these



petitioners their right to participate in the counselling held on 07.10.2016. He has relied on Supreme Court's decision, in the case of **Asha v. Pt. B. D. Sharma University of Health Sciences and Others**, reported in **(2012) 7 SCC 389**, with special reference to paragraphs 21 and 29 to 34 which read thus:-

"21. At this stage, we may refer to certain judgments of the Court where it has clearly spelt out that the criteria for selection has to be merit alone. In fact, merit, fairness and transparency are the ethos of the process for admission to such courses. It will be travesty of the scheme formulated by this Court and duly notified by the states, if the Rule of Merit is defeated by inefficiency, inaccuracy or improper methods of admission. There cannot be any circumstance where the Rule of merit can be compromised. From the facts of the present case, it is evident that merit has been a casualty. It will be useful to refer to the view consistently taken by this Court that merit alone is the criteria for such admissions and circumvention of merit is not only impermissible but is also abuse of the process of law. Ref. Priya Gupta v. State of Chhatisgarh and Anr. [CA @ SLP(C) No. 27089 of 2011, decided on 8th May, 2012], Harshali v. State of Maharashtra and Ors. (2005) 13 SCC 464, Pradeep Jain v. UOI MANU/SC/0047/1984 :



1984 (3) SCC 654, Sharwan Kumar and Ors. v. Director of Health Services and Anr. MANU/SC/0431/1992 : 1993 Supp (1) SCC 632, Preeti Srivastava v. State of MP MANU/SC/1021/1999 : (1999) 7 SCC 120, Guru Nanak Dev University v. Saumil Garg and Ors. 2005 (13) SCC 749, AIIMS Students' Union v. AIIMS and Ors. MANU/SC/0480/2001 : (2002) 1 SCC 428.

29. However, the question that immediately follows is whether any mid-term admission can be granted after 30th September of the concerned academic year, that being the last date for admissions. The Respondents before us have argued with some vehemence that it will amount to a mid-term admission which is impermissible, will result in indiscipline and will cause prejudice to other candidates. Reliance has been placed upon the judgments of this Court in Medical Council of India v. Madhu Singh and Ors. MANU/SC/0761/2002 : (2002) 7 SCC 258, Ms. Neelu Arora and Anr. v. Union of India and Ors. MANU/SC/0048/2003 : (2003) 3 SCC 366, Aman Deep Jaswal v. State of Punjab and Ors. (2006) 9 SCC 597, Medical Council of India v. Naina Verma and Ors. (2005) 12 SCC 626, Mridul Dhar and Anr. v. Union of India and Ors. MANU/SC/0029/2005 : (2005) 2 SCC 65, Medical Council of India v. Madhu Singh and Ors. MANU/SC/0761/2002 : (2002) 7



SCC 258.

30. 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.

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 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.

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 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 Ors. v. State of J and K and Ors.* MANU/SC/0065/1981 : (1981) 2 SCC 484; *Chavi Mehrotra v. Director General Health Services* MANU/SC/0635/1994 : (1994) 2 SCC 370; and *Arvind Kumar Kankane v. State of UP and Ors.* MANU/SC/0416/2001 : (2001) 8 SCC 355.

33. We must hasten to add at this stage that even if these conditions are satisfied, still, the court would be called upon to decide whether the relief should or should not be granted and, if granted, should it be with or without compensation.

34. This brings us to the last



phase of this case as to what relief, if any, the Appellant is entitled to. Having returned a finding on merits in favour of the Appellant, the Court has to grant relief to the Appellant even, if necessary, by moulding the relief appropriately and in accordance with law. This Court must do complete justice between the parties, particularly, where the legitimate right of the Appellant stands frustrated because of inaction or inappropriate action on the part of the concerned Respondents. In fact, normally keeping in view the factual matrix of this case, we would have directed the admission of the Appellant to the MBBS course in the academic year 2011-2012 and would further have directed the Respondents to pay compensation to the Appellant towards the mental agony and expense of litigation and the valuable period of her life that stands wasted for failure on the part of the Respondents to adhere to the proper procedure of selection and admission process. May be the Court would have granted this relief subject to some further conditions. However, we are unable to grant this relief to the Appellant in its totality for reason of her own doing. She has completely faulted in pursuing her academic course in accordance with the Rules and like a diligent student should do."

18. Mr. P.K. Shahi, learned Senior Counsel



appearing on behalf of the BCECEB has submitted that had persons, who had already taken admission been allowed to participate in the counselling in the light of the Supreme Court's order, dated 07.10.2016, by the BCECEB, it would have had a chain reaction and resulted into seats in different Colleges/Course becoming vacant. He has submitted that now since admission had been taken on the basis of counselling one, it may not be possible for this Court to direct admission of these petitioners to MBBS Course in view of law laid down by the Supreme court in case of **Mridul Dhar** (supra), even if the Court is satisfied about their better rights than the person allowed admission on the basis of counselling held by the BCECEB on 07.10.2016.

19. Mr. Kumar Brijnandan, learned counsel representing the Medical Council of India has mainly argued that Appendix E to Medical Council of India Regulations on Graduate Medical Education, 1997 prescribes the time schedule for completion of the admission process for first MBBS Course which has statutory force. According to the said time schedule 30.09.2016 is the last date upto which students can be allowed admission against vacancies arising due to any reason. He has relied on decisions subsequent to the decision of the Supreme court in case of **Mridul Dhar**



(supra), wherein the Supreme Court reiterated and re-emphasized the need for strict adherence to statutory time schedule for admission to MBBS/BDS Courses. He has also relied on decision of Supreme Court, in the case of **Priya Gupta v. State of Chhattisgarh and Others**, reported in **(2012) 7 SCC 433**, wherein the Supreme Court observed in paragraph 40 as follows:-

“40. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the Regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations.”



20. He has also referred to decisions of Supreme Court, in the cases of **Royal Medical Trust (Registered) and Another v. Union of India and Another**, reported in **(2015) 10 SCC 19**, **D.Y. Patil Medical College v. Medical Council of India and Another**, reported in **(2015) 10 SCC 51** and Poonaiyah **Ramajayam Institute of Science and Technology Trust v. Medical Council of India and Another**, reported in **(2015) 10 SCC 83**. Referring to the counter affidavit filed on behalf of the Medical Council of India, he has submitted that the said counselling held under the orders of the Supreme Court was meant only for those candidates who had been unable to secure seat in any course even after second round of counselling held on 29.06.2016 and once the petitioner had accepted admission in BDS course, she could not claim any benefit in the All India Quota for any counselling held thereafter. He has reiterated the stand taken in the Counter affidavit that the Supreme Court in the order, dated 06.10.2016 was of the view that the students of All India Quota, who had already secured admission after second round of counseling, would not participate in the special counselling which was held on 07.10.2016. According to him, the extension of time schedule was not available for these petitioners who had already taken admission in BDS Course.



21. Mr. Binodanand Mishra, learned counsel appearing on behalf of Respondent Nos. 10, 12 and 13 has laid considerable emphasis on Clause 14 of the notice issued on 29.06.2016 for second round of counselling for MBBS/BDS Course issued by the BCECEB, which reads thus:-

“Each candidate should note that once the Course/Institution is opted at the time of his/her Counselling and the same is allotted to him/her, no subsequent request for change of course and/or Institution shall be entertained.”

22. With reference to the said notice, he has argued that on the basis of second counselling held, the petitioners were allowed admission in BDS Course. By virtue of provision under clause 14 of the notice for second counselling, they cannot claim for change of course or institution.

23. The plea is completely fallacious and misconceived for more than one reasons. Firstly, the said second notice for second counselling was issued against 85 per cent of State Quota Seats and not for All India Quota Seats. Secondly, the candidatures of these petitioners were to be considered, for admission to courses against all India Quota Seats, for which a direction was issued by the Supreme Court of India in special facts and circumstances,



by concerned State Governments, though the designated authority for counselling for 15 per cent of All India Quota Seats is Directorate General of Health Services under Regulation 5A of the Medical Council of India on Graduate Medical Education, 1997, which has been quoted hereinabove. The BCECEB was discharging the function which is the primary function of the Directorate General Health Services, Government of India, in accordance with the said regulation 5A, under the orders of Supreme Court. The said exercise, which was to be carried out under the orders of the Supreme Court, had nothing to do with the first and second counselling done by the BCECEB for filling up of 85 per cent State Quota Seats.

24. In support of his submission that this was fortuitous circumstance where a third counselling was held, though no counselling after second round of counselling held by the BCECEB was required to be held and, therefore, the petitioners cannot claim violation of fundamental rights since any consequence arising out of such fortuitous circumstance will not amount to discrimination, he has placed reliance on Supreme Court's decisions in following cases:-

(1) **AIR 1963 SC 591 (Khandige Sham Bhat Vs. Agricultural Income Tax Officer, Kasara)**

(2) **Arvind Kumar Kankane v. State of U.P. and**



Others (AIR 2001 SC 2800)

(3) **Shafali Nandwant v. State of Haryana and Others (AIR 2002 SC 3382)**

(4) **Jindal Stainless Ltd. Vs. State of Haryana (AIR 2016 SC 5617)**

25. The said submission also deserves to be rejected for the same reason that the counselling conducted on 07.10.2016 by the BCECEB cannot be termed as third counselling for filling up of State Quota Seats rather it was counselling held for admission to MBBS Courses for filling up remaining All India Seats, not to be treated to have been reverted to State Quota to from All India Seats. This was not a fortuitous circumstance but an exercise carried out for filling up all India Quota Seats, under the orders of Supreme Court.

26. Reliance by Mr. Mishra, learned counsel for the respondents on Supreme Court's decision in case **of Khindige Sham Vat** (supra) and **Jindal Stainless Steel Ltd.** (supra), is also misplaced. Mr. Mishra has referred to paragraph 138 of **Jindal Stainless Steel Ltd.** (supra), to bolster his submissions that this being a fortuitous circumstance, no violation of fundamental rights can be asserted. In the said case, while dealing with validity of enactments for levy of tax on the "entry of goods into local areas comprising the State" the Supreme Court held in



paragraph 138, relying on decision in case of **Khandige Sahm Bhat** (supra), that a law may facially appear to be non-discriminative and yet its impact on persons and property similarly situated may operate unequally in which event the law would offend equality clause. The Court laid down that impliedly, facial equality is not the only test for determination whether the law is valid. The said decision does not help the answering respondents in any manner.

27. In the present case, validity of any statutory provision or policy of State or its instrumentality within the meaning of Article 12 of the Constitution of India is not under challenge on ground of discrimination. The action of the State-respondents in complying with the statutory provisions and the directive of the Supreme Court has rather been put to challenge in the case in hand. In that background the Court is required to examine as to whether there has been breach of equality clause of the constitution, and statutory regulations framed by the Medical Council of India. In case of breach, this Court is required to analyze the effect of such breach on the persons discriminated against.

28. The Supreme Court's decision, in the case of **Arvind Kumar Kankane** (supra), too has no application in the present set of facts and circumstances. In that case, admission to Post-Graduate Medical Course was being



considered where there was rule which provided that no candidate could be permitted to change subject or College once the allotment was final. In the present case, which relates to admission to MBBS course, there is no such statutory provision or guideline.

DISCUSSIONS

29. This is not in dispute that these petitioners had presented themselves for counselling in the light of the Supreme Court's order, dated 07.10.2016, in case of **Ashish Ranjan** (supra), for admission to MBBS Course against remaining 15 per cent of All India Quota Seats. They have been denied admission and the candidates with lower merit position (respondent nos. 10 to 13) have been given MBBS All India seats in Government Medical Colleges in the State of Bihar on the basis of counselling held by BCECEB. The explanation for denial of MBBS seats to these petitioners, as has been made in the counter affidavits filed by the Board and the Medical Council of India, is with reference to that part of the order of the Supreme Court in case of **Ashish Ranjan** (supra), which has been passed on I. A. Nos. 36 and 37, wherein the Apex Court observed, while dealing with case of Goa that remaining four seats shall be filled up by adopting the method that was adopted by the State for filling up 85 per cent seats as other seats had been filled up by taking into



consideration NEET merits, their admission shall not be disturbed. Be it noted here that for remaining All India Seats the, Supreme Court specifically mentioned in the order that the seats shall be filled up by concerned States by adopting a transparent procedure, regard being had to "criteria followed for filling up All India Quota Seats" (emphasis is supplied).

30. Further, It must be kept in mind at this stage that whereas MBBS qualification is a medical qualification under the Indian Medical Council Act, 1956 (hereinafter referred to as the IMC Act), which is a qualification in medicine within the meaning of Section 2(h) of the IMC, Act read with its first schedule, B.D.S on the other hand, is a qualification governed by Indian Dentists Act, 1948 (hereinafter referred to as the Dentists Act). Whereas the Medical Council of India has the jurisdiction to make regulation under Section 33 of the IMC Act, with the previous sanction of the Central Government, for carrying out the purposes of IMC Act, such power is vested with the Dental Council of India under Section 20 of the Dentists Act to frame regulations under the Dentists Act. Since the dispute in the present proceedings relate to denial of admission to MBBS Course, I will deal with statutory regulations framed under the IMC Act.

31. In exercise of said power conferred by Section



33 of the IMC, Act, the MCI has framed regulations with the previous sanction of the Central Government, namely, "Regulations on Graduate Medical Education, 1997", prescribing, *inter alia*, the minimum eligibility criteria and procedure for selection of students for admission to MBBS Course in Medical Colleges. The Medical Council of India, through notification, dated 21.12.2010, introducing amendment in the existing regulations provides for a single National Eligibility-cum-Entrance Test (NEET) for admission to MBBS Course. Similar provision has been made by the Dental Council of India with issuance of a separate notification on the same date, i.e., 21.12.2010. Both the notifications were struck down by the Supreme Court in case of Christian ***Medical College, Vellore Vs. Union of India*** reported in **2014 (2) SCC 305**, which decision subsequently stood reviewed and recalled by the Supreme Court by judgment and order, dated 11.04.2016, in Review Petition (c) Nos. 2159-2268 of 2013.

32. It is in this background that common NEET-2016 was held for admission to MBBS/BDS Courses. Since the present controversy relates to admission to MBBS Course, I must take note of amendment introduced in the MCI regulations through gazette notification dated 10.03.2017 incorporating regulation 5A, which reads thus:-

"5A Common Counselling.



(1) There shall be a common counselling for admission to MBBS Course in all Medical Educational Institutions **on the basis of merit list of the National Eligibility Entrance Test.**

(2) The Designated Authority for counseling for the 15% All India Quota seats of the contributing States shall be the Directorate General of Health Services.

(3) The Counselling for all admission to MBBS course in all Medical Educational Institutions in a State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority Institutions/Corporations or a Company shall be conducted by the State/Union Territory Government. Such common counselling shall be under the over all superintendence, direction and control of the State/Union Territory Government."

(Emphasis is added)

33. It is easily evincible from the said regulation that "merit list of National Eligibility Entrance Test" is the basis as per the Regulation for common counselling for admission to MBBS Course in all medical educational institutions. The designated authority for counselling of 15% All India Quota Seats of the contributing States is the



Directorate General of Health Services, Government of India, whereas counselling for all admission to MBBS Course in all medical educational institutions in State/Union Territory, including Medical Educational Institutions established by the Central Government, State Government, University, Deemed University, Trust, Society/Minority Institutions/Corporations or a Company is to be conducted by the State/Union Territory Government. In the present case, counselling was to be held of remaining seats of 15% All India Quota seats for which the designated authorities under Regulation 5A (2) of the MCI Regulations, 1997, is the Directorate General of Health Services. The Supreme Court, however, keeping in mind the paucity of time asked the State Governments to fill up the seats by adopting a transparent procedure taking “merit in All India Quota” into account.

34. In this background, it has to be seen whether the action of the respondents in refusing to consider the cases of these petitioners for admission to MBBS Course on the basis that they had already taken admission in BDS Course can be justified or not.

35. The All India Quota rank of the petitioners are as follows:-

- | | |
|-------------------|------------|
| 1. Manisha Gaurav | AIR- 13172 |
| 2. Dipty Preyasi | AIR-14439 |
| 3. Gul Afshan Naz | AIR-14212 |



4. Adhishree

AIR-13351

36. All India Rank of Private Respondents 10 to 13 as it appears from an affidavit filed on behalf of BCECEB is as follows:-

- | | |
|-------------------|-------------|
| 1. Akbar Kabir | - AIR 13826 |
| 2. Rishu Kumar | - AIR 14003 |
| 3. Anil Kr. Yadav | - AIR 14747 |
| 4. Astha Raj | - AIR 14766 |

37. It is evident on comparison of All India Rank of these petitioners vis-à-vis the persons who have been allowed admission to MBBS Course that persons lower in merits have been allotted MBBS Course, refusing to consider the case of these petitioners on the ground that they had already taken admission in BDS course. The petitioner Dipty Preyasi with All India Rank as 14439 may not have grievance against private respondent nos. 10 and 11, her ranking being below them but she, certainly can maintain her grievance against selection of Respondent Nos. 12 and 13 who are admittedly placed below in the all India merit list in question.

38. These facts have left me to one and the only irresistible conclusion that these petitioners were wrongly denied participation in the process of counseling held on 07.10.2016, which had the result of persons with lower merits having been selected and offered admission to MBBS course, which according to me has no justification.



The action of the Respondents in my view is gross breach of Articles 14 and 15 of the Constitution of India.

39. Equality is the noblest concept for a society which can claim to be civilized. This concept occupies the most significant status in our constitutional scheme which is treated to be complementary to the concept of rule of law. Degree of adherence to the Fundamental Rights of equality determines the quality of governance of the State. The fundamental right of equality of every individual guaranteed under Articles 14 and 15 of the Constitution of India, therefore, deserves to be protected and breach remedied, zealously by every authority and the constitutional courts. Breach of this fundamental right by the State, its instrumentalities or its functionaries shakes the confidence of a common man in the system. Giving someone, who is less meritorious, something, which a person of better merit deserved, fulfilled the criteria and though opted but denied illegally is serious infraction of fundamental right of an individual. Every breach of equality must, therefore, be remedied, unless otherwise barred or held inequitable.

40. The question, which is automatically posed to the Court, now, is as to what relief can be granted to these petitioners in a situation where academic sessions have started long back and under the statutory provision, last



date for admission to MBBS course of 30.09.2016 has already crossed. When submissions were being made at the bar, it was pointed out that certain All India Quota Seats were still vacant against which these petitioners could be adjusted, instead of taking recourse to setting aside admissions of the private respondents in MBBS course.

41. Learned Counsel appearing on behalf of the petitioners has vehemently argued that admission of private respondent nos. 10 to 13, being in teeth of Article 14 of the Constitution of India, their admissions should be set aside and these petitioners should be allowed admission against those seats.

42. While considering the question as to what relief can be granted to these petitioners, I consider it apt to deal first as to what can not be given to them, in the facts and circumstances of the case and judicial pronouncements of the Supreme Court, in this regard.

43. There is a common stand taken on behalf of the contesting respondents that in view of Supreme Court's decision in case of **Mridul Dhar (Minor) and Another v. Union of India**, reported in **(2005) 2 SCC 65**, which has been consistently followed by the Apex Court and other Courts in subsequent decisions, no direction for admission to MBBS Course in favour of these petitioners can be allowed,



the cut off date for admission of 30th September, having already crossed. The stand which has been taken on behalf of the respondents in this regard has merit and therefore, despite being satisfied that there has been infringement of fundamental rights of these petitioners, in refusal to allow them to be considered for admission to MBBS Course on the incorrect plea that they had already taken admission to BDS Course. I refrain from issuing any direction to reconsider their cases or to admit them to MBBS Course.

44. There is yet another aspect which is crucial for determination of *inter se* rights of the petitioners vis-à-vis respondent nos. 10 to 13, germane for just decision of the case. As has been noticed, on the basis of counseling held on 07.10.2016 under the orders of the Supreme Court, four persons (respondent nos. 10 to 13) have been given admission to MBBS course. Had the petitioners been allowed to participate in the process of counseling, following would have been merit wise position of the petitioners and the private respondents.

All India Ranking	Name	Status of Party
13172	Manisha Gaurav	Petitioner in CWJC No. 19135 of 2016
13351	Adhishree	Petitioner in CWJC No. 17708 of 2016
13826	Akbar Kabir	Respondent No. 10 (in all cases)



14003	Rishu Kumar	Respondent No. 11 (in all cases)
14212	Gul Afshan Naz	Petitioner in CWJC No. 388 of 2017
14439	Dipty Preyasi	Petitioner in CWJC No. 19183 of 2016
14747	Anil Kumar Yadav	Respondent No. 12 (in all cases)
14766	Astha Raj	Respondent No. 13 (in all cases)

45. Apparently thus, against the said four All India Quota Seats, the petitioners, Gul Afshan Naz and Dipty Preyasi, could not have been selected and offered admission to MBBS course, their position being beyond four in the merit, as shown above. Said differently, even in the presence of these petitioners in the counseling, respondent nos. 10 and 11 would have been offered admission to MBBS course on the basis of counseling held on 07.10.2016. Further, the petitioners have not made out a case that had they been given All India Quota Seats of MBBS course, private respondents would have had no chance of admission, since no case has been made out that All India Quota Seats stood completely filled up after admissions taken on the basis of counseling held on 07.10.2016.

46. As discussed above, no case for setting aside admissions of respondent nos. 10 to 13 is made out.

47. In any view of the matter, in the light of repeated decisions of the Supreme Court on the point of last date of admission to MBBS course, no direction can be given



after cut-off date having been crossed, particularly when process of admission in the next batch is also at an advanced stage on the basis of subsequent NEET, held in 2017 for admission of these petitioners to MBBS course.

48. The question, however, still remains that the petitioners were wrongly denied to participate in the process of counseling on incorrect plea that their candidature ought not to have been considered because they had taken admission in BDS course and that they did not produce the original certificates. This stand has been taken by both the BCECEB and Medical Council of India, both. These two grounds taken are mutually inconsistent for the apparent reason that original certificates of these petitioners were admittedly taken by the BCECEB for their admission to BDS course and they could not have insisted the petitioner to produce original certificates at the time of counseling. The BCECEB and the Medical Council of India, at the same time, could not have taken another stand that because the petitioners had taken admission in BDS course and, therefore, they were not entitled for admission in MBBS course against All India Quota Seats. The counselling for State's seats and All India Quota Seats are separate under the Regulations, as noted above. The present counseling was done under the orders of the Supreme Court. The MBBS seats were to be offered on the basis of merit position of



respective candidates, which was, admittedly, made available to BCECEB by the Director General, Health Services, Government of India, which ought to have been the sole basis for counselling.

49. The petitioners, Manisha Gaurav (petitioner in CWJC No. 19135 of 2016) and Adhishree (petitioner in CWJC No. 17708 of 2016), are apparently much above in the merit position, which is evident from the comparative chart shown above. There would have been no question of denial of their admission to MBBS course, had their candidature been entertained and had they been allowed to participate in the counseling on 07.10.2016. The denial by the respondents, particularly, the BCECEB, of rights of petitioners, Manisha Gaurav and Adhishree, in my opinion, is, thus, in gross violation of fundamental rights guaranteed under Articles 14 and 15 of the Constitution of India. Since such breach cannot be remedied in the facts and circumstances of the case by directing the respondents to admit them in MBBS course, the damage caused to them, in my opinion, is enormous and will have to be compensated by issuing appropriate orders exercising power of judicial review under Article 226 of the Constitution of India.

50. I must take note of the statement of law in case of **Asha Vs. Pd. B. D. Sharma University of Health** (supra), wherein the Supreme Court observed in paragraph



31 that cut-off date cannot be used as a technical instrument and tool for denying admission to a meritorious students and there can be rarest of rare cases for exceptional circumstances where the Courts may have to mould the relief and make an 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 a candidate, the candidate pursued her rights and legal remedies expeditiously without any delay and there is a 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.

51. In the background of the facts which I have taken note of as above, I have no hesitation in returning the finding that no fault is attributable to the petitioners which led to denial of their right to participate in the process of counselling held on 07.10.2016. Except for petitioner of CWJC No. 388 of 2017, the petitioners pursued their rights and legal remedies expeditiously without any delay. Thirdly, there is apparent breach of rules, regulations and principles in process of selection and grant of admission. The case of the petitioners except that the petitioner in CWJC No. 388 of 2017 is fully covered by the observations made in paragraph 32 of the Supreme Court's decision in Case of **Asha Vs. Pandit B.D. Sharma University of Health** (supra).



However, in view of clear pronouncements in case of **Mriduldhara** (supra), in my view, no direction to the respondents to admit the petitioners after the cut-off date can be issued.

52. The young men and women having opted medicine as career harbour dream in their minds to pursue MBBS course. The competition for admission to MBBS course in Government Medical Colleges is tough and keen. The loss caused to such young men and women by denying them the right which they acquired on the basis of their own performance and merit is gross case of infringement of Articles 14 and 15 of the Constitution of India. It is difficult to quantify, in terms of money, the damage sustained by them in terms of money as a consequence of illegal and unconstitutional acts of the respondents. One has to keep in mind, how coveted the MBBS course is and how difficult it is to get admission to MBBS course in a Government Medical College, which has been casually denied to them by pernicious conduct of the respondents, palpably offending Articles 14 and 15 of the Constitution of India.

53. In my view, taking holistic view all the facts and circumstances, which have been discussed above, a sum of Rs. 20 lakhs, payable by the BCECEB, will be appropriate compensation to mitigate the damage caused to each of the petitioners, Manisha Gaurav (petitioner in CWJC No. 19135 of



2016) and Adhishree (petitioner in CWJC No. 17708 of 2016). I take judicial notice of the fact that till recently practice of charging capitation fee for admission to MBBS course, which had become institutionalized was in vogue and it is with the Supreme Court's intervention that the said practice has been done away with. Even today, pursuing MBBS course in private medical college is much more expensive as compared to Government Medical Colleges. These petitioners, thus have apparently been denied opportunity of admission to MBBS Course in a Government Medical College. These facts, I have kept in my mind, while determining the amount of compensation.

54. So far as petitioner Dipty Preyasi (petitioner in CWJC No. 19183 of 2016) is concerned, she cannot have grievance against respondent nos. 10 and 11. I have already noticed had the counseling been done in presence of all these petitioners, on the basis of merit position, the petitioner Dipty Preyasi would not have been given admission in MBBS course on the basis of her merit position, if the vacant seats for counselling as on 07.10.2016 were four(4) only. However, since two persons of lower merit position than her (respondent nos. 12 and 13) have been admitted in MBBS course illegally, she also deserves to be compensated. There is apparent distinguishable feature between the case of the petitioner Dipty Preyasi and petitioners Manisha Gaurav and



Adhesive inasmuch as the latter would have certainly been given MBBS course had they been allowed to participate in counseling. The petitioner Dipty Preyasi might have been out because of their participation. Similar is the case with the petitioner Gul Afshan Naz (petitioner in CWJC No. 388 of 2017).

55. Noticing this distinguishable feature, so far as petitioner Dipty Preyasi is concerned, since person of lower merit position (respondent nos. 12 and 13) have been given admission to MBBS, in her case compensation of a sum of Rs. 10 lakhs, payable by the BCECEB, will be appropriate.

56. The petitioners, Manisha Gaurav, Adhishree and Dipty Preyasi, approached this Court soon after they were denied the opportunity to participate in the counseling held on 07.10.2016; whereas the petitioner, Gul Afshan Naz, approached this Court seeking similar relief more than three months after the counseling was held. Considering the time frame within which the admissions are to be completed, conduct of petitioner Gul Afshan Naz goes to show that she had accepted the result of counseling held on 07.10.2016. In that background, I am not inclined to grant her any relief.

57. CWJC Nos. 17708, 19135 and 19183 of 2016 are accordingly allowed with a direction to the BCECEB (respondent No. 6) to pay compensation of a sum of Rs. 20 lakhs to each of the petitioners, Manisha Gaurav (petitioner



in CWJC No. 19135 of 2016) and Adhishree (petitioner in CWJC No. 17708 of 2016); whereas, compensation of a sum of Rs. 10 lakhs be paid to the petitioner Dipty Preyasi (petitioner of CWJC No. 19183 of 2016), to compensate the damages caused to them because of the illegal and unconstitutional denial of their fundamental rights to participate in the counseling held on 07.10.2016, for admission to MBBS course against All India Quota Seats. The said amount must be paid within two months from the date of this judgment and order.

58. For the reasons stated above, CWJC No. 388 of 2017 stands dismissed.

59. Before I part with the present judgment and order, I must record my strong displeasure over the manner the Medical Council of India has taken plea in the counter affidavit, as has been discussed above. The Court expects the authorities of the Medical Council of India to be careful in future to avoid any serious consequences.

(Chakradhari Sharan Singh, J.)

Arunkumar

AFR/NAFR	AFR
CAV DATE	
Uploading Date	29.06.2017
Transmission Date	N.A.

