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

**CONTEMPT PETITION NO.5 OF 2016
IN
CIVIL APPEAL NO.4318 OF 2012**

Ankita d/o Bhimrao Chavan,
Age: 18 years, Occu: Education,
R/o Girdharwadi, Tq. Palam,
Dist. Parbhani

..PETITIONER

VERSUS

1. Dr. Pravin s/o Harishchandra Shingare,
Age: 61 years, Occu: Service as the
Competent Authority/ Director of Medical
Education and Research (DMER), 4th Floor,
Govt. Dental College and Hospital,
St. Jorges Hospital Area, P. Dimelo Road,
Fort, Mumbai

2. Dr. Madhavi V. Ryate,
Age: 50 years, Occu: Service as the
Dean, Ashwini Rural Medical College
Hospital & Research Centre,
Kumbhari, South Solapur,
Dist. Solapur

..RESPONDENTS

Mr S. M. Vibhute, Advocate for petitioner;
Mr S. S. Dande, A.G.P. for respondent No.1;
Mr S. B. Patil (Bhosikar), Advocate for respondent No.2

**CORAM : PRASANNA B. VARALE
AND
SUNIL K. KOTWAL, JJ.**

DATE : 19th December, 2017

ORAL ORDER:

Heard Mr Vibhute, the learned Counsel appearing for the petitioner,
at length.

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2. The sum and substance of the submission of Mr Vibhute is, the respondents-authorities failed to follow directions of the Honourable the Apex Court in the case of **Priya Gupta vs. State of Chhattisgarh and ors.**, reported in **(2012) 7 Supreme Court Cases 433**. Mr Vibhute, by inviting our attention to the judgment of the Apex Court in Priya Gupta's case (supra) submitted that the directions of the Honourable the Apex Court form part of paragraph 46 of the judgment. It was the submission of Mr Vibhute that the direction was issued by the Honourable the Apex Court that no college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex facie arbitrary and casts the shadow of favouritism. On the backdrop of the judgment of the Apex Court, Mr Vibhute submitted the grievance of the petitioner.

3. Mr Vibhute, the learned Counsel submitted that the petitioner is a meritorious student and in the first round of selection, she was selected for a medical seat and was given admission in Government Dental College at Mumbai. As certain seats were falling vacant, a notification was issued by the Director of Medical Education and Research (for short "DMER"). The copy of the notification is placed at Exh.E (page 31). The notification refers to the Institutes wherein the seats were falling vacant. These Institutes are private unaided medical colleges and private unaided dental colleges.

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Some seats were vacant at Sr.No.5 institute, namely, Ashwini Rural Medical College and Research Centre, Kumbhari, District Solapur. Mr Vibhute fairly submitted that the DMER made known the vacancy position available on its website. Mr Vibhute submitted that as per instructions of the notification dated 18th September, 2015, the petitioner was desirous of admission and she submitted application as per the said instructions. The said Institute Ashwini Rural Medical College and Research Centre published the list of selected candidates. The same is placed on record at Exh.F. The perusal of the said document shows that four candidates were selected in their respective categories, namely, Sapkal Sushma Suresh, Kashid Vishakha Sunil, Mathew Alita George and Jadhav Mayuri Navnath. The marks obtained by these four candidates at MH-CET level were 171, 166, 166 and 164, respectively. Mr Vibhute, the learned Counsel submitted that the petitioner obtained 161 marks at MH-CET level and was just below the last candidate i.e. Jadhav Mayuri Navnath and the petitioner was also falling in the same category of Mayuri Jadhav i.e. in the category of VJ candidates. Mr Vibhute submitted that the last candidate i.e. Mayuri Jadhav was informed to take necessary steps for the admission formalities till 29th September, 2015. Even the notification states that the last date for joining the selected candidates was up to 29th September, 2015. Mr Vibhute then submitted that on 29th it came to the knowledge of the petitioner that Ms Mayuri Jadhav opted for some other college and failed to comply the formalities for seeking admission to Ashwini Rural Medical College till 29th September, 2015. Mr Vibhute then submitted that the petitioner then immediately approached the DMER on 30th September,

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2015 and submitted her claim in the said institute, namely, Ashwini Rural Medical College and Research Centre, as the last candidate Jadhav Mayuri Navnath opted for some other institution. Mr Vibhute then submitted that though as per merit list the petitioner was the next candidate who could have been allotted the seat, was not considered for allocation of seat. Thus, it is the submission of Mr Vibhute that the respondents-authorities failed to follow the directions of the Honourable the Apex Court and willful disobedience of these respondents-authorities results in inviting an action for contempt. Mr Vibhute submitted that though there is failure to comply the directions of the Apex Court, the Apex Court granted liberty to the interested parties to take out contempt proceedings before the High Court, having jurisdiction over such institution/State, etc. Accordingly, the petitioner is before this Court.

4. The perusal of the order sheet shows that this Court by order dated 12th January, 2016, though issued notice, thought it fit to pass the appropriate order whether to initiate contempt proceedings or not, upon reply of response which would be received from the respondents.

5. Learned AGP Mr Dande appearing for respondent No.1 i.e. competent authority and DMER as well as learned Counsel Mr Sham Patil appearing for respondent No.2 vehemently opposed the petition. Both the learned Counsel appearing for respective respondents submitted that there is a strict compliance of the directions of the Honourable the Apex Court. Learned AGP submitted that the DMER, in the strict compliance of the

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directions of the Honourable the Apex Court published a notification about the vacant seats on 18th September, 2015. In the reply filed by respondent No.1, it is submitted that as per the notification dated 18th September, 2015, all the relevant information was made available to the candidates, who were desirous of submitting their claim for vacant seats. Learned AGP submitted that as per the notification, the seats remaining vacant after 22nd September, 2015, due to non-joining or cancellation of admission by the candidates at the above college only shall be filled in category wise by the respective colleges as per MH-CET 2015 Rules. Learned AGP submitted that as per the directions of the Honourable the Apex Court, there was wide publication of the notification in the newspapers as well as on the website. It is also submitted by the learned AGP that respondent No.1 i.e. the DMER is under no obligation to intimate about the vacancy of the seats personally to each candidate. It is by way of the notification that the information is made known to the candidates in general and desirous candidates seeking admission to medical or dental course in particular. It is further submitted by the learned AGP that on 29th September, 2015, if the last candidate failed to submit her claim, the petitioner could have lodged her claim at that point of time itself. The learned AGP submitted that even the representation submitted by the petitioner shows that on 29th September, 2015, the petitioner made no attempts to lodge her claim if Ms. Mayuri Jadhav opted for some other college. The representation further states that on 30th September, 2015, the petitioner visited the Head of the Department of MH-CET cell in the Government Dental College at Mumbai. Mr Dande then by inviting our attention to the affidavit-in-reply submitted

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that it is not the case that the petitioner is deprived of the medical education, but the petitioner is already admitted in the Government Dental College and she subsequently contested her claim for those seats which fell vacant in the private unaided medical colleges.

6. Mr Sham Patil, learned Counsel appearing for respondent No.2 submitted that in respondent No.2 institute/college, 214 candidates applied for vacant seats till last date i.e. till 25th September, 2015. The college had displayed the merit list and selection list on 26th September, 2015 at 11.00 a.m. on the notice board. Till 29th September, 2015, i.e. the last date for joining by selected candidates, only one candidate joined. The joining and not joining report of the selected candidates was also displayed on notice board immediately at 5.30 p.m. for the information of the public at large and student community in particular. The information was also forwarded to the competent authority i.e. DMER on 29th September, 2015 at 6.19 p.m. through e-mail. Mr Patil then submitted that respondent No.2 college/institute also forwarded the information to the competent authority, that the residual vacant seats will be filled on 30th September, 2015 at 12.00 noon from the candidates from merit list of 26th September, 2015 as per the notification of the competent authority. Mr Patil submitted that as per the notification, 30th September, 2015 was the cut-off date for MBBS course and the candidates who were desirous of seeking admissions, were required to remain present personally with all the original relevant documents. On 30th September, 2015, at 12.00 hours, 23 candidates were present, whereas the petitioner was not present. As the petitioner was

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absent on that day i.e. 30th September, 2015, there was no question of considering her claim and the vacant seat was offered to one Rohini Rathod, who had secured 132 marks at MH-CET level and was the topper candidate in the reported VJ candidates. Mr Patil submitted that as a cautionary measure, the respondent-institute video-graphed the entire process and as the petitioner was not present on 30th September, 2015, petitioner could not have been considered for filling up the vacant seat.

7. Considering the material placed on record and the submissions of the learned AGP as well as learned Counsel Mr Patil appearing for the respondent No.2-institute, we find that the respondents have followed the directions of the Honourable the Apex Court in *stricto sensu*. There is no departure from the directions of the Apex Court in any of the acts by the respondents. The petition filed by the petitioner is devoid of merit. Contempt Petition thus being unmeritorious, we are not inclined to initiate any proceedings for contempt of Court and dispose the petition accordingly.

(SUNIL K. KOTWAL, J.)

(PRASANNA B. VARALE, J.)

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