

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4916 OF 2013
WITH
CIVIL APPLICATION NO.1053 OF 2016**

Miss Firdos Vahajuddin Ansari,]
aged about 20 years, Occu – Student,]
R/o. Post – Temapla, Taluka – Mangaon,]
District – Raigad – 402 103] ... Petitioner

Vs

1. State of Maharashtra,]
through the Secretary,]
Medical Education, having their]
office at G. T. Hospital, Mantralaya]
Building, 9th Floor, Mumbai – 400 002.]
2. The Secretary,]
Pravesh Niyantaran Samiti (PNS)]
having their office at 305,]
Government Polytechnic Building,]
49, Kherwadi, Ali Yawar Jung Marg,]
Bandra (East), Mumbai – 400 051.]
3. The Registrar,]
Maharashtra University of Health]
Sciences, Nashik, having their office]
at, Vani Road, Mhasrul, Nashi.]
4. The Secretary]
Association of Management of Unaided]

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|----|---------------------------------------|---|-----------------|
| | Private Medical and Dental College, |] | |
| | Maharashtra (AMUPMDC) |] | |
| | having their office at Shreeji House, |] | |
| | 75, Mint Road, Fort, Mumbai. |] | |
| 5. | The Medical Council of India, |] | |
| | through its Chairman, |] | |
| | having their office at Pocket 14, |] | |
| | Sector 8, Dwarka, Phase – I, |] | |
| | New Delhi – 110 077. |] | |
| 6. | Godavari Foundation's Dr. Ulhas Patil |] | |
| | Medical College & Hospital, |] | |
| | NH 6, Jalgaon Bhusawal Highway, |] | |
| | Jalgaon – 425 309. |] | |
| 7. | Ashwini Rural Medical College, |] | |
| | Hospital & Research Centre, |] | |
| | having their address at Kumbhari, |] | |
| | Solapur – 413 001, Maharashtra. |] | ... Respondents |

...

Mr. Kamal Bulchandani i/b. Kamal & Co. for the Petitioner/Applicant.
Mr. R. V. Govilkar a/w Ms. Heena Bhagtani for Respondent No. 3.
Mr. V. N. Sagare, AGP for Respondent No. 1.
Mr. Ganesh Gole a/w Ateet Shirodkar for Respondent No. 5.
Mr. Sameer Khedekar a/w Kishor Ajetrao for Respondent No. 2.

**CORAM : SHANTANU S. KEMKAR &
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgment : 15th MARCH 2017
Date of pronouncing the Judgment : 05th APRIL 2017.

JUDGMENT (Per PRAKASH D. NAIK, J.):

. The petitioner has preferred the aforesaid petition before this Court under Article 226 of the Constitution of India.

2. Rule. Rule is made returnable forthwith. By consent of the counsel for both the respective parties, matter is taken up for final disposal forthwith.

3. The petitioner had sought issuance of Writ or Order in the nature of Mandamus, directing the respondents to take fresh admission/re-admission in accordance with law and rules. It was also prayed that the respondents be directed to submit the necessary report of compliance of rules/regulations and an undertaking to follow rules and law and giving admission to meritorious students on the basis of merit without any discrimination whatsoever. It was further prayed that, the petitioner be directed to be admitted after considering her merit over the other students who have scored lower marks and to inquire into the entire issue of admission and violation

of law and rules by the colleges and take necessary action against the institution found to be in violation of law. The petitioner also prayed that adequate compensation be directed to be provided by the respective colleges for damaging the academic career of the petitioner and the mental agony and stress caused to her.

4. The relevant facts as contended by the petitioner and the factual aspects which are necessary for adjudication of the issues involved in the petition and the application are as follows;

(a) The petitioner belongs to minority community and the caste of OBC.

(b) The respondent no. 3 is in-charge of the functioning of institution of Health Science and is the registered University. The respondent no. 4 is the Association of Management of Unaided Private Medical College which accepts application forms with preference for admission on behalf of unaided medical colleges. The

respondent no. 5 is the Apex Body which is in-charge of the entire system of education and medical profession. The respondent No. 2 controls and gives schedule of admission process and is also in-charge of handling complaints against the colleges. The respondent nos. 6 and 7 are Medical Institutions which are members of respondent no. 4.

- (c) The petitioner is a meritorious student having secured 143/200 marks in the Common Entrance Exam conducted by respondent no. 4. The petitioner's name was listed on merit list no. 4600 as per the certificate issued by competent authority of respondent no. 4. The petitioner had applied for admission in various medical colleges including respondent nos. 6 and 7.
- (d) Vide Circular No. PNS(MED)/Admission-2012/UG/Schedul/3529, the respondent no. 2 issue a schedule of admission process for 1st Year Health Science Course. As per the circular, the schedule was

to be followed strictly. The respondent nos. 6 and 7 ignored the circular and changed the schedule without giving proper notice to the students. The action of respondent nos. 6 and 7 resulted in denial of admission to the petitioner.

- (e) The petitioner submitted the application for admission with respondent nos. 4, 6 and 7 in accordance with rules and regulations. However, non-meritorious students securing lesser marks were granted admission and the petitioner was denied the admission. The denial of admission has damaged her career and right to profess medical profession. The act of respondents caused great mental agony, stress and torture not only to the petitioner but also to her family.
- (f) After display of second merit list, the vacancy was declared on 14th September 2011. Unfortunately, 15th, 16th, 19th and 20th of September were either declared as Band or holidays. The petitioner was left with two

days to apply for admission in various colleges across Maharashtra and it was practically impossible to remain physically present with provisional documents for the purpose of admission.

- (g) The petitioner thereafter filed a complaint dated 6th November 2012, with respondent no.2. In the said complaint it was stated that she had applied for admission in three colleges viz. Dr. Ulhas Patil Medical College, Jalgaon, Dr. Vithal Rao Vikhe Medical College, Ahmednagar and Ashwini Medical College, Solapur. It was stated that the said colleges did not follow the rules of admission and the students were having lesser marks are admitted in the said colleges.
- (h) The respondent no. 2 had issued guidelines and schedule was given to all private unaided Medical/Dental Colleges for filling up vacant seats at institute level from merit list of Asso-CET. The respondent no. 2 held meeting under the chairmanship

of the retired judge of this Court on 14th August 2012. The aforesaid guidelines were received in the said meeting which is evident from the minutes of the meeting dated 14th August 2012. In spite of guidelines, complaints were received about irregularities such as not adhering to the schedule, not publishing vacant seats on website and allotting seats to lower meritorious candidates.

- (i) On the receipt of the complaint the respondent no. 2 conducted a meeting on 28th September 2012 and directed the concerned medical/dental colleges to submit clarifications on affidavit regarding the complaints against the institute level admission process. It was decided by the respondent no. 2 that the complaint received be inquired by three State level inquiry committees.
- (j) On the basis of reports of enquiry committees, respondent no. 2 in its meeting dated 11th January

2013, recommended to the State Government to cancel the said admissions and also to approach the Supreme Court to extend the cut-off date for admission. The cut-off date was 30th September 2012 for the academic year 2012-13.

- (k) In the minutes of the meeting dated 11th January 2013 conducted by respondent no. 2 a reference was made to irregularities committed by respondent no. 6. The respondent no.2 confirmed the findings of the enquiry committee as under ;

“Samiti therefore confirms the findings of Enquiry Committee as under:-

- a) PNS Schedule was not followed.*

The admission process was thus not fair, transparent & merit based. Samiti therefore disapproves all the admissions i.e. 19 done by the College/Institute after the last “Common Admission Process” (CAP) round of Asso-CET-2012 for the Academic Year 2012-13. Samiti recommends to Government of Maharashtra to direct the said College/Institute to cancel the admissions after last CAP round of Asso-CET-2012.

- 5. Considering the large number of resultant vacancies, Samiti decides to suggest*

Government of Maharashtra to consider moving the Hon'ble Supreme Court of India, New Delhi for permissions to fill in the resultant vacancies, extension of cut-off-date and also praying their in that all admissions even after CAP rounds be brought under "Common Admission Process" only."

- (1) Similarly, the irregularities committed by respondent no. 7 were also quoted by confirming the findings of inquiry committee which are as under ;

"In light of above, Samiti therefore confirms the findings of Enquiry Committee as under:-

- a) College admitted non Meritorious Students.*
- b) Reservation rules were not followed.*
- c) Applications sent by speed post and email were not accepted by college.*
- d) Attendance record was not kept at the time of counseling.*

The admission process was thus not fair, transparent & merit based and reservation rules having not followed in the right perspective. Samiti therefore disapproves all the admissions i.e. 07 done by the College/Institute after the last "Common Admission Process" (CAP) round of Asso-CET-2012 for the Academic Year 2012-13. Samiti recommends to Government of Maharashtra to direct the said College/Institute to cancel the admissions after last CAP round of

Asso-CET-2012.

5. *Considering the number of resultant vacancies, Samiti decides to suggest Government of Maharashtra to consider moving the Hon'ble Supreme Court of India, New Delhi for permissions to fill in the resultant vacancies, extension of cut-off-date and also praying their in that all admissions even after CAP rounds be brought under "Common Admission Process" only."*

(m) Several petitions were filed before this Court against the respondents and respective colleges. It was contended that before the cut-off date of 30th September 2012 for the admissions to the medical colleges for the academic year 2012-13, the admissions were declared closed. It was also contended that admissions were granted to non-meritorious candidates by depriving the eligible candidates.

(n) Most of the writ petitions filed before this Court were disposed of as rejected as there were no vacancies and much time has lapsed for the academic year 2012-13. Writ Petition No. 214/2013 was disposed of vide order

dated 12th August 2013. This Court while disposing of the said petition had observed that petitioner had pressed only prayer clause (b) of the said petition. As per the said prayer clause the directions were sought to be issued to respondent no. 2 to take necessary steps to provide admissions to the petitioners to the respective respondents colleges as expeditiously as possible. The petitioner therein submitted that even before the cut-off date for concluding the admission process i.e. 30th September 2012, the petitioners approached the respondent no. 2 with the grievance as regard the illegalities committed by concerned colleges by admitting ineligible students. It was further contended that the recommendations of the 2nd respondent have not been acted upon.

- (o) This court in the order dated 12th August 2013 passed in writ petition no. 214 of 2013 has observed that it is not in dispute that 30th September 2012 was the cut-off

date for concluding the admission process to the medical and dental colleges. The students were allegedly ineligible and who have been unlawfully admitted have not been made parties. Probably for that reason the petitioner had not pressed for the relief of cancellation of admission granted to the said students. Therefore, unless admission granted to certain students is cancelled the petitioners therein cannot be accommodated. The Court further observed that, though adjudication on the contention that ineligible students were unlawfully admitted by the concerned medical/dental colleges, the Court is not in a position to grant any relief as prayed for. Issue whether admissions were illegal or unauthorizedly granted to some other students remains open. This court also made reference to the decision of the Supreme Court in the case of *Asha v/s B. D. Sharma University of Health Science and others* pronounced

in Civil Appeal No. 5055 of 2012 and observed that in paragraph 31 of the said decisions the power to extend the cut-off date can be exercised by the Apex Court in exercise of its jurisdiction under Article 142 of the Constitution of India. In the light of another decision of the Apex Court in the case of ***Faiza Chaudhari v/s. State of Jammu and Kashmir***, reported in 2012 (10) Supreme Court Cases 149 it was observed that the said decision lays down that a medical seat has a life only in the year it falls, that to, only till cut-off date, i.e. 30th September in the respective year. Hence the petition was rejected.

- (p) Vide order dated 12th August 2013, the aforesaid judgment and order was challenged by some of the students by preferring Special Leave Petition before the Supreme Court. On hearing the petitioners therein and the respondents, the Supreme Court disposed of the said Special Leave Petition No. 31900 of 2013, vide

judgment and order dated 2nd September 2014.

- (q) In the said decision, the Supreme Court had observed that none of the petitioners, secured admission at the said examination in the course of their choice. The Supreme Court took cognizance of report dated 11th January 2013, submitted by respondent no. 2. It was noted that the said report was forwarded to the State of Maharashtra and inspite of that no action was initiated in the matter. It was further observed that after dismissal of the writ petitions by the High Court, the petitioners there in had preferred Special Leave Petitions before the said Court and although the said petition was pending for over a year, the State did not file any affidavits explaining its stand in the matter. It was further observed that it is unfortunate situation that directions given by the Constitution Bench of the Supreme Court with a view to ensure compliance with the mandates of the constitution in the matter of

admissions to various courses run by unaided private education institutions is allowed to remain only a paper declaration. The directions of the said Court mandating the constitution of the committee to monitor the whole process to ensure that the educational institutions do not flout the constitutional mandate and the legal obligations are not adhered to. Although, the respondent no. 1 constituted the committee, it did not act upon the recommendations of the committee. The committee constituted to monitor, specifically recorded a finding that the admission process adopted by the members of the respondents association is faulty and less meritorious students have been admitted into the colleges in preference to the more meritorious students.

- (r) The Supreme Court in the aforesaid decision concluded by observing that, in the circumstances, though the relief such as the one sought by the petitioners cannot

be granted at the stage in view of long lapse of time, the Court is of the opinion that the petitioners are certainly entitled to public law damages. The respondent no. 1 was directed to pay an amount of Rs. 20,00,000/- to each one of those petitioners towards public law damages and such payment should be made within a period of four weeks from the date of passing order. It was further directed that the respondent no. 1 to indemnify the officers who are responsible for the inaction on the report of monitoring committee dated 11th January 2013 and take appropriate action against them including the recovery of the amount from the said officers.

- (s) The respondent no. 1 was slow in complying the aforesaid directions of the Apex Court within the time frame as set out therein. The petitioner therein issued contempt notices on the concerned respondents by their Advocate's letter dated 21st January 2015.

Thereafter, the respondent no. 1 complied with the directions of the Supreme Court and paid sum of Rs.20,00,000/- to each of the petitioners before the Apex Court.

- (t) The writ petition preferred by the petitioner was heard by this Court on 12th August 2013 itself i.e. the day on which Writ Petition No. 214 of 2013 was rejected. This Court had passed the following order in the present petition on 12th August 2013.

- “1. Learned counsel appearing for the petitioner, on instructions, states that he is not pressing prayers (a) and (c). We accept the statement.*
- 2. Issue notice to the respondents, returnable on 30th September 2013. In addition to the service of notice through Court, private notice is permitted. Learned counsel appearing for respondent No. 5 waives service. Learned AGP waives service for respondent No. 1.”*

- (u) As per aforesaid order, the petitioner had not pressed prayers (a) and (c). However, the petition remained pending for admission for a long period of time. In

view of the order dated 12th August 2013, passed in the present petition, it would be appropriate to quote the prayer clauses of the petition.

- “a) That this Hon'ble Court be pleased to issue Writ of Mandamus or any other Writ or Order in nature of Mandamus as may be deemed fit, directing the Respondents to take fresh admission / re-admission in compliance of law and rules ;*
- b) That this Hon'ble Court be pleased to issue any Writ directing the Respondent No. 4 and all its members to give necessary report of compliance of rules/regulations and an undertaking to follow rules and law and giving admissions to meritorious students on the basis of merit without any discrimination whatsoever;*
- c) That this Court be pleased to issue Writ of Mandamus, directing Respondent No. 6 and 7, depending upon the preference of the Petitioner, to admit the Petitioner after considering her merit over other students who have scored lower marks;*
- d) That this Court be pleased to issue Writ of Mandamus against Respondent Nos. 1 to 3 to inquire into the entire issue of admission and violation of law and rules by the colleges and take necessary action against the institution found to be in violation of law and rules as per law;*
- e) That pending the final hearing and disposal of this Writ Petition or other Writ Petition on this issues, this court be pleased to, if deem fit, convert the instant petition into a PIL to enable other students whose rights have been violated to put up the case before the Bench and in case need be, Amicus Curiae be appointed for the same looking*

into the composition of Respondent Nos. 2 and 4 and to protect the entire medical education system as whole;

f) That this Hon'ble Court be pleased to provide for cost of this petition as well adequate compensation from the respective colleges for damaging the academic career of the Petitioner and the mental agony and stress caused to the Petitioner.

(v) The petitioner preferred the aforesaid Civil Application No. 1053 of 2016 and prayed that the petition may be disposed of in terms of order dated 2nd September 2014, passed by the Apex Court. The petitioner is therefore seeking public law damages as awarded by the Apex Court vide decision dated 2nd September 2014.

5. We have heard the learned counsel for the petitioner/applicant as well as the respondents. The learned counsel for the petitioner/applicant submitted that the applicant had suffered mental agony and the case of the applicant is similar to the case of the petitioners in Special Leave Petition No. 214 of 2013. He

submitted that the petitioners in the Special Leave Petition No. 214 of 2013 had approached the Apex Court seeking reliefs with regards to the admissions of the said petitioners by challenging the order dated 12th August 2013, passed by this Court, rejecting their petitions. He submitted that the Apex Court had granted public law damages considering the sufferings of the said petitioner students. He submitted that the present petition had remained pending in this Court. The petition was filed during the same period and although the same was listed on several occasions, it had remained to be disposed of. He submitted that the facts in the petition are identical with several such other petitions filed in this Court which were disposed of by judgment and order dated 12th August 2013. He further submitted that there was delay in seeking the similar reliefs from this Court as on every modified date, it was expected that the matter would be listed for hearing. However, on every date the Advocate on record in the present petition had intimated to the petitioner that no sooner the matter is listed on board, the above development would be brought to the notice of Court and necessary

order would be sought for. Relying upon the representations of the Advocate, the petitioner did not insist for moving the Court for redressal of the grievances on the same line as that of the petitioners before the Apex Court. He further submitted that although the time has lapsed, the prejudice continues to be caused to the petitioner without any redressal and hence the petitioner is now approaching this Court for indulgence and pray that this Court may grant the relief in the light of the order of the Apex Court. He further submitted that the petitioner belongs to OBC category and has been a meritorious student throughout. Although, the petitioner intended to pursue her career in MBBS. She had to opt for BDS stream and she is pursuing the said career.

6. Learned AGP Mr. Sagare vehemently opposed the reliefs sought by the petitioner/applicant. He submitted that the petitioner had waived her prayers seeking admission in the writ petition which is recorded by order dated 12th August 2013. She cannot be allowed to seek damages on the ground that she could not secure admission

for MBBS course. He further submitted that without amending the writ petition the petitioner is seeking the disposal of the petition in terms of order of the Supreme Court dated 2nd September 2014. He submitted that the petitioner had not chosen to pursue the writ petition in the year 2013 and now after the period of about four years, the civil application is filed seeking public law damages for extraneous reasons. He submitted that the order passed by the Supreme Court is applicable only to the petitioners who had preferred the Special Leave Petition before the Supreme Court. He submitted that another petitioner Ms. Devyani Vivek Sthalekar who was also petitioner in Writ Petition No. 214 of 2013 which was rejected by this Court had approached the Apex Court by preferring I.A. No. 04 of 2015 seeking reliefs granted by the Supreme Court in order dated 2nd September 2014. The Supreme Court however dismissed the application preferred by the said petitioner by order dated 27th March 2015. He therefore submitted that the petitioner was not party to Writ Petition No. 214 of 2013 and therefore the reliefs granted by the Supreme Court cannot be claimed by the

petitioner more particularly in the circumstances that the petitioner had not pressed the principal prayers in her petition as stated herein above. He further submitted that the petitioner has failed to explain the delay in preferring the civil application and the application be dismissed on the ground of delay and laches. He submitted that petitioner has also admitted in her application that she has opted for BDS course and she is pursuing the said course. The vague explanation tendered by the petitioner towards belatedly moving application is devoid of any substance. It was contended by the Ms. Devyani Sthalekar, referred to herein above that her case is identically situated with the petitioners to whom the public law damages were granted by the Apex Court. Since the Apex Court had rejected her application, even the petitioner cannot claim such reliefs before this Court. He also submitted that during the year 2012-13 various complaints regarding irregular admissions were received and the State Government had appointed the committee for inquiry. On the basis of report of inquiry the committee had fixed the penalty to colleges who had committed irregularities in admission process. The

said decision of the Pravesh Niyamtran Samiti had been stayed by this Court in Writ Petition No. 2684/2016, 2686/2016, 2687/2016 and 2695/2016. He also contended that the irregularities were committed by the private colleges and the State Government should not be penalized for the same.

7. We have given anxious consideration to the submission made by both the parties. We have also perused the documents on record, contents of the petition and the affidavit in reply tendered by the respondent no. 1. No doubt the petitioner was not party to Writ Petition No. 214 of 2013. The petitioner had preferred the present petition separately and claimed for various reliefs. We have noted that in the order dated 12th August 2013, passed in the present petition, it was recorded that the learned counsel appearing for the petitioner on the instructions states that he is not pressing prayers (a) and (c) to the petition and the said statement was accepted. The Court thereafter issued notice to the respondents and directed them to file reply within stipulated time. The petition remained pending

before this Court . Prayer clauses (a) and (c) to the petition which are quoted herein above in the earlier paragraphs no doubt relates to reliefs sought by the petitioners directing the respondents to take fresh admission/readmission in compliance of law and rules and that the respondent nos. 6 and 7 be directed, depending upon the preference of the petitioner to admit the petitioner after considering her merits over other students who have scored lower marks. However, the fact remains that Writ Petition No. 214 of 2013 was dismissed with observations that it is not possible to grant the prayers as sought for by the petitioners in the said petition. The said judgment and order was passed by this court on 12th August 2013. The petitioner however on the same date had invited the order in her petition through her counsel as stated above. We cannot overlook the fact that the petitioner is otherwise placed in identical situation with the circumstances in which the petitioners in Writ Petition No. 214 of 2013, were situated and had been facing similar mental agony. We have also noted that prayer clauses (b) and (d) of the petition preferred by the petitioner relates to issuance of

direction to respondent no. 4 and all its members to give necessary report of compliance of rules/regulations and an undertaking to follow rules and law and giving admissions to meritorious students on the basis of merit without any discrimination whatsoever. The prayer also seeks directions against respondent nos. 1 to 3 to inquire into the entire issue of admission and violation of law and rules by the colleges and take necessary action against the institution found to be in-violation of law and rules as per law. On perusal of the said prayers it is apparent that the petitioner had challenged the irregularities committed by the respondents and had insisted that undertaking should be called for to follow rules and giving admission to meritorious students on the basis of merit without any discrimination. In the light of the utter disregard to the rules and regulations by the concerned respondents we cannot be hyper-technical in appreciating the prayers made by the petitioner. Prayer clause (b) was wide enough to exercise the writ jurisdiction under Article 226 of Constitution of India to look into the grievance of the petitioner for grant of the admission sought by the petitioner.

8. We are conscious of the fact that petitioner was the victim of the circumstances and was denied admission to the course which she had sought for. This Court could not grant the prayers to the petitioners in Writ Petition No. 214 of 2013. In the peculiar circumstance as reflected in the order dated 12th August 2013 it was not possible to grant the reliefs prayed by the petitioner. The petitioner case was identically situated and even if the prayers which were waived by the petitioner in her petition had continued, the Court could have passed similar order in the case of the petitioner. This Court while disposing the Writ Petition No. 214 of 2013 has observed that it was not possible to grant the prayer of admission to the course for which the petitioners had applied for in view of various circumstances including the fact that the petitioner therein had not arrayed the students who were allegedly ineligible as party to the petitions and it is not the case of the said petitioners that the cut-off date for concluding the admission process can be extended as there are vacant seats. It was also observed that the medical seats has a life only for the year, that to only till cut-off date i.e. 30th

September in the respective year and the cut-off date can only be extended by the Apex Court in exercise of power under Article 142 of the Constitution of India. On perusal of the said observations it is ample clear that the petitioner was also similarly placed and could not have succeeded in getting the reliefs even if the petition of the petitioner was heard at that point of time with all the reliefs as claimed in this petition. It is pertinent to note that the Apex Court while deciding the Special Leave Petition has observed that the petitioners could not secure admission at the said examination in the course of their choice. The Apex Court also quoted the recommendations of the Pravesh Niyantran Samiti wherein Samiti had recommended to Government of Maharashtra to direct the colleges to cancel the admissions after lapse of CAP round of MH-CET-2012. The Samiti has also suggested to the Government of Maharashtra moving the Supreme Court for permission to fill in the resultant vacancy, extension of cut-off date and also prayed therein that all admission even after CAP round be brought under common admission process. Although the report of the Samiti was forwarded

to the State of Maharashtra and inspite of that no action was initiated by the State. It is in the light of the circumstances, the Supreme Court observed that it was not possible to grant the admissions to the petitioners in the said Special Leave Petition. The Apex Court however, observed that inspite of the recommendations of the committee, the State of Maharashtra did not chose to act upon the report of the committee. In the circumstances, the Supreme Court observed that though reliefs sought by the petitioners cannot be granted at the said stage, in view of the long lapse of time the said petitioners are entitled to public law damages and therefore, the State of Maharashtra was directed to pay the amount as stipulated in the aforesaid order by the Apex Court.

9. The petitioner is similarly placed with the petitioners in Writ Petition No. 214 of 2013. Although the petitioner was not party to Writ Petition No. 214 of 2013, the present petition preferred by the Petitioner is pending for final disposal before this Court. The objections raised by the respondent that the petitioner has not amended the petition seeking the public law damages or that

belatedly filing of the application seeking damages should not be entertained is devoid of merits. The mental agony of the petitioner on account of failure to get admission for MBBS course as sought by her is perpetual. In that sense the petitioner is identically situated with the petitioners to whom the relief was granted by the Supreme Court. The said petitioners had approached the Apex Court as there petition was dismissed by the High Court. It is necessary to consider that the petitioners before the Supreme Court had not prayed for public law damages and their petition was for seeking reliefs of admission and challenging the order passed by the High Court. Merely on the ground that the petitioner had waived certain prayers and the petition had remained pending for a long period of time is no ground to deny the public law damages to the petitioner. In the civil application the petitioner has narrated the circumstances in which her petition has remained pending and prayers for the relief of public law damages. The other objections of the respondents that the petitioner is pursuing BDS course and is in the final year of the said course is no ground to refuse the reliefs sought by the

petitioner. It is pertinent to note that the petitioner before the Apex Court had also resorted to other courses and some of them had secured admission in the subsequent year but not in the college of their choice.

10. The learned AGP had stressed upon the fact that the application preferred by Ms. Devyani Sthalekar was rejected by the Supreme Court. She had belatedly moved the application seeking damages after the Apex Court had passed the judgment and order dated 2nd September 2014. It is true that Ms. Devyani Sathlekar was party to Writ Petition 214 of 2013 before this Court and was similarly placed with the students who had preferred Special Leave Petition before the Supreme Court and should be granted public law damages. However, on perusal of correspondence placed on record by the learned Advocate for the petitioner, we have noted that the Deputy Secretary to Government of Maharashtra had forwarded a communication dated 2nd June 2016, to the Assistant Registrar, National Human Rights Commission and in the said communication it was stated that Ms. Devyani Sthalekar was one of the Petitioner in

the High Court in Writ Petition No. 214 of 2013 and that she did not approach the Supreme Court by preferring SLP along with other candidates. She filed I.A. No. 04 of 2015 in SLP No. 31900 of 2013 for extending to her the reliefs granted in order dated 2nd September 2013 passed by the Supreme Court. The Supreme Court dismissed the said I.A. preferred by Ms. Devyani Sthalekar which indicates that, only the petitioners who were party to SLP (C) No. 31900 of 2013 are entitled to the compensation of Rs. 20,00,000/-. From the said communication it is implicit that Ms. Devyani Sthalekar was not party to Special Leave Petition preferred by the other candidates and her application was dismissed by the Supreme Court vide order dated 27th March 2015. We have perused the order rejecting the IA No.4/2015, preferred by Ms. Devyani Sthalekar. The order dated 27th March 2015 reads as follows:-

“Upon hearing the counsel the Court made following order. IA No. 4/2015 is dismissed.”

11. Perhaps the reasons tendered by the authority of the respondent no. 1 in the aforesaid communications are probable that

Ms. Devyani Sthalekar was not party to the Special Leave Petition which was preferred by the other candidates.

12. We are therefore of the opinion that the petitioner is similarly placed with that of the candidates who had preferred Special Leave Petition before the Apex Court. We are conscious of the fact that the petitioner is the victim on account of irregularities committed by the respondent nos. 6 and 7. The High Court and the Apex Court has observed that the colleges including respondent nos. 6 and 7 have committed gross irregularities while giving admissions. It is also observed that inspite of the recommendations by the Pravesh Niyanttran Samiti, the State of Maharashtra did not take any steps as recommended by the Samiti. In the light of the said situation the Apex Court had granted public law damages to the petitioners therein. The Apex Court had observed that long gap of time and inability to grant the reliefs as prayed for by the petitioners, in view of the circumstances referred to in the said judgment, the petitioners therein were entitled for public law damages. We are of the opinion that even the present petitioner is

entitled for the public law damages as awarded by the Apex Court to the other candidates. It is not open to the Respondent no. 1 to state that the irregularities were committed by the colleges for which the State should not be penalized by asking them to pay public law damages. We have noted herein above that the State machinery had failed to implement the recommendations of the Samiti. The Samiti had confirmed the findings of inquiry committee, highlighting the violations of rules and regulations by the colleges while granting admissions to the students. It would not be out of place to mention that the petitioner in the present petition had also prayed for adequate compensation from the respective colleges for damaging the academic career of the petitioner and the mental agony and the stress caused to the petitioner. We have also noted that in the present petition which was pending for disposal the petitioner had averred that the denial of the admission has completely damaged her career and the right to practice as a doctor in future seems to have been taken away. Such an act on the part of the respondent have caused great mental agony, stress and torture not only to the

petitioner but also to the family of the petitioner whose dream was to see to the petitioner as a doctor which has been completely shattered. In this circumstances, we are of the opinion that the respondent no.1 is liable to pay public law damages to the petitioner.

13. Hence we pass the following order.

ORDER

- a) Civil Application No. 1053 of 2016 is allowed in terms of judgment and order dated 2nd September 2014, passed by the Apex Court in Special Leave Petition No. 31900 of 2013 and the respondent no. 1 is directed to pay an amount of Rs. 20,00,000/- to the petitioner/applicant towards public law damages, within a period of eight weeks from today.

b) Civil Application No. 1053 of 2016 and Writ
Petition No. 4916 of 2013 stands disposed of.

c) No order as to costs.

(PRAKASH D. NAIK, J)

(SHANTANU S. KEMKAR, J.)