

***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

and

***THE HON'BLE SRI JUSTICE M. GANGA RAO**

+Writ Petition No.17221 of 2017

% -01-2018

Between:

Bobbili Anusha, D/o Naveen Kumar, aged about 19yrs,
Occ: MBBS Student, R/o Plot No.1041, Gokul Plots,
Venkataramana Colony, near 9th Phase, KPHB,
Hyderabad and 3 others

... Petitioners

Vs.

Kaloji Narayana Rao University of Health Sciences,
Telangana State, Warangal, represented by its
Registrar and 3 others

.. Respondents

! Counsel for petitioners : Mr. G. Vidyasagar, senior counsel

^ Counsel for respondents: Mr. A. Prabhakara Rao, standing
counsel

Mr. Vivek Chandrasekhar, standing counsel

Mr. B.G. Ravinder Reddy, standing counsel

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> Head Note:

? Cases referred:

- 1) 2014 (2) SCC 305
- 2) 2016 (7) SCC 353
- 3) 2012 (3) SCC 430
- 4) 2004 (8) SCC 1

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE M. GANGA RAO

Writ Petition No.17221 of 2017

ORDER: (V. Ramasubramanian, J)

The petitioners, who secured admission to the first year of the MBBS course during the academic Year 2016-17 and who were ordered by the University to be discharged from the college on the ground that they had not secured the minimum cut off marks in EAMCET-III, have come up with the above writ petition challenging the cancellation of their admission.

2. Heard Mr. G. Vidyasagar, learned senior counsel appearing for the petitioners, Mr. A. Prabhakara Rao, learned standing counsel for the 1st respondent-University, Mr. Vivek Chandrasekhar, learned standing counsel appearing for the 2nd respondent-Medical Council of India and Mr. B.G. Ravinder Reddy, learned standing counsel for the respondents 3 and 4- ESI Corporation.

3. The petitioners 1 and 3 herein belong to the Scheduled Castes. The petitioners 2 and 4 do not belong to any reserved category.

4. The Employees State Insurance Corporation established a Medical College at Hyderabad, for the first time, during the academic year 2016-17. A notification dated 20-07-2016 was issued by the said Medical College for admission to the MBBS course. As per the notification, 50 seats were reserved for the wards of insured persons, out of which 25 were left unreserved, 8 reserved for

Scheduled Castes, 4 reserved for Scheduled Tribes and 13 reserved for Other Backward Classes. The selection was to be based upon a common entrance test.

5. In the State of Telangana, a common entrance test known as EAMCET-I was announced in February and conducted in March, 2016, but the same was cancelled. A second examination known as EAMCET-II, was held in May, 2016, but the same was also cancelled in July, 2016 on account of certain malpractices. Therefore, the Employees State Insurance Corporation Medical College, who is the 4th respondent herein, cancelled the admission notification issued on 20-07-2016 and issued a fresh notification on 01-09-2016.

6. The petitioners applied and they were short-listed for counseling at New Delhi. After the counseling held on 27-09-2016, the names of the petitioners were included respectively at Serial Nos.39, 35, 40 and 38 and they were issued with allotment letters. The petitioners joined the course by paying the requisite fee and the classes commenced from 03-10-2016.

7. But by a letter dated 13-04-2017, the Medical Council of India asked the ESI Corporation Medical College to clarify as to how the petitioners 1 and 3, who secured less than 40 percentile marks in EAMCET-III and the petitioners 2 and 4, who secured less than 50 percentile marks in EAMCET-III, were granted admission. In response to the said communication, the ESI Corporation Medical College sent a reply dated 22-04-2017 claiming that the Telangana State awarded ranks based on the aggregate score in EMACET-III

and the Higher Secondary Education and that on the basis of the same, admission was granted.

8. In the meantime, the ESI Corporation Medical College sent a list of candidates admitted to the course, to the Kaloji Narayana Rao University of Health Sciences. After perusing the merit list of all candidates selected for admission, the University sent the impugned notification dated 04-05-2017 to the ESI Corporation Medical College calling upon them to discharge the petitioners herein on the ground that the petitioners had not secured the minimum marks in EAMCET-III. Upon being served with a copy of the said communication, the petitioners came up with the above writ petition. On 18-05-2017, this Court ordered notice before admission and also granted interim suspension of the communication of the University dated 04-05-2017. By virtue of the said interim order, the petitioners are continuing their course of study.

9. The contention of the petitioners is that admissions to MBBS courses in the State of Telangana are regulated by a State enactment known as Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, as per Section 3 (1) of which, the admissions are to be made on the basis of the rank assigned by giving weightage to the marks secured in the relevant group subjects in Intermediate Public Examinations together with the marks secured in the common entrance test. According to the petitioners, the Government of Andhra Pradesh issued a set of Rules under G.O.Ms.No.73, Higher Education Department, dated 28-07-2011, in exercise of the powers

conferred under Act 5 of 1983 and that as per these Rules, candidates will be assigned rank in the order of merit on the basis of the combined score obtained by giving 75% weightage to the marks secured in EAMCET and 25% weightage to the marks secured in the relevant group subjects in the qualifying examinations. The petitioners were assigned ranking in the order of merit, on the basis of the combined score obtained by giving 75% weightage to the marks secured in EAMCET and 25% weightage to the marks secured in the relevant group subjects. Therefore, according to the petitioners, their selection was in tune with the relevant rules and also in tune with the notification for EAMCET 2016 issued first in the month of February, 2016.

10. According to the petitioners, the Medical Council of India issued certain regulations in exercise of the powers conferred by Section 33 of the Indian Medical Council Act 1956. Regulation 5 (5) of the regulations was substituted, by a notification dated 03-11-2010 and the eligibility criteria was also amended by a subsequent notification dated 21-12-2010. But the amended regulations of the year 2010 became a subject matter of challenge in ***Christian Medical College v. Union of India***¹. By a judgment rendered on 18-07-2013 in the said case, the Supreme Court set aside the amendments to the regulations. However, a petition for review of the said judgment was allowed on 11-04-2016. Thereafter, according to the petitioners, the State Governments were empowered by virtue of the judgment of the Supreme Court in ***Modern Dental College***

¹ 2014 (2) SCC 305

Research Centre and the State of Madhya Pradesh² to make admissions as per State Enactments and Rules.

11. The University has filed a counter affidavit contending, *inter alia*, that the qualifying marks prescribed by the Medical Council of India in the entrance examination is 50% for Open Category candidates and 40% for Scheduled Castes and Scheduled Tribes; that the petitioners herein failed to secure the minimum qualifying marks in the entrance examination; that as per Regulation 5 (5) (ii) of the Medical Council of India Regulations, open category candidates should have secured 50% marks and Scheduled Caste and Scheduled Tribes should have secured 40% marks in the entrance examination; and that since the petitioners failed to secure the minimum qualifying marks in the entrance examination, their admissions were not approved by the Medical Council of India and that therefore, the discharge of the petitioners became inevitable.

12. The University has also produced a copy of the notification issued on 18-07-2016 for verification of certificates for Web based Counseling. In the said notification, a very clear stipulation was made at Serial No.3 under the heading "Eligibility for admission into MBBS/BDS courses, which reads as follows:

"The candidate should have qualified in Telangana EAMCET-II- 2016; OC candidates should secure not less than 50% marks in Telangana EAMCET-II-2016; BC/SC/ST candidates should secure not less than 40% marks in Telangana EAMCET-II-2016. OC/PH candidates should secure not less than 45% marks in Telangana EAMCET-II 2016."

13. Therefore, it is contended on behalf of the University that the petitioners, who have not secured the minimum qualifying marks in the entrance examination, cannot continue the course.

² 2016 (7) SCC 353

14. The Medical Council of India (MCI) has not filed a counter. But the learned standing counsel appearing for the MCI contended that as per the Medical Council of India Regulations 1997, (MCI Regulations) as amended in the year 2010, the candidates, who failed to secure the minimum marks in the entrance examination, cannot be admitted to the medical course and that therefore, the petitioners deserve to be discharged.

15. We have carefully considered the above submissions.

16. It appears that the admission of the petitioners to the medical course and the contentions now raised by the petitioners, can be attributed to a confusion created in the manner in which amendments were effected to the MCI Regulations 1997. The Graduate Medical Admission Regulations, 1997 issued by MCI contained a detailed procedure for selection of students for admission to the MBBS course in Regulation 5. This Regulation 5 originally comprised of 5 sub-regulations. Sub-regulation (5) of Regulation 5 originally comprised of 2 clauses and one proviso. One more proviso was added to Regulation No.5 (5) (ii), by a notification dated 25-03-2009. Subsequently, sub-regulation (5) of Regulation 5 was substituted by a new provision by a notification dated 3-11-2010. But later, this sub-regulation (5) of Regulation 5 was again substituted by a new provision by another notification dated 21-12-2010. While doing so, sub-regulations (1) to (4) of Regulation 5 were deleted by the notification dated 21-12-2010. As a consequence, there was only sub-regulation namely sub-regulation (5), without there being sub-regulations (1) to (4), after the notification dated 21-

12-2010. The confusion created by the series of amendments, can be best understood by looking at them. Therefore, Regulation 5 together with the series of amendments it underwent, is presented as follows:

5 Selection of Students: The selection of students to medical college shall be based solely on merit of the candidate and for determination of merit, the following criteria be adopted uniformly throughout the country:

(1) In states, having only one Medical College and one university/board/ examining body conducting the qualifying examination, the marks obtained at such qualifying examination may be taken into consideration.

(2) In states, having more than one university/board/examining body conducting the qualifying examination (or where there is more than one medical college under the administrative control of one authority) a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards at qualifying examinations conducted by different agencies.

(3) Where there are more than one college in a state and only one university/board conducting the qualifying examination, then a joint selection board be constituted for all the colleges.

(4) A competitive entrance examination is absolutely necessary in the cases of Institutions of All India character.

In terms of notification dated 21.12.2010, In Chapter II, Clause 5 under the heading "Selection of Students", sub-clause (1) to (4) shall be deleted.

(5) Procedure for selection to MBBS course shall be as follows :-

i) In case of admission on the basis of qualifying examination under Clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry, and Biology at the qualifying examination as mentioned in Clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes, the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% as above.

ii) In case of admission on the basis of competitive entrance examination under Clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry & Biology at the qualifying examination as mentioned in Clause (2) of Regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be

admitted to that course until he fulfils the eligibility criteria under Regulation 4.

The following has been added before the proviso to Clause 5(5)(ii) in terms of notification published on 25.03.2009.

Provided that the eligibility criteria for admission to persons with locomotory disability of lower limbs in terms of Clause 4(3) above – will be a minimum of 45% marks instead of 50% taken together in qualifying examination and competitive entrance examination for admission in MBBS course.

The Clause 5(5) has been substituted in terms of notification published on 03.11.2010 in Gazette of India and the same is as under:-

5(5) Procedure for selection to MBBS course shall be as follows:-

(i) In case of admission on the basis of qualifying examination under clause (1) based on merit, candidate for admission to MBBS course must have passed in the subjects of Physics, Chemistry, Biology/Bio-technology & English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Bio-technology at the qualifying examination as mentioned in the clause (2) of regulation 4. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward classes. The marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination be 40% instead of 50% as above;

(ii) In case of admission on the basis of Competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology/Bio-technology and English individually and must have obtained a minimum of 50% of marks taken together in Physics Chemistry and Biology/Bio-technology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology/Bio-technology taken together in the competitive examination. In respect of candidates belonging to Schedule Caste, Schedule Tribes or other Backward Class the marks obtained in Physics, Chemistry, and Biology/Bio-technology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under regulation 4.”

The Clause 5(5) has been further substituted in terms of notification published on 21.12.2010 in Gazette of India and the same is as under:-

“I. There shall be a single eligibility cum entrance examination namely ‘National Eligibility-cum-Entrance Test for admission to MBBS course’ in each academic year. The overall superintendence, direction and control of National Eligibility-cum-Entrance Test shall vest with Medical Council of India. However, Medical Council of India with the previous approval of the Central Government shall select organization/s to conduct ‘National Eligibility-cum-Entrance Test for admission to MBBS course.

II. In order to be eligible for admission to MBBS course for a particular academic year, it shall be necessary for a candidate to obtain minimum of 50% (Fifty Percent) marks in each paper of National Eligibility-cum-Entrance Test held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes, the minimum percentage marks shall be 40% (Forty

Percent) in each paper and in respect of candidates with locomotory disability of lower limbs, the minimum percentage marks shall be 45% (Forty Five Percent) in each paper of National Eligibility-cum-Entrance Test:

Provided when sufficient number of candidates belonging to respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test in any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may, at its discretion, lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said year only.

III. The reservation of seats in medical colleges for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to MBBS course from the said lists only.

IV. No Candidate who has failed to obtain the minimum eligibility marks as prescribed in Sub Clause (ii) above shall be admitted to MBBS Course in the said academic year.

V. All admissions to MBBS course within the respective categories shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test.”

In the clause 5, sub-clause II, as amended vide notification No.MCI-31(1)/2010-Med/ 49068 dated 21st December 2010, the following shall be substituted as under, in terms of notification dated 15.02.2012.

“II. In order to be eligible for admission to MBBS Course for a particular academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in ‘National Eligibility-cum-Entrance Test to MBBS course’ held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with locomotory disability of lower limbs terms of Clause 4(3) above, the minimum marks shall be at 45th percentile. The percentile shall be determined on the basis of highest marks secured in the All-India common merit list in ‘National Eligibility-cum-Entrance Test for admission to MBBS course’.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to MBBS Course, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to MBBS Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the said academic year only.”

In the clause 5, sub-clause II, as amended vide notification No. MCI-31(1)/2010-Med/ 49068 dated 21st December 2010, the following shall be added as under, in terms of notification dated 15.02.2012.

“VI. To be eligible for admission to MBBS course, a candidate must have passed in the subjects of Physics, Chemistry, Biology/ Biotechnology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology/Bio-technology at the qualifying examination as mentioned in clause (2) of Regulation 4 and in addition must have come in the merit list of “National Eligibility-cum-Entrance Test” for admission to MBBS course. In respect of candidates belonging to Scheduled Castes, Scheduled Tribes or other Backward Classes the minimum marks obtained in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be

40% instead of 50%. In respect of candidates with locomotory disability of lower limbs in terms of Clause 4(3) above, the minimum marks in qualifying examination in Physics, Chemistry and Biology/Bio-technology taken together in qualifying examination shall be 45% instead of 50%.

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he/she may be provisionally permitted to take up the National Eligibility-cum-Entrance Test and in case of selection for admission to the MBBS course, he/she shall not be admitted to that course until he fulfils the eligibility criteria under Regulation 4.

VII. The Central Board of Secondary Education shall be the organization to conduct National Eligibility-cum-Entrance Test for admission to MBBS course."

(The above notification was quashed by the Honble Supreme Court on 8.07.2013 and has been revived on 11.04.2016 by the Hon'ble Supreme Court.)

17. The notifications issued by the Medical Council of India on 21-12-2010 introducing a single National Eligibility-cum-Entrance Test (NEET) alone were the subject matter of challenge before the Supreme Court in ***Christian Medical College v. Union of India***. These notifications were set aside by the judgment rendered on 18-07-2013. However, the applications for review were allowed on 11-04-2016.

18. In other words, Regulation 5 (5) as it existed prior to the notification dated 21-12-2010 was never challenged. Even before the issue of the notification dated 21-12-2010, Regulation 5 (5) (ii) contained a prescription to the effect that Open Category candidates should have secured not less than 50% marks in the Competitive Examination and reserved category candidates should have secured 40% marks in the competitive examination to be eligible for admission. We may have to understand Regulation 5 (5) with reference to the manner in which it evolved over 3 different sequences of time, viz., (1) the regulation as it existed before 3-11-2010; (2) the regulation after it got amended by notification dated 03-

11-2010; and (3) the regulation as it was amended by notification dated 21-12-2010.

19. Even before the amendment under the notification dated 25-03-2009, Regulation 5 (5)(ii) contained a stipulation that general category candidates should have secured 50% marks and reserved category candidate should have secured 40% marks in the competitive examination. By virtue of the notification dated 25-03-2009, this prescription was little diluted in favour of persons with loco-motor disability of lower limbs. This was done by adding one more proviso to the existing proviso to Regulation 5 (5) (ii).

20. Regulation 5 (5) was substituted by a new provision under the next notification dated 03-11-2010. But this newly substituted Regulation 5 (5) also contained clause (ii) containing a prescription relating to qualifying marks.

21. By the notification dated 21-12-2010 a small modification was made to Regulation 5 (5) (ii) by incorporating the words "National Eligibility-cum-Entrance Test" in the place of the words "competitive entrance examination". Simultaneously, sub-regulations (1) to (4) were deleted by the notification dated 21-12-2010, but renumbering does not appear to have taken place.

22. Therefore, it is clear that at all points of time, both before and after the introduction of NEET, the MCI Regulations always contained a prescription regarding the minimum qualifying marks in the competitive entrance examination. The petitioners cannot take advantage of some kind of confusion created in the manner in which successive amendments took place to the MCI Regulations.

23. The contention of Mr. G. Vidyasagar, learned senior counsel appearing for the petitioners is that when EAMCET-I was notified in February, 2016 or when EAMCET-II was notified in May, 2016 for the State of Telangana, no qualifying marks were prescribed for Scheduled Castes and Scheduled Tribes. According to the learned senior counsel, the amendment notification dated 21-12-2010 issued by Medical Council of India was set aside by the Supreme Court on 18-07-2013 and the review was allowed on 11-04-2016. But by the time the review was allowed on 11-04-2016, the notification for EAMCET-I had already been issued in February, 2016 on the basis of the decision in **Christian Medical College** dated 18-07-2013 which was holding the field. After the decision in **Christian Medical College** was reviewed, the Government of India issued an ordinance known as Indian Medical Council of India (Amendment) Ordinance, 2016 on 24-05-2016 granting exemption from the conduct of NEET for the academic year 2016-17. Therefore, it is the contention of the learned senior counsel that the only set of rules that were applicable in the State of Telangana for admission to medical courses for the academic year 2016-17 were the rules issued under G.O.Ms.No.73 Higher Education dated 28-07-2011. Rule 4 of these Rules, which were known as “the Andhra Pradesh Common Entrance Test for entry into Engineering, Pharmacy, Agriculture, Medical and Dental Courses Rules, 2011” provided for the conduct of a common entrance test known as EAMCET. Rule 5 prescribes the procedure for preparation of the merit list. Rule 5 (1) reads as follows:

“(1) The candidate who have secured qualifying marks in EAMCET and candidates belonging to the category of Scheduled Caste and Scheduled Tribe, for whom qualifying marks have not been prescribed, shall be assigned ranking in the order of merit on the basis of combined score obtained by giving 75% weightage to the marks secured in EAMCET and 25% weightage to the marks secured in the relevant group subjects namely, Mathematics, Physics, Chemistry or Biology, Physics, Chemistry, as the case may be, in the qualifying examination.”

24. Therefore, the contention of Mr. G. Vidyasagar, learned senior counsel for the petitioners is that (1) in the light of the notification for EAMCET-I having been issued in February 2016 when the judgment of the Supreme Court in **Christian Medical College** dated 18-07-2013 was holding the field; and (2) in the light of the Ordinance No.4 of 2016 issued by the Government of India on 24-05-2016 exempting the State from NEET for the academic year 2016-17, the prescription contained in the MCI Regulations cannot be applied to the petitioners, and that the prescription contained in the 2011 Rules alone should apply.

25. But we do not agree. As we have pointed out earlier, the MCI Regulations 1997 had always contained a prescription, even before the controversial notification dated 21-12-2010 issued by the Medical Council of India. This prescription mandated the candidates to secure 50% marks if they belonged to the general categories and 40% marks if they belonged to the reserved categories, in the common entrance examination. What was in question before the Supreme Court in **Christian Medical College** was only the validity of NEET and not the validity of the common entrance examination conducted by the States.

26. The statutory rules issued under G.O.Ms.No.73, dated 28-07-2011 cannot go contrary to the MCI Regulations. After all, the candidates who pass out of Medical Colleges, may have to enroll only with the Medical Council of India. The MCI Regulations relating to admissions cannot be diluted. The prescription contained in Rule 5 (1) of the State Rules has to be read in tune with the Regulation 5 (5) (ii) of the MCI Regulations 1997. Therefore, the admission of the petitioners to the Medical courses, is clearly in contravention of the MCI regulations, since admittedly the petitioners 1 and 3 have not secured 40% and the petitioners 2 and 4 have not secured 50% marks in EAMCET-III.

27. Drawing our attention to the decision of the Supreme Court in **Deepa Thomas v. Medical Council of India**³, the learned senior counsel for the petitioners submitted that the petitioners, having been admitted to the courses and allowed to continue, should not be penalised for no fault of theirs and that after sending a letter dated 13-04-2017 to the ESI Corporation Medical College and receiving a reply dated 22-04-2017, the Medical Council of India itself kept quiet and hence, there was no occasion for the University to issue the impugned order discharging the petitioners.

28. But the above contention is without substance. It can be seen from the paragraph 24 of the decision of the Supreme Court in **Deepa Thomas v. Medical Council of India**, that the Supreme Court agreed with the Medical Council of India that the admission of students, who had not secured 50% marks in the common entrance

³ 2012 (3) SCC 430

examination, was irregular. But the Supreme Court exercised its power under Article 142 of the Constitution to save the admission granted to those petitioners, as the candidates had already completed nearly 4½ years of the course of study. Therefore, the decision in **Deepa Thomas v. Medical Council of India** cannot be followed by us as a precedent. Perhaps it may be open to the petitioners to seek similar concession only from the Hon'ble Supreme Court.

29. It is true that the Medical Council of India took up the issue with the 4th respondent College by issuing a letter dated 13-04-2017 and did not take further action after the receipt of a reply dated 22-04-2017 from the College. But there was no occasion for the Medical Council of India to proceed further, in view of the order passed by the University on 04-05-2017 discharging the petitioners. In any case, the learned standing counsel for the MCI made it clear that the petitioners cannot continue their course of study as their admissions were irregular. Thus, the stand of the Medical Council of India has also now become clear.

30. The learned senior counsel for the petitioners placed reliance upon the decision of the Supreme Court in **Zile Singh v. State of Haryana**⁴ to highlight the effect of substitution of a statutory provision by another. It was his contention that once what was substituted is set aside, the original also cannot survive.

31. But the above contention loses sight of one important fact. What was under challenge before the Supreme Court in **Christian**

⁴ 2004 (8) SCC 1

Medical College was only the notification dated 21-12-2010. It was that notification, which was set aside. Therefore, Regulation 5 (5)(ii), as it existed before the notification dated 21-12-2010 would automatically come back to life. This position can be best understood through an illustration. If a provision of the statute is substituted by a new one by way of amendment and if the newly substituted provision is set aside, then the position may be different. But if the notification by which a substitution is ordered is challenged and it is set aside, then the provision that existed before would get revived.

32. Therefore, it is clear from the above discussion that the MCI Regulations always contained a prescription with regard to the minimum qualifying marks and that the petitioners, who had not secured minimum qualifying marks, ought not to have been admitted to the medical course. As a consequence, their discharge from the courses cannot be taken exception to.

33. Therefore, the writ petition is liable to be dismissed, though it rather painful to do so. Accordingly the writ petition is dismissed. There will be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

M. GANGA RAO, J

Date: -01-2018

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