

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2018
DATE OF DECISION : 11.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.28266, 28602, 29406, 30339 of 2018

1. Aditi Susan John
2. R.Vaisnavi
3. S.Suprathi
4. R.Visveswaran
5. James P.Sarij
6. Dasien Ika Syngkon
7. Daya Uday

... Petitioners in W.P.No.28266 of 2018

1. Supretha Sivakumar
2. Ppavani
3. Swetha Harikumar
4. Mohanraam.S
5. Fathima R.S
6. Maila Venkatasiva Sandeep Reddy
7. Sayooj Sajeevan
8. Aparna Babu
9. Yuvasri S.R
- 10.Sushma D
- 11.S.Subarna
- 12.Nerella Sunny Supreeth
- 13.Mohamed Ali Akram S.M
- 14.Adarsh Menon
- 15.Rehana Yaasha Mena.R.B
- 16.Gadde Edukondalu
- 17.Reshma Priya.C
- 18.Sikhakolanu Sankarrao
- 19.Jayapriya K

...Petitioners in W.P.No.28602 of 2018

P.Joseph Ryan Alex Sargunam ..Petitioner in W.P.No.29406 of 2018

Midhila M.A.Nair ..Petitioner in W.P.No.30339 of 2018

-vs-

1. Government of Puducherry
Rep by Secretary to Government
(Higher and Technical Education)
Chief Secretariat
Puducherry 605 004

2. Government of Puducherry
Centralised Admission Committee (CENTAC)
Rep by Co-ordinator (Admission)
CENTAC, Pondicherry Engineering College Campus
Puducherry 605 014
3. Medical Council of India
Rep by Secretary
Sector-VIII,
Dwaraga Phase-II
New Delhi 110 077
4. Pondicherry Institute of Medical Sciences
Rep by its Registrar
Kalapet
Puducherry 605-014. ..Respondents in all the Writ Petitions

W.P.No.28266 of 2018 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the press release dated 16.10.2018 having reference No.CENTAC/UG-Admin/2018-2019 issued by the second respondent and quash the same in so far as it relates to the special counselling to be conducted on 15.10.18 to fill up the 33 management quota seats by calling upon all the 330 candidates in the list sponsored by the second respondent which comprised of students who did not report for counselling on 31.08.2018 which is the last date for admission of students all over the country as per the Supreme Court Order in Writ Petition Civil No.267 of 2017 dated 09.05.2017 and consequently direct the second respondent to recall the press release in so far as it has resulted in the discontinuance of the seven petitioners from the MBBS Course and direct the second respondent to issue appropriate orders to the fourth respondent to permit the petitioners to continue their first year MBBS Course in the fourth respondent college.

W.P.No.28602 of 2018 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the press release dated 16.10.2018 having Ref.No. CENTAC/UG-Admin/2018-19 issued by the second respondent in so far as it related to the special counselling conducted on 15.10.2018 to fill up the 33 management quota seats in the fourth respondent college by calling upon only the 330 candidates in the 1:10 stray mop-up list sponsored by the second respondent prepared before the order of this Hon'ble Court dated 28.08.2018 sanctioning additional 33 management quota seats for the academic year 2018-19 and quash the same and consequently direct

the second respondent to recall its decision in so far as it has resulted in the discontinuance of the 19 petitioners from the MBBS Course and direct the second respondent to issue appropriate orders to the fourth respondent to permit the petitioners to continue their first year MBBS course in the fourth respondent college.

W.P.No.29406 of 2018 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned provisional allotment list for UG Medical (2018-2019) Management Quota (Special Counselling) dated 15.10.2018 issued by the second respondent and the consequential press release dated 16.10.2018 having reference No.CENTAC/UG-Admin/2018-2019 issued by the second respondent and quash the same in so far as it relates to the special counselling conducted on 15.10.2018 to fill up the 33 management quota seats by calling upon all the 330 candidates in the list sponsored by the second respondent which comprised of students who did not report for counselling on 31.08.2018 which is the last date for admission of students all over the country as per the Supreme Court Order in Writ Petition Civil No.267 of 2017 dated 09.05.2017 and consequently direct the second respondent to recall the allotment order dated 15.10.2018 and consequential press release dated 16.10.2018 in so far as it has resulted in the discontinuance of the petitioner from MBBS Course and direct the second respondent to issue appropriate orders to the fourth respondent to permit the petitioner to continue MBBS Course in the fourth respondent college.

W.P.No.30339 of 2018 is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the press release dated 16.10.2018 having Ref.No.CENTAC/UG-Admin/2018-19 issued by the second respondent in so far as it related to the special counselling conducted on 15.10.2018 to fill up the 33 management quota seats in the fourth respondent college by calling upon only the 330 candidates in the 1:10 stray mop-up list sponsored by the second respondent prepared before the order of this Hon'ble Court dated 28.08.2018 sanctioning additional 33 management quota seats for the academic year 2018-19 and quash the same and consequently direct the second respondent to recall its decision in so far as it has resulted in the discontinuance of the petitioner from the MBBS course and direct the second respondent to issue appropriate orders to the fourth respondent to permit the petitioner to continue the first year MBBS Course in the fourth respondent college.

For Petitioners :: Mr.N.L.Rajah
Senior Counsel for Mr.N.Umapathi
in W.P.Nos.28266 & 30339 of 2018
Mrs.Nalini Chidambaram
Senior Counsel for M/s C.Uma in
W.P.No.28602 of 2018

Mr.D.Prabhu Mukunth Arunkumar
in W.P.No.29406 of 2018

For Respondents :: Mr.T.P.Manoharan
Senior Counsel for
Mr.C.T.Ramesh
Additional Government Pleader
(Pondy) for R1 & R2
Mr.V.P.Raman
Standing Counsel for R3
Mr.Abishek Jenasanen for R4

ORDER

The petitioners in W.P.No.28266 of 2018 have challenged the press release dated 16.10.2018 in reference No.CENTAC/UG-Admin/2018-2019 issued by the second respondent, to quash the same in so far as it relates to the special counselling to be conducted on 15.10.18 to fill up the 33 management quota seats by calling upon all the 330 candidates in the list sponsored by the second respondent, which comprised of students who did not report for counselling on 31.08.2018, which is the last date for admission of students all over the country, as per the Supreme Court Order in Writ Petition Civil No.267 of 2017 dated 09.05.2017 with a consequential direction to the second respondent to recall the press release in so far as it has resulted in the discontinuance of the seven petitioners from the MBBS Course and to issue appropriate orders to the fourth respondent to permit the petitioners to continue their first year MBBS Course in the fourth respondent college.

1.1. The petitioner in W.P.No.30339 of 2018 has also challenged the press release dated 16.10.2018 in Ref.No.CENTAC/UG-Admin/2018-19 issued by the second respondent in so far as it related to the special counselling conducted on 15.10.2018 to fill up the 33 management quota seats in the fourth respondent college by calling upon only the 330 candidates in the 1:10 stray mop-up list sponsored by the second respondent prepared before the order of this Hon'ble Court dated 28.08.2018 sanctioning additional 33 management quota seats for the academic year 2018-19, to quash the same with a consequential direction to the second respondent to recall its decision in so far as it has resulted in the discontinuance of

the petitioner from the MBBS course and to issue appropriate orders to the fourth respondent to permit the petitioner to continue the first year MBBS Course in the fourth respondent college.

1.2. The petitioners in W.P.No.28602 of 2018 have challenged the press release dated 16.10.2018 in Ref.No. CENTAC/UG-Admin/2018-19 issued by the second respondent in so far as it related to the special counselling conducted on 15.10.2018 to fill up the 33 management quota seats in the fourth respondent college by calling upon only the 330 candidates in the 1:10 stray mop-up list sponsored by the second respondent prepared before the order of this Hon'ble Court dated 28.08.2018 sanctioning additional 33 management quota seats for the academic year 2018-19, to quash the same with a consequential direction to the second respondent to recall its decision in so far as it has resulted in the discontinuance of the 19 petitioners from the MBBS Course and to issue appropriate orders to the fourth respondent to permit the petitioners to continue their first year MBBS course in the fourth respondent college.

1.3. The petitioner in W.P.No.29406 of 2018 has also challenged the provisional allotment list for UG Medical (2018-2019) Management Quota (Special Counselling) dated 15.10.2018 issued by the second respondent and the consequential press release dated 16.10.2018 in reference No.CENTAC/UG-Admin/2018-2019 issued by the second respondent, to quash the same in so far as it relates to the special counselling conducted on 15.10.2018 to fill up the 33 management quota seats by calling upon all the 330 candidates in the list sponsored by the second respondent, which comprised of students who did not report for counselling on 31.08.2018, which is the last date for admission of students all over the country, as per the Supreme Court Order in Writ Petition Civil No.267 of 2017 dated 09.05.2017, with a consequential direction to the second respondent to recall the allotment order dated 15.10.2018 and consequential press release dated 16.10.2018 in so far as it has resulted in the discontinuance of the petitioner from MBBS Course and to issue appropriate orders to the fourth respondent to permit the petitioner to continue MBBS Course in the fourth respondent college.

1.4. Since the issues raised in all the writ petitions are common, they are taken up together and disposed of by this common order.

2. Mr.N.L.Rajah, learned Senior Counsel appearing for the petitioners in W.P.Nos.28266 & 30339 of 2018 argued that when all the eight petitioners were admitted to the First Year MBBS course in the Pondicherry Institute of Medical Sciences, Puducherry, the fourth respondent herein, the Coordinator of the Centralised Admission Committee (CENTAC), Puducherry, the second respondent herein (hereinafter referred to as "the CENTAC") directed the petitioners to discontinue their course on the

ground that they were wrongly admitted. Continuing his arguments, Mr.N.L.Rajah submitted that as per the MBBS admission process, the CENTAC will conduct two rounds of common counselling to fill up the seats under both the Government and Management Quota seats. At each stage of the counselling, candidates are to register their names. In spite of the two rounds of counselling, if the seats are not filled up, to fill up the left out seats, the CENTAC will conduct a mop-up counselling. Only after these rounds of counselling, if few more seats are found vacant, the respective colleges are permitted to conduct stray mop-up counselling, based on the 1:10 list of candidates furnished by the CENTAC. At each stage of counselling, the candidates are called up to register their acceptance on their CENTAC registration page online for the next stage of counselling. Even the Supreme Court has also fixed 31.08.2018 as the last date for admission to the MBBS course across India, which is an inflexible deadline. Hence, the same have to be respected and adhered to by all the colleges and other authorities.

3. While so, when the CENTAC conducted the mop-up counselling on 22.8.2018 to fill up the left out MBBS seats in the colleges affiliated to Pondicherry University, the said mop-up list contained the names of more than 1000 candidates. The second respondent also sent SMS to about 1100 students from the mop-up list on 25.8.2018 asking them to update their choice for the 1:10 in their login until 26 August 5.00 PM. Pursuant to the said SMS and email messages received by the petitioners herein, the eligible candidates including the petitioners registered their names with the second respondent for the stray mop-up counselling. At this juncture, it is pertinent to mention the subsequent development, it is pleaded, that the Madras High Court by order dated 28.8.2018 in W.P.No.18058 of 2018 filed by the fourth respondent college, quashing the order dated 1.5.2018 issued by the Ministry of Health and Family Welfare restricting the students, allowed the writ petition directing the Ministry to grant renewal of permission to the fourth respondent for admitting the fifth batch of MBBS students against the increased intake from 100 to 150 students for the academic year 2018-19 and the learned Judge also in the said order directed that out of 50 seats, 17 shall be the Government quota seats and 33 shall be the Management quota seats with a further direction to the CENTAC to admit the 50 students under the Government and management quotas. Immediately thereafter, the fourth respondent wrote to the CENTAC by letter dated 29.8.2018 requesting to comply with the order of the High Court and allot the 50 students for admission. As there was no response to the said letter, the fourth respondent also sent another letter dated 30.8.2018 requesting the CENTAC to furnish the 1:10 students for the 33 management quota seats who have applied to the CENTAC so as to enable the fourth respondent

college to admit the students, failing which the fourth respondent informed that they would have no option except to admit the students on 31.8.2018 from the merit list of the CENTAC and the mop-up counselling list available on its website since 22.8.2018.

4. Mr.N.L.Rajah, continuing his arguments, submitted that the CENTAC also wrote a letter dated 30.8.2018 to the fourth respondent college informing them that since approval for renewal of permission for increase of seats from 100 to 150 students has not yet been received from the Medical Council of India, the third respondent herein, the filling up of 50 seats and the furnishing of 1:10 merit list also would not arise. Since the Ministry of Health and Family Welfare had issued an order on 30.8.2018 permitting the fourth respondent college to admit the fifth batch of MBBS students against the increased intake from 100 to 150 seats for the academic year 2018-19, the action on the part of the CENTAC in the letter dated 31.8.2018 calling upon the fourth respondent college to desist from unauthorised admission of students in the 50 seats, is wrong. Again referring to the order passed by the Supreme Court in Writ Petition (Civil) No.267 of 2017 dated 9.5.2017 (Dar-Us-Slam Educational Trust and others v. Medical Council of India and others), the learned Senior Counsel submitted that the refusal on the part of the CENTAC to comply with the request of the fourth respondent college, to comply with the order of the High Court allotting students to both the Government and management quota for the additional 50 seats in 1:10 ratio, is unacceptable. It is in these circumstances, the claim of the fourth respondent college that they had no other option except to fill up the 50 seats on 31.8.2018 strictly from the merit list uploaded by the CENTAC on its website to ensure that the 50 seats do not lapse for the academic year 2018-19 and thereupon filling up of the 50 seats from the merit list uploaded by the second respondent on its website for the purpose of conducting the counselling including the mop-up counselling, cannot be found fault with. Therefore, the show cause notice dated 2.9.2018 issued by the CENTAC calling upon the fourth respondent college to explain the unauthorised admission of students, is uncalled for. However, the fourth respondent college, in their reply letter dated 2.9.2018, informed the CENTAC that they are willing to admit the students, provided the time limit is suitably extended by the concerned authorities. However, in the meanwhile, aggrieved by the order dated 28.8.2018 passed by the learned Judge in W.P.No.18058 of 2018 increasing the seats in the fourth respondent college from 100 to 150, the Medical Council of India, the third respondent herein filed S.L.P.No.24064 of 2018. While it came up for hearing on 3.9.2018, the Supreme Court, by order dated 3.9.2018, stayed the operation of the order dated 28.8.2018. However, again on 9.10.2018, the Supreme Court, declining to interfere

with the order dated 28.8.2018, taking note of the statement made by the learned ASC that the students have not been correctly admitted, directed that if admissions were given wrongly, they shall be discontinued and substituted by the proper candidates as per merit within a period of seven days from the said date with a further observation that if any student has been admitted wrongly, his/her fees shall be refunded by the college.

5. Continuing further, the learned Senior Counsel submitted that after the order passed by the Supreme Court on 9.10.2018, the CENTAC sent a communication dated 13.10.2018 to the candidates whose names are included in the list of 330 candidates in the stray mop-up list published on 31.8.2018 midnight calling upon them to attend the counselling on 15.10.2018 and the candidates were also informed that those who pay the first year fees of Rs.16 lakhs alone would be allotted seats. Since the petitioners were in the list of 330 candidates even on the admission made by the fourth respondent college on 31.8.2018, they have been attending the classes after paying the first year tuition fees of Rs.16 lakhs. But the fourth respondent college wrote to the CENTAC stating that 50 students admitted in the management quota on 31.8.2018 have been attending the classes for the past 1 ½ months and any change would severely affect their future. Accordingly, the fourth respondent college requested the CENTAC to consider this and not insist upon the payment of tuition fees by demand draft or cash during the counselling. In spite of the said letter, the CENTAC called up the candidates in the stray mop-up list on 15.10.2018 to allot 33 students to the 33 management quota seats out of 50 seats and based on the said communication, the petitioners also attended the counselling on 15.10.2018. However, they were not selected for the 33 management quota seats, since there were other fresh candidates with higher NEET marks. Explaining further, the learned Senior Counsel submitted that interestingly, the fresh candidates were not physically present on 31.8.2018 in the office of the fourth respondent for the reasons best known to them. Moreover, when 50 students were admitted in the fourth respondent college on 31.8.2018, 28 students were in the 1:10 stray mop-up list and out of these 28 students who were called for counselling by the CENTAC on 15.10.2018, 20 of them were shortlisted and selected, whereas the petitioners were not shortlisted. Therefore, they are aggrieved by their non-selection in the counselling held on 15.10.2018 and the method followed by the CENTAC is in violation of the order passed by the Supreme Court. Referring to the order passed by the Supreme Court in Dar-Us-Slam case, the learned Senior Counsel has contended that the Supreme Court had restricted the role of CENTAC only to send the merit list to the college and thereafter it is for the college to make the admissions, based on which when the CENTAC sent the SMS message

to all the candidates in the 1:10 management quota list on 3.9.2018 asking them to contact the fourth respondent if interested in admissions, reiterating that the fourth respondent was responsible for the stray mop-up for the 33 management seats, the CENTAC cannot reverse their stand before the Supreme Court that they should conduct the counselling and the college was wrong in admitting the students that has resulted in complex problems today. Therefore, the students cannot be faulted for making the payments directly to the college, it is pleaded.

6. Again referring to the order passed by the Supreme Court on 9.10.2018 directing the scrutiny of the admissions, if any, given wrongly, the learned Senior Counsel further contended that not only the order passed by the Apex Court, but also the Regulations of the Medical Council of India have been violated by the CENTAC, because, without conducting a detailed enquiry and the scrutiny of the admissions made by the fourth respondent as directed by the Apex Court in the order dated 9.10.2018, the CENTAC unilaterally decided to conduct the special counselling for the 33 management seats on 15.10.2018 by calling the new candidates in the 1:10 management quota list who had not been physically present on 31.8.2018. When the Apex Court in its order dated 9.10.2018 never mentioned the conduct of special counselling for the 33 management seats and confirmed the order of the learned Judge dated 28.8.2018, all the eight writ petitioners in W.P.Nos.28266 & 30339 of 2018 who are pursuing their course cannot be discharged, as it is in gross violation of the order of the Apex Court and the guidelines issued by the Director General of Health Services, Government of India. Adding further, it was argued that these petitioners were not parties in the appeal filed by the third respondent-MCI before the Supreme Court, therefore, more responsibility is cast upon the CENTAC to scrutinise the list of 50 candidates to find out the eligibility of the 330 candidates for the stray vacancy list including the petitioners and they should also issue notice to these eight petitioners asking them to show cause why their admissions should not be discontinued. Had there been a notice to these petitioners, they would have given a reply to the CENTAC that they have been rightly admitted and satisfied the eligibility criteria. Taking support from the judgment of the Apex Court in Kanachur Islamic Education Trust @ v. Union of India and another, (2017) 15 SCC 702, it was contended that when the Apex Court in the said judgment has held that a reasonable opportunity of hearing is an important ingredient of audi alteram partem rule and that the affected party should be given an opportunity to meet the case against him effectively, no notice whatsoever has been given to the petitioners. When there was no enquiry conducted, the impugned order has to go and the petitioners should be allowed to continue in the fourth respondent college. Assailing the approach of CENTAC, it was submitted that the CENTAC has committed gross illegality in not

publishing/releasing the list for management and government quota seats before the cut-off date (31.8.2018) that is also in violation of the Medical Council of India Regulations and the order passed by the Apex Court. It was also emphatically contended that the CENTAC has committed yet another irregularity by releasing the list of 17 government quota seats on 2.9.2018 and on 3.9.2018, the CENTAC sent SMS to these petitioners to approach the college for filling up the 33 management seats after the crucial date, which is against the law and the Medical Council of India Regulations and also the various judgments of the Apex Court. Since the CENTAC failed to bring the said fact to the Apex Court by committing perjury, the CENTAC is liable to be hauled up for contempt.

7. Justifying the admissions made by the fourth respondent college, it was pleaded that when the last date for admission to the MBBS course for the academic year 2018-19 is 31.8.2018, only on 28.8.2018, the additional 33 management quota seats were sanctioned by the High Court and the CENTAC had enough time to send the list of 330 candidates to the fourth respondent college. Moreover, the Ministry of Health and Family Welfare, Government of India had also approved the 50 additional seats even on 30.8.2018. Therefore, instead of releasing the list of 330 candidates to fill up the 33 management quota seats atleast in the midnight of 30.8.2018, the CENTAC kept quiet. In view of the fact that the deadline would expire on the evening of 31.8.2018, the fourth respondent was forced to admit the students to the management quota seats. Hence, the selection of these petitioners were purely based on the list of 330 willing candidates for the stray mop-up vacancies and their selection is based on merit and not an arbitrary selection. In any event, due to the mistake committed by the CENTAC, the students admitted in the fourth respondent college should not be made to suffer for no fault of them. In such circumstances, to meet out the equity, the fourth respondent college should be directed to surrender the seats from the management quota of the next academic year 2019-20 to accommodate the eight petitioners in the academic session 2018-19, in the light of the ratio laid down by the Apex Court in *Monika Ranka* case reported in (2010) 10 SCC 233, wherein the Apex Court, in the interest of students admitted in excess of the sanctioned strength, gave the relief of permitting them to continue with the course. Even in the case of *Mridul Dhar (Minor) and another v. Union of India and others*, (2005) 2 SCC 65, the Apex Court has held that if any private medical college in a given academic year for any reasons grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall be set off in respect of the excess admission in the previous academic year.

8. Concluding his arguments, Mr.N.L.Rajah, learned Senior Counsel, taking support from the ratio laid down by the Apex Court in the case of Ashish Ranjan and others v. Union of India and others, (2016) 11 SCC 225 holding that the institute/college/courses permitted after 31st May will not be considered for admission/allotment of seats for current academic year and in any circumstances, the last date for admission/joining will not be extended after 31st August, submitted that when the petitioners were all admitted before 31st August, replacing them without notice and making fresh admissions after 31st August by the CENTAC cannot be termed as valid admissions.

9. Mrs.Nalini Chidambaram, learned Senior Counsel appearing for the petitioners in W.P.No.28602 of 2018 pleaded that these 19 petitioners have secured higher NEET marks and if the criteria of merit had been followed by the CENTAC, these 19 petitioners should have been included in the list of 330 candidates and called for counselling. Explaining further, the learned Senior Counsel stated that the first candidate in the list of 40 candidates had secured 484 marks and the last of the candidates in the said list of 40 candidates had secured 310 marks in the NEET, whereas all the 40 candidates who had secured 484 upto 310 marks have been deliberately omitted from the list of 330 candidates prepared in the ratio of 1:10 for the 33 management quota seats. Even the CENTAC also has failed to give any explanation for having omitted to include the list of 40 candidates who even according to the concept of willingness are willing candidates and no further explanation has been offered as to why the said 40 candidates were not included in the 330 list of candidates when they have secured marks between 484 and 310. When the petitioners have participated in the counselling held by the fourth respondent on the last date viz., 31.8.2018 for the 33 seats, they should have been considered. On the other hand, the concept of willingness has been wrongly adopted by the CENTAC, as a result the meritorious candidates like the petitioners have been kept out of consideration. Therefore, the list of 330 candidates prepared by the CENTAC is a flawed list and all the admissions made from the flawed list are to be declared as illegal. Going to the order passed by the Apex Court dated 9.10.2018 directing the CENTAC to scrutinise the fact that the students have been properly admitted with a further direction that if any admissions have been wrongly given, they shall be discontinued and substituted by the proper candidates as per merit, Mrs.Nalini Chidambaram pleaded that the CENTAC, instead of scrutinising the list of 50 candidates by sending notice to them asking them to show cause why their admissions should not be discontinued, without even identifying the candidates who have been wrongly admitted against the 50 seats, wrongly and arbitrarily prepared the 1:10 list of 330 candidates without referring to the higher NEET marks for

admission to the 33 management seats and such an arbitrary procedure adopted by the CENTAC has given the cause of action for the petitioners to come to this Court under Article 226 of the Constitution of India. Moreover, when the petitioners were not parties in the appeal filed by the Medical Council of India before the Supreme Court, they can only file a writ petition under Article 226. The learned Senior Counsel further contended that when a writ under Article 32 of the Constitution of India can be filed only for violation of fundamental rights, a writ under Article 226 can be filed for even violation of fundamental rights or for any other purpose. Therefore, the remedy guaranteed under Article 226 is larger in scope than Article 32 and they have rightly filed the present writ petition under Article 226. Hence, their writ petition should be decided on merits by this Court without directing the petitioners to approach the Supreme Court for such relief.

10. Replying to the arguments of CENTAC that under Clause 7 of the Regulations on Graduate Medical Admission that any candidate admitted in contravention of the Regulations shall be discharged, she has stated that the CENTAC failed to appreciate the Regulation 7. The reason being that Clause 5 of the aforesaid Regulations states that an all India merit list as well as State/Union Territory wise merit list of the eligible candidates shall be prepared on the basis of marks obtained in NEET and candidates shall be admitted to MBBS course from the said list only. Again Clause 8 of the Regulations states that all admissions to MBBS course within the respective categories shall be based on the marks obtained in NEET. While so, the list of 33 candidates published at 11.45 PM on 31.8.2018 by the CENTAC is not based on the marks obtained in NEET, but an arbitrary list ignoring the NEET marks. Therefore, the students selected by the CENTAC alone ought to be discharged as per clause 7 and not the petitioners. Attacking the impugned order, it was further submitted that the order discontinuing the petitioners has been passed in gross violation of the principles of natural justice, therefore, it is a nullity in the eye of law. Had there been a notice issued by the CENTAC to the petitioners, they would have satisfied the CENTAC that the petitioners were selected on merit based on high NEET marks. Therefore, the contention of the CENTAC that the issuance of notice is only an empty formality has to be rejected, it is pleaded. Again justifying the admissions made by the fourth respondent college on 31.8.2018 for the 33 management quota seats, Mrs. Nalini Chidambaram stated that these admissions are not illegal in the facts and circumstances of the case. The reason being that when the last date for admission to the MBBS course for the academic year 2018-19 was 31.8.2018, only on 28.8.2018, the additional 33 management quota seats were sanctioned by the Madras High Court. While so, the CENTAC had the time to send the list of 330 candidates based on NEET marks to the fourth respondent

immediately after the order of the High Court. Even the Ministry of Health and Family Welfare had approved the 50 additional seats on 30.8.2018. Hence, instead of releasing the list of 330 candidates to fill up the 33 management quota seats, the CENTAC had kept quiet till the midnight of 31.8.2018. For the vital reason that the deadline for admission would expire on the evening of 31.8.2018, the fourth respondent college were forced to admit students in the 33 management quota seats based on the merit list sent by the CENTAC for filling up the 100 management quota seats. Therefore, the selection of 33 candidates was from the CENTAC list prepared for the first and second counselling for the 100 seats and the same were based on merit and not an arbitrary one.

11. Projecting the case of Ppavani, the second petitioner herein, the learned Senior Counsel stated that the said student had secured 331 marks in NEET. Being so, she was one of the candidates in the list of 40 candidates prepared by the CENTAC in the ratio of 1:10 for the four stray mop-up seats. Hence, Ppavani was qualified to be included in the list of 330 candidates and should have been called for counselling by the CENTAC for filling up the 33 management quota seats. Again applying the criteria of willingness, Ppavani was qualified as a willing candidate. While so, omitting to include her in the list of 330 candidates and the failure to call her for counselling to fill up the 33 management quota seats vitiates the entire selection made by the CENTAC. Complaining that the CENTAC has not strictly enforced the procedure of admitting the students, the learned Senior Counsel submitted that there were four stray mop-up seats viz., 3 in Sri Venkateswara Medical College and one in Pondicherry Institute of Medical Sciences, the merit list of 40 candidates were prepared by the CENTAC for the said four stray mop-up seats. Since the fourth respondent admitted one candidate by name Arushi who had secured 448 marks found in Serial No.3, the three mop up seats in Sri Venkateswara Medical College were not filled up with the candidates in CENTAC list of 40, but three outside candidates were admitted to the MBBS course after receiving huge capitation fee. However, it is claimed by the CENTAC that they have sent a complaint to the Medical Council of India against Sri Venkateswara Medical College. Therefore, to work out the equities between the parties, deduction of seats from management quota of next academic year could be considered by this Court. She has also pleaded that following the Mridul Dhar case, the Apex Court in State of Madhya Pradesh and another v. Suresh Narayan Vijayavargiya and others, has also held that excess of 107 admissions made by the medical college for the MBBS course during the year 2011-12 should be adjusted in the session 2014-15 in full taking note of the full sanctioned strength and the balance seats also be adjusted in the year 2015-16. Therefore, the learned Senior Counsel submitted that since the students who

were admitted by the CENTAC on 16.10.2018 have established the fact that the CENTAC had made the admissions based on a flawed list of 330 candidates and their admissions were irregular, the admission of the petitioners by the fourth respondent on 31.8.2018 has been rightly made, for no fault on the part of the petitioners, the remedial ratio laid down by the Apex Court in Mridul Dhar case allowing the excess of admission in the management quota in a given academic year to be adjusted in the next academic year for the management quota seats, can be followed.

12. Mr.D.Prabhu Mukunth Arunkumar, learned counsel for the petitioner in W.P.No.29406 of 2018 also adopted the arguments of the respective learned Senior Counsel for the petitioners in the other writ petitions.

13. Detailed counter affidavits have been filed by the respondents 1 and 2. Mr.T.P.Manoharan, learned Senior Counsel appearing for the respondents 1 & 2, questioning the maintainability of the writ petitions, urged this Court to dismiss the writ petitions as wholly not maintainable both on facts and law. He submitted that originally the Pondicherry Institute of Medical Sciences, the fourth respondent herein has sought permission from the Ministry of Health and Family Welfare, Government of India in the academic year 2014-15 for increasing the seats in the first year MBBS degree course from 100 to 150 seats. The said Ministry has granted permission for such increase of 50 seats for the said academic year and admission of students in those seats. Thereafter, the Ministry had granted permission to increase from 100 to 150 seats i.e., to increase 50 seats in the fourth respondent college for the academic years 2015-16, 2016-17, 2017-18. However, for the academic year 2018-19, based on the inspections made by the Medical Council of India in the fourth respondent college in August 2017, February and April, 2018, by order dated 1.5.2018, the Ministry also refused permission to increase 50 seats with a direction to the fourth respondent college not to admit students in those 50 seats. In the meanwhile, for the academic year 2018-19, as per Regulation 5-A of the Regulations on Graduate Medical Education as amended in 2017 and the orders of the Apex Court in W.P.(C) No.267 of 2017, the Government of Puducherry have prepared and notified the seat matrix and the CENTAC has conducted a common counselling viz., first and second rounds of counselling and mop-up counselling for the 100 seats in the fourth respondent college for the 37 seats under the Government quota and 63 seats under the management quota and also selected candidates in accordance with their merit score in the NEET. Thereafter, it has forwarded the same to the fourth respondent college by transferring the fees deposited by the said candidates to the said college and ultimately the fourth respondent also has admitted them.

14. However, during the previous academic year, many non-selected candidates in the panel of merit list of all the applied candidates prepared for the said year had not shown interest in the stray vacancies and the same led to complications. In view of the said experience, the CENTAC has requested the non-selected candidates in the overall merit list of all the applied candidates prepared for the academic year 2018-19 including the petitioners in the above writ petitions to express their willingness for consideration for admission to the vacancies including stray vacancies that arose in the fourth respondent college and based on the willingness given by the candidates, in accordance with the directions issued by the Supreme Court in Dar-Us-Slam case, the CENTAC has forwarded the list of 40 candidates from those willing candidates for consideration for admission to the four stray vacancies arose in the fourth respondent college. Again after increase of 50 seats in the fourth respondent college on 31.8.2018, they prepared a merit list of willing candidates containing 330 candidates from those willing candidates in accordance with their merit score in the NEET to the 33 college seats for consideration in the said 50 increased seats and published the same in the website. So far as the petitioners in the above writ petitions are concerned, they have not recorded their willingness for consideration in the vacancies including stray vacancies. In view thereof, the CENTAC has not included their names in the merit list of willing candidates prepared for the fourth respondent college, therefore, they became ineligible for consideration for admission in the 50 increased seats in the said college.

15. Continuing his arguments, Mr.T.P.Manoharan submitted that the fourth respondent college, being aggrieved by the order dated 1.5.2018 refusing permission to increase 50 seats, filed W.P.No.18058 of 2018 and this Court, by order dated 28.8.2018, was pleased to issue three directions, (a) directing the Ministry of Health and Family Welfare to grant renewal of permission to the fourth respondent college to admit students to the first year MBBS degree course to 150 seats for the academic year 2018-19, (b) to record the agreement of the fourth respondent college to surrender 17 seats out of the 50 increased seats to the Government of Puducherry, (c) directing the CENTAC to admit students to both the 17 government seats and the 33 management seats, in all the 50 increased seats through the counselling conducted by it as per Regulation 5-A of the Regulations on Graduate Medical Education and the orders of the Apex Court. Pursuant to the order passed by this Court, the Ministry of Health and Family Welfare, Government of India vide order dated 30.8.2018 permitted the fourth respondent college to increase the seats in the first year MBBS course from 100 to 150 seats for the academic year 2018-19 subject to the outcome of the appeal/SLP, if any, to be filed by the Medical Council of India and also admit students in those seats. That order was

received by the Government of Puducherry only on 31.8.2018. Since Regulation 5-A of the Regulations on Graduate Medical Education as amended in 2017 and the orders passed by the Apex Court and the specific direction issued by this Court on 28.8.2018 in W.P.No.18058 of 2018 directing (i) the Government of Puducherry to make reservation to the OBC, MBC, SC, BCM, EBC and BT for filling up of 17 government quota seats, (ii) the CENTAC to conduct a common counselling for the said 50 seats i.e., 17 seats under the government quota with the reservation and 33 seats under the management quota of the fourth respondent college, (iii) to select candidates for those categories as per the merit score in the NEET for each category for admission to the first year MBBS degree course, (iv) to collect the fees fixed for those seats and transfer the same to the said college and (v) the said college is bound to admit them and receive the fees from the CENTAC, the Government of Puducherry has made reservation to various categories for the seats earmarked under the government quota of 17 seats and prepared and notified a revised seat matrix.

16. On 31.8.2018, the CENTAC also has prepared a merit list of willing candidates containing 330 candidates on the basis of the merit score in the NEET for admission to the 33 management quota seats and the same was also published in the website. Again the CENTAC also informed the fourth respondent college by letter dated 31.8.2018 sent by email at 2.24 PM that having received the orders dated 30.8.2018 from the said Ministry and in compliance with the direction issued by this Court, it is proposing to conduct common counselling for selection of candidates for admission to the 50 increased seats, both for the 17 government quota seats and 33 management quota seats. In the said letter, it was also stated that to enable the candidates hailing from Yanam and Mahe which are situated 700 to 800 Kms away to participate in the said counselling, it has fixed the said counselling on 3.9.2018. But the fourth respondent college wrongly changed their mind thereafter and in utter violation of Regulation 5-A of the Regulations on Graduate Medical Education and also in breach of the orders of the Apex Court in W.P.(C) No.267 of 2017 and also the specific directions issued by this Court in its order dated 28.8.2018 made in W.P.No.18058 of 2018, highhandedly proceeded to follow a method of its own to admit students to all those 50 seats including the government quota on its own through backdoor. By letter dated 30.8.2018, the fourth respondent college has requested the CENTAC to issue 1:10 merit list with phone numbers. Since such action was unauthorized, illegal and forbidden, as the selection of candidates for those 50 seats should be made only by the CENTAC through counselling, the CENTAC as per law refused to furnish such list. In spite of the refusal by the CENTAC to such unreasonable admission, the fourth respondent has highhandedly chosen 50 candidates including the petitioners in the above writ petitions from the

lapsed overall merit list of all the applied candidates on its own that too, without reference to the merit score in the NEET and also unauthorisedly, wrongly, illegally made the irregular admission to all the 50 increased seats, which is against Regulation 5-A of the Regulations on Graduate Medical Education and also the orders passed by the Supreme Court passed in W.P. (C) No.267 of 2017 in Dar-Us-Slam case. Moreover, they also received huge fees fixed for college seats for the 17 government quota seats also. Peculiarly, the fourth respondent has admitted the petitioners herein when their phone numbers were not shared by the CENTAC. When the petitioners are also aware of the fact that the admissions made by the fourth respondent college on its own through backdoor are unauthorized, irregular, wrong and illegal, they have taken a calculated risk, therefore, it is not open to the petitioners to say that there is no fault on their part in getting admission in the fourth respondent college. By letter dated 31.8.2018 sent through email at 2.23 PM, the fourth respondent college also informed the CENTAC against the said unauthorized, irregular admissions made by the college on its own, hence, they were discharged by the impugned order. Mr.T.P.Manoharan, learned Senior Counsel, taking support from the judgment of the Apex Court in State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436, quoting its judgment in Upen Chandra Gogoi v. State of Assam, (1998) 3 SCC 381, holding that if an order is bad in its inception, it does not get sanctified at a later stage and a right in law exists only when it has a lawful origin, submitted that the continuation of a candidate wrongly admitted does not create any right in his/her favour. Again taking support from the judgment of the Apex Court in Mahatma Gandhi University and another v. Gis Jose and others, (2008) 17 SCC 611, Mr.Manoharan pleaded that even misplaced sympathies should not have been shown either to the fourth respondent or the students admitted by the fourth respondent, because such a course has been disapproved by the Apex Court in CBSE v. Sheena Peethambaran, (2003) 7 SCC 719, wherein the Apex Court on several occasions deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petition. Therefore, no such misplaced sympathy should be shown to the petitioners. Once they are discharged, they have no right to continue their college studies.

17. The learned Senior Counsel also submitted that these things have been rightly appreciated by the Supreme Court when the Medical Council of India filed an appeal against the order dated 28.8.2018 passed in W.P.No.18058 of 2018 imposing exemplary costs of Rs.50 lakhs upon the college payable to the Supreme Court Advocate on Record Welfare Trust and SCBA Advocates' Welfare Fund equally i.e., Rs.25 lakhs each. The exemplary costs imposed on the fourth respondent college was already paid by the fourth respondent college. The CENTAC also

directed the fourth respondent to discontinue all the candidates including the petitioners in the above writ petitions and to refund the fees collected by the college from them, because the CENTAC has to substitute them by the available proper candidates as per merit through the counselling conducted by it in accordance with the merit score of the candidates in the NEET on or before 16.10.2018. Since the Supreme Court, by order dated 9.10.2018, directed the CENTAC to examine whether any admissions were made wrongly so that they shall be discontinued and substituted by the available proper candidates as per merit within seven days on or before 16.10.2018, the CENTAC has selected the 17 candidates for the government seats in accordance with the merit score in the NEET and prepared a select list on 15.10.2018. Thereafter, the CENTAC collected the fees from them, transferred the same to the fourth respondent college in respect of the 17 government seats and the same was also accepted by the fourth respondent college and the students are attending classes on and from 16/17.10.2018. Likewise, for the 33 managements seats, the CENTAC has published the merit list of the 330 willing candidates for the special counselling to be held on 15.10.2018 and selected 33 candidates in accordance with their merit score in the NEET and thereafter collected fees from them and transferred the same to the fourth respondent college and the fourth respondent also accepted the same and the said students are also attending classes on and from 16/17.10.2018. Mr.T.P.Manoharan also submitted that in the said counselling, 20 candidates, who are in the merit list of willing candidates, having realized that their admissions are wrong, had participated. So far as the petitioners in W.P.Nos.28266 and 29406 of 2018 who have given their willingness are concerned, they have secured lesser score of only 154, 164, 169, 160, 165, 171, 170 & 159 respectively, which is much lesser than the merit score of 174 obtained by the 33rd candidate in the selection list. Hence, they were not selected and included in the selection list for admission. After selecting them, the second direction issued by the Supreme Court to discontinue the wrongly admitted students was also considered. Accordingly, the impugned order has been issued discharging the candidates who wrongly obtained admission in the fourth respondent college behind the back of CENTAC, which is also in violation of Regulation 5-A of the Regulations on Graduate Medical Education. Therefore, no interference is called for, he pleaded.

18. Mr.V.P.Raman, learned standing counsel appearing for the Medical Council of India, the third respondent herein submitted that the present cases are an unique one, since 50 additional seats were created by an order dated 28.8.2018, just two days before the expiry of the cut off date i.e., 31.8.2018. Under normal circumstances, when additional seats are created before the first round of counselling, such additional seats will not be filled through stray vacancy list, but in the regular rounds

of counselling viz., first, second or mop-up round conducted by the CENTAC. In the present cases, the CENTAC sought to fill up the 50 additional seats as stray vacancies taking 1:10 ratio as laid down by the Apex Court in paragraph-7 of Dar-Us-Slam case. Accordingly, the CENTAC also followed the procedure only by 11.45 PM/midnight on 31.8.2018, whereas the direction issued by the Supreme Court in Dar-Us-Slam case does not contemplate any willingness to be obtained from the available candidates, as has been done by the CENTAC in the present cases, but merely directed the list to be drawn up as per merit. However, in the meanwhile, the fourth respondent college proceeded unilaterally to admit 50 students, which is impermissible in law, since any admission could have been made by the list prepared by the CENTAC as per Regulation 5-A. Since the violation is apparent in the present cases, because the fourth respondent college undertook to surrender 17 seats to the government quota and retaining 33 seats in the management quota, the same was recorded in W.P.No.18058 of 2018. However, contrary to the same, even the 17 government quota seats were also filled up by the fourth respondent college. When the order dated 28.8.2018 was questioned before the Apex Court, the Apex Court, upholding the order, further directed the standing counsel for CENTAC to scrutinize the admissions made on 31.8.2018 by the fourth respondent college. Now the Medical Council of India is in a position to recognize only 50 additional seats, whereas 77 candidates are undergoing the MBBS course in the place of 50 admissions. Now the Medical Council of India cannot recognize the admissions made by the college unilaterally on 31.8.2018, but only those admissions made through CENTAC through the counselling held on 15.10.2018. However, the issue whether the exercise conducted by the CENTAC was right or not is a matter between the petitioners and the CENTAC.

19. Heard learned counsel for the parties.

20. Originally, the fourth respondent college viz., Pondicherry Institute of Medical Sciences (PIMS), for the academic year 2014-15, sought permission from the Ministry of Health and Family Welfare, Government of India for increasing the seats in the first year MBBS degree course from 100 to 150. The Ministry has granted permission to such increase of 50 additional seats for the said academic year and thereafter, it has also granted permission to the fourth respondent college to the additional increase of 50 seats for the academic years 2015-16, 2016-17 and 2017-18. However, for the academic year 2018-19, based on the inspections made by the Medical Council of India at the fourth respondent college in August 2017, February and April, 2018, by order dated 1.5.2018, the Ministry refused permission for increase of 50 seats and directed the fourth respondent college not to admit students in these 50 seats. Questioning the order dated 1.5.2018, W.P.No.18058 of 2018 was

filed by the college. This Court, by order dated 28.8.2018, was pleased to allow the writ petition with the following directions:-

"35. In such circumstances, this Court is inclined to allow the Writ Petition, so as to enable the petitioner institution to admit 5th batch of MBBS students against increased intake from 100-150 seats during the academic year 2018-2019.

36. This Writ Petition is allowed. The impugned order of the first respondent dated 01.05.2018 in reference No.U/12012/2018-Mw-1 [FTS.3150193] is quashed and the first respondent is directed to grant renewal of permission forthwith to the petitioner institution for admission of the 5th batch of MBBS students against increased intake from 100 to 150 seats during the academic year 2018-2019. The respondents shall do the needful to enable the petitioner to admit the students against increased intake from 100 to 150 seats during this academic year.

37. Since the petitioner has agreed to surrender 17 seats out of 50 seats to the Government, the third respondent is directed to admit students under the Management Quota and Government Quota respectively. Accordingly, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed."

21. By virtue of the said order, the Ministry of Health and Family Welfare, Government of India in its order dated 30.8.2018 permitted the fourth respondent college to increase the seats in the first year MBBS degree course from 100 to 150 for the academic year 2018-19 subject to the outcome of appeal/SLP, if any, to be filed by the Medical Council of India. After receipt of the order dated 30.8.2018 from the Ministry of Health and Family Welfare, the Government of Puducherry also made reservation to the OBC, MBC, SC, BCM, EBC and BT for filling up of 17 government quota seats and notified the revised seat matrix on 31.8.2018. So far as the 33 management seats are concerned, the CENTAC has prepared a merit list of willing candidates on 31.8.2018 containing 330 candidates from those willing candidates in accordance with the merit score in the NEET for admission and published the same in its website. By letter dated 31.8.2018 sent through email at 2.24 PM, the CENTAC informed the fourth respondent college about the receipt of the order dated 30.8.2018 from the Ministry of Health and Family Welfare. It was indicated therein that the CENTAC proposes to

conduct a common counselling for selection of the candidates for admission to the 50 increased seats, both for the 17 government quota seats and 33 management quota seats. In an effort to enable the students hailing from Yanam and Mahe which are situated 700-800 Kms away to participate in the said counselling, the counselling date was fixed on 3.9.2018. Ironically, the fourth respondent college, in violation of Regulation 5-A of the Regulations on Graduate Medical Education and also the orders of the Apex Court passed in W.P.(C) No.267 of 2017, without any authority, wrongly proceeded to follow the procedure of its own for admission of the entire 50 students including 17 government quota seats on its own through backdoor after agreeing to surrender 17 government seats. In this context, it is necessary to see the procedure contemplated under Regulation 5-A, which reads as follows:-

"5-A 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 counselling 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."

22. A close reading of Regulation 5-A shows that there shall be a common counselling for admission to the MBBS course only on the basis of the merit list in the National Eligibility cum Entrance Test and that shall be conducted by the State/Union Territory Government. A careful perusal of Regulation 5-A also shows that the common counselling shall be conducted by the State/Union Territory Government under the overall superintendence and control of the State/Union Territory Government. Even Regulation 5(7), which reads as follows,

"5(7). No authority/institution shall admit any candidate to the MBBS course in contravention of the criteria/procedure as laid down by these

Regulations and/or in violation of the judgments passed by the Hon'ble Supreme Court in respect of admissions. Any candidate admitted in contravention/violation of aforesaid shall be discharged by the Council forthwith. The authority/institution which grants admission to any student in contravention/ violation of the Regulations and/or the judgments passed by the Hon'ble Supreme Court, shall also be liable to face such action as may be prescribed by the Council, including surrender of seats equivalent to the extent of such admission made from its sanctioned intake capacity for the succeeding academic year/years.”,

makes it clear that no authority shall admit any candidate to the MBBS course in contravention of the procedure laid down in the Regulations as well as by the orders passed by the Apex Court in respect of the admissions. No doubt, the fourth respondent in a letter dated 30.8.2018 requested the CENTAC to provide 1:10 merit list for admission of candidates under the management quota, for which a reply was given by the CENTAC on 30.8.2018 at 5.30 PM that no approval has been received regarding increased intake, therefore, the question of counselling would not arise and also the question of furnishing 1:10 list would also not arise. In the meanwhile, the fourth respondent wrongly admitted the students under the management quota unilaterally without going through the counselling process through the designated authority viz., CENTAC. Therefore, the CENTAC in its communication dated 2.9.2018 sent through email at 2.35 PM informed the fourth respondent to desist from such activity of unauthorized filling up of seats, since the CENTAC is the only authority to hold counselling for the purpose of selecting the meritorious candidates for admission to the MBBS course in various colleges.

23. Even a close perusal of Regulation 5-A also shows that the common counselling shall be conducted by the CENTAC and making reservation to the OBC, MBC, SC, BCM, EBC and BT for filling up of the government quota seats and these candidates are to be selected for these seats as per the merit score in the NEET in the first year of admission to the MBBS degree course. Thereafter, the CENTAC has to collect the fees fixed for these seats, transfer the same to the said college. On receipt of the same, the said college is bound to admit them and collect the fees from the CENTAC. Since no other method can be followed by anyone including the fourth respondent, the choosing of candidates by the fourth respondent college including the petitioners without the merit list of all the applied candidates published by CENTAC on its own that too, without reference to the merit score in the NEET, is wrong. Therefore, only the

Supreme Court in its order dated 9.10.2018 has directed the CENTAC to examine the wrong admissions made by the fourth respondent and to discontinue them by substituting from the proper available candidates as per merit. Hence, the admissions made by the fourth respondent college to all the 50 increased seats including the 17 government quota seats on its own through backdoor were considered by the CENTAC. Finally, when the CENTAC has sent a revised selection list of 17 candidates on 15.10.2018 for the government quota seats and transferred the fees deposited by them, the fourth respondent college, having accepted the same, admitted these students to the first year MBBS degree course and they have been attending the classes on and from 16/17.10.2018. So far as the 33 management seats in the fourth respondent college are concerned, the counselling fixed by the CENTAC on 31.8.2018 was cancelled. Thereafter, a press release was issued and the special counselling was conducted on 15.10.2018 to comply with the orders of the Supreme Court. The CENTAC in the said counselling has called the 330 candidates in the merit list of willing candidates which was published on 31.8.2018 in the order of merit score in the NEET and the fourth respondent also has accepted the said selection and admitted the said 33 selected candidates also in the first year MBBS degree course and permitted them to attend classes on and from 16/17.10.2018. Therefore, the rest of the candidates including the petitioners who were admitted by the fourth respondent unilaterally and continuing their first year MBBS degree course, have been rightly discharged by the CENTAC.

24. One of the contentions made by Mrs.Nalini Chidambaram that Ms.Ppavani who is qualified and willing candidate has been omitted to be included in the list of 330 candidates published by CENTAC and the failure to call her for counselling to fill up the 33 management quota seats vitiates the entire selection made by CENTAC, also cannot be examined by this Court, since the fourth respondent has admitted the said Ppavani without receiving any merit list on the basis of the NEET score from the CENTAC. The conduct of the fourth respondent college in unilaterally admitting the writ petitioners when their phone numbers have not been shared by the CENTAC, raises a serious suspicion on the bona fide of the petitioners' claim of innocence, because when all the petitioners have applied and participated in the previous counselling conducted by the CENTAC, they were fully aware of the admission made by the fourth respondent college on its own through backdoor. However, notice should have been issued by the CENTAC to all the petitioners informing them to take part in the counselling before sponsoring the 17 candidates under government quota and 33 candidates under the management quota on the basis of the NEET score. Since the CENTAC has committed a mistake, in view of the factor that the cut-off date fixed for medical admissions was to expire on 31.8.2018 and secondly the Supreme Court also

has given only seven days time to find out the wrong admissions done by the fourth respondent and substitute them from the proper candidates, this Court is not inclined to go into the said technical issue now.

25. Considering the facts and circumstances of the present cases, it is also very difficult to accept the request of the petitioners to apply the carry forward rule as laid down by the Apex Court in Mridhul Dhar (minor) case. The reason being that as against the 50 enhanced intake in the first year MBBS degree course, the fourth respondent college, violating Regulation 5-A of the Regulations on Graduate Medical Education and also the order passed by this Court, admitted candidates in both the government and management quota without receiving any merit list from the CENTAC and overstepped its limit by admitting the writ petitioners. Hence, this Court is not inclined to accept the case of the petitioners herein to adjust the excess of admission in the next academic year under the management quota when they have secured lesser merit score in comparison to the other candidates in the NEET.

26. The Apex Court in Kunwar Pal Singh (dead) by Lrs v. State of U.P. and others, (2007) 5 SCC 85 has held that there is no option left with anyone to give up or waive any mode and all such modes have to be strictly resorted to. In the light of the legal principle that when a statutory provision provides a particular manner to do a particular act, then, that thing or act must be done in accordance with the manner prescribed therefor in the Act. As discussed above, when Regulation 5-A mentioned supra clearly mandates that there shall be a common counselling for admission to the MBBS course and only on the basis of the merit list in the National Eligibility cum Entrance Test, admission shall be granted, the fourth respondent, without following the mandatory Regulation 5-A, has wrongly given admissions. Therefore, the petitioners are not entitled to continue. Besides, it is also a well settled legal position that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside, as the right in law exists only when it has a lawful origin. Therefore, when the fourth respondent violating Regulation 5-A admitted 50 students, they do not have a right to continue. In this context, it is relevant to extract paragraph-37 of the judgment of the Apex Court in State of Orissa and another v. Mamata Mohanty, (2011) 3 SCC 436, as follows:-

"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the

reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside. A right in law exists only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of Assam, (1998) 3 SCC 381, Mangal Prasad Tamoli v. Narvadeshwar Mishra, (2005) 3 SCC 422 and Ritesh Tewari v. State of U.P., (2010) 10 SCC 677).

In the light of the above, when the fourth respondent has admitted 50 students violating Regulation 5-A, they are not entitled to continue.

27. More importantly, the Hon'ble Supreme Court also in its order dated 9.10.2018 has issued a specific direction to the fourth respondent college to discontinue those wrongly admitted students from the course and refund the fees paid by them and also accepted all the 50 selections made by the CENTAC in accordance with the merit score in the NEET by admitting them in the 50 increased seats and this apart, they also received the fees deposited by them in the CENTAC. Therefore, when the decision of the Supreme Court is binding on all the parties, the petitioners cannot complain of the action taken by the CENTAC. It is also pertinent to refer to paragraphs 71, 77, 78 of the judgment of the Apex Court in Om Prakash Verma and others v. State of Andhra Pradesh and others, (2010) 13 SCC 158, as follows:-

"71. In Palitana Sugar Mills (P) Ltd v. State of Gujarat, (2004) 12 SCC 645 this Court reiterated the principle that a judgment of this Court is binding on all and it is not open to contend that the full facts had not been placed before the Court. In this regard, para 62 of the judgment reads as follows: (SCC p.665)

"62. It is well settled that the judgments of this Court are binding on all the authorities under Article 141 of the Constitution and it is not open to any authority to ignore a binding judgment of this Court on the ground that the full facts had not been placed before this Court and/or the judgment of this

Court in the earlier proceedings had only collaterally or incidentally decided the issues....."

77. In *Hoystead v. Taxation Commr.*, 1926 AC 155, the Privy Council observed: (AC pp.165-66)

"....Parties are not permitted to begin fresh litigations because of new views that they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle."

78. As rightly observed by the High Court, what is of utmost relevance is the final judgment of the superior court and not the reasons in support of that decision. Apart from the legal position and the effect of allowing of the appeals and dismissing the writ petitions by this Court, the contention with regard to the land being agricultural land was raised in the writ petitions which were the subject-matter of the appeals filed in this Court. In these proceedings, the State categorically took the stand that the lands are not agricultural. It was brought to our notice that the present appellants as respondents in the earlier round did not urge this plea before this Court and no such arguments were advanced before this Court. In view of the same, the appellants are not entitled to raise any such contention now. The effect of allowing the said appeals is that WP Nos.18385 of 1993 and 238 of 1994 stood dismissed."

In the light of the above, when the direction has been issued by the Supreme Court to the CENTAC, it is no longer open to the petitioners to contend that their admissions were not considered.

28. For all the aforementioned reasons, this Court is not inclined to interfere with the impugned order. Accordingly, all the writ petitions fail and they are dismissed. Consequently,

the connected miscellaneous petitions including the impleading petitions are also dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss

To

- 1.The Secretary to Government
Government of Puducherry
(Higher and Technical Education)
Chief Secretariat
Puducherry 605 004
- 2.The Co-ordinator (Admission)
Government of Puducherry
Centralised Admission Committee (CENTAC)
Pondicherry Engineering College Campus
Puducherry 605 014
- 3.The Secretary
Medical Council of India
Sector-VIII, Dwaraga Phase-II
New Delhi 110 077
- 4.The Registrar
Pondicherry Institute of Medical Science
Kalapet,Puducherry 605 014.

+4ccs to the Government Pleader for Puducherry,
S.R.Nos. 11569 to 11572

+4ccs to Mr.N.Umapathi, Advocate, S.R.No.11585

+1cc to Mr.V.P.Raman, Advocate, S.R.No.11594

+1cc to Mr.D.Prabhu Mukunth Arunkumar, Advocate, S.R.No.11618

+2ccs to Mr.Abishek Jenasenan, Advocate, S.R.No.11711.

W.P.Nos.28266 of 2018,
28602,29406,30339 of 2018

KAN(CO)

rrs 12/02/2019