

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.08.2020

DELIVERED ON : 13.08.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.Nos.494 and 500 of 2020

W.A.No.494 of 2020:

Sri Venkateshwaraa Medical College Hospital
and Research Centre,
rep. by its Chairman B.Ramachandran,
Main Road, Ariyur,
Puducherry - 605 102. .. Appellant /Petitioner

Vs.

- 1.Medical Council of India,
rep. by Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077.
- 2.Government of Puducherry,
rep. by its Secretary,
Health Department,
Chief Secretariat, Puducherry.
- 3.Centralized Admission Committee,
rep. by Coordinator (Admission),
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.
- 4.The Pondicherry University,
rep. by its Registrar,
R.V. Nagar, Kalapet,
Puducherry - 605 014. .. Respondents/Respondents

W.A.No.500 of 2020:

1.Mahesh M.R.S.

2.Shri Preethi M. ..1st & 2nd Appellant/3rd party

Vs.

1.Sri Venkateshwaraa Medical College Hospital
and Research Centre,
rep. by its Chairman B.Ramachandran,
No.13-A, Pondy-Villupuram Main Road, Ariyur,
Puducherry - 605 102.

2.Medical Council of India,
rep. by Secretary,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077.

3.Government of Puducherry,
rep. by its Secretary,
Health Department,
Chief Secretariat,
Puducherry.

4.Centralized Admission Committee,
rep. by Coordinator (Admission),
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.

5.The Pondicherry University,
rep. by its Registrar,
R.V. Nagar, Kalapet,
Puducherry - 605 014.

.. Respondents

Prayer: Appeals filed under Clause 15 of the Letters Patent
against the order dated 11.03.2020 passed in W.P.No.15095 of
2019.

WP.No.15095 of 2019:Writ of Mandamus directing the 2nd & 3rd
Respondent to approve the admission of Candidates (i)Bolini Damu
V., (ii) Mahesh M.R.S. (iii) Sabari Ganesh P. and (iv) Shri

Preethi .M in the MBBS course offered by the petitioner Institution during the Academic year 2018-2019.

For Appellant in : Mr.AR.L.Sundaresan
W.A.No.494 of 2020 Senior Counsel
and Respondent No.1 in for Mr.J.Abishek
W.A.No.500 of 2020

For Appellant in Mr.N.L.Rajah,
W.A.No.500 of 2020 Senior Counsel
for M/s.Hari Radhakrishnan

For Respondents : Mr.V.P.Raman
for respondent No.1 in
W.A.No.494 of 2020 and
respondent No.2 in
W.A.No.500 of 2020
Ms.N.Mala
Addl. Govt. Pleader (Pondy)
for respondent Nos.2 & 3
in W.A.No.494 of 2020
and respondent Nos.3 & 4
in W.A.No.500 of 2020
: Mr.M.Ravi
for Respondent No.4 in
W.A.No.494 of 2020
and Respondent No.5
in W.A.No.500 of 2020

COMMON JUDGMENT

The Hon'ble Chief Justice

Disputing the correctness of the judgment dated 11.03.2020 by a learned Single Judge, the present appeals have been filed by the petitioner/appellant Institution and by two other students seeking leave to appeal in a matter relating to admissions against four seats of MBBS course to the four candidates who were admitted by the appellant Institution on the ground that they remained vacant even after the last stage of counselling conducted by the Centralized Admission Committee (CENTAC), Government of Puducherry. The appellant Institution is a privately managed Medical College governed by the provisions of the Medical Council of India (MCI) and other relevant laws in this regard.

2. The learned Single Judge held that the appellant Institution, in violation of Clause 5(7) of the MCI Regulations, has unilaterally admitted these four students, which is in direct conflict with law and the judgments of the Apex Court governing the field. A compensation of Rs.1.00 lakh to each of the four students has also been directed to be paid by the appellant Institution with a further observation that the official respondents may explore the possibility of accommodating them in any other Institution in the coming academic year based on their merit.

3. Writ Appeal No.494 of 2020 has been filed by the original petitioner Institution. The writ petition giving rise to the said appeal is W.P.No.15095 of 2020, where the relief sought is for issuance of a Writ of Mandamus directing the Government of Puducherry, through its Health Secretary and the Centralized Admission Committee, represented by its Coordinator (Admission), Government of Puducherry, to approve the admission of four candidates admitted by the Institution viz., (i) Bollini Damu V., (ii) Mahesh M.R.S., (iii) Sabari Ganesh P. and (iv) Shri Preethi M. in the MBBS course offered by the Institution for the academic year 2018-2019.

4. Writ Appeal No.500 of 2020 has been filed by two of the aforesaid candidates viz., Mahesh M.R.S. and Shri Preethi M. in their individual capacity, who were not parties to the writ petition, but were granted leave to appeal vide order dated 18.06.2020, whereafter the said appeal has been entertained.

5. The other two students viz., Bollini Damu V. and Sabari Ganesh, P., whose admissions are sought to be protected by the Institution have neither been impleaded in either of the proceedings nor they have filed their separate appeal questioning the impugned judgment of the learned Single Judge.

6. A counter-affidavit was filed in the writ petition by the Medical Council of India; the Government of Puducherry and the Centralized Admission Committee as well as by the Pondicherry University to whom the responsibility of verifying the documents and certificates as well as the eligibility conditions is entrusted in the process of admission.

7. Shri AR.L.Sundaresan, learned Senior Counsel has advanced his submissions in W.A.No.494 of 2020; Shri N.L.Rajah, learned Senior Counsel has advanced in submissions in W.A.No.500 of 2020; Ms.Mala, learned Additional Government Pleader (Puducherry) has advanced her submissions on behalf of the

Government of Puducherry, Centralized Admission Committee; Shri M.Ravi for Pondicherry University and Shri V.P.Raman has been heard for the Medical Council of India. Learned counsel have also filed their typed set of papers in these appeals. Written submission has also been filed on behalf of the appellant Institution and learned counsel for the Medical Council of India has also placed before this Court the communication dated 5.8.2020 received by him from the Medical Council of India in the shape of submissions.

8. Before we proceed to deal with the arguments advanced, the narration of facts needs to be recorded, apart from the facts that have been narrated by the learned Single Judge in the impugned judgment.

9. The appellant Institution has a total approved intake of 150 Under Graduate seats in the MBBS course, out of which 55 are the Government Quota seats for the Union Territory of Puducherry and 95 seats are treated as Management Quota seats. The Centralized Admission Committee issued a provisional allotment list after the first round, the second round of counselling and the Mop Up phase both in the Government Quota as well as the Management Quota. The said list has been gainfully indexed in the type set of papers filed by the Medical Council of India. This list was notified on 22.08.2018. The announced schedule was 31.08.2018 as the last date for admissions as fixed by the Apex Court.

10. The Centralized Admission Committee reported the stray vacancies that remained unfilled after the Mop Up phase vide letter dated 27.08.2018, informing that one seat has remained vacant in the Pondicherry Institute of Medical Sciences, Puducherry and three seats remain unfilled in the appellant's Medical College. It also referred to the order passed by the Apex Court on 09.05.2017 in the case of Dar-Us-Slam Educational Trust and others v. Medical Council of India and others, W.P.(C) No.267 of 2017 and further intimated that in compliance of the said judgment, a list of 40 candidates in the ratio of 1:10 was being sent in order of merit between the score of 484 to 310 for being filled up by the two Institutions, only from the said list before 31.8.2018. The said list contains the names of 40 candidates, which is also placed on record in the typed of papers filed by the Medical Council of India.

11. The case of the appellant Institution is that on having received the said intimation dated 27.8.2018 from the CENTAC, none of the forty candidates mentioned in the list reported for taking admission as on 30.8.2018. The institution vide letter

dated 30.8.2018 addressed to the Government of Puducherry with a copy of the same to CENTAC, requested that the entire list of merit according to the NEET qualified candidates registered with the CENTAC was available, which may be provided so that the Institution may proceed to fill up the vacant seats in the Institution.

12. We may record that till 30.8.2018 there were only three vacant seats available in the appellant Institution. In paragraph (11) of the writ petition, the College/Institution has stated that on 31.8.2018, another seat fell vacant as one Mr.Jaya Subramani, who had been duly allotted the seat by the CENTAC, had expressed his inability to join the course. Thus, a fourth vacancy also came into existence which had not been intimated to the CENTAC prior to admission.

13. The appellant Institution then in paragraph (12) has stated that since the Government of Puducherry as well as the CENTAC authorities remained silent and gave no response to the letter dated 30.8.2018, certain students approached the Institution who had cleared the NEET examinations who were admitted by the College directly as per the inter-se merit. The inter-se merit and the CENTAC number of the said candidates which have been narrated in the writ petition is extracted hereunder:

S.No.	Candidate Name	NEET Marks	CENTAC S.No.
1	Sabri Ganesh P.	160	6774
2	Mahesh M.R.S.	150	7136
3	Bollini Damu V.	142	7401
4	Shri Preethi M.	131	7832

It is thereafter that the Institution states that it had sent a letter dated 05.9.2018 to the Medical Council of India with a copy of the same to the State Government giving details of the candidates admitted to the MBBS course in the academic year 2018-2019. A letter was also despatched on the same day to the Director of Health and Family Welfare, Government of Puducherry and another letter to the CENTAC. A further clarification sent on 14.9.2018 by the appellant to the Director of Health and Family Welfare Services, in response to some telephonic conversation, states that the fourth candidate came to be

admitted on 31.08.2018 at the last minute on account of the withdrawal of the candidature of Mr.Jaya Subramani, as indicated above.

14. There is one more link which deserves to be completed with the aid of the typed set filed by the Medical Council of India viz., the letter sent by the Director of Health and Family Welfare Services to the Medical Council of India on 05.10.2018. Through this letter, the Director of Health and Family Welfare Services, Puducherry, informed the Secretary, Medical Council of India that in respect of the appellant Institution, four candidates had been admitted from outside the list that had been forwarded by the CENTAC, which is against the direction of the Hon'ble Supreme Court and the instruction of Ministry of Health and Family Welfare, New Delhi. It was therefore requested that necessary action for withdrawal of the recognition of the four candidates be taken and appropriate action be taken against the Institute.

15. There is another significant development which deserves to be recorded viz., one candidate by the name Mithuna, filed W.P.No.22400 of 2018 with a prayer to quash the same list of MBBS seats issued on 27.8.2018 in the ratio of 1:10 and to allot one seat to the petitioner for admission in the appellant Institution. The petitioner therein had alleged that she had attended the Mop Up counselling and since she had 156 marks in the NEET examinations, she was entitled to get admission, as four seats were vacant. It was also alleged that the admission of some of the students was illegal.

16. An order was passed on 30.8.2018 in the said writ petition, whereby the CENTAC was directed to provisionally give admission to the petitioner out of the three seats that had been initially declared vacant, and further the College was informed that it was not entitled to fill up the seat that was reserved for the petitioner therein. It was alleged by the petitioner therein that the said order was tendered to the CENTAC on 31.8.2018, but the petitioner did not receive admission in spite of the provisional allotment being made in her favour. The Court also noted the filling up of the stray seats in the appellant Institution and also observed that the fact that atleast three candidates were given illegal admission was not being disputed. The writ petition was disposed of with a direction that the petitioner therein shall now be given admission in the forthcoming session of 2019-2020 under the Management Quota in any other self-financing private Medical College in Pondicherry with some further directions. The College

filed Writ Appeal No.407 of 2019 against the said order/judgment of the learned Single Judge, where the petitioner/student herself made an offer to withdraw the original writ petition and accordingly, the writ appeal was allowed setting aside the judgment of the learned Single Judge and also permitting withdrawal of the writ petition.

17. On 19.03.2019, the appellant wrote a letter to the Registrar of Pondicherry University requesting for registration and recognition of all 150 candidates, including the four disputed admissions presently involved.

18. The Pondicherry University, in response, wrote back on 04.4.2019 informing the appellant Institution that only 146 qualified candidates stand registered, but so far as the recognition of the four other candidates admitted by the appellant Institution is concerned, the same will be considered only after the approval from the CENTAC and the Government of Puducherry, as these four students have not been admitted through the CENTAC, a copy of the said letter was also sent to the CENTAC as well as to the Government of Puducherry.

19. The appellant Institution on 11.4.2019, wrote a letter to the Secretary to Government (Health), Government of Puducherry, to approve the admission of the said four candidates and significantly, it was stated therein for the first time by the College that they had contacted all forty candidates as per the list dated 27.8.2018 for filling up of the stray seats from the list provided by the CENTAC, but the candidates informed that they have already joined in other Colleges. The other significant fact stated in this letter to the Government is that they made a request for admissions on the basis of the merit list of the NEET score between 310 to 119 (from just below 310, the last candidate named in the CENTAC list dated 27.8.2018), but the contact addresses and numbers of the candidates were not available in the merit list. Therefore, the appellant Institution filled three vacancies by giving admission to those candidates who approached the Institution. On 31.8.2018, they admitted the fourth student, who had approached the Institution on account of surrendering of the seat by Jaya Subramani and a request therefore was made for recognition of the four candidates, who were admitted by the appellant Institution.

20. Having failed to get any response, the appellant Institution filed W.P.No.15095 of 2019 on 27.5.2019 and on 30.5.2019, an interim order was granted by the learned Single Judge that is extracted hereinunder:

"Heard Mr.A.R.L.Sundaresan, learned senior counsel appearing for the petitioner, Mr.J.Kumaran, learned Additional Government Pleader appearing for Respondents 2 and 3 and Ms.A.V.Bharathi, learned counsel appearing for the fourth respondent.

2.It is the contention of the learned senior counsel for the petitioner that despite the order of this Court dated 05.10.2018 passed in W.P.No.22400 of 2018 to take action against the fourth respondent and also cancel the admission of the students in stray vacancies either by the third respondent or by the second respondent, after affording an opportunity to the fourth respondent and students in accordance with law, no action whatsoever has been taken against the students so far by the second respondent or by the first respondent and on the other hand, the students are allowed to continue their education. It is the further contention of the learned senior counsel that the writ petition filed by the petitioners were disposed of on 05.10.2018, but till now no action has been initiated as per the orders of this Court and submitted that these four students, who were admitted by the fourth respondent, have completed one year and their exams are scheduled to be held in June 2019, whereas the University insists that unless CENTAC approves the list of four students, they will not be permitted to write exams.

3. Learned counsel appearing for the second respondent submits that only Medical Council of India (MCI) has to take a call in this matter and they have sent communication to the MCI for taking action, but, however, MCI has not taken any action till now. The counsel appearing for the fourth respondent university would contend that unless CENTAC approves the list, those four students will not be permitted to write exams.

4. Having regard to the fact that four students were admitted, though violating the rules, MCI and CENTAC have not taken any action and allowed them to continue studies more than a year. Inaction on the part of the first and second respondents clearly indicate that they indirectly accept the

action of the fourth respondent. However, this Court is of the view that inaction on the part of first and second respondents should not have any impact on the students. Therefore, first and second respondents should permit the students to write the exams subject to the result of any action that may be taken by MCI or CENTAC.

5. Accordingly, there will be a direction to the fourth respondent University to permit the four students to write exams to be held in the month of June 2019 and the students cannot claim any equity merely they were permitted to write exams. Their continuance in the education will always subject to the result of the action that may be taken either by MCI or CENTAC as held by this Court.

6. Notice to the first respondent returnable by 25.06.2019. Private notice is also permitted.

List on 25.06.2019 for filing counter."

Upon the grant of the interim order, counter-affidavits were filed by the respondents, as indicated above, with a prayer for vacating the interim order and dismissing the writ petition. The writ petition was kept pending and in between, notice was issued by the Medical Council of India to the appellant Institution vis-a-vis the disputed admissions. The said notice dated 27.11.2019 has been brought on record, whereby the Medical Council of India had called upon the appellant Institution to explain that the names of four of the candidates admitted by it were not available in the list provided by the CENTAC, which is the counselling authority for admissions in the MBBS course.

21. In paragraph (75) of the counter-affidavit of the Medical Council of India, it has been categorically stated that a reply from the Institution is still awaited, whereafter the matter shall be further considered. To this, the appellant institution has in this appeal filed a reply dated 3.12.2019.

22. The writ petition was finally, after hearing, dismissed on 11.03.2020, whereafter the present appeals have been filed.

23. Shri AR.L.Sundaresan, learned Senior Counsel, advancing his submissions, has urged that the appellant Institution has acted bona fide and the judgment in the case of Dar-Us-Slam

Educational Trust (supra), nowhere prohibits the appellant Institution from making any admissions against the seats which have been left vacant in spite of efforts having been made by the College to invite the students out of the list of forty candidates provided for in the ratio 1:10 against the four vacancies by the CENTAC. He has urged that when none of the forty candidates turned up in spite of being contacted, and no response was received to the letter written by the appellant on 30.8.2018 either from the Government or from the CENTAC, then the candidates, who approached on 30th and 31st August, 2018, and were from the merit list on NEET, were granted admission.

24. To substantiate and support the stand of the appellant Institution, Shri Sundaresan submits that the provisional allotment list in respect of the Management Quota seats clearly indicates that 146 candidates admitted are between the NEET score 314 to 99. He submits that the last candidate being of the reserved category, if his candidature is excluded, then the last candidate admitted is with the NEET score of 157.

25. He submits that no other candidate was interested, inasmuch as after the last Mop Up phase counselling the stray seats were to be filled up from a list to be provided by the CENTAC. The names of forty candidates in the list dated 27.8.2018 indicates that the score of such candidates is between 484 to 310, which is far above the merit of the candidates, who have been admitted against the Management Quota in the Institution. He therefore submits that the forty names who are in the list dated 27.8.2018 were of very high merit and therefore they seem to have not opted for the appellant Medical College. Secondly, they did not approach the appellant Institution seeking admission nor anyone of them made any complaint about they not having been offered admission. He submits that it is quite possible that they may have got admission elsewhere on account of their high merit and they therefore did not exercise their preference or choice of even applying or contacting in spite of intimation after the completion of the Mop Up phase of counselling. He submits that as a matter of fact it appears that they did not the least care for admission in the appellant Institution and therefore, sending of forty names was absolutely an empty formality and of no purpose at all. The College therefore had a reasonable a plausible foundation to believe that these forty candidates did not voluntarily choose to seek admission in spite of offer having made to them.

26. Shri Sundaresan emphasized that all the candidates had been contacted and when they did not turn up, it is only thereafter that the candidates who had approached the appellant Institution and were NEET qualified candidates were admitted for which there was no legal impediment. Thus, the appellant College has not violated either any direction of the Hon'ble Supreme Court or the Regulations pertaining to the admission and the appellant College was well within its authority and right to grant admission to these four students. He submits that the power of admission of the College is not lost and the seats could not have been allowed to go vacant, thereby depriving the students who were otherwise qualified through NEET examination from pursuing the MBBS course. The appellant College acted bona fide without any deliberate attempt or an unauthorised action on its part in admitting these four students. He, therefore, submits that the admission having been granted and the students having pursued about two years of their course, they deserve the benefit of the interim order granted by this Court on 30.5.2019.

27. He further submits that subsequently, a Division Bench, on 19.6.2020, passed an interim order directing declaration of the results of the four students who were granted admission. The interim order dated 19.6.2020 is extracted hereinunder:

"Mr.V.P.Raman, learned counsel, takes notice for first respondent and Mr.D.Ravichandran, learned Additional Government Pleader [Pondicherry], takes notice for respondent 2 to 4.

2. Interim stay in respect of paragraph No.15 of the impugned order.

3. There shall be an interim direction directing fourth respondent to release the results of 1st year MBBS examination conducted in June 2019 of the four students admitted into the MBBS course in the petitioner institution during the Academic Year 2018-19 viz., (i) Bollini Damu V., (ii) Mahesh M.R.S. (iii) Sabari Ganesh P. and (iv) Shri Preeethi M.

Post on 06.07.2020."

28. He has also tendered his written submissions, extracted herein under:

"The Appellant is seeking to question the judgment issued by the Learned Judge dismissing the writ petition filed by the Appellant seeking for a Mandamus directing the Respondents to approve the

admission of four students admitted into the MBBS course during the A.Y. 2018-19. I submit that the Appellant is a medical institution situated in Puducherry with an approved intake of 150 seats in the MBBS course. During the A.Y. 2018-19, the Appellant had surrendered 55 seats to the Government of Puducherry.

As per the regulations framed by the MCI and the directions issued by the Hon'ble Supreme Court, the counseling authority viz. the CENTAC, will have to conduct 2 rounds of counseling to allot students and thereafter a mop-up round of counseling to fill up the remaining vacant seats. If any seats remain vacant thereafter, the CENTAC will send a list of students in the ratio of 1:10 for every vacancy to enable the Institution to fill up the same. After three rounds of counseling, 147 out of the 150 students allotted by CENTAC reported for admission to the Appellant and were duly admitted. Three students withdrew from admission after informing CENTAC and obtaining refund of their fees at the very last moment.

The Appellant contacted every student in the 1:10 list forwarded by CENTAC on 27.08.2018 but none of the students were interested in taking up admission. Accordingly, the Appellant informed the Respondents on 30.08.2018 and requested for a further list of candidates. In the meantime, one more candidate withdrew from admission on 31.08.2018 after informing CENTAC leaving the Appellant with the prospect of 4 MBBS seats going vacant for no fault of its own. In spite of the same, the Respondents were completely silent on the matter and did not even respond to the request made by the Appellant.

In these circumstances, the Appellant admitted four students who fulfilled all the eligibility criteria including having qualified in the NEET examination, having applied to CENTAC for admission and also having expressed their willingness for inclusion in the 1:10 list. I submit that even though the fact of their admission has been reported to all the Respondents, no action has been taken by any of them till date. When the Respondents denied permission to these four students to write their

semester examination, the Appellant approached this Hon'ble Court by filing W.P.No.15095 of 2019 and the same came to be dismissed by this Hon'ble Court vide order dated 11.03.2019 against the same, the present Writ Appeal has been filed on the following, amongst other, grounds:

i. The Learned Judge erred in holding that the Appellant violated the regulations of MCI/directions issued by the Hon'ble Supreme Court: It is submitted that the Appellant was fully in compliance with the directions issued by Hon'ble Supreme Court as well as the regulations framed by the MCI as the Appellant had admitted all candidates allotted by CENTAC in the three rounds of admission and also contacted every candidate who's name found place in the 1:10 list. However, the Regulations are silent as to the method to be followed if seats continue to remain vacant even after the 1:10 list is exhausted. The Appellant had informed the Respondents about the same on 30.08.2018 but received no reply at all even though the last date for admission was 31.08.2018. It was only in these circumstances the Appellant had admitted the four students.

ii. None of the Respondents have taken any action till date: It is submitted that even though the fact of admission of these four students were intimated to the Respondents as far back, as in September, 2018 itself, none of the Respondents have initiated any action to set aside the said admissions till date thereby recognizing implicitly that these students were admitted in compliance with the regulations.

iii. All four students admitted by the Appellant are fully qualified and no eligible student has been denied admission: It ought to have been seen that all the four students admitted by the examination, applied to CENTAC for admission and even expressed their willingness to be included in the 1:10 list. In addition, the Appellant had admitted all the students allotted by CENTAC without any demur and did not deny admission to any candidate duly entitled to the same.

iv. The vacancy themselves arose only due to the fault of CENTAC:

It is submitted that the vacancies arose in the Appellate Institution only due to the unilateral action of the CENTAC in allowing students to withdraw from admission at the very last minute and even refunding their fees without demur. In fact, in the case of one candidate, CENTAC permitted his withdrawal on the very last date for admission viz. 31.08.2018, as a result of which this seat could not even form part of the 1:10 list. It was only due to this unilateral action of the CENTAC in allowing students to withdraw from admission at their own convenience that the Appellant had been placed in the detrimental position of having to admit candidates on the last date.

v. The Learned Judge committed a patent error in relying on alleged 'pattern of admissions' made by Appellant and holding that the Appellant is using the students as a shield:

The Learned Judge committed a patent error in holding that the Appellant is involved in a pattern of illegal admissions as with respect to the alleged illegal admissions made by the Appellant during the A.Y. 2017-18, the said matter is sub judice before this Hon'ble Court in W.P.No.12506 of 2018 and the same is pending final adjudication and with respect to the alleged illegal admissions made in A.Y. 2019-20, no action has been taken by any of the concerned authorities till date.

Furthermore, the Appellant has not indulged in utilizing the students as a shield, which is apparent from the fact that the Appellant itself approached this Hon'ble Court when the cause of action arose and did not utilize the students to file the writ petition."

29. Shri Sundaresan has also drawn the attention of the Court to the orders passed by the Apex Court in S.L.P. (C) No.30336 of 2016 (Akshita Singh v. Union of India and others), dated 28.8.2017 and has urged that the appellant Institution had also raised the issue, pertaining to the amendment in Appendix-2 of the Post Graduate Medical Education Admission Regulations introduced on 20.2.2018, before the Apex Court by filing a writ petition under Article 32 of the Constitution of India being W.P.(C) No.518 of 2018 that was dismissed as withdrawn with

liberty to approach the High Court vide order dated 16.5.2018. He further submits that the same was in relation to Post Graduate seats, whereas the present dispute relates to the admission in MBBS Under Graduate course of the year 2018-2019. He further contends that the Medical Council of India never informed the appellant about the outcome of the reply tendered by the appellant on 3.12.2019 to the query raised by the Medical Council of India. The said document dated 3.12.2019 has been brought along with the additional typed set Volume-I, that has been perused by us.

30. Shri Sundaresan has also urged that the directions of the Hon'ble Supreme Court should not be read like a statute and the Apex Court cannot be presumed to have comprehended every peculiar situation which may arise in future so as to prohibit any admissions that can be otherwise lawfully made by the Institutions.

31. He therefore submits that all the four students are now entitled to complete their course as their admission has not caused any prejudice to anyone nor admissions are in contravention of orders, rules or directions.

32. Shri N.L.Rajah, learned Senior Counsel, appearing for the two of the students, who were granted leave to appeal in W.A.No.500 of 2020 contends that the order in the case of Dar-Us-Slam Educational Trust (supra) and the Regulations are absolutely silent as to what procedure has to be followed for taking admissions once the process of filling up of the stray seats as directed by the Hon'ble Supreme Court ends up in failure to fill up the stray seats out of the list drawn up after the Mop Up phase. He contends that it will be appropriate to presume that the College does not cease to have any authority for granting admission when the seats are vacant, in spite of having followed the entire procedure prescribed.

33. He submits that no rule or judgment has been violated and he has laid special emphasis on paragraph (9) of the counter-affidavit of the Medical Council of India to urge that the Medical Council admits that common counselling conducted by the Central/State Government can in no way affect the right of any Institution, including Deemed Universities to admit the students. Paragraph (9) of the counter-affidavit has been further read out to contend that the reason and purpose of common counselling is to shortlist meritorious students in accordance with their merit in the NEET examination so that the merit may prevail while admitting the students in the Medical College. He therefore contends that merit has not been

compromised, inasmuch as, even after the last attempt of filling up of the stray seats which did not yield any result, the seats were vacant and therefore, such of those students who had qualified NEET examination were granted admission.

34. He has advanced an additional submission on behalf of the students to the effect that this method of sending of a list for filling up of stray vacancies is without application of mind, inasmuch as sending the list of high merit candidates is a fruitless exercise, as the candidates with such high merit may have got admission and therefore, after the first round of the counselling, the second round of counselling and the Mop Up exercise, the list for stray vacancies should commence from the last merited admission in the Institution. He illustrates this by stating that in the present case, the second last candidate under the Management Quota has obtained the NEET score of 157, leaving out the last candidate who had a NEET score of 99 only and belonged to the reserved category. With the aid of the aforesaid data, he submits that it is now below the score of 157 that the list should be prepared by the CENTAC for filling up of the stray vacancies as any person higher in merit to 157 will never turn up for any admission which is evident in the present case, as none of the forty candidates who had excessively high merit approached the College, nor did they raise any grievance with regard to their admission. Shri Raja emphasized that those who have been given the opportunity to opt in the first, second and Mop Up phase counselling, should not be invited against the stray vacancies once again as the very fact of they not having opted earlier should not be allowed to take away the chance of students waiting in the queue. This mistake in the process of offering stray vacancies therefore results in non-filling of the seats in the Institution giving rise to litigation and unnecessary harassment to other deserving students. This has not been countenanced nor decided by the Apex Court in Dar-Us-Slam Educational Trust (supra) but the opening up of a larger NEET list was indicated in Akshita Singh's case (supra). He contends that the Medical Council of India and the CENTAC if follow this methodology as suggested, it would eliminate these small hurdles and would pave the way for filling all seats that would neither violate any provision or any direction of the Supreme Court. The creation of a disparity in effect establishes the inappropriateness of preparing a list which does not serve the purpose of the directions of the Hon'ble Supreme court in the case of Dar-Us-Slam Educational Trust (supra). He has further submitted that the directions contained in the aforesaid judgment in paragraphs (4) and (7) read appropriately would leave no room for doubt that the method

adopted by the admission and the counselling agencies is contrary to the said directions and not in conformity with the same.

35. Shri N.L.Rajah, learned Senior Counsel, also contends that the directions of the Apex Court are not to be understood as a Euclid's theorem, which in no way restricts admissions against stray seats to the total exclusion of the authority of the College/Institution.

36. Responding to the said submissions, Mrs.N.Mala, learned Additional Government Pleader (Puducherry) appearing on behalf of the Union Territory of Puducherry and the CENTAC submits that the contention of the learned counsel for the appellants that sending of the letter on 27.8.2018 in the ratio 1:10 was erroneous cannot be countenanced, as this merit list for filling up of the stray vacant seats has not been challenged either by the students or by the appellant Institution. It is urged that if this contention was to be raised, then in the absence of any such challenge, the correctness of the list cannot be now questioned after the admissions have been held to be invalid by the learned Single Judge. This list dated 27.8.2018 was challenged by the candidate in Mithuna vs. Govt. of Puducherry and others in WP No.22400/2018, that was ultimately withdrawn and dismissed in W.A.No.407 of 2019, decided on 15.07.2019, which was an appeal filed by this very Institution.

37. She further submits that the contention on behalf of the appellant Institution that they had contacted all the forty students mentioned in the list and since they did not respond the appellant Institution proceeded to grant admission to the four students, is not evidenced by any material to demonstrate as to how and in what manner the students were intimated or there was failure on their part to respond to the appellant Institution in spite of the intimation. A bald statement made for the first time in the letter addressed to the Secretary to the Government on 11.4.2019 is unsubstantiated by any material whatsoever.

38. She then submits that the direction of the Hon'ble Supreme Court in Dar-Us-Slam Educational Trust (supra) is final and binding and there is no scope to infer any authority left with the Institution to make admissions on its own. The admissions made bereft of merit and ranking of the students is clearly in violation of the Regulations of the Medical Council of India as well as the admission rules. She therefore contends that there is no right available either to the students or to

the appellant Institution to claim admission on the grounds raised in the writ petition or in these appeals.

39. Shri M.Ravi, learned counsel for the Pondicherry University has also opposed the appeals contending that the University has acted in accordance with the rules and regulations and the Institution had called upon the University for recognition and registration of all the 150 candidates, including the four disputed students herein, but the University vide letter dated 4.4.2019 had made it abundantly clear to the Institution that the claim of recognition of these four disputed students will be considered only after approval from the CENTAC, as they have not been admitted by the CENTAC. He has therefore questioned the induction of the students as being invalid and violative of the provisions as well as directives of the Apex Court. He further submits additionally that this communication dated 4.4.2019 from the University to the appellant Institution was not challenged and the only prayer made in the writ petition was for a mandamus to accept the admissions of the four students.

40. Shri V.P.Raman, learned counsel, has advanced his submissions on behalf of the Medical Council of India very categorically stating that upon the list allotting the candidates sent by the CENTAC after counselling and Mopping Up, if any seat remains vacant in the Institution, the College/Institution informs the vacancy which falls within the category of a stray vacancy. The reason is that the ratio 1:10 can be fixed only if the number of stray vacancies are known. In the present case, the two Colleges had already informed the (3+1) vacancies and it is in response thereto that the letter dated 27.8.2018 was issued along with the list of forty candidates against the four vacancies that were reported to the CENTAC by the two Institutions. This is clearly stated in the letter dated 27.8.2018.

41. He then submits that no admission is permissible unilaterally by the College even if the seats remain vacant and if the College did not have any such authority or permission, then any admissions made are clearly in violation of the rules and regulations, particularly, Regulation 5(7) of the Medical Council of India Regulations. It is submitted by him that paragraphs (4) and (7) of the order in Dar-Us-Slam Educational Trust case cannot be read disjunctively and has to be read in conjunction with each other to understand the real purport of the directives of the Hon'ble Supreme Court, which clearly means

that no admission will be made except in accordance with the directions given therein in respect of stray seats after the Mop Up phase is over. It is urged that the distinction which is sought to be drawn by the learned counsel for the appellants is absolutely imaginary and the finality of the order cannot be questioned by interpreting it so as to allow admissions unilaterally by the College without allocation by the CENTAC.

42. Shri Raman has further clarified that considerable time had lapsed after the communications were sent by the College to the Medical Council, but since the function of the Medical Council had administratively undergone a change on account of the introduction of the Indian Medical Council (Amendment) Ordinance, 2018 and then its functioning afresh through the Board of Governors after the promulgation of the National Medical Commission Act, 2020, a delay was caused, but the Medical Council of India has promptly filed its counter-affidavit before this Court. The Medical Council of India thereafter did not send any reply to the appellant Institution for the simple reason that the matter was sub judice before this Court and an interim order had already been passed on 30.5.2019.

43. To substantiate the reasons for this delay and his submissions, he has handed down the written instructions dated 5.8.2020, which is extracted hereinunder:

"1. The Council Office had vide Circular dated 23.08.2018 sought information from all Medical Colleges across the Country including the medical college in question, in respect of admission made in MBBS course in the academic year 2018-19, as also to till in the details of these admission in the online portal of MCI.

2. The Council had vide Circular dated 11.09.2018 requested all the Director of Medical Education (DMEs) and Health Secretaries, including CENTAC in the present matter, to furnish the list of candidates allotted to the various medical colleges by the said Counselling Authorities of the State.

3. The Central Govt. on 26.09.2018, had promulgated the Indian Medical Council (Amendment) Ordinance, 2018, consequently the MCI stood dissolved and the Board of Governors in Supersession of MCI had been appointed to discharge the functions under the Indian Medical Council Act, 1956. it is stated

that the normal functioning of the office after dissolution of the Council got resumed only in November 2019. During this period lot of files that were held by the different sections of the Council Office were prepared and handed over to the Ministry Officials who had been deputed to MCI by the Central Government for handing and taking over. Thus, sometime had lapsed on account of handing over of work to the BoG, MCI. Subsequent to that prior to making any discharge an explanation is sought from the College Authorities regarding any discrepancy in the authenticated records.

4. The order dated 05.10.18 of the Hon'ble High Court in WP (C) No.22400/2018 – Mithuna vs. Govt. of Puducherry & Ors was received from the Registry of this Hon'ble Court on 08.11.2018. This was processed on 16.11.18 and forwarded to Monitoring Cell of the Council for initiating action.

5. In pursuance of MCI Circular dated 23.08.18, the College authorities had uploaded the information of MBBS admission made for academic session 2018-19 on MCI website and informed about the same vide their letter dated 05.09.18. Thereafter, the records of admission came to be scrutinized and vide Council letter dated 04.02.19, the College Authorities had been asked to resubmit the information in accordance with the format stated in the latter in Hard Copy duly signed by Dean/Principal of the College on all pages. This was responded by the College Authorities vide their letter dated 09.02.2019. Thus there was an inordinate delay by the medical college towards furnishing the requisite information from 23.08.2018 to 09.02.2019. This was for covering up the illegal admissions granted by the Medical College.

6. Writ Appeal 407/2019-Sri Venkateshwara Medical College Hospital & Research vs. Mithuna & Ors. came to be received on 28.02.19. The Final Orders dated 15.07.2019 passed in the Writ Appeal by which the Order of the Ld. Single Judge dated 26.09.18 was set aside and rendered infructuous came to be communicated vide letter dated 25.10.2019 of Council Advocate in the Hon'ble High Court of Madras.

7. Meanwhile, W.P.No.15095 of 2019 - Sri Venkateshwara Medical College Hospital & Research vs. MCI & Ors. Along with orders dated 30.05.19 came to be received on 01.06.2019. By way of this Petition College had sought the directions for Respondent No.4 - Pondicherry University to recognize and register as matriculates the four students admitted into the MBBS course in the Petitioner Institution in the academic year 2018-19, so as to enable them to attend the first year MBBS examinations to be held in June 2019 and other incidental reliefs. Vide order dated 30.05.19, the Hon'ble High Court was pleaded to allow the students to write University Examination, and made their continuance subject to any action to be taken by MCI or CENTAC.

8. Vide MCI communication dated 19.08.19 clarifications were sought from the College Authorities in respect of 06 names not being found in the list of candidates sent by CENTAC.

9. Another communication was made to the College Authorities on 27.11.19 seeking clarification.

10. A response dated 25.11.19 of the College Authorities was received in Council Office on 26.11.19. In respect of two candidates, the College had informed that two candidates were admitted under Govt. Quota based upon the orders of the Hon'ble High Court in W.P.Nos.17672 & 15839 of 2019 - J.Yuvaraj & N.R.Prakash vs. The Govt. of Puducherry & Ors. dated 29.08.2018. While in respect of four candidates the College had after the MOP Counselling there was a vacancy of four seats for which CENTAC have forwarded 40 candidates on the basis of 1:10 list from the top rank list. The College had stated that it had not received any candidate from this list and as State Authorities and CENTAC had not responded until 31.08.2018 they had admitted candidates from CENTAC registered NEET qualified candidates. Another reply on similar lines dated 03.12.2019 in response to Council letter dated 26.11.19 was received. In view of the matter being sub judice no further action was initiated.

11. The affidavit tendered in the W.P. 15095 of 2019 was drafted based upon the records available until 27.11.19 in the file of Monitoring Cell of the Council. Thus, in this reply reference to the reply of the College dated 25.11.19 could not be included.

12. Vide email dated 13.03.2020, the Standing Counsel for the BoG, MCI communicated the final order passed in W.P.15095 of 2019 along with the summary of directions issued by the Learned Single Judge. The Council has taken a very serious view of this matter as the malady of illegal admissions needs to be eradicated from the system and hence in the interest of upholding merit, the Council immediately took steps to comply with the order of this Hon'ble Court dated 11.03.2020. The order dated 11.03.2020 passed by the Hon'ble High Court in the matter was processed on 16.03.2020, however, due to nation-wide lockdown the Council Officer was only partially functional. Thus, after resumption of normal function on 08.06.2020 matter was processed in compliance of the orders passed by the Hon'ble High Court for discharging the candidates admitted without common counseling and imposition of exemplary penalty on the College. This was to be placed for the consideration in the meeting of the Board of Governors for their approval. However, in the meanwhile orders dated 19.06.2020 passed in W.A.Nos.494 and 500 of 2020 were received, in view of which further steps were not taken.

13. It may be most respectfully submitted that this Council has the highest regard for the orders passed by this Hon'ble Court and any inadvertent delay in the matter is due to administrative reasons and are entirely bona fide. Any inconvenience caused to this Hon'ble Court is deeply regretted and in the fact and circumstances of the case may be kindly condoned."

44. Responding to the contention raised by Shri Sundaresan on behalf of the appellant Institution about the filing of the writ petition before the Apex Court in respect of Post Graduate

admissions in the year 2018 and its withdrawal to approach the High Court, Shri Raman contends that the appellant Institution did file W.P.No.12879 of 2018, that was entertained on 02.1.2019 and the Medical Council of India was directed to produce the records pertaining to the notification dated 20.2.2018, whereby the Appendix-2 of the Post Graduate Medical Education Rules, 2000 had been amended. By the order dated 14.2.2018, the Division Bench further directed the Medical Council of India to obtain files pertaining to Minutes dated 27.9.2017 of the Ministry of Health and Family Welfare for perusal. Ultimately, the Division Bench, vide order dated 4.4.2019, dismissed the challenge raised, though in respect of Post Graduate admissions, but to the same effect as the arguments advanced herein were similar. He therefore contends that it is no longer open to the appellant Institution to raise the same arguments again and he has pressed into service the aforesaid judgment, particularly, to answer the plea raised by Shri N.L.Rajah, learned Senior Counsel on behalf of the students on the issue of the mistake being committed in the forwarding of a list, which is to be notified in the ratio 1:10 for filling up of stray vacancies. He urges that the very same argument has been rejected finally by this Court by a Coordinate Bench and therefore, the same applies on all fours to reject similar contentions in the present matter, even though it relates to Under Graduate admissions in MBBS course.

45. Having considered the submissions raised, it would be appropriate to sift the facts and clear the mist that covers the claim of the appellant Institution of having contacted all the forty students as per the list dated 27.8.2018 sent by the CENTAC. In this regard, the first assertion appears in the letter dated 30.8.2018 that no candidate reported up to 30.8.2018 out of the list of the forty candidates and therefore, permission was sought to proceed with admissions from amongst the candidates who had secured NEET marks 310 to 119, as the next date i.e., 31.8.2018 was the last date for admission.

46. The next letter, thereafter, which mentions this fact of no candidate having reported out of the list of forty is dated 19.3.2019. The assertion for the first time that the appellant Institution had contacted all the forty candidates and they told that they have already joined in other Colleges appears in the letter dated 11.4.2019. This letter categorically states about the alleged response of the forty candidates that they had already joined in other Colleges. The last letter which throws the light on the said stand taken by the appellant Institution is the reply sent to the Medical

Council of India on 3.12.2019, where the appellant Institution states that no response was shown by the forty students, but the Institution had called all the students over phone and no one came and joined the College till 30.8.2018. These categorical assertions of talking to the candidates on telephone do not find place in the affidavit filed on behalf of the appellant Institution. The writ petition in paragraph (9) states that the appellant Institution had contacted the forty candidates and offered admission, but none of the students reported for admission for various reasons such as having obtained admission in other Institutions, inability to pay the prescribed fee etc. The gist of these assertions is that the appellant had contacted all the forty candidates on telephone and they have told that they had joined in other Institutions or did not want to join the appellant Institution.

47. The third dimension added in the writ petition is that some of them were incapable of paying the College fees. The respondent Government of Puducherry and the CENTAC in their counter-affidavit have denied the allegations and in paragraph (13) it has been asserted that the private Colleges have been demanding more fee over and above the fee fixed for the Management Quota. As a result whereof, such candidates who are not ready to pay the excessive fee do not turn up thereby paving the way of creating stray vacancies.

48. No evidence whatsoever of any kind was filed along with the writ petition to demonstrate as to in what manner did the appellant Institution contact the forty students and their response thereto. As a matter of fact, the appellant Institution was sent the list dated 27.8.2018 without the number and addresses of the forty candidates. The appellant Institution has nowhere stated as to the sources of contact details of the forty candidates. This contradiction in itself indicates that the averment made in the letters and in the writ petition about contacting the forty candidates through phone is incorrect and is not substantiated by any material from which it cannot be gathered that any genuine attempt had been made by the appellant Institution to contact all the forty candidates or hear their response. It is nowhere stated as to who on behalf of the appellant Institution made the phone calls to the forty candidates and in what manner. In the absence of any such details, there cannot be a presumption of the genuineness of such claim set up by the appellant Institution.

49. Shri Sundaresan for the appellant Institution has urged that the circumstance of none of the forty students having raised any grievance about information of offering admissions to them, or not having claimed admission, itself was a strong circumstance to make the Institution believe that those forty students in spite of intimation were never willing to seek admission. In the absence of any such remote complaint or semblance thereof, when the available seats were displayed on the Website as well, there is no material to draw an adverse inference or find fault with the assertion of the Institution. To the contrary it confirms that the Institution had abided by the directions and the forty candidates had voluntarily declined to accept the offer.

50. To this argument, the factual position is that the forty students, or even one of them in representative capacity, were not added as respondents to the writ petition to have actually disputed or accepted the claim of the appellant Institution. Thus the proper and necessary parties to rebut or accept such a fact of having been contacted on phone not having been impleaded, no advantage of any inference or presumption in favour of the Institution arises. As to who is a proper and necessary party, reference be had to be Apex Court decision in the case of Udit Narain Singh Malpharia v. Additional Member Board of Revenue, Bihar and another, reported in AIR 1963 SC 786. A failure on this count is adverse to the appellant Institution.

51. The neighbouring fact of not disclosing any material to establish the mode of communication by phone to the forty candidates is another serious default in pleading as in order to draw a favourable presumption the appellant Institution ought to have discharged it's burden effectively to create belief by supplementing it's bald statements by factual details of information supported by evidence. This burden was not discharged as per established principles of practice in writs, leaving aside strict rules of evidence under the Indian Evidence Act, 1872, as laid down by the Apex Court in the case of Bharat Singh and others v. State of Haryana and others, reported in (1988) 4 SCC 534, where a bald pleading without evidence was dealt with in paragraph (11) and (13) of the report as under:

" 11. There was no attempt on the part of the appellants to substantiate the point by pleading relevant facts and producing relevant evidence. It is apparent that there was no material in the writ petitions in support of the contention

of the appellants that the impugned acquisition was nothing but a profiteering venture.

13. As has been already noticed, although the point as to profiteering by the State was pleaded in the writ petitions before the High Court as an abstract point of law, there was no reference to any material in support thereof nor was the point argued at the hearing of the writ petitions. Before us also, no particulars and no facts have been given in the special leave petitions or in the writ petitions or in any affidavit, but the point has been sought to be substantiated at the time of hearing by referring to certain facts stated in the said application by HSIDC. In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit."

52. The second aspect is that the list dated 27.8.2018 was not challenged by the appellant Institution, nor by the students who are seeking admission. Any argument on their behalf now at this stage to question the correctness of the preparation of the list of forty candidates in the ratio 1:10 therefore cannot be entertained. Apart from this, the very same contention of preparing the list from the score of the last candidate of the provisional list was raised as a direct issue in the matter of

Post Graduate seats by the same Institution in W.P.No.12879 of 2018. The writ petition had been filed by the same Medical College, which was dismissed on 04.04.2019 and to make the narration complete, paragraph (18) of the said judgment is extracted herein under:

"18. Learned counsel for the petitioner has not made out any case of prejudice that is being caused to them because of the reversal in the date of counseling i.e., counseling for the seats in the deemed Universities being done, after the counseling of seats by State Government. If the students feel that particular seat in a deemed to be University is available and the faculty and the infrastructure is good, then the Court can take judicial notice of the fact that the students will wait to approach the deemed to be University, after the State counseling. It is well known that after the second round of counseling, the students know the seats in the courses available and the Colleges in which these seats are available. Student makes his choice at that point of time for taking admission. Seats are filled merits and as stated earlier, there is no dearth of students. In fact, the number of seats available are far less than the number of students, who are waiting for admission, in medical Colleges. Case of the petitioner that merit list which has to be sent to the medical Colleges in the first round of counseling in the ratio 1 : 10 should be created from the bottom of the merit list, cannot be accepted. There is no fallacy in the scheme wherein counseling by the State Government precedes the counselling to the seats in deemed to be Universities, for the simple reason that fee structure in the Colleges, which are offered by the Government Colleges and Government quota seats, in private colleges are much lesser than the seats available in the deemed to be Universities. This schedule is no way inconsistent with the object of introducing NEET, which is filling up of seats, on merits. The deemed Universities cannot demand that, first their seats must be offered to the candidates first."

53. We entirely agree with the reasonings given by the said Division Bench and we reject the argument advanced on behalf of the students to that effect. We further find that if the argument is accepted then the second last candidate granted

provisional allotment had a score of 157. Learned counsel for the respondents are right in their submission that if this is the argument, then how could one of the candidates viz., Sabari Ganesh, have been admitted as he had a score of 160 which was above 157. Thus, there is fallacy in the argument itself on the basis of the facts pleaded.

54. The flip side of this aspect is that the list dated 27.8.2018 had been earlier challenged by one Mithuna in W.P.No.22400 of 2018 where the said candidate had succeeded in getting some relief for admission in the following year, but the College itself filed W.A.No.407 of 2019, that was allowed on 15.7.2019 as the writ petitioner choose to withdraw her writ petition. Thus, a challenge which was raised to the said list was opposed by the appellant Institution. Accordingly, this stand of the College runs counter to the stand taken by the students in their writ appeal.

55. Shri Sundaresan, learned Senior Counsel for the appellant Institution has not been able to successfully explain the said contradictory stand between the Institution and that of the appeal filed by the students. The stand taken by the students therefore, as submitted by Shri N.L.Rajah, learned Senior Counsel, has to be rejected.

56. There is a third dimension in respect of one of the seats viz., that only three seats had been reported to be vacant in the Institution before the letter dated 27.8.2018 with the list of forty had arrived. The said list had been sent taking into account one seat in another Medical College viz., Pondicherry Institute of Medical Sciences. No intimation of the fourth vacancy so as to obtain a permission from the CENTAC to fill up the same was ever obtained by the appellant Institution which, admittedly, was reported to have become vacant on 31.8.2018. This being the factual position, it is evident that neither the State Government nor the CENTAC nor the Medical Council of India ever approved the admissions of these four students.

57. Coming to the legal issues, Regulation 5(7) of the Medical Council of India Regulations in relation to Under Graduate admissions categorically provides that no admissions shall be made except in accordance with the procedure prescribed and the directions of the Apex Court. Regulation 5(7) is extracted herein below:

"5. Procedure for selection to MBBS course shall be as follows:-

(1)

(2)

(3)

(4)

(5)

(6)

(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."

58. In the instant case, we are concerned with the stray seats falling vacant after the counselling process and the Mopping Up phase is over. For this, the order of the Apex Court in the case of Dar-Us-Slam Educational Trust (supra) dated 09.05.2017 deserves to be extracted, the same is gainfully re-produced herein below:

"Issue notice.

As the respondents have been represented by the respective counsel, no further notice need be issued.

Having heard learned counsel for the parties, as an interim measure, the following directions are issued :

1. Common Counselling for admission to All India Quota seats in Government Medical Colleges shall be conducted by the DGHS. The counselling conducted by DGHS will also include Deemed Universities as they have an All India character. The Deemed Universities mentioned above shall also include Deemed Universities run by religious and linguistic minorities.

2. Common Counselling for State Quota seats in Government as well as Private Medical Colleges including colleges/institutions run by religious and linguistic minorities affiliated to State Universities shall be conducted by the State Government or the authority designated by the State Government. The notification issued by the State Government intimating the students about the Common Counselling must specify that at the time of counselling the students belonging to minority community will be required to furnish the necessary proof regarding their minority status and submit in writing about their willingness to take admission in the concerned minority college/institution.

3. As per the judgment of this Hon'ble Court in the case of Ashish Ranjan vs. Union of India & Ors. [(2016) 11 SCC 225], there shall be only two rounds of common counselling each conducted by the DGHS/State Government or authority designated by the State Government for All India Quota (including Deemed University) and State Quota seats respectively.

4. After the second round of counselling for All India Quota seats, the students who take admission in All India Quota seats should not be allowed/permitted to vacate the seats. This would ensure that very few seats are reverted to the State Quota and also All India Quota seats are filled by students from the all India merit list only. The students who take admission and secure admission in Deemed Universities pursuant to the second round of counselling conducted by the DGHS shall not be eligible to participate in any other counselling.

5. The notification to be issued by the DGHS and the State Government notifying Common Counselling should also provide the fee structure of Deemed Universities and Private Medical Colleges. The DGHS/State Government should also obtain the consent of the students regarding their willingness to pay the fees provided in the notification and take admission in the Deemed Universities and Private Medical Colleges.

6. The students who secure admission in MBBS course pursuant to the Common Counselling conducted by the State Government, at the time of common counselling itself, should be made to deposit with the admission/counselling committee the Demand Draft towards the fees payable to the institution College/ University. The admission/counselling committee shall forthwith forward the Demand Draft to the respective Institution/Colleges/University. The necessity for including the above-mentioned requirement has arisen as it has been time and again noticed that when students report to the college after the counselling they are refused admission by the colleges on some pretext or the other and it is shown by the college as if the student never reported to the college for admission. If the Demand Draft is deposited by the admission/counselling committee then there would be no scope for colleges to refuse admission to any student.

7. In order to ascertain the number of seats that still remain vacant after the counselling the State Government or the authority designated by the State Government shall conduct manual counselling for allotment of students. After the completion counseling, the State Government shall determine the number of seats that are still vacant and thereafter shall forward a list of students in order of merit, equaling to ten times the number of vacant seats to the medical college so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.

8. In the applications submitted by the students belonging to the minority community they should confirm their minority status as well as the fact that they fulfill other conditions which may be prescribed by the minority institutions. Accordingly, the DGHS as well as the State Government shall prepare a separate list of minority students seeking admissions in the respective minority institutions in order of merit. The competent authorities of the College present during counselling shall check/verify the minority status of the candidate. This arrangement is only

meant for the State Quota.

9. During the common counselling conducted by the State Government, the representatives of the medical colleges particularly representative of minority institutions should be a part of the admission/counselling committee as the case may be.

10. Common counselling conducted by the DGHS/State Government will not in any manner affect the rights of minority institutions to admit students of their respective minority community. The minority quota seats, if any, in institutions run by minorities will be filled up by minority students only. Therefore, the rights of minority institutions are fully protected.

Needless to say this arrangement will not apply to the States of Andhra Pradesh, Telangana and Jammu & Kashmir. As far as the other States are concerned, needless to say, this arrangement shall apply to all the colleges unless this Court has passed any different or separate order.

Let the matter be listed on 13.9.2017.

WP (C) No. 345 of 2017

Let the matter be listed on 13.9.2017.

The directions issued in Writ Petition (Civil) NO. 267 of 2017 shall apply on all fours to this case.

Needless to say, all the contentions are kept open."

59. As per the status report on the Website, there are no further modifications to the said order. In respect to the admissions of the year 2017, as pointed out by the learned counsel for the appellants, an order was passed in the case of Akshita Singh v. Union of India and others in S.L.P. (C) No.30336 of 2016 on 28.8.2017, which is after the order in the case of Dar-Us-Slam Educational Trust (supra). The said order is extracted hereinunder:

"Heard Learned counsel for the parties.

Having heard learned counsel for the parties at length, we pass the following directions :

- a) Time for Mop up round counselling is extended till 7.9.2017.
- b) This extension shall only be applicable to the deemed universities and none else.
- c) Any application by any other college or institution seeking extension shall not be entertained.
- d) The competent authority, i.e., Director General of Health Services shall put up the list on the website and send it by e-mail to each of the deemed university by 8.00 p.m. today itself.
- e) The candidates whose names shall feature in the list should be NEET qualified.
- f) The ratio shall remain at 1:10.

At this juncture, it is urged on behalf of the deemed universities that if need be and in order to maintain the ratio of 1:10, in case of deficit in the list meant for deemed universities, the names from the larger NEET list may be provided. As long as for the seats which have fallen vacant, the ratio is maintained at 1:10, we do not perceive any difficulty. If 1:10 ratio is not sufficient, the Director General of Health Services is granted liberty to get into the larger NEET list. We order accordingly.

It is made clear that no extension shall be granted.

The Applications, the special leave petition and the writ petition stand disposed of accordingly. There shall be no order as to costs."

60. Learned counsel for the appellants have vehemently urged that in view of the aforesaid orders, there is no prohibition against the Institution to proceed to take admissions if the seats are left vacant by getting into the larger NEET list.

61. We have considered the submissions raised and we find that on a reading of paragraphs (4) and (7) of the order in the case of Dar-Us-Slam Educational Trust (supra), the only option left after the Mopping Up phase is to take admissions from a list sent by the designated authority in order of merit, which has to be in the ratio of 1:10, keeping in view the number of

vacancies. No Institution has been granted any further liberty to undertake admissions if a stray seat is left vacant. The authority lies with, as in the present case, the CENTAC which is the Counselling Authority. There is no liberty or residual power given to the Institution to admit students on their own.

62. Shri N.L.Rajah, learned Senior Counsel, has pointed out that any provision not made for by the Hon'ble Supreme Court can still be adopted by the CENTAC and the Medical Council of India to facilitate filling up of stray vacancies, for which his argument is that those candidates who were already given an opportunity in the first and second round of counselling as well as the Mopping Up phase, should not be included in the 1:10 ratio list for filling up of stray vacancies. He submits that this situation was not taken into account nor any decision was rendered by the Hon'ble Supreme Court in such a peculiar situation and therefore, there is no such prohibition either on the Medical Council of India or the CENTAC to follow this system, thereby eliminating the mistake in sending of the list of 1:10 ratio. To buttress his submissions, he points out that an attempt made in this very case to send the list of forty candidates of high merit has turned out to be an unsuccessful attempt in attracting even a single candidate and on the other hand, such a system deprives admission to deserving candidates, who are otherwise even though down below yet from the same merit list prepared by the NEET.

63. We cannot accept this argument as this would be adding and supplementing something what has not been provided for either in the Regulations or in the directions of the Apex Court in the case of Dar-Us-Slam Educational Trust (supra) or even in the case of Akshita Singh (supra). The entire process of admissions is being conducted upon the directions so issued and therefore, to prescribe another mode of merit as suggested by learned counsel would be crossing the limits as prescribed by the Apex Court and the Regulations which hold the field today.

64. The direction in the communication dated 27.8.2018 accompanying the list of forty candidates, in the last sentence categorically recites that the Colleges are requested to fill the stray vacancies in order of merit from the 1:10 list only. This restriction was thrown over board by the College and in the event any such alteration is desirable as suggested by the learned counsel, then the same can only be by way of an amendment either in the Regulations or a clarification from the Apex Court in this regard. This Court cannot issue any such

direction which may run counter to the directions issued by the Apex Court and which powers may have been exercised by the Apex Court under Article 142 of the Constitution of India. Any alteration in the scheme therefore so prescribed has to abide by the directions of the Apex Court.

65. The argument of learned counsel for the appellants that something which is not prohibited should be presumed to be permitted has to be answered in the negative by categorically holding that whatever has not been provided for by the Apex Court cannot be presumed to be permitted, inasmuch as, the entire exercise undertaken by the Apex Court was to ensure that Colleges are prevented from taking admissions on their own and they have to abide by the admission process already in place.

66. To meet this, learned counsel for the appellants have advanced the submission that the students have not been admitted beyond the NEET list and they are also qualified candidates of the NEET examination. This argument has to be rejected, inasmuch as, the College has nowhere come up with a case that some list had been prepared that included the names of these four candidates. The preparation of the list has to be by the Admission Committee and not an exercise by any other authority. The score marks of all the four candidates indicate a spread over merit and had any such exercise been taken by the Admission Committee, it is quite possible that the students above the merit of these four candidates could have sought admission in the Institution. If this method is allowed on the argument advanced by learned counsel for the appellants, then this would be perpetuating an illegality and a malady which was sought to be remedied by the introduction of National Eligibility cum Entrance Test. Such procedure would put into haywire a regular scheme of admission on the basis of the merit by offering seats to the candidates in order of merit, which is the direction of the Apex Court in Dar-Us-Slam Educational Trust (supra).

67. The argument that the directions of the Apex Court should not be read as an Euclid's theorem so as to prohibit an action for meeting a genuine exigency as involved in the present case, cannot be accepted for the reasons already given herein above, as the entire scheme of admissions which was initiated under the directives of the Apex Court and has also now taken the shape of statutory Regulations has to be read plainly in its term with no scope for any addition or subtraction by this Court. A gap if any, cannot be intruded into by a wedge deployed by this Court.

68. There is yet another argument which has to be answered at this stage viz., that no complaint was raised by any of the forty candidates nor any prejudice has been caused to any candidate on account of the four admissions in question. Suffice it to say that we have already recorded that the procedure of picking up students from the list of forty candidates does not appear to have been scrupulously followed or proved to have been followed. The entire exercise was completed between 28.8.2018 and 31.8.2018 with a speed so as to match the last date of applications. The non-arrival of any complaint or any prejudice caused by itself would not justify an action of the Institution which was without authority and requisite permission. This argument is also therefore negated.

69. The stand taken by the Medical Council of India has been explained and we find that the Medical Council of India had promptly filed its counter-affidavit disputing the claim of the College in proceeding to fill up four unfilled seats without following the procedure prescribed by law.

70. Further from the entire scheme of holding of the NEET examinations and counselling, it is clear that the examinations and admissions through counselling are a continued process squarely within the domain of the examination/counselling agencies as prescribed under the Regulations. Whatever the activity pertaining to the preparation of the merit list and its consequential execution is concerned, is entirely within the control of such agencies and the allotment of seats has to be carried out by the Colleges accordingly. The contention raised on the strength of paragraph (9) of the counter-affidavit of the Medical Council of India therefore has to be understood in the light of above. The Medical Council of India has nowhere stated that the College is free to admit any student bereft of the procedure as already prescribed. The Institutions have to abide by the allocations made and they cannot be permitted to create a situation so as to foster litigation as a parallel method of seeking permission to admit students beyond the directives of the Apex Court and the Regulations.

71. Consequently, for all the reasons stated herein above, we find no merit in these appeals insofar as the appellant Institution is concerned. To that extent the students also cannot succeed and we cannot permit extension of any such benefit to the students through a patently illegal process of admission adopted by the Institution. We also do not find any justification for the learned Single Judge at the interim stage

to have granted an interim order nor does the interim order passed in these proceedings in anyway come to the aid of the students. If their admissions are illegal, then any consequential pursuit of study or attending the examinations are of no avail.

72. However, if the students were put in jeopardy by the College, then they can claim their entire refund of fee from the College as well as compensation awarded by the learned Single Judge. The College was absolutely at fault in proceeding to undertake the exercise of admission unilaterally, for which it had no authority.

73. We may reiterate that the appellant Institution was informed as early as on 4.4.2019 by the Pondicherry University that only 146 students for the first year MBBS course as per the list enclosed were recognized and registered, whereas the other four candidates having not been admitted through the CENTAC will be considered only if the approval is given by the CENTAC. Thus, the College knew that these four students have not been admitted through the procedure prescribed and therefore, the College is squarely to blame for kindling this fond hope or expectation in the four students for admission in the Institution. The damage caused therefore is on account of the action of the appellant Institution, hence, there is neither any equity nor any law so as to justify any protection to the appellant Institution. To the contrary, the appellant Institution must compensate the students.

74. So far as the students are concerned, they have been put to a loss on account of this exercise, but the legal battle does not enure any benefit to them as held by us herein above. They can approach the Medical Council of India and the CENTAC authorities for any such redressal, keeping in view the fact that they have spent almost two years in pursuing a course, which they otherwise were not entitled to be admitted into through a faulty process adopted by the College.

75. Consequently, the appeals stand dismissed with the aforesaid observations. No costs. Connected, C.M.P.Nos.7320 to 7322, 7362 and 7364 of 2020 are closed.

-s/d-

Assistant Registrar

true Copy

Sub-Assistant Registrar

bbr

To

1.The Secretary,
Medical Council of India,
Sector VIII, Dwaraka Phase II,
New Delhi - 110 077.

2.The Secretary,
Government of Puducherry,
Health Department,
Chief Secretariat, Puducherry.

3.The Coordinator (Admission),
Centralized Admission Committee,
Government of Puducherry,
Pondicherry Engineering College Campus,
Puducherry - 605 014.

4.The Registrar,
Pondicherry University,
R.V. Nagar, Kalapet,
Puducherry - 605 014.

+1 cc to the Government Pleader Puducherry sr26699

+2 ccs to M/s.Abishok Jenasenar Advocate sr26494

+1 cc to Mr.V.P.Raman Advocate sr 26529

W.A.Nos.494 and 500 of 2020

vs (co)
aa24/08/2020

सत्यमेव जयते

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