

3. The learned Counsel for the Petitioner states that the last date for admitting students is tomorrow, that is, 30 November 2022. We note that the Petitioner was granted provisional permission by the Maharashtra Nursing Council to start course for the academic year 2011-12. Thereafter, the suitability certificate was not granted and the course did not commence. The Petitioner made a representation for affiliation thereafter on 2 January 2021 and after almost a period of one and half year, the Petitioner seeks a direction in this petition.

4. The learned Counsel for Respondent No.3- Maharashtra State Board of Nursing states that the Petitioner's proposal is forwarded to the State Government and it is for the State Government to take a final decision. The learned AGP states that no instruction has been received.

5. It is not possible for us to issue a writ of mandamus to direct the Respondent to grant affiliation as it is for the Respondent-State to examine the issue and take a decision as per law. However, a direction that the representation to be decided early can be issued.

6. As regards the prayer of the Petitioner to admit students pending further decision, we are not inclined to grant the same. The Petitioner as on today is not legally entitled to admit the students. As far as the Petitioner is concerned, it is only the question of filling up seats and thus with monetary connotations. However,

if the final decision is against the Petitioner, then we have to be mindful of the calamity that may befall on the innocent students so admitted.

7. The Hon'ble Supreme Court in the case of *Medical Council of India Versus N.C. Medical College & Hospital and others*¹ has summarized the earlier law repeatedly disapproving directions to grant admissions pending decisions, observing thus :

“12. In the face of repeated failures on part of the respondent College to remove the deficiencies, no permission to make admissions for the current academic session could have been granted unless and until on physical verification everything was found to be in order. A condition such as making students aware about the pendency of the matter and stating that their admissions would be subject to the result of pending litigation, is not a sufficient insulation. We have repeatedly seen cases where after making such provisional admissions the colleges have been denied permission upon physical verification. Questions then come up as to what is the status of such students and how best their interest can be protected. Theoretically, in terms of conditions of Essentiality Certificate the State Government concerned is obliged to take care of interest of such students. But the harsh reality is such students cannot be accommodated because in normal circumstances all the seats in every medical college are filled up. It then becomes a case of impossibility of accommodating such students in any existing college. The entire exercise may thus result in great hardship and wastage of academic years of the

¹ (2019) 17 SCC 655

students concerned. It is for this reason that while granting any interim relief very cautious approach needs to be adopted. It may be possible to expedite the process of physical verification in a given case but to allow provisional admissions and make them subject to the result of the petition may entail tremendous adverse consequences and prejudice to students.

13. At this juncture, we may advert to certain decisions of this Court where the issues regarding propriety and correctness of similar such interim order were put in question:

13.1. In *Medical Council of India v. Rajiv Gandhi University of Health Sciences* [Medical Council of India v. Rajiv Gandhi University of Health Sciences, [(2004) 6 SCC 76 : 2 SCEC 562], it was observed : (SCC p. 84, para 14)

“14. In the normal circumstances, the High Court ought not to issue an interim order when for the earlier year itself permission had not been granted by the Council. Indeed, by grant of such interim orders students who have been admitted in such institutions would be put to serious jeopardy, apart from the fact whether such institutions could run the medical college without following the law. Therefore, we make it clear that the High Court ought not to grant such interim orders in any of the cases where the Council has not granted permission in terms of Section 10-A of the Medical Council Act. If interim orders are granted to those institutions which have been established without fulfilling the prescribed conditions to admit students, it will lead to

serious jeopardy to the students admitted in these institutions.”

13.2. *In Medical Council of India v. JSS Medical College [Medical Council of India v. JSS Medical College, [(2012) 5 SCC 628 : 4 SCEC 414], this Court stated : (SCC pp. 631-32, paras 12-13)*

“12. Without advertng to the aforesaid issues and many other issues which may arise for determination, the High Court, in our opinion, erred in permitting increase in seats by an interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. The High Court ought to realise that granting such permission by an interim order has a cascading effect. By virtue of such order students are admitted as in the present case and though many of them had taken the risk knowingly but few may be ignorant. In most of such cases when finally the issue is decided against the College the welfare and plight of the students are ultimately projected to arouse sympathy of the Court. It results in a very awkward and difficult situation. If on ultimate analysis it is found that the College's claim for increase of seats is untenable, in such an event the admission of students with reference to the increased seats shall be illegal. We cannot imagine anything more destructive of the rule of law than a direction by the Court to allow continuance of such students, whose admissions is found illegal in the ultimate analysis.

13. *This Court is entrusted with the task to administer law and uphold its majesty. Courts cannot by its fiat increase the seats, a task entrusted to the Board of Governors and that too by interim order.”*

13.3. *The observations in Medical Council of India v. Kalinga Institute of Medical Sciences (2016) 11 SCC 530 : 8 SCEC 176] , were : (SCC p. 541, paras 27-28)*

“27. That apart, we are of the opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25-9-2015 [Kalinga Institute of Medical Science v. Union of India, 2015 SCC OnLine Ori 609]. There was no need for the High Court to rush into an area that MCI feared to tread. Granting admission to students in an educational institution when there is a serious doubt whether admission should at all be granted is not a matter to be taken lightly. First of all the career of a student is involved—what would a student do if his admission is found to be illegal or is quashed? Is it not a huge waste of time for him or her? Is it enough to say that the student will not claim any equity in his or her favour? Is it enough for student to be told that his or her admission is subject to the outcome of a pending litigation? These are all questions that arise and for which there is no easy answer. Generally speaking, it is better to err on the side of caution and deny admission to a student rather than have the sword of Damocles hanging over him or her. There would at least be some certainty.

28. *Whichever way the matter is looked at, we find no justification for the orders passed by the High Court, particularly the order dated 25-9-2015 [Kalinga Institute of Medical Science v. Union of India, 2015 SCC OnLine Ori 609] and the order dated 4-3-2016 [Kalinga Institute of Medical Sciences v. Union of India, 2016 SCC OnLine Ori 134].”*

13.4. *Further, in Dental Council of India v. Dr Hedgewar Smruti Rugna Seva Mandal [Dental Council of India v. Dr Hedgewar Smruti Rugna Seva Mandal, [(2017) 13 SCC 115 : 8 SCEC 485], it was observed : (SCC pp. 124-25, paras 22-23)*

“22. From the aforesaid authorities, it is perspicuous that the court should not pass such interim orders in the matters of admission, more so, when the institution had not been accorded approval. Such kind of interim orders are likely to cause chaos, anarchy and uncertainty. And, there is no reason for creating such situations. There is no justification or requirement. The High Court may feel that while exercising power under Article 226 of the Constitution, it can pass such orders with certain qualifiers as has been done by the impugned order [Dr Hedgewar Smruti Rugna Seva Mandal v. Union of India, 2016 SCC OnLine Bom 13166], but it really does not save the situation. It is because an institution which has not been given approval for the course, gets a premium. That apart, by virtue of interim order, the Court grants approval in a way which is the subject-matter of final adjudication before it. The anxiety of the students to get admission reigns supreme as they feel that the

institution is granting admission on the basis of an order passed by the High Court. The institution might be directed to inform the students that the matter is sub judice, but the career oriented students get into the college with the hope and aspiration that in the ultimate eventuate everything shall be correct for them and they will be saved. It can be thought of from another perspective, that is, the students had deliberately got into such a situation. But it is seemly to note that it is the institution that had approached the High Court and sought a relief of the present nature. By saying that the institution may give admission at its own risk invites further chaotic and unfortunate situations.

23. The High Court has to realise the nature of the lis or the controversy. It is quite different. It is not a construction which is built at the risk of a plaintiff or the defendant which can be demolished or redeemed by grant of compensation. It is a situation where the order has the potentiality to play with the career and life of young peoples. One may say, "... life is a foreign language; all mispronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life."

14. In the backdrop of the law laid down by this Court, the High Court was not justified in passing interim directions and permitting the respondent College to go ahead with provisional admissions for the academic session 2018-2019. We, therefore, allow this appeal and set aside the order dated 29-5-2018 [N.C. Medical College & Hospital v. Union of

India, 2018 SCC OnLine P&H 907] passed by the High Court”.

(emphasis supplied)

8. There is therefore no question of grant of any provisional admission. There is however merit in the prayer for early disposal of the representation/ application. The Respondent-State Government will take a decision on Petitioner’s representation / application dated 16 August 2021 within a period of four weeks from today, subject to completion of all procedural formalities. Thereafter, it is open to the Petitioner to take further action if final decision of the State Government is adverse to the Petitioner.

9. The writ petition is disposed of in above terms.

(GAURI GODSE, J.)

(NITIN JAMDAR, J.)