



W.P. Nos.11963-13564-13466/2020

W.P. NOS. 11963, 13564 & 13466 OF 2020

AND

W.M.P. NOS. 14690, 16819, 16820, 17510 & 17512 OF 2020

Reserved on	Pronounced on
04.02.2022	25.02.2022

M.DHANDAPANI, J.

Education is a tool, which uplifts an individual from ignorance, improves intelligence and results in the overall development of the society. Education is imparted for the specific purpose of being beneficial not only to the individual who receives the same, but also the persons, who are members of the society, as the intelligence attained by an individual, would, in turn, enure to the benefit of the society.

2. India has a great lineage to boast of, from the giver in Karna; to the truthfulness in Harichandra; to the selflessness in Buddha; to the rendering of Justice in Manu, which list is endless, but unmindful of the expanse of the cultural heritage, which is the hallmark of our country, which is eternal, unmindful of the ancestral thread that has woven the whole of the fabric of this great Nation intricately for safeguarding its legacy, for certain earthly and monetary benefits, the greatness of this Nation, which has been evolved over the centuries have



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been thrown into the bins and unscrupulous persons are indulging themselves in acts, which acts were precisely forbidden and which had been considered the main reason for the country being on top for upholding and cherishing the values of the past.

3. Medical profession is a fast exploding and most sought after field by many of the younger generation, not only for its stature, but also for its service and the respect that it commands from the public. The present pandemic situation, that had engulfed the entire Universe, has brought to limelight the value of the medical professionals and the need for more meritorious medical professionals, who can, with, devotion to duty, render their unselfish service to the public at large. Though the pandemic has put the skids on all the activities, yet the medical field was thrown at full swing to save the citizens from the clutches of the COVID dragon, which was successfully kept at bay by the medical practitioners, which has once again stressed the need for keeping in mind that merit should be the sole criterion for the purpose of providing seat to the younger generation, who can alone be able to save the human folk from such a nightmare pandemic, which fact has been time and again reiterated by the Hon'ble Supreme Court that the primary consideration for providing seats in the



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Post-Graduate Medical courses and Super-Specialty Medical Courses should be on the basis of the merit of the individual, which alone would act as the saviour of the common man in times of dire necessity.

4. National Eligibility Entrance Test, most commonly called as 'NEET', which is creating furore amongst the masses, the necessity of which is not under consideration of this Court, yet the filling up of the seats in such higher medical courses, which has to be done strictly in adherence with the directions of the Hon'ble Supreme Court, failure of which has not only resulted in the filing of the present writ petitions before this Court, inviting certain orders from this Court, but also putting the life and interest of many of the meritorious candidates in jeopardy, who have been left in lurch and mental turmoil due to the unmindful, despicable, vicious and colourable act of the respondents in filling up of about 90 of the 113 stray vacancies in the higher medical courses, has also been visited with an enquiry at the hands of this Court, which has been ordered to be conducted by a team headed by a senior officer of the CB-CID, due to the very many infractions and in not adhering to the timelines that have been mandated by the Hon'ble Supreme Court, thereby, inviting the wrath of this Court, which have been pointed out by this Court in its order dated 28.10.2020.



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5. The factual aspects of the matter have been eclipsed in the order passed by this Court on 28.10.20 and, therefore, it is not necessary for this Court to traverse the said path once over, as it would be nothing but duplication of the work, which has already been done in extenso by my learned predecessor. The order dated 28.10.20, as portrayed, brings out the detriments that have been meted out to the petitioners inspite of the fact that they have proved their merit in the NEET examination by securing higher marks and got fully qualified for being provided with a course of their choice, had a Mop Up Counseling been held, as per the procedure prescribed for filling up of the vacancies by the Medical Council of India and approved by the Hon'ble Supreme Court. The act of not conducting mop up counseling inspite of the mandate of the Medical Council of India and the approval of the Hon'ble Supreme Court is nothing but an act of ridiculing the statutory authority and the Constitutional authority that whatever the respondents behold, the respondents would go to any extent to dilute the mandate and the order to fulfill their objectives unmindful of the fact that the infraction committed by them not only borders on contempt, but it is also playing with the lives and livelihood of the younger generation.



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6. Travelling back in time, an analysis of the order passed in this matter, as early as on 02.09.2020, reveal that this Court has highlighted the need to follow the procedure prescribed for conducting Mop Up Counseling, as per the order passed by the Hon'ble Apex Court in ***Dar-Us-Salam Educational Trust & Ors. - Vs - Medical Council of India & Ors. (W.P. (Civil) No.267 of 2017 - Dated 09.05.2017)***, wherein in para-6 and 7, the following directions have been issued :-

"6. The students who secure admission in MBBS course pursuant to the Common Counselling conducted by the State Government, 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/College/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



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manual counselling for allotment of students. After the completion of counselling, 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 colleges so that in case of any stray vacancy arising in any college the said seat may be filled up from the said list.”

(Emphasis Supplied)

7. From the above directions issued by the Hon'ble Supreme Court, it is crystal clear that anticipating certain fraudulent acts on the part of the stakeholders, the directions have been coined in such a manner by the Hon'ble Apex Court that the meritorious individuals are recognized and they be provided with the opportunity to acquire higher knowledge so that they can be of service to the society. The aforesaid directions have been issued on 9.5.17 by the Hon'ble Apex Court and were put into practice from the year 2017 itself. There is no dispute on the said fact.

8. The present cases have cropped up in the year 2020 by which time already three years have passed in the filling the seats following the aforesaid directions. Therefore, the respondents cannot feign ignorance, rather the respondents are not feigning ignorance, but only trying to take shelter under the



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pandemic, which gripped the whole Universe from end March, 2020. However, it is to be pointed out that due to the pandemic, though there may have been slight delay in certain quarters, but all the works have been moving thick and fast and in fact many of the works were being conducted in virtual mode, including counselling for engineering, medical admissions and other higher educational admissions. All the establishments were under virtual operations and, in fact, the Government had urged all the business establishments and offices to move to virtual mode to tackle the pandemic situation.

9. From the orders passed by this Court, it is seen that the stand of the Government, as submitted before this Court by the learned Advocate General was that the Government though made strenuous efforts to fill up the seats under the Government quota, however, many seats could not be filled up in the 1st and 2nd Mop Up counselling, as the said candidates were posted/engaged at various hospitals offering treatment for the patients affected with COVID-19 and the restrictions in movement also prevented many candidates from joining the courses.



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10. It was the further submission of the learned Advocate General that steps were taken to fill up the Government Quota seats through an additional mop-up counselling but the 113 seats available under the Management Quota could not be filled up as there was no time to conduct the counselling, which resulted in the selection committee writing letter to the self-financing colleges to fill-up the vacancies from the list forwarded to them.

11. However, the materials available on record, which were perused by this Court, led this Court to the concrete opinion that it is not only that all is not well with the whole of the selection process, but the selection process was rigged in such a manner that mop-up counselling could not be completed within the time prescribed by the Hon'ble Supreme Court for filling up of the seats under the Management Quota, though in reality, plenty of time was available with the selection committee to conduct the mop-up counselling. Due to the aforesaid act of the selection committee, persons, who were meritorious, and were eagerly and fondly looking forward for the mop-up counseling for getting a seat of their choice in the Management Quota in the Private Medical Colleges, their dreams and ambitions have been shattered by the devious act of the selection committee, which prompted the Court to order an enquiry by CB-CID.



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12. Pursuant to the orders of this Court dated 28.10.2020, enquiry by CB-CID was taken up and regular reports are being filed before this Court, a perusal of which reveals a dark reality engulfing the society through the medical mafia, thereby, monetary considerations outweigh merit and the less meritorious candidates with higher monetary considerations were being given seats in the medical colleges over the more meritorious candidates, thereby, not only the seats are sold, but in effect education is purchased; the quality of education is compromised, thereby, putting the lives of the citizens at risk at the hands of the less meritorious individuals, who are allowed to pursue the higher medical courses and become medical practitioners.

13. The concept of NEET was conceptualized only with a view to acknowledge merit amongst the students, who strive hard to achieve their dreams and ambitions, by putting their time and effort in enriching their knowledge for cracking the NEET exam. This Court is not in any way expressing any opinion on whether the conduct of NEET exam is proper or not, as the orders of the Hon'ble Supreme Court, with regard to conduct of NEET exam for filling up the seats in the medical colleges, has attained finality, though there may be



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difference of opinion on the same arising on many fronts, with which this Court is not concerned. Once the concept of NEET has crystallized and is put to action, unless the same is revisited in a manner known to law, it is the duty of the Government to scrupulously adhere to the guidelines framed by the Medical Council of India as also the various orders of the Hon'ble Supreme Court, while filling up the said seats.

14. Amidst the COVID-19 pandemic, which had a telling effect globally, there were certain restrictions, which was imposed for the safety and security of humanity. But the said restrictions did not in any way hamper the basic necessities of life and the essential acts were performed by all the entities involved in fighting the pandemic. Education is one of the essential activities, on which the future of a country is built. The younger generation being educated properly would alone have a positive impact on the society and the growth that it could achieve. Further, medical practitioners were in the forefront leading the fight against COVID-19. The Courts, being the custodian of the constitutional guarantees as envisaged under the Constitution has to be oblivious of its duty, a sanguine one, to protect and preserve the fundamental rights of the citizens of which education is also a fundamental right, which has been dug deep and buried



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by the acts of many of the interested stakeholders, this Court has taken upon itself the task to separate the wheat from the chaff to find out the black sheeps within the herd so that hitherto fore such acts can be nipped in the bud.

15. Only with the aforesaid idea of rendering substantial justice, be it for the individual, or the society at large, this Court, vide order dated 28.10.20 has ordered investigation by CB-CID and directed submission of report and pursuant to the said directions, regularly the special team, which has since been constituted, has been submitting regular reports on the investigation conducted by it, which found appreciation at the hands of this Court, and in continuation of the same, the present report has been filed.

16. The earlier report reveals that very many individuals, holding positions of importance and power were enquired into, in addition to preliminary enquiry about the monetary transactions, if any, that had been involved in the act perpetrated for the benefit of filling up the Management Quota seats. Though certain findings have been recorded by the Enquiry Officer, however, the enquiry officer has stated in the report that certain restrictions had prevented the



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enquiry from proceeding further in certain directions, which were brought to the attention of this Court.

17. In the aforesaid backdrop, the report dated 19.1.2022 has been filed before this Court. A series of reports have been filed earlier, which have been taken note of by this Court, while issuing orders with regard to the future course of enquiry. In fact, on the earlier occasions, when the Court was hearing the matter, this Court thought it fit not to disclose the materials that were unearthed during enquiry so that the enquiry is not scuttled by the persons in power. However, at this point of time, after perusing the report filed by the enquiry officer, this Court is of the considered view that certain directions, which this Court proposes to pass would definitely have to be linked to certain findings recorded by the enquiry officer for which advertance to the report and portions thereof becomes imminent. In such backdrop, shedding the cloak of secrecy, this Court is inclined to refer to certain portions of the earlier reports, which have a crucial bearing on the case.

18. It is seen from the earlier enquiry reports that a detailed enquiry has been conducted with reference to the Private Colleges in which vacancies under



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the Management Quota was existing, which were neglected to be filled up by the Selection Committee, citing paucity of time and further permitting the Private Colleges to fill up the seats from the merit list based on NEET rankings that is to be forwarded by the Selection Committee to the said colleges. A specific direction was given in *Dar-Us-Salam case (supra)* that candidates in the ratio of 1:10 has to be forwarded by the Selection Committee in respect of stray seats to the Private Medical Colleges for filling the said seats on the basis of merit. However, the report reveals that the stand taken by the Selection Committee was that the said direction by the Hon'ble Supreme Court dated 9.5.17 does not relate to admission to Post-Graduate courses and is confined to admission to Under-Graduate courses and, therefore, there was no necessity to send a list in the ratio of 1:10. However, the enquiry reveals that the letter addressed to the Private Medical Colleges by the Selection Committee reveal that the seats are to be filled up on the basis of the merit list attached with preference in order of merit without any deviation. Therefore, the colleges are well aware that the directions of the Hon'ble Supreme Court in *Dar-Us-Salam case (supra)* has to be followed..

19. The enquiry report further reveals that the Selection Committee had abdicated its responsibility to fill up the seats under the Management Quota and



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had left it at the hands of the Private Medical Colleges to fill up the said stray vacancies, which is against the guidelines issued by the Hon'ble Supreme Court.

Further, it is also evident from the report that the Selection Committee has not monitored the collection of fees and had merely passed on the buck to the Fee Fixation Committee.

20. Likewise, there are many discrepancies that have been pointed out in the enquiry report which have far reaching ramifications, not only insofar as filling up of seats are concerned, but well in the way in which education is being sold in the market with the deserving persons made the beggars amidst the affluent, who purchase the seats rather than the seats being filled up in accordance with law. The said fact is writ large from the report in which one medical college had even usurped the Government Quota seats and the Selection Committee had not taken any steps to redeem the said seats, rather, the seats were sold in and by which the said medical college had unjustly enriched itself.

21. Further, one other striking fact, which emerges from the report is the fact that with regard to the filling up of the seats, though the enquiry made with the candidates, their parents as also the college did not reveal that any monetary



consideration has played its part, yet one case stands distinctly separate, in that the candidate had made a clear admission that the fee collected was more than the fee, which has been fixed for the Management Quota seat. The stray case assumes significance for the fact that while all the other candidates, who have secured admission are continuing their courses, yet the one individual, due to financial constraints, was not able to continue the course. This Court is of the *prima facie* view that the said act of the individual deserves to be accepted for the simple reason that the persons, who have secured seats, rather, purchased the seats, were not willing and ready enough to accept the manner in which they got admitted into the medical course, yet the single individual had come out in the open and submitted the true facts to the enquiry team only due to the fact that the pressure that would have been mounted on him to pay the fees demanded by the college and his inability to pay the said fees resulting in his giving up the said seat, would have made the said individual to come out in the open and speak about the true dark facts which happened behind closed doors in the filling up of the medical seats.

22. The enquiry was mooted out by this Court by coining three queries, which are as under :-



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a) Whether there was any conspiracy between the officials of the Directorate of Medical Education, officials of the Selection Committee and the Self-Financing Colleges (list extracted supra) in filling up the stray vacancies on 31.08.2020;

b) The amount received from each candidate who was admitted by the Self Financing Colleges on 31.08.2020; and

c) Any other matter that unfolds during investigation in this regard.

23. Based on the queries raised, enquiry had been conducted in which monetary transactions between the members of the Selection Committee, the officials of the Directorate of Medical Education, the 13 self-financing colleges the suspected middle men and the immovable properties of the aforesaid entities were placed under the scanner. However, the enquiry officer has submitted his report opining that given the limitations and restrictions in conducting the enquiry, substantial evidence could not be collected for which there is a necessity to register a case to probe the acts of the aforesaid individuals.

24. The enquiry report reveals the following facts :-

i) Dr. G.Selvarajan, the then Secretary, Selection Committee was given re-employment for 19 months from



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the date of his retirement on 31.07.2019 to 26.02.2021 to conduct selection process for the academic year 2020-2021;

ii) The Secretary, Selection Committee, who is solely responsible for ensuring accuracy, impartiality and secrecy in the entire selection process took the decision not to conduct the mop-up counseling for the remaining 113 management quota seats, for the reasons best known to him, despite sufficient time being available for conducting such counseling;

iii) On 30.08.2020, when the private colleges were asked to fill their stray vacancies, on the directions of the Secretary, separate merit lists were not sent to the colleges, thereby violating the rule;

iv) Two merit lists of candidates that were uploaded on the website of the Selection Committee did not have the contact details of the candidates which helped the private colleges to select the candidates on their own without merit;

v) Out of 113 vacancies in 14 private colleges, overall 90 vacancies were filled up by 13 colleges on 31.08.2020 based on the applications received by the following means : (i) online, ii) candidates who approached the college over the phone after 17.08.2020 and those who gave contact details; and iii) who approached the college in person on 31.08.2020. But merit was not followed in the selection process.



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vi) While issuing provisional allotment orders of these 90 candidates on 25.09.2020, the Selection Committee did not check and verify the merit of the candidates, which has the power to withhold the issue of provisional allotment order to unmeritorious candidates, if deemed fit.

25. Further to the above, a gloomy picture is painted in the enquiry report with regard to the then Secretary of the Selection Committee, Dr.G.Selvarajan (Retd.) in which the following particulars have been tabulated :-

i) That Dr.G.Selvarajan (Retd.) was the Addl. Director of Medical Education/Secretary, Selection Committee, Directorate of Medical Education from 04.03.2016 to 31.07.2019. After his retirement, he was re-employed as Secretary, Selection Committee from 31.07.2019 AN to 28.02.2021.

ii) His extension period from 01.01.2021 to 26.02.2021 was issued on 12.08.2021 by reference No.G.O. (D) No.932, Health and Family Welfare (A1) Department. He had acted for two months without a valid order, which needs verification.

iii) That during the selection of the students to Post-Graduate Medical Admission in management quota for the academic year 2020-2021, he has abused his official position by colluding with others.



iv) That in the capacity of Secretary, Selection Committee, Directorate of Medical Education, abusing his official position, prevented his subordinates to send separate merit lists to 14 private medical colleges on 30.08.2020 for filling up stray vacancies so that they can fill up the vacancies on their own.

v) That the Secretary, Selection Committee, Directorate of Medical Education, abusing his official position, directed his subordinates to remove the software verification, which was created to prevent bogus blocking of seats during seat blocking in 2nd phase of regular counselling of management quota seats, which caused bogus blocking for six seats, thereby indirectly helped the self-financing medical colleges to hide the correct vacancy position in their website, which might have been used later by the suspected colleges to fill on their own.

vi) That the Secretary, Selection Committee, Directorate of Medical Education, seems to have colluded with the self-financing medical colleges in committing irregularities while selecting students for PG Medical Admission in management quota to fill up stray vacancies by way of issuing of provisional allotment orders to less meritorious candidates without checking and verifying the merit of the candidates.

vi) That the officer might have received gratification for him or others since he has not conducted mop-up



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*counselling for the management quota seats during PG
medical admission for the academic year 2020-2021.*

26. The above materials found in the enquiry report reveal that all is not well with the conduct of the counselling done by the Directorate of Medical Education through its Secretary, Selection Committee, who is the ultimate authority to decide on the course of action to be taken to fill up the seats. Though the above may be suspicions, lest it is not without any basis as the records reveal that subsequent to his retirement in July, 2019, the said officer was re-employed, that too for a term covering two sessions of medical admissions, one pertaining to the period 2019-2020 and the other pertaining to the period 2020-2021, with which session this Court is concerned in this case. Further, as pointed out in the enquiry report, the said individual has been holding his office without a valid order for two months, which is grossly impermissible.

27. In the aforesaid sequence of events, which have unfolded through the report of the enquiry officer, necessarily, this Court feels that a more comprehensive enquiry requires to be undertaken to find out the nexus between the various stakeholders in admitting less meritorious candidates in the management quota without conducting mop-up counselling, as the claim of the



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respondents that paucity of time was the reason for not conducting mop-up counselling.

28. Service to humanity is service to God. The medical profession is placed in a pedestal just beneath the Creator, as the medical professionals, unmindful of their stress and strain, do service to humanity for its well being and happiness. Education is imparted only to inculcate in the minds of the individuals about the need to render selfless service to humanity, but which, nowadays, has become selfish service. However, in the case on hand, the circumstances, which have unfolded through the reports of the enquiry officer reveal that the person holding the post of Secretary of the Selection Committee in the Directorate of Medical Education, who is to render his duties without impartiality and within the framework of law, has doomed the lives of around 113 meritorious individuals, who have secured higher marks in NEET, from being provided with a seat of their choice in the Management quota in the Private Medical Colleges through the centralised counseling and giving the directions of the Hon'ble Supreme Court a go-by, has given on a golden platter, 113 seats to the Private Medical Colleges to be filled up as per their choice rather than on the basis of the merit list and the Private Medical Colleges have gleefully accepted the offer to fill up the said seats



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unmindful of the meritorious candidates, who have secured more marks in NEET.

The act of the Secretary, Selection Committee, is not only not in consonance with law, but his act, as sketched in the enquiry reports, is a calculated attempt to provide a benefit to the Private Medical Colleges at the expense of the meritorious candidates. But for the act of the Secretary, Selection Committee, the petitioners and the other candidates, equally placed, who are more meritorious than the persons, who have been provided with a seat in the private medical colleges, would have not only acquired a seat in the said institutions, but the rule of law would also have been upheld.

29. The revelations from the enquiry report clearly shows that all is not well with the allotment of seats made in the private medical colleges, but the Secretary, Selection Committee has been instrumental in not following the procedure prescribed for filling up the seats on the basis of the marks obtained by the candidates in NEET, which deserves much to be said.

30. The great Tamil poet and philosopher, Thiruvalluvar, in his masterpiece, Thirukkural, has spoken about the traits of the person, who is learning and the manner in which he should conduct himself.



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அறத்தினூடங்கு ஆக்கமும் இல்லை அதனை
மறத்தலின் ஊங்கில்லை கேடு.

Meaning :

அறம் செய்வதை விட நன்மையும் இல்லை.
அதைச் செய்ய மறப்பதைவிட கெடுதியும் இல்லை.

31. There can be no greater source of good than the practice of virtue and there can be no greater source of evil than forgetfulness of it. The above verse clearly postulates that every person should strive to do good, by his actions, and forgetting the same and causing harm by his/her actions is more of an evil than failing to do any good. It is a lamentable scenario that though each and every person, even at his tender age, learn Thirukkural, seldom bother to follow the golden words, which have been proscribed therein. This has left the country in a very egregious and deplorable position and persons, who are close to the power centre get done things for their benefit, in detriment to the society, thereby causing great harm to the other persons. The present case is one such classic example where the rule of law has been thrown to the winds for the benefit of non-meritorious persons, thereby causing grave harm, evil and to the detriment to the meritorious candidates, and the meritorious candidates have been made



to run from pillar to post, including coming before this Court for getting the relief, which was a matter of right for them as per law.

32. As pointed out above, the enquiry officer has expressed certain bottlenecks in the conduct of the enquiry as without a case being registered under the relevant provisions of law, moving forward with the enquiry is expressed to be a difficulty, as the enquiry team, is not be in a position to collect the requisite materials with the authority of law.

33. In the aforesaid scenario, if this Court does not step in to take action in accordance with law, the faith that has been reposed on this Court by the public would have a whirlwind downfall. ***Therefore, on a consideration of the entire materials placed before this Court in the form of enquiry reports and material documents, it clearly transpires that Dr.G.Selvarajan, the then Secretary, Selection Committee, Directorate of Medical Education, has not only been instrumental in depriving the meritorious candidates of their rightful seats under the management quota in the private medical colleges, which are under the scanner of the enquiry officer, by not following the mandate of the Medical Council of India and the orders of the Hon'ble Supreme Court, but even on a***



holistic consideration of the case, this Court is of the view that the nexus does not start or end with the said Dr.G.Selvarajan, the then Secretary, Selection Committee, but the tentacles of illegality are cast far and wide as the perpetrator of the crime could not an isolated individual in the form of the then Secretary, Selection Committee, but the said officer would definitely have been aided by other persons in stage-managing the aforesaid act, which has deprived the meritorious candidates of their right to a seat of their choice in the Management quota. Therefore, a more deeper probe into the acts committed by the then Secretary, Selection Committee as also the other persons, whoever be it, requires to be looked into without which a complete probe cannot be said to have been made.

34. Further, this Court also cannot lose sight of the fact that Dr. G.Selvarajan, the then Secretary, Selection Committee, was the person, under whose authority and direction, all the acts were being done. The acts of Dr. G.Selvarajan, the then Secretary, Selection Committee, has impeded on the lives of many aspiring candidates, who have lost their valuable right of getting a seat in the higher medical course due to the illegal, unreasonable, arbitrary and perverse act of the said individual and the act of the said individual, viz.,



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Dr.G.Selvarajan, cannot be left unnoticed merely because the individual has since retired. Therefore, this Court, in exercise of its inherent powers and exercising its extraordinary jurisdiction direct the Government to take appropriate action against Dr.G.Selvarajan (Retd.), the then Secretary, Selection Committee, Directorate of Medical Education in consultation with the Accountant General under Section 12 of the Pension Rules and stop disbursement of pension and other benefits to which the said individual is entitled to upon his retirement, till the matter is enquired into and the issue is taken to its logical conclusion. Allowing the said Dr.G.Selvarajan to receive all the benefits which are due to him on his retirement, inspite of a categorical finding that he has been instrumental in axing the aspirations of around 113 students, would be nothing but rendering injustice to the 113 candidates, who have been made the scapegoats in the evil design perpetrated by interested persons in filling up the seats under the management quota.

35. Accordingly, this Court directs the enquiry officer to register a case against Dr.G.Selvarajan and all the other persons, known and unknown, who have had nexus with the said individual including the private medical colleges, which have flouted the directions of the Hon'ble Supreme Court under the



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relevant provisions of law by registering an FIR, which shall be placed before this Court on the next date of hearing for consideration and approval.

36. Further, the enquiry officer is also directed to concentrate his enquiry on all the persons in the Directorate of Medical Education and the Department under which the said Directorate is functioning so that none of the persons, who have had a foothold in the said Department and see to it that no stone is left unturned in trying to find out the culprits, who have been instrumental in depriving the meritorious candidates, such as the petitioners from their rightful seats in the higher medical courses.

37. The Director General of Police is hereby directed not to transfer the officers, who are part of the team, who have been entrusted with the task of investigating the issue as otherwise the transfer will hang above the heads of the said officers as Solomon's Sword, which will have a deleterious effect in the discharge of their duties.

38. Coming to the relief sought for in the writ petitions proper, the petitioner in W.P. No.11963/20 has prayed that in the event of the M.D.



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(Pediatrics) seat not being provided to her inspite of the upgradation allowed to her from M.D. (Microbiology), she may be permitted to give up her seat in the 4th Respondent college in M.D. Micro Biology. This Court, acceding to the request, in the light of the fact that the petitioner has been made to suffer for no fault of hers, has directed that she be allowed to give up her seat and that the penalty as contemplated under Clause 21(c) of the Prospectus be not put against her and that the petitioner will be entitled to once again participate during selection in the next academic year for post-graduate courses.

39. Insofar as the petitioner in W.P. No.13466 of 2020 is concerned, in view of the fact that a direction has been issued to the petitioner to pay the fees fixed by the fee fixation committee to the 4th Respondent college on or before 02.11.2020 and on such payment, the 4th respondent was directed to admit the Petitioner in the M.S. Orthopedics course, it is submitted that the said order has been complied with.

40. However, insofar as W.P. No.13564/20 is concerned, the prayer made is for a direction to the respondent authorities to fill up the Post graduate medical seats declared as vacant as per the seat matrix published by the third



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respondent dated 17.08.2020 only by conducting mop-up counselling for management seats 2020 and by considering the candidates of the petitioner having NEET PG Rank 67168.

41. In the light of the facts discussed above, 90 seats of the 113 seats having already been filled up by the private medical colleges and the further fact that this Court is not aware of the position of the persons in the NEET merit list who have been provided with the said seats and in the absence of the said persons being impleaded as party respondents, the affirmative direction sought for by the petitioner cannot be granted. However, it is the undisputed the case of the petitioner as also accepted by the respondents that the petitioner was a meritorious candidate, who would have secured a seat in the management quota in the private medical college had a mop-up counselling been conducted. Therefore, the act of the respondents have clearly caused detriment to the petitioner and caused colossal damage not only to the higher education prospects of the petitioner, but also affected his chances in his further growth in his profession, the petitioner should not be left in lurch without being compensated for the loss suffered by him.



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42. However, insofar as compensation is concerned, would monetary compensation be a justiciable relief to the petitioner is the moot question that falls for consideration of this Court.

43. In ***S.Krishna Sradha – Vs – State of A.P. & Ors. (2017 (4) SCC 516)***, the Hon'ble Apex Court had occasion to consider whether improper denial of admission for a candidate for the fault of the authorities when such candidates being meritorious and having approached the court diligently could be compensated with mere monetary compensation. Doubting the correctness and fairness of the said decision ***Chandigarh Admn. - Vs - Jasmine Kaur (2014 (10) SCC 521)***, a co-ordinate Bench of the Hon'ble Apex Court, for the following reasons, referred the matter to a larger Bench :-

“1. The centripetal issue that emerges for consideration in this appeal, by special leave, compels us to think and constraints us to ruminate over the principle whether grant of monetary compensation can be considered as the sole and adequate remedy for a student who has been deprived of admission to the MBBS course, despite he or she being meritorious, vigilant and diligent and thereby abandoning the path of recalcitrance and eventually being found flawless, is forced to suffer non-admission to the course for which he had aspired for and found suitable because of lapses committed either by the counselling authority or the administrating authority intrinsically connected



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with the process of admission; and the ancillary issue that arises for deliberation is whether the constitutional courts, be it High Court or this Court, while exercising the power Under Article 226 of the Constitution or Under Article 32 or 136 of the Constitution, would feel handicapped because of expiry of time Schedule fixed by the Court to deny the relief to the candidate by pronouncing, "relief denied as the time has expired".

* * * * *

10. At this juncture, we think it appropriate to have a look at the decisions that have been cited at the Bar. In Asha (supra), the Court observed that it was the need of the hour and demand of justice that this Court clarified its decisions and stated the principles with greater precision so as to ensure elimination of colourable abuse and arbitrary exercise of power in the process of selection and admission to the professional courses by all concerned. The Court posed four questions. They are:

- a) Is there any exception to the principle of strict adherence to the Rule of Merit for preference of courses and colleges regarding admission to such courses?*
- b) Whether the cut-off date of 30th September of the relevant academic year is a date which admits any exception?*
- c) What relief the courts can grant and to what extent they can mould it while ensuring adherence to the Rule of merit, fairness and transparency in admission in terms of Rules and Regulations?*
- d) What issues need to be dealt with and finding returned by the court before passing orders which may be more equitable, but*



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still in strict compliance with the framework of Regulations and judgments of this Court governing the subject?

27. As is seen, stress has always been laid on the merit in the matters of all admissions as meritorious students should not face any impediment to get admission for some fault on the part of the institution or the persons involved with it. He/She has no other remedy but to approach the Court for getting redressal of his/her grievances. It is a grievance that pertains to fundamental right. It has to be remembered that a right is conferred on a person by Rule of law and if he seeks remedy through the process meant for establishing Rule of law and it is denied to him, it would never subserve the cause of real justice. When a lis of this nature comes in a constitutional court, it becomes the duty of the court to address whether the authority had acted within the powers conferred on it or deviated from the same as a consequence of which injustice has been caused to the grieved person. The redressal of a fundamental right, if one deserves to have, cannot be weighed in terms of grant of compensation only. Grant of compensation may be an additional relief. Confining it to grant of compensation as the only measure would defeat the basic purpose of the fundamental rights which the Constitution has conferred so that the said rights are sustained. It would be inapposite to recognize the right, record a finding that there is a violation of the right and deny the requisite relief.

28. A young student should not feel that his entire industry to get himself qualified in the examination becomes meaningless because of some fault or dramatic design of certain authorities



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and they can get away by giving some amount as compensation.

It may not only be agonizing but may amount to grant of premium either to laxity or evil design or incurable greed of the authorities. We are disposed to think, in such a situation, justice may be farther away and the knocking at the doors of a constitutional court, a sisyphian endeavour, an exercise in futility. It is well known that the law intends not anything impossible; "lex non intendit aliquid impossibile". But when it is in the realm of possibility; and denial of relief hurts the "majesty of justice", it should not be denied. On the contrary, every effort has to be made to grant the relief. Needless to say, to get the relief, conditions precedent are to be satisfied; and that is what has precisely been stated in Asha (supra) and Harshali (supra).

29. In this context, Mr. Narasimha, learned friend of the court submitted that the court in Jasmine Kaur (supra) has been guided by the principle adopted by this Court in the cases of constitutional tort. He has drawn our attention to the authorities in Rudul Shah v. State of Bihar (1983) 4 SCC 141, Sebastian Hongray v. Union of India AIR 1984 SC 571 and Chairman, Railway Board v. Chandrima Das (2000) 2 SCC 465, where the Court granted compensation because there was no other option and the only way of redemption was to grant compensation. It is necessary to state that grant of relief as lawfully due should be the primary duty of the court. Where doctrine of restitution can be applied and there is no impossibility it would be anathema to the cause of justice to deny the same. It is seemly to appreciate that restitution as a concept, as is traditionally understood, is the restoration of an



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aggrieved party to his condition prior to the wrongdoing. It could be limited to monetary quantification only if the breach is not capable of being remedied. That being so, compensation cannot be the adequate or sole remedy for the wrongful deprivation of admission, as it affects the academic career of a student. There may be cases where restitution may be too harsh. Then, as we are inclined to think, telescoping albeit reasonably is not an impossible one. In Aneesh D. Lawande (supra) some of the candidates were adjusted as the government had played possum and telescoping was not allowed as the candidates had got into the course in contravention of the decision of this Court. The factual score was different. But when a right is comatosed by a maladroitness design, we think, the right of the person presently aggrieved should matter, not the right of the future candidate. Present cannot be crucified at the alter of the present. Whether the beneficiary who has got in should go out or not, would depend upon the discretion of the Court."

44. On the above reference, the Larger Bench of the Apex Court had considered the issue and had overruled the decision in *Jasmine Kaur case (supra)* and has held as under :-

"9. In light of the discussion/observations made hereinabove, a meritorious candidate/student who has been denied an admission in MBBS Course illegally or irrationally by the authorities for no fault of his/her and who has approached the Court in time and so as to see that such a meritorious candidate



may not have to suffer for no fault of his/her, we answer the reference as under:

(i) That in a case where candidate/student has approached the court at the earliest and without any delay and that the question is with respect to the admission in medical course all the efforts shall be made by the concerned court to dispose of the proceedings by giving priority and at the earliest.

(ii) Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed – 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time, i.e., within one month from 30th September, i.e., cut off date and under no circumstances, the Court shall order any Admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more



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meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

(iii) In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota.

(iv) Grant of the compensation could be an additional remedy but not a substitute for restitutorial remedies. Therefore, in an appropriate case the Court may award the compensation to such a meritorious candidate who for no fault of his/her has to



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lose one full academic year and who could not be granted any relief of admission in the same academic year.

(v) It is clarified that the aforesaid directions pertain for Admission in MBBS Course only and we have not dealt with Post Graduate Medical Course.

10. In view of the above, the decision of this Court in the case of Jasmine Kaur (Supra) or any other decisions contrary to the above stand overruled. The decision of this Court in the case of Asha (Supra) is hereby affirmed to the aforesaid extent. The reference is answered accordingly."

(Emphasis Supplied)

45. From the above, it is clear that a quietus has been given by the full Bench of the Hon'ble Apex Court relating to the relief to be granted to persons, who have been deprived of a seat due to the illegal act of the respondents, inspite of the persons diligently prosecuting their case. However, as noticed above, the Apex Court has limited its examination to seats in MBBS course alone and has not considered post-graduate courses. In the case on hand, the matter pertains to post-graduate courses, this Court cannot import the said decision. In such view of the matter, this Court can only direct grant of compensation and insofar as any further relief is concerned, it is for the petitioners to work out their remedy in accordance with law.



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46. In the case on hand, the petitioner in W.P. No.13564/21 has diligently approached the Court and furthermore, the illegality of the respondents in not conducting mop-up counselling has been the reason for the petitioner not getting a seat, though he was meritorious. The illegality perpetrated by the Selection Committee as also the private medical colleges in flouting the norms and giving the seats to non-meritorious students to the exclusion of the meritorious students definitely warrants that atleast till the Hon'ble Apex Court clear the doubt expressed in *Krishna Sradha's case (supra)*, the petitioner herein would be entitled to compensation from the State, as the petitioner has been robbed of his right to a seat in the mop-up counselling, which has been nullified by the illegal action of the Selection Committee.

47. In the aforesaid circumstances, this Court is of the considered opinion that the petitioners in W.P. Nos.11963 & 13564 of 2021 would each be entitled to a compensation in a sum of Rs.4,00,000/- (Rupees Four Lakhs only) payable within a period of four weeks from the date of receipt of a copy of this order. The said amount shall initially be paid by the State and, thereafter, the same shall be recovered from the then Secretary, Selection Committee, Directorate of Medical Education from his retirement proceeds/pension. Further, liberty is granted to



the petitioners to proceed in accordance with law for any other relief, if so advised on the basis of the decision *Krishna Sradha's case (supra)*.

48. While the writ petitions are ordered accordingly, in the overall circumstances of the case, the following order is passed :-

i) The Chief Secretary, Government of Tamil Nadu, is directed to take necessary action against Dr.G.Selvarajan departmentally for stopping pension and other benefits payable to the individual, which would be subject to the outcome of the investigation;

ii) The Enquiry Officer is directed to register an FIR against all persons, including known and unknown persons as also against the private medical colleges, which were under the scanner of investigation for filling up the seats in derogation of the merit list;

iii) The enquiry officer is further directed to conduct enquiry against all persons in the Directorate of Medical Education and the Department under which the said Directorate is functioning so that none of the persons, who have had a foothold in the said Department are left out;

iv) The Director General of Police, Chennai, is directed not to transfer the officers, who are part of the enquiry team formed for investigating this matter at the instance of this Court.



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v) State is directed to pay a compensation in a sum of Rs.4,00,000/= (Rupees Four Lakhs only) to the petitioners in W.P. Nos.11963 and 13564 of 2021 within a period of four weeks from the date of receipt of a copy of this order. The said amount shall initially be paid by the State and, thereafter, the same shall be recovered from the then Secretary, Selection Committee, Directorate of Medical Education from his retirement proceeds/pension. Further liberty is granted to the petitioners to proceed in accordance with law for any other relief, if so advised on the basis of the decision Krishna Sradha's case (supra);

vi) The enquiry officer is directed to ensure compliance of registration of the case and conduct enquiry and to file further report on the progress of the investigation on 25.4.2022.

49. Registry is directed to forward a copy of this order to the Chief Secretary, Government of Tamil Nadu, Fort St. George, Chennai and the Director General of Police. List the petitions for further orders on 25.04.2022.

25.02.2022

Index : Yes / No

Internet : Yes / No

GLN



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To

1. The Chief Secretary
Government of Tamil Nadu
Fort St. George, Chennai - 9.
2. The Director General of Police
Chennai.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS.11963, 13564
& 13466 OF 2020**

**Pronounced on
25.02.2022**