HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Special Appeal (Writ) No. 1057/2024

In

S.B. Civil Writ Petition No.16822/2024

1. Union Of India, Through its Secretary, Ministry Of Health And Family Welfare Nirman Bhavan, New Delhi.
2. National Medical Commission, Through its Secretary General, Pocket 14, Sector 18, Dwarka Phase-I, New Delhi-110077.
3. Medical Assessment And Rating Board, Through Its President, Pocket 14, Sector 18, Dwarka Phase-I, New Delhi- 110077.

----Appellants-Non-Petitioners

Versus

1. JIET Medical College And Hospital, Having its Campus Situated At NH 62, JIET Universe Campus, Jodhpur Pali Highway, Village Mogra Jodhpur, Through Its Authorized Representative Abhishek Soni S/o Chhagan Lal Soni, Aged About 38 Years, R/o Om Shri Om Ram, Part Of Plot A-1, Inside Shiv Parvati Bhawan, Opposite Mahila Police Thana, Police Line Ratanada, Jodhpur.
2. Arun Shanti Education Trust, Having Its Office At NH 62, JIET Universe Campus, Jodhpur Pali Highway, Village Mogra Jodhpur.

------Respondents-Petitioners

3. Office Of The Chairman, Neet Ug Medical And Dental Admission/counseling Board-2024 And Principal And Controller Sms Medical College And Attached Hospitals, Jaipur.

----Proforma-Respondents

For Appellant(s)	:	Mr. R.D. Rastogi, Additional Solicitor General (Senior Advocate) assisted by Mr. Devesh Yadav (through VC) with Mr. B.P. Bohra Advocate.
For Respondent(s)	:	Mr. M.S. Singhvi, Senior Advocate assisted by Mr. Abhishek Mehta Advocate, Dr. Vikas Balia, Senior Advocate (through VC) assisted by Mr. Hemant Ballani Advocate.

HON'BLE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE MUNNURI LAXMAN
(Through V.C.)
Judgment

REPORTABLE

11/12/2024

1. This appeal is directed against order dated 16.10.2024 passed by the learned Single Judge, whereby, the learned Single Judge by interim order has allowed increase of the seats in the medical college.

2. Respondents-writ petitioners, in response to the public notice dated 18.08.2023 inviting applications for establishment of new colleges for MBBS Course and revised intake of existing colleges, submitted application for establishment of college with intake capacity of 150 seats. A show cause notice was issued on 04.04.2024 requiring certain compliance and it is the case of the Respondents-writ petitioners that compliance report was submitted on 12.04.2024, physical inspection was conducted by the assessor of National Medical Commission. The assessor found that there were some deficiencies insofar as faculty and SR are concerned. On 04.07.2024, Medical Assessment and Rating Board (hereinafter referred to as the 'MARB') disapproved the entire scheme for establishment of medical college with 150 seats. Respondents-writ petitioners filed first appeal, which was dismissed. A second appeal was then filed on 04.08.2024. During pendency of the appeal, counseling started on 14.08.2024. Till completion of first and second round of counseling, the second appeal remained pending and was finally decided on 30.09.2024, partly allowing the same and granting permission for only 50

seats. The Respondents-writ petitioners dissatisfied with the rejection of application insofar as remaining 100 seats was concerned, approached the Writ Court by filing writ petition wherein, interim order came to be passed in its favour on 16.10.2024. By interim order, learned Single Judge allowed increase in the seats from 50 to 100. In compliance of order of the Court, the appellants and the other instrumentalities had to increase and issue notice enhancing seats from 50 to 100 which eventuality led to publication of increased vacant seat matrix in the stray vacancy round held on 30.10.2024. The students were allowed admission against 50 enhanced seats who later on deposited tuition fee and were admitted from 04.11.2024 to 05.11.2024 in the concerned college.

3. Learned Additional Solicitor General appearing for the appellants would submit that increase in the intake capacity of a medical college by an interim order has been seriously deprecated by the Hon’ble Supreme Court in plethora of decisions but despite that learned Single Judge has passed an interim order directing increase in the intake of seats by as many as 50 seats. Learned Additional Solicitor General for the appellants would submit that merely because a *prima-facie* case or strong *prima-facie* case is made out, interim relief ought not to have been granted as increase in seats by such interim order results in admission of large number of students and in case, the writ petition is dismissed, it will seriously jeopardise the future and career of those students who applied for admission against the seats increased provisionally by an interim order. On the other hand, if the writ petition is allowed, permission could always be granted to

admit students in the following academic session. It is not a case of irreparable injury. The Court may even award appropriate compensation if ultimately it is found that rejection of application was illegal but no interim order should have been passed. Learned Additional Solicitor General for the appellants has placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Medical Council of India Versus JSS Medical College & Another[1], Medical Council of India Versus Rajiv Gandhi University of Health Sciences & Others[2], Dental Council of India Versus Dr. Hedgewar Smruti Rugna Seva Mandal Hingoli and Others[3], Medical Council of India Versus N.C. Medical College and Hospital and Others[4], State of Uttar Pradesh and Others Versus Sandeep Kumar Balmiki & Others[5], Medical Council of India Versus Kalinga Institute of Medical Sciences (KIMS) & Others[6], S. Krishna Sradha Versus State of Andhra Pradesh & Others[7], Medical Council of India Versus Chairman, S.R. Educational and Charitable Trust & Another[8], Fuljit Kaur Versus State of Punjab & Others[9], Faiza Choudhary Versus State of Jammu and Kashmir and Another[10]** and the judgments of this Court in the cases of **National Medical Commission & Others Versus Tirupati Balaji Educational Trust & Others, (D.B. Special Appeal (Writ) No.1032/2024)**, decided on 05.11.2024 & **Indian Mission of Medical Sciences Society & Another**

1 (2012) 5 SCC 628
2 (2004) 6 SCC 76
3 (2017) 13 SCC 115
4 (2019) 17 SCC 655
5 (2009) 17 SCC 555
6 (2016) 11 SCC 530
7 (2020) 17 SCC 465
8 (2020) 17 SCC 717
9 (2010) 11 SCC 455
10 (2012) 10 SCC 149

Versus Union of India and Others, (S.B. Civil Writ Petition No.15646/2024), decided on 05.11.2024 and the judgment of the **Madras High Court in the case of Vels Medical College & Hospital Under Vels Institute of Science, Technology & Advanced Studies (VISTAS) Versus Union of India & Others, W.P. No.22750/2022 & connected matters**, decided on 28.03.2024.

4. Per-contra, learned Senior Counsel appearing for the Respondents-writ petitioners would submit that though normally court does not allow increase of intake capacity by an interim order, present is a case of extraordinary circumstances and very strong *prima-facie* case. He would submit that the Respondents-writ petitioners replied to notice issued to it by clearly stating that the deficiency, if any, was cured. As far as deficiency of faculty is concerned, it is submitted the deficiency as pointed out was negligible and statutorily permitted within the permissible range of deficiency for the purposes of grant of permission for creation of seats in the institutions. Some of the deficiencies were misconceived as those requirements were to be fulfilled only after grant of permission and not before that. He would further submit that the appellants themselves are not very clear as to which rule is applicable. It is submitted that though in the case of the Respondents-writ petitioners, Rules of 2023 have been applied, in many other cases, applying earlier Rules of 2020, permissions have been granted. Learned Senior counsel also cited various examples of many other institutions both Government as well as private where despite many deficiencies being found, permission was granted with certain undertakings. Therefore, the

Respondents-writ petitioners have been subjected to discriminatory treatment. It is also submitted that shortage of faculty was alleged ignoring that under the Rules, faculty as against various posts are interchangeable. Lastly, it is submitted that the appellants itself did not follow the timeline prescribed under the schedule laid down by the appellants themselves in the matter of deciding application for establishment of medical college, decision on first and second appeal, which led to a situation that the second appeal came to be decided only after first and second round of counseling were over. In the second appeal, 50 seats were allowed, but no justification was provided as to why application for another 100 seats was rejected.

5. Taking into consideration the aforesaid extraordinary circumstances and strong *prima facie* case, learned Single Judge passed an interim order. It is submitted that while exercising jurisdiction under Article 226 of the Constitution of India, it is within the discretion of the Writ Court to pass appropriate order and no restriction can be imposed as a rule of thumb that under no circumstances, seats can be allowed to be increased by an interim order. He would submit that appellants have fundamental right granted under Article 19(1)g of the Constitution of India to carry on his occupation which is subjected to reasonable restrictions as per law. Where rejection of application is found apparently illegal and arbitrary, it would be a case of violation of fundamental right and, therefore, while granting interim order, learned Single Bench has only protected the fundamental right of the Respondents-writ petitioners. He would further submit that in those cases where in the event of refusal to grant interim order,

writ petition itself would be frustrated or rendered academic, interim order could always be granted and there is no bar under the Constitution for the Writ Court to pass appropriate interim orders. He would also submit that the delay was occasioned because reply was not being filed and ultimately learned Single Judge had to pass an interim order. In support of his submissions, learned Senior counsel for the Respondents-writ petitioners has placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of **Viacom 18 Media Private Limited and Others Versus Union of India and Others**[11]**, DEORAJ Versus State of Maharashtra and Others**[12]**, Rajiv Memorial Academic Welfare Society and Another Versus Union of India and Another**[13] **& Medical Council of India Versus Chairman, S.R. Educational and Charitable Trust and Another**[14].

6. We have gone through the order passed by the learned Single Judge and also given anxious consideration to submissions made by respective counsel for the parties.

7. What is reflected from the order is that the learned Single Judge was of the view that a strong *prima facie* case is made out in favour of the Respondents-writ petitioners as the deficiency which has been pointed out, due to which application for grant of permission for intake of 150 seats was partially allowed and limited to 50 seats, was bad in law. To some extent, learned Single Judge has gone into merits of the case also and particularly taking into consideration that when after initial notice under Section 28(3) of the National Medical Commission Act, 2019

11 (2018) 1 SCC 761
12 (2004) 4 SCC 697
13 (2016) 11 SCC 522
14 (2020) 17 SCC 717

(hereinafter referred to the 'NMC Act of 2019), response was also submitted, before passing the order rejecting application on 04.07.2024, another notice was not given, therefore, it was violation of Section 28(3) of the NMC Act of 2019. It has also been observed that no reasons have been recorded why grant of permission was restricted only to 50 seats and rejected for remaining 100 seats. Learned Single Judge has also observed that there was delay on the part of the appellants in completing various exercises of consideration of application for grant of permission and decision of appeals and due to delayed exercise in violation of the timeline prescribed, the situation arose where the interim order was required to be passed.

8. We find that the operative reasons for the learned Single Judge to increase seats from 50 to 100 by interim order is based on the ground that the Respondents-writ petitioners had a strong *prima facie* case and, therefore, it had became necessary to protect them.

9. An interim order in the nature of directing increase in the intake capacity of an educational institution including medical college has been deprecated by the Hon'ble Supreme Court in plethora of decisions which we shall refer to herein below.

10. In the case of **Medical Council of India Versus Rajiv Gandhi University of Health Sciences & Others (Supra)**, the facts were that by an interim order, direction was issued to the Government to include the seats of the Respondents-writ petitioners' medical college and make admission for the academic years in question subject to the conditions *inter-alia* that in the event of government's refusal to grant renewal, students or

institutions should not claim equities. Direction for admission of students in those institutions, which are yet to get approval from the concerned authority, or permission has not been granted by the council, was not approved. It was observed as below:-

> "**4.** We once again emphasis that the law declared by this Court in Union of India v. Era Educational Trust that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the applications filed by educational institutions concerned for grant of permission or manner in which the same should be processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the authorities concerned or permission has not been granted by the Council."

11. The nature of dispute which fell for consideration before the Hon'ble Supreme Court in the above case, almost similar as in the case in hand, was given as below:-

> "**12.** There is serious dispute between the parties as to what are the requirements to be fulfilled to get necessary permission. Whether majority of the requirements have already been fulfilled or not; whether all the primary conditions that have been provided have been fulfilled or not; whether non-fulfilment of certain other requirements which are of minor character should not come in the way of grant of permission, are all such matters to be decided in the course of the writ proceedings before the High Court rather than in these proceedings. Therefore, we do not wish to enter upon the controversy in this regard at this stage."

12. The detailed process through which applications for grant of permission are required to be processed and the nature of exercise required to be undertaken before permission is granted for establishment of medical college, was also emphasized by the Hon'ble Supreme Court as below:-

> "**13.** Law is well settled that Section 10-A of the Medical Council Act which provides for terms and conditions have to be fulfilled before starting or establishing a medical college or starting higher courses making it clear that what is postulated thereunder is evaluation of application made by the institution concerned by the Central Government in the first instance and then forwarding the same to the Medical Council of India for its further examination. There are various steps envisaged under the Scheme such as: (a) issuance of letter of intent by the Central Government on the recommendation of the Council; (b) issuance of letter of permission by the Central Government on the recommendation of the Council for starting admissions; (c) issuance of annual renewal to be granted by the Central Government on the recommendation of the Council; (d) at the stage of 1st batch of students admitted in MBBS course go for final-year examination, grant of formal recognition by the Central Government on the recommendation of the Council; and (e) if at any stage after the grant of initial permission entitling permission of 1st batch of students any college fails to fulfill the minimum norms in any successive year, as per the statutory regulations, further admissions are liable to be stopped at any stage."

13. Having so considered the matter in the light of the scheme for grant of permission for establishing medical college or for increasing seats in a medical college, it was held that the interim order should not be granted in normal circumstances. Following are the pertinent observations:-

> "**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 that 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."

14. In the case of **Faiza Choudhary Versus State of Jammu and Kashmir and Another (Supra)**, issue was whether an

MBBS seat which fell vacant in a particular year could be carried forward to the next year so as to accommodate a candidate who was in the merit list published in the earlier year. On principles, it was held that seat could not be increased by the order of the Hon'ble Supreme Court or the High Court.

15. In the case of **Medical Council of India Versus JSS Medical College & Another (Supra)**, in the matter of challenge to an interim order, directing increase of seats for MBBS course from 150 to 200, cautionary principle as laid down earlier was reiterated by their Lordships in the Hon'ble Supreme Court as below:-

> "**12.** Without adverting 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 interim order. In normal circumstances the High Court should not issue interim order granting permission for increase of the seats. High Court ought to realize 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 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.
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> **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. In a matter like the present one, decisions on issues have to be addressed at the interlocutory stage and they can not be deferred or dictated later when serious complications might ensue from the interim order itself. There are large number of authorities which take this view and instead of burdening this

judgment with all those authorities it would be sufficient to refer to a three-Judge Bench decision of this Court in the case of Medical Council of India v. Rajiv Gandhi University of Health Sciences, (2004) 6 SCC 76, in which it has been held as follows:

> "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."
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> **14.** For all these reasons we are of the opinion that the interim order passed by the High Court is unsustainable. Any observation made by us in this judgment is for disposal of the present appeal and shall have no bearing on the merits of the case. Further, as the matter pertains to increase in seats in educational institution, we deem it expedient that the High Court considers and disposes of the case on merit expeditiously."

16. It would be pertinent to mention here that while holding that interim order should not have been granted, it was observed that it would be expedient that the case is considered and disposed off on merits expeditiously.

17. In the case of **Medical Council of India Versus Kalinga Institute of Medical Sciences (KIMS) & Others (Supra)**, limited scope of interference against report and decision regarding deficiency was highlighted that under no circumstance, the Court should examine the report as an Appellate body and it was again repeated that interim order to increase seats should not have been passed as that would be an erroneous approach. The

observations made by the Hon'ble Supreme Court in this regard are as below:-

> "**27.** That apart, we are of opinion that the High Court ought to have been more circumspect in directing the admission of students by its order dated 25-9-2015. 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."

18. The aforesaid view which is being consistently taken by the Hon'ble Supreme Court, particularly in relation to admission to medical college and other educational institutions, clearly lays down that the approach has to be "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".

19. The aforesaid principles have been succinctly repeated one after the other. In the case of **Dental Council of India Versus Dr. Hedgewar Smruti Rugna Seva Mandal Hingoli and Others (Supra)**, again impermissibility of an interim direction resulting in paving way for admission by staying the order of disapproval, which had the effect of establishment of college or increase of intake capacity was highlighted. The qualifying conditions of interim order that the admission process shall be at the risk of the college and the students shall be intimated and

shall not claim equities, was also taken into consideration on the ground realities by observing that such conditions do not justify passing of an interim order. It is important to note that in the aforesaid case, the orders of disapproval were challenged on the ground of perversity and various other legalities and interim order was justified on the basis that as the matter could not be finally adjudicated, it had become necessary to pass an interim order for increasing seat capacity. In this background, following pertinent observations came to be made:-

> "**11.** True it is, the High Court has qualified its order by stating that the admission process shall be at the risk of the college and the students shall be intimated, but the heart of the matter is, whether the High Court should have stayed the order with such conditions. Basically, the order amounts to granting permission for the admission of students in certain courses in a college which had not received approval. There may be a case where the court may ultimately come to the conclusion that the recommendation is unacceptable and eventually the decision of disapproval by the Government of India is unsustainable. But the issue is whether before arriving at such conclusions, should the High Court, by way of interim measure, pass such an order."

20. Having conceived the issue as to whether, before arriving at such conclusions on merits, the High Court, by way of interim order, was correct in giving interim order which has the effect of allowing admission against seats, it was observed that such controversy is no longer *res integra* as below:-

> "**12.** Such a controversy has not arisen for the first time. A two-Judge Bench in Union of India v. Era Educational Trust stated that normally this Court would hesitate to interfere with an interlocutory order, but was compelled to do so where prima facie it appeared that the said order could not be justified by any judicial standard, the ends of justice and the need to maintain judicial discipline required the Court to do so and to indicate the reasons for such interference. The Court, adverting to the aspects of passing of orders relating to provisional admission, quoted a passage from Krishna Priya Ganguly v. University of Lucknow which reads thus:-

> "8. … '[T]hat whenever a writ petition is filed provisional admission should not be given as a matter of course on the petition being admitted unless the court is fully satisfied that the petitioner has a cast-iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible.'

The Court also thought it appropriate to reproduce further observations from Krishna Priya Ganguly (supra):-

> "8. … '3. … Unless the institutions can provide complete and full facilities for the training of each candidate who is admitted in the various disciplines, the medical education will be incomplete and the universities would be turning out doctors not fully qualified which would adversely affect the health of the people in general.'

13. Adverting to the facts in the case before it, the Court held:

> "9. In the present case, this type of situation has arisen because of the interim order passed by the High Court without taking into consideration various judgments rendered by this Court for exercise of jurisdiction under Article 226. It is apparent that even at the final stage the High Court normally could not have granted such a mandatory order. Unfortunately, mystery has no place in judicial process. Hence, the impugned order cannot be justified by any judicial standards and requires to be quashed and set aside."

The aforesaid passage is quite vivid and reflects the surprise expressed by the learned Judges.

14. In *Medical Council of India v. Rajiv Gandhi University of Health Sciences (Supra)* the three-Judge Bench referred to the authority in Era Educational Trust (supra) and emphatically reiterated the law declared therein. The reiteration is as follows:

> "4. We once again emphasise that the law declared by this Court in Union of India v. Era Educational Trust that interim order should not be granted as a matter of course, particularly in relation to matter where standards of institutions are involved and the permission to be granted to such institutions is subject to certain provisions of law and regulations applicable to the same, unless the same are complied with. Even if the High Court gives certain directions in relation to consideration of the applications filed by educational institutions concerned for grant of permission or manner in which the same should be

> processed should not form a basis to direct the admission of students in these institutions which are yet to get approval from the authorities concerned or permission has not been granted by the Council."

The aforesaid pronouncement, as is manifest, rules that issue of an interim order in respect of an institution which has not received the approval is not countenanced in law.

15. In Medical Council of India v. JSS Medical College the issue had arisen with regard to passing of interim orders by the High Court relating to permission for increase of seats. The anguish expressed by the Court is reflectible from the following passage:

> "12. Without adverting 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."

16. In *Priya Gupta v. State of Chhattisgarh (2012) 7 SCC 433* dealing with various aspects, the Court was in pain and thought it appropriate to request the High Courts with humility. The lucid statement is extracted below:

> "78.4. With all the humility at our command, we request the High Courts to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. We reiterate what has been stated by this Court earlier, that except in very exceptional cases, the High Court may consider it appropriate to decline interim orders and hear the main petitions finally, subject to the convenience of the Court. …"

17. In *Medical Council of India v. M.G.R. Educational & Research Institute University (2015) 4 SCC 580* treating the admission as unauthorized as there had been no approval by the MCI, the Court imposed costs of Rs. 5 crores on the respondent institution therein, for it had created a complete mess insofar as the students were admitted to the second batch of MBBS course in the college. There has been a further direction that the amount of costs that was directed to be deposited before the Registry of this Court was not to be recovered in any manner from any student or adjusted against the fees or provision for facilities for students of subsequent batches.

18. The three-Judge Bench in *Royal Medical Trust V. Union of India, (2015) 10 SCC 19*, while dealing with time schedule, stated thus:

> "33. The cases in hand show that the Central Government did not choose to extend the time-limits in the Schedule despite being empowered by Note below the Schedule. Though the Central Government apparently felt constrained by the directions in *Priya Gupta v. State of Chhattisgarh, (2012) 7 SCC 435* it did exercise that power in favour of government medical colleges. The decision of this Court in *Priya Gupta (supra)* undoubtedly directed that the Schedule to the Regulations must be strictly and scrupulously observed. However, subsequent to that decision, the Regulations stood amended, incorporating a Note empowering the Central Government to modify the stages and time-limits in the Schedule to the Regulations. The effect of similar such empowerment and consequential exercise of power as expected from the Central Government has been considered by this Court in *Priyadarshini Dental College and Hospital v. Union of India, (2011) 4 SCC 623*. The Central Government is thus statutorily empowered to modify the Schedule in respect of class or category of applicants, for reasons to be recorded in writing. Because of subsequent amendment and incorporation of the Note as aforesaid, the matter is now required to be seen in the light of and in accord with *Priyadarshini (supra)* where similar Note in pari materia Regulations was considered by this Court. We therefore hold that the directions in *Priya Gupta (supra)* must now be understood in the light of such statutory empowerment and we declare that it is open to the Central Government, in terms of the Note, to extend or modify the time-limits in the Schedule to the Regulations. However the deadline, namely, 30th of September for making admissions to the first MBBS course as laid down by this Court in *Medical Council of*

India v. Madhu Singh, (2002) 7 SCC 258 and Mridul Dhar (5) v. Union of India, (2005) 2 SCC 65 must always be observed."

19. The question of tenability of an interim order passed by the High Court in matters of admission came for consideration in a recent decision in *Medical Council of India v. Kalinga Institute of Medical Sciences (KIMS) and others (Supra)*. The Court found that after MCI and the Central Government having twice considered the inspection report, the matter ought to have been given a quietus by the High Court for the academic year 2015-2016. It has been further observed that the High Court ought to have been more circumspect in directing the admission of students and there was no need for the High Court to rush into an area that MCI feared to tread. It was further observed that:

> "27. … 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."

We respectfully concur with the said observations.

20. It is worthy to note that the Court in *Kalinga Institute case (supra)* thought it appropriate to observe that for the fault of the institution, the students should not suffer nor should the institution get away scot-free. It issued certain directions to the institution that it should not have entered into adventurist litigation and costs of Rs.5 crores were imposed for playing with the future of the students and the mess that the institution had created for them. Certain other directions were issued in this case which we need not advert to.

21. In *Ashish Ranjan v. Union of India, (2016) 11 SCC 225*, the Court after hearing the Union of India, MCI and all the States, had fixed a time schedule and directed as follows:

> "3. Regard being had to the prayer in the writ petition, nothing remains to be adjudicated. The order

> passed today be sent to the Chief Secretaries of all the States so that they shall see to it that all the stakeholders follow the schedule in letter and spirit and not make any deviation whatsoever. Needless to say AIIMS and PGI (for the examination held in July) shall also follow the schedule in letter and spirit."

21. Having surveyed earlier decisions and consistent view, it was then held:-

> "**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, 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 realize 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. One may say, "… life is a foreign language; all mis-pronounce it", but it has to be borne in mind that artificial or contrived accident is not the goal of life.
>
> **24.** There is no reason to invite a disaster by way of an interim order. A Judge has to constantly remind himself about the precedents in the field and not to be swayed away by his own convictions. In this context, the oft-quoted passage from *Felix Frankfurter* would be apt to remember:

> "For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians-those impersonal convictions that make a society a civilized community, and not the victims of personal rule."

22. In the case of **Medical Council of India Versus N.C. Medical College and Hospital and Others (Supra)**, while interfering with the interim order permitting provisional admission during pendency of challenge to derecognition/cancellation/ withdrawal of affiliation/recognition or refusal to grant of permission for renewal, it was authoritatively held as below:-

> "**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 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."

23. Having noticed as above, the earlier decisions referred to above were again taken into consideration by the Hon'ble

Supreme Court in the cases of **Medical Council of India Versus Rajiv Gandhi University of Health Sciences & Others (Supra), Medical Council of India Versus JSS Medical College & Another (Supra), Medical Council of India Versus Kalinga Institute of Medical Sciences (KIMS) & Others (Supra) and Dental Council of India Versus Dr. Hedgewar Smruti Rugna Seva Mandal Hingoli and Others (Supra)**, it was again reiterated as below:-

> "**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 2018-19. We, therefore, allow this appeal and set aside the order dated 29.5.2018 passed by the High Court."

24. In the operative part, again a direction was issued for expediting the final hearing of the case.

25. Limited scope of interference against the decision taken by the expert in the matter of deficiency, in the absence of their being substantial proof of mala-fide or incompetence of assessors and impermisibility to examine the report as an Appellate Authority, has also been consistently dealt with in the cases of Medical Council of India Versus Kalinga Institute of Medical Sciences (Supra), S, Krishna Sradha Versus State of Andhra Pradesh (Supra), Medical Council of India Versus Chairman, S.R. Educational and Charitable Trust (Supra).

26. In the case of **Medical Council of India Versus Chairman, S.R. Educational and Charitable Trust & Another (Supra)**, it was emphasized that seats could not be allowed to be increased by the Court order. Further, it was held that in case the petition is

allowed, restitutional relief and additional compensation could be awarded though it was individual case of a candidate, even in cases relating to a college where if it is ultimately found that permission to establish medical college or grant or increase seats was illegally denied, appropriate compensation along with relief to increase seats along with relief to admit students in the next year, could always be granted. However, it would be a worst situation where in the event of writ petition being dismissed, those candidates who have been allowed provisional admission will stand nowhere and as has been observed in the case of **Medical Council of India Versus JSS Medical College & Another (Supra)**, one cannot imagine anything more destructive of the rule of law then a direction of the Court to allow continuance of such students, whose admissions are found illegal in the ultimate analysis.

27. It is also apposite to refer to the observations made in the case of **Fuljit Kaur Versus State of Punjab & Others (Supra)**, that even if some other similarly situated persons have been granted some benefit inadvertently or by mistake or some illegal order is passed, then the same does not confer any legal right on such persons to get the same relief. Sufficiently answering the arguments, it was held that in some cases, permissions have been illegally granted and at the stage of final hearing, appropriate directions can always be issued.

28. The consistency of the view taken by the Hon’ble Supreme Court in plethora of decisions referred to above is clearly to the effect that by interim order, increase in seat should not be allowed

in educational institutions. We notice that in all the cases, increase of seats in medical colleges by interim order without final adjudication of the case has been held illegal and set aside though coupled with a direction to decide the case expeditiously and as early as possible.

29. The decisions, which have been relied by the learned Senior Counsel for the Respondents-writ petitioners, do not come to his aid. Those decisions are either on the merits of the case or to say that where interim order is not granted, final hearing of the petition itself may be frustrated. In view of series of decisions particularly dealing with admission to medical colleges, as referred to herein above, the decisions cited at the bar by learned Senior Counsel for the Respondents-writ petitioners cannot be made a basis to justify grant of interim order.

30. In the result, we are of the view that no interim order should have been granted and only course open was to expedite hearing of the case and if at all admissions were over by that time, the case was to be finally decided and appropriate relief could be granted to the Respondents-writ petitioners.

31. However, even though, we have held that interim order should not have been granted, we find that by the time, this appeal came up for hearing even on the first date of hearing, the admission process and the last date of admission was also over. By virtue of interim order, 50 seats were increased and those seats were thrown open for admission through the process of counseling. 50 candidates were allowed admission. They have paid their fees, admitted and joined also and by now they have

completed about a month of study. The question would be whether at this stage, interim order should be vacated so as to result in ouster of those students, who have already been benefited by full execution of interim order. In this peculiar circumstances, we would prefer to be guided by the course of action which was adopted by the Hon'ble Supreme Court, in identical situation, in the case of **Board of Governors in Supersession of Medical Council of India Versus Tirupati Balaji Educational Trust & Others, Special Leave to Appeal (C) No.10216/2020**, decided on 14.09.2020. On facts, that was a case where there was an interim order passed by the High Court resulting in 96 students having gone through various stages of counseling. Hon'ble Supreme Court declined to interfere with the order, but made it clear that the final hearing of the writ petition was to take place within three weeks and judgment delivered within another two weeks thereafter so that the students are not left hanging in uncertainty. The SLP was disposed of with following observations and directions :-

> "However, we make it clear that the final hearing of the writ petition is to take place within three weeks from today and judgment delivered within another two weeks thereafter so that the students are not left hanging in uncertainty. We also make it clear that in case that learned Single Judge, who is assigned to decide this case, finally decides it against the students, the students can claim no equity whatsoever. We also make it clear that the pleadings are to be completed before the learned Single Judge within a period of ten days from today. The learned Chief Justice of the High Court may look into this matter to see that the time-lines indicated by our order are strictly adhered to."

32. In view of the above, even though, we have held that interim order ought not to have been granted, at this stage, we are not

inclined to set aside the interim order, but request the learned Single Judge to decide the case. We direct the parties to complete their pleadings within a period of 10 days form today. We request the learned Single Judge to here the petition expeditiously and decide the same within a period of one month from the date of completion of pleadings.

33. This appeal is, accordingly, disposed off.

(MUNNURI LAXMAN),J (MANINDRA MOHAN SHRIVASTAVA),CJ

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