

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY 2015

BEFORE

THE HON'BLE MR. JUSTICE H.G.RAMESH

WRIT PETITION NO.49585/2014

C/W

WRIT PETITION NOS.49627/2014, 49200/2014 &
49201/2014 (EDN-RES)

IN W.P. No.49585/2014

BETWEEN

SRI GIRISH RITHVIK K.R.
S/O SRI K.R. CHOUDARY
AGED ABOUT 18 YEARS
RESIDING AT 'SAMSKRUTI', NO.24A
37TH 'A' CROSS, 8TH BLOCK
JAYANAGAR, BANGALORE-560082

... PETITIONER

(BY SRI JAYAKUMAR S PATIL, SR. COUNSEL FOR
SRI S.SUBRAMANYA FOR
M/S. UPASANA ASSOCIATES, ADVOCATES)

AND:

1. UNION OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN , C-WING, NEW DELHI-110 001
REPRESENTED BY ITS SECRETARY
2. MEDICAL COUNCIL OF INDIA
PACKET-14, SECTOR-8, DWARKA, PHASE-1,
NEW DELHI-110 077
REPRESENTED BY ITS PRESIDENT
3. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
4TH 'T' BLOCK, JAYANAGR, BANGALORE-560 041
REPRESENTED BY ITS SECRETARY

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

4. THE PRINCIPAL
KEMPEGOWDA INSTITUTE OF MEDICAL SCIENCES,
BANASHANKARI 2ND STAGE, BANGALORE-560 070
5. RAJYA VOKKALIGARA SANGHA
NO.148, K R ROAD, V V PURAM
BANGALORE-560 004
REPRESENTED BY ITS SECRETARY
6. MS. R.LEKHASHREE
D/O DR. H C RAMANNA
AGED ABOUT 18 YEARS
RESIDING AT NO.123
3RD MAIN, HVR LAYOUT
BANGALORE 560 079 ...RESPONDENTS

(BY SRI N.K.RAMESH, ADVOCATE FOR R3;
SRI N.DILIP KUMAR, ADVOCATE FOR R1;
SRI N. KHEITY, ADVOCATE FOR R2;
SRI MADHUSUDAN R. NAIK, SR.COUNSEL FOR
M/S NAIK & NAIK LAW FIRM, ADVOCATES FOR R4 & R5;
SRI D.N.NANJUNDA REDDY, SR. COUNSEL FOR
SRI NISHANTH A.V., ADVOCATE FOR R6)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THE
R-2 TO CONFIRM THE ADMISSION OF THE PETITIONER AS PER
THE FINAL LIST SENT BY THE R-4 INSTITUTION AT ANNEXURE-K
AND TO AWARD COSTS AND ETC.

IN W.P.No.49627/2014

BETWEEN:

MS. R.LEKHASHREE
D/O DR. H C RAMANNA
AGED ABOUT 18 YEARS
RESIDING AT NO.123
3RD MAIN, HVR LAYOUT
BANGALORE 560 079 ... PETITIONER

(BY SRI D.N.NANJUNDA REDDY, SR.COUNSEL FOR
SRI NISHANTH A.V., ADVOCATE)

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

AND:

1. KEMPEGOWDA INSTITUTE OF MEDICAL SCIENCES
BANASHANKARI 2ND STAGE, BANGALORE-560 070
REP. BY ITS PRINCIPAL
2. RAJYA VOKKALIGARA SANGHA
148, KR ROAD, VV PURAM
BANGALORE-560 004
REPRESENTED BY ITS GENERAL SECRETARY
3. MEDICAL COUNCIL OF INDIA
POCKET 14, SECTOR 8
DWARAKA PHASE-I
NEW DELHI-110 077
REPRESENTED BY ITS SECRETARY
4. UNION OF INDIA
THROUGH THE MINISTRY OF
HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN, C WING
NEW DELHI-110 001
THROUGH ITS SECRETARY
5. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
4TH 'T' BLOCK, JAYANAGAR
BANGALORE-560 041
REP. BY ITS REGISTRAR
6. MR. GIRISH RITHVIK K.R.
S/O K.R.CHOUDARY
AGED ABOUT 18 YEARS
RESIDING AT "SAMSKRUTHI"
NO.24A, 37TH A CROSS
8TH BLOCK, JAYANAGAR
BANGALORE-560 082

... RESPONDENTS

(BY SRI MADHUSUDAN R. NAIK, SR. COUNSEL FOR
M/S. NAIK & NAIK LAW FIRM, ADVOCATES FOR R1 & R2;
SRI N. KHETTY, ADVOCATE FOR R3;
SRI M.S. MOHAN, CGSC FOR R4;
SRI N.K. RAMESH, ADVOCATE FOR R5;
SRI JAYAKUMAR S. PATIL, SR. COUNSEL FOR
SRI S. SUBRAMANYA FOR M/S. UPASANA ASSTS.,
ADVOCATES FOR R6)

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS AND TO DECLARE THE ACTION OF R-5 IN NOT CONSIDERING THE NAME OF THE PETITIONER FOR APPROVAL OF HER ADMISSION VIDE LETTER DATED 21.10.2014 VIDE ANNEXURE-P AS ARBITRARY, ILLEGAL AND UNJUSTIFIED AND TO QUASH THE LETTER DATED 21.10.2014 VIDE ANNEXURE-P ISSUED BY THE R-5 AND TO DIRECT THE R-1 TO CONSIDER THE REPRESENTATION DATED 23.10.2014 VIDE ANNEXURE-G AND ETC.

IN W.P.No.49200/2014

BETWEEN:

SREEKAR SURAPANENI
S/O SHRI SUBHAKAR RAO SURAPANENI &
DR. SWARNA LATHA SURAPANENI
AGED ABOUT 17 YEARS, STUDENT OF 1ST YEAR MBBS
KEMPEGOWDA INSTITUTE OF MEDICAL SCIENCES

REPRESENTED BY
DR. SWARNALATHA SURAPANENI
D/O NIDAMANURI NAGESHWAR RAO
AGED ABOUT 45 YEARS, RESIDING AT
NO.105, DELPHI - 2, PRESTIGE ACROPOLIS
KORAMANGALA, BANGALORE
KARNATAKA-560 029

... PETITIONER

(BY SRI D.N.NANJUNDA REDDY, SR. COUNSEL FOR
SRI NISHANTH A.V., ADVOCATE)

AND:

1. KEMPEGOWDA INSTITUTE OF MEDICAL SCIENCES
BANASHANKARI 2ND STAGE, BANGALORE-560 070
REP. BY ITS PRINCIPAL
2. RAJYA VOKKALIGARA SANGHA
148, KR ROAD, VV PURAM
BANGALORE-560 004
REPRESENTED BY ITS GENERAL SECRETARY
3. UNION OF INDIA
THROUGH THE MINISTRY OF

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN, C WING
NEW DELHI-110 001
THROUGH ITS SECRETARY

4. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
4TH 'T' BLOCK, JAYANAGAR
BANGALORE-560 041
REP. BY ITS REGISTRAR
 5. MEDICAL COUNCIL OF INDIA
POCKET 14, SECTOR 8, DWARAKA PHASE-I
NEW DELHI-110 077
REPRESENTED BY ITS SECRETARY
(AMENDED AS PER COURT ORDER DTD. 10.6.2015)
... RESPONDENTS
- (BY SRI MADHUSUDAN R. NAIK, SR. COUNSEL FOR
M/S NAIK & NAIK LAW FIRM, ADVOCATES FOR R1 & R2;
SRI M.S.MOHAN, CGSC FOR R3;
SRI N.K.RAMESH, ADVOCATE FOR R4;
SRI N.KHETTY, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS AND TO DECLARE THE ACTION OF R-1 IN SEEKING TO DISCHARGE THE PETITIONER BY ENDORSEMENT DTD 15.10.2014 AS ARBITRARY, ILLEGAL AND UNJUSTIFIED AND TO QUASH THE IMPUGNED ENDORSEMENT DTD. 15.10.2014 VIDE ANNEXURE-A AND TO DIRECT THE R-1 TO CONSIDER THE REPRESENTATION DTD 17.10.2014 VIDE ANNEX-G AND TO DIRECT THE R-1 TO CONSIDER THE REPRESENTATION DTD. 17.10.2014 VIDE ANNEXURE-H AND ETC.

IN W.P.No.49201/2014

BETWEEN:

MISS VADAANYA VENKATESH
D/O VENKATESH B.L, AGED ABOUT 18 YEARS
R/A NO. 1264/5, 4TH MAIN
E BLOCK, II STAGE, RAJAJINAGAR
BANGALORE-560 010.

... PETITIONER

(BY SRI D.N.NANJUNDA REDDY, SR. COUNSEL FOR
SRI NISHANTH A.V., ADVOCATE)

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

AND:

1. KEMPEGOWDA INSTITUTE
OF MEDICAL SCIENCES
BANASHANKARI 2ND STAGE
BANGALORE-560 070
REP. BY ITS PRINCIPAL
2. RAJYA VOKKALIGARA SANGHA
148, K R ROAD, VV PURAM
BANGALORE-560 004
REPRESENTED BY ITS GENERAL SECRETARY
3. UNION OF INDIA
THROUGH THE MINISTRY OF
HEALTH AND FAMILY WELFARE
NIRMAN BHAWAN, C WING
NEW DELHI-110 001
THROUGH ITS SECRETARY
4. RAJIV GANDHI UNIVERSITY OF HEALTH SCIENCES
4TH 'T' BLOCK, JAYANAGAR
BANGALORE-560 041
REP. BY ITS REGISTRAR
5. MEDICAL COUNCIL OF INDIA
POCKET 14, SECTOR 8
DWARAKA PHASE-I
NEW DELHI-110 077
REPRESENTED BY ITS SECRETARY
(AMENDED AS PER COURT ORDER DTD. 10.6.2015)
... RESPONDENTS

(BY SRI MADHUSUDAN R NAIK, SR. COUNSEL FOR
M/S. NAIK & NAIK LAW FIRM, ADVOCATES FOR R1 & R2;
SRI M.S.MOHAN, CGSC FOR R3;
SRI N.K.RAMESH, ADVOCATE FOR R4;
SRI N.KHETTY, ADVOCATE FOR R5)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 &
227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE
RECORDS AND TO DECLARE THE ACTION OF R-1 IN SEEKING TO
DISCHARGE THE PETITIONER BY ENDORSEMENT DTD.15.10.2014
VIDE ANNEXURE-A AS ARBITRARY, ILLEGAL AND UNJUSTIFIED
AND TO QUASH THE IMPUGNED ENDORSEMENT DTD. 15.10.2014

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

VIDE ANNEXURE-A AND TO DIRECT THE R-1 TO CONSIDER THE REPRESENTATION DTD. 17.10.2014 VIDE ANNEXURE-F AND TO DIRECT THE R-1 TO CONSIDER THE REPRESENTATION DTD. 17.10.2014 VIDE ANNEXURE-G AND ETC.

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED ON 02.07.2015 FOR ORDERS AND COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, **H.G.RAMESH J.** DELIVERED THE FOLLOWING:

ORDER

H.G.RAMESH, J.:

1. In Writ Petition No.49585/2014, the petitioner namely, Mr. Girish Rithvik K.R. has sought for a writ of mandamus directing the Medical Council of India (*'the Medical Council'*) and Rajiv Gandhi University of Health Sciences (*'the University'*) to approve his admission to I year MBBS course for the academic year 2014-2015 as per the list at Annexure-K sent by Kempegowda Institute of Medical Sciences (*'the College'*). The petitioner is stated to have paid more than Rupees one crore to *the College* and to its management namely, Rajya Vokkaligara Sangha (*'the Sangha'*) for his admission to I year MBBS course. To evidence the said payments, the petitioner has produced the receipts at Annexures-C, C-1, C-2, C-3, G, H, H1, H2, H3 and H4.

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

2. In Writ Petition No.49627/2014, the petitioner nameiy, Ms. R.Lekhashree has sought for quashing of the letter dated 21.10.2014 (Annexure-P) sent by *the University* to *the College*, declining to grant approval to the petitioner's admission for I year MBBS course for the academic year 2014-2015. In substance, she has also sought for a direction to *the University* to approve her admission. The impugned letter dated 21.10.2014 (Annexure-P) of *the University* addressed to *the College* reads as follows:

" In response to your letter cited under reference, I write to inform you that on verification of the documents submitted by you, it has been observed that the name of Mr. Girish Rithvik K.R. exists in both hard copy of the list of students submitted on 01.10.2014 and the online statement submitted by you on 07.10.2014, along with the original documents of Mr. Girish Rithvik K.R.

Hence his admission along with the other eligible students will be approved at the earliest.

Since the name of R. Lekhashree does not figure in the hard copy/online statement submitted by you within the last date prescribed by the University, her admission cannot be considered for approval.

This is for your information."

3. In Writ Petition No.49200/2014, the petitioner namely, Mr. Sreekar Surapaneni has sought for quashing of the endorsement dated 15.10.2014 (Annexure-A) issued by *the College* whereby he has been discharged from *the College* on the ground that his admission to the MBBS Course was in

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

excess of the *admission capacity* fixed for *the College*. The petitioner-Sreekar Surapaneni is stated to have paid more than Rs.85,00,000/- (Rupees Eighty Five Lakhs) to *the College* and the *Sangha* towards his admission. The impugned endorsement dated 15.10.2014 at Annexure-A issued by *the College* reads as follows:

" Our sanctioned intake for admission for the academic year 2013-14 was 150 seats to the MBBS course with proportionate number of seats under the management Quota as per the consensual agreement, but the Government of India restricted the number of seats for admission to the MBBS course to 120 seats by not renewing the permission for 30 seats for the academic year 2014-15, thereby reducing the seats under management quota.

As the number of students that were permitted to be admitted under the said quota has now reduced and since you were admitted under the management quota, therefore in view of the reduction in the number of seats under the management quota, we have no option but to relieve you from the institution.

You are hereby discharged from the institution with immediate effect, you are advised to collect fees paid with original documents submitted by you during the time of admission."

4. Similarly, in Writ Petition No.49201/2014, the petitioner namely, Ms. Vadaanya Venkatesh has sought for quashing of the endorsement dated 15.10.2014 (Annexure-A) issued by *the College* whereby she has been discharged from *the College* on the ground that her admission to the MBBS Course was in excess of the *admission capacity* fixed

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

for *the College*. The petitioner-Vadaanya Venkatesh is stated to have paid more than Rs.85,00,000/- (Rupees Eighty Five Lakhs) to *the College* and *the Sangha* towards her admission to I year MBBS course. To evidence the payment of Rs.60,00,000/- (Rupees Sixty Lakhs), the petitioner has produced the receipt dated 09.09.2014 (Annexure-C6) issued to the petitioner's father describing his name as Venkatesh B.L. F/o Vadaanya Venkatesh. The endorsement dated 15.10.2014 impugned in this writ petition is identical to the one extracted at para 3 above.

5. I have heard Sri Jayakumar S.Patil, learned Senior Counsel for the petitioner-Girish Rithvik K.R., Sri D.N.Narjunda Reddy, learned Senior Counsel for the other three petitioners, Sri Madhusudan R.Naik, learned Senior Counsel appearing for *the College* and, for *Rajya Vokkaligara Sangha ('the Sangha')*, Sri N.Khetty, learned counsel for *the Medical Council* and Sri N.K.Ramesh, learned counsel for *the University* and perused the record.

6. For clarity, it is necessary to formulate the questions that require determination in these four writ petitions. It is

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

not in dispute that against the one seat that was available for I year MBBS course commencing from the academic year 2014-15, *the College* has admitted all the four petitioners. The admission of three petitioners was clearly in excess of the *admission capacity*. In the light of the contentions urged by the learned counsel on both sides, the following three questions fall for determination in these writ petitions:

- (i) Who, among the four petitioners, is entitled for the one seat which is within the *admission capacity* of *the College*?
- (ii) Whether the admissions of the remaining three petitioners, which are in excess of the *admission capacity* of *the College*, could be directed to be regularized?
- (iii) What reliefs the petitioners are entitled for?

7. Sri Jayakumar S.Patil, learned Senior Counsel for the petitioner-Girish Rithvik submitted that the petitioner's ranking in competitive entrance tests is higher than the other petitioners, and therefore, by applying the *rule of merit* laid down by the Supreme Court in *Priya Gupta vs. State of Chhattisgarh [(2012)7 SCC 433]*, his admission to the MBBS course merits approval by *the University*. He also

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

submitted that *the College* had sent only the name of the petitioner-Girish Rithvik for approval to *the University* before the last date fixed by *the University*.

8. However, Sri D.N.Nanjunda Reddy, learned Senior Counsel appearing for the petitioner-Lekhashree submitted that she has obtained more marks in the qualifying examination than others and therefore, her admission merits approval.

9. Sri D.N.Nanjunda Reddy, learned Senior Counsel, also appearing for the other two petitioners in W.P.Nos.49200/2014 & 49201/2014 submitted that these petitioners are not staking their claim for the last seat available within the *admission capacity*. However, in respect of these two petitioners, he sought for a direction to *the University* and *the Medical Council* to regularize their admissions by relying on the decisions of the Supreme Court in *Mridul Dhar v. Union of India [(2005)2 SCC 65]* and *State of M.P. v. Suresh Narayan Vijayvargiya [(2014)11 SCC 694]*. In my opinion, the directions given in the aforesaid two decisions were in the context of the facts therein. No law is

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

laid down in the aforesaid two decisions for regularisation of illegal admissions. On the contrary, as could be seen from para 32 in *Mridul Dhar* itself, it is stated by the *three Judge Bench* that admissions shall not be made in excess of the sanctioned intake capacity. It is useful to extract para 32:

"32. Having regard to the professional courses, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges – new or old, students, Boards, universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; **admissions should not be in excess of sanctioned intake capacity or in excess of quota of anyone, whether State or management.** The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible."

(Emphasis supplied)

The admissions of these two petitioners made in excess of the *admission capacity* being contrary to S.10A of the Indian Medical Council Act, 1956, cannot be directed to be regularized. *The College* also has not sent their names to *the University or the Medical Council* for approval of their admissions.

10. Sri Madhusudan R.Naik, learned Senior Counsel appearing for *the College*, and the management-*Sangha*, supported the case of the petitioner-Lekhashree and

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

submitted that she is more meritorious than Girish Rithvik as she has secured more marks in the qualifying examination and, therefore, her admission merits approval. He submitted that marks in the qualifying examination shall determine the *inter se* merit for filling of the unfilled seats as per para E(viii) of the consensual agreement dated 22.03.2014 entered into between Government of Karnataka and Private Medical & Dental Colleges in Karnataka for the academic year 2014-2015.

11. Sri N.Khetty, learned counsel appearing for *the Medical Council*, by referring to the statement of objections, submitted that the petitioner-Girish Rithvik is more meritorious than the other petitioners as per the ranking obtained by him in Competitive Entrance Tests namely CET and COMEDK. The other three petitioners have not secured higher ranking in the Entrance Tests than Girish Rithvik. Hence, on the basis of *inter se* merit between the petitioners, he submitted that Mr.Girish Rithvik's admission merits approval. He further submitted that *the College* should not have admitted the other three petitioners as they

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

were lower in merit compared to Mr.Girish Rithvik and further that no seat was available.

12. Sri N.K.Ramesh, learned counsel appearing for *the University* submitted that only the name of Mr.Girish Rithvik was sent for approval to *the University* before the last date i.e. 30th September 2014, and the name of Ms. Lekhashree was not sent by *the College* before the last date. He submitted that *the University* will approve admission for the last seat as per the direction of this Court in these petitions.

13. It is relevant to refer to para 3 of the statement of objections filed by *the University* in W.P. No.49585/2014:

"3. It is submitted that the 4th Respondent has sent the On-line copy of the Admission list to this Respondent on 30.9.2014 at 8 p.m. and a copy of the said list was sent by e-mail on 7.10.2014. The hard copy of the list was sent on 7.10.2014. In the said list sent by the 4th Respondent the Petitioner's (i.e., Girish Rithvik K.R.) name is shown at Sl.No. 150 and the date of his admission is shown as 15.6.2014. Hence the admission of the Petitioner so made by the 4th Respondent is liable for approval by this Respondent. However, very strangely on 21.10.2014 the 4th Respondent sent a letter to this Respondent to replace the name of one R.Lekhashree in place of the Petitioner in the online statement sent by them and sought for clarification. In response to the same this Respondent by its communication dated 21.10.2014 that since the name of R.Lekhashree does not figure in the online list sent by them within the last date prescribed, the request made can not be considered. True copy of the letter dated 21.10.2014 sent by the College and the reply sent by

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

this Respondent is produced herewith and is marked as Annexures-R-1 and R-2 respectively."

14. It is also relevant to refer to para 7 of the statement of objections filed by *the Medical Council* in W.P. No.49585/2014:

"7. Further, with regard to the Petitioner in W.P.No.49627/2014 (Lekhashree Vs. KIMS & Ors), after initially sending the name of the Petitioner-Girish Rithvick in the above Petition, the Respondent College performed a flip flop by introducing the name of Lekhashree, and finally it has reconfirmed the admission of the Petitioner as being within the permitted intake vide its letter dated 27.10.2014 to this Respondent which was received on 15.11.2014, a true copy of which is produced herewith as Annexure-R2/1, and in view of the above facts and letter this Respondent has recognized the admission of the Petitioner in the above W.P., namely Girish Rithvick as being within the permitted intake or as being the candidate admitted for the last management quota seat."

(Underlining supplied)

15. Let me now proceed to examine the questions formulated at para 6 for determination by this Court.

16. In my opinion, *the College* has not applied the *rule of merit* laid down in *Priya Gupta vs. State of Chhattisgarh* [(2012)7 SCC 433] to fill the unfilled seats. This is evident by *the College* admitting all the four petitioners herein without ascertaining and evaluating their *inter se* merit on the basis of their rankings in competitive entrance

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

examination, as laid down in para 47.6 in *Priya Gupta's* case. It is relevant to extract paras 46, 47 & 78.4 of the judgment of the Supreme Court in *Priya Gupta's* case [(2012)7 SCC 433] wherein certain directions *in rem* have been issued by the Supreme Court in the matter of selection of students for admission to Dental and Medical courses:

"46. Keeping in view the contemptuous conduct of the relevant stakeholders, their cannonade on the rule of merit compels us to state, with precision and esemplastically, the action that is necessary to ameliorate the process of selection. **Thus, we issue the following directions in rem for their strict compliance, without demur and default, by all concerned:**

46.1. The commencement of new courses or increases in seats of existing courses of MBBS/BDS are to be approved/recognised by the Government of India by 15th July of each calendar year for the relevant academic sessions of that year.

46.2. The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.

46.3. After 15th July of each year, neither the Union of India nor the Medical or Dental Council of India shall issue any recognition or approval for the current academic year. If any such approval is granted after 15th July of any year, it shall only be operative for the next academic year and not in the current academic year. Once the sanction/approval is granted on or before 15th July of the relevant year, the name of that college and all seats shall be included in both the first and the second counseling, in accordance with the Rules.

46.4. Any medical or dental college, or seats thereof, to which the recognition/approval is issued subsequent to 15th July of the respective year shall not be included in the counseling to be conducted by the authority concerned and that college would have no right

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

to make admissions in the current academic year against such seats.

46.5. The admission to the medical or dental colleges shall be granted only through the respective entrance tests conducted by the competitive authority in the State or the body of the private colleges. These two are the methods of selection and grant of admission to these courses. However, where there is a single Board conducting the State examination and there is a single medical college, then in terms of Clause 5.1 of the Medical Council of India Eligibility Certificate Regulations, 2002 the admission can be given on the basis of 10+2 exam marks, strictly in order of merit.

46.6. All admissions through any of the stated selection processes have to be effected only after due publicity and in consonance with the directions issued by this Court. We vehemently deprecate the practice of giving admissions on 30th September of the academic year. In fact, that is the date by which, in exceptional circumstances, a candidate duly selected as per the prescribed selection process is to join the academic course of MBBS/BDS. Under the directions of this Court, second counseling should be the final counseling, as this Court has already held in the *Neelu Arora v. Union of India* and third counseling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses.

46.7. If any seats remain vacant or are surrendered from all-India quota, they should positively be allotted and admission granted strictly as per the merit by 15th September of the relevant year and not by holding an extended counselling. The remaining time will be limited to the filling up of the vacant seats resulting from exceptional circumstances or surrender of seats. All candidates should join the academic courses by 30th September of the academic year.

46.8. No college may grant admissions without duly advertising the vacancies available and by publicising the same through the internet, newspaper, on the notice board of the respective feeder schools and colleges, etc. Every effort has to be made by all concerned to ensure that the admissions are given on merit and after due publicity and not in a manner which is ex facie arbitrary and casts the shadow of favouritism.

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

46.9. The admissions to all government colleges have to be on merit obtained in the entrance examination conducted by the nominated authority, while in the case of private colleges, the colleges should choose their option by 30th April of the relevant year, as to whether they wish to grant admission on the basis of the merit obtained in the test conducted by the nominated State authority or they wish to follow the merit list/rank obtained by the candidates in the competitive examination collectively held by the nominated agency for the private colleges. The option exercised by 30th April shall not be subject to change. This choice should also be given by the colleges which are anticipating grant of recognition, in compliance with the date specified in these directions.

47. All these directions shall be complied with by all concerned, including Union of India, Medical Council of India, Dental Council of India, State Governments, Universities and medical and dental colleges and the management of the respective universities or dental and medical colleges. Any default in compliance with these conditions or attempt to overreach these directions shall, without fail, invite the following consequences and penal actions:

47.1. Every body, officer or authority who disobeys or avoids or fails to strictly comply with these directions stricto sensu shall be liable for action under the provisions of the Contempt of Courts Act. **Liberty is granted to any interested party to take out the contempt proceedings before the High Court having jurisdiction over such Institution/State, etc.**

47.2. The person, member or authority found responsible for any violation shall be departmentally proceeded against and punished in accordance with the Rules. We make it clear that violation of these directions or overreaching them by any process shall tantamount to indiscipline, insubordination, misconduct and being unworthy of becoming a public servant.

47.3. Such defaulting authority, member or body shall also be liable for action by and personal liability to third parties who might have suffered losses as a result of such default.

47.4. There shall be due channelization of selection and admission process with full cooperation and coordination between the Government of India, State Government, Universities, Medical Council of India or Dental Council of India and the colleges concerned. They

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

shall act in tandem and strictly as per the prescribed schedule. In other words, there should be complete harmonisation with a view to form a uniform pattern for concerted action, according to the framed scheme, schedule for admission and regulations framed in this behalf.

47.5. The college which grants admission for the current academic year, where its recognition/approval is granted subsequent to 15th July of the current academic year, shall be liable for withdrawal of recognition/approval on this ground, in addition to being liable to indemnify such students who are denied admission or who are wrongfully given admission in the college.

47.6. Upon the expiry of one week after holding of the second counseling, **the unfilled seats from all quotas** shall be deemed to have been surrendered in favour of the respective States and **shall be filled thereafter strictly on the basis of merit obtained in the competitive entrance test.**

47.7. It shall be mandatory on the part of each college and University to inform the State and the Central Government/competent authority of the seats which are lying vacant after each counseling and they shall furnish the complete details, list of seats filled and vacant in the respective states, immediately after each counseling.

47.8. No college shall fill up its seats in any other manner.

.....
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. We may refer to the dictum of this Court in *Medical Council of India v. Rajiv Gandhi University of Health Sciences* [(2004)6 SCC 76], SCC para 14 in this regard."

(Emphasis supplied)

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

17. It is stated at the Bar that the rankings of the four petitioners are as follows:

SL. No.	Name of the student	Marks obtained in the qualifying examination	CET Ranking	Comedk Ranking
1	GIRISH RITHVIK	267/300	5217	14791
2	LEKHASHREE R	268/300	Not qualified in the test though appeared	17220
3	SREEKAR SURPANENI	254/300	----	15354
4	VADAANYA VENKATESH	204/300	----	----

18. As the petitioner-Girish Rithvik in W.P.No.49585/2014 has secured higher rank in both the entrance tests namely CET and COMEDK than the other three petitioners, *the College* on the basis of *inter se* merit could have admitted only Girish Rithvik as per the direction of the Supreme Court in *Priya Gupta's* case. Therefore, only Mr. Girish Rithvik's admission merits approval by *the University and the Medical Council*. The contention of Mr. Madhusudan R.Naik, learned Senior Counsel for *the College*, that marks in the qualifying examination shall be the basis for determination of *inter se* merit as per the *consensual agreement* cannot be accepted in view of the specific direction issued by the Supreme Court in *Priya Gupta* (at para 47.6) to fill the unfilled seats only on the basis of *inter se* merit based on the rankings in

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

competitive entrance examination. *The College* is bound by the direction given by the Supreme Court in *Priya Gupta's* case and, therefore, the consensual agreement dated 22.03.2014 entered into between Government of Karnataka and Private Medical & Dental Colleges in Karnataka for the academic year 2014-2015 cannot override the criteria laid down by the Supreme Court in *Priya Gupta's* case for selection of students for the unfilled seats. As laid down in *Priya Gupta's* case vide para 47.6, admission to unfilled seats shall be based on *inter se* merit determined on the basis of rankings obtained by them in competitive entrance examination.

19. The stand of *the College* preferring Girish Rithvik to the last seat is reflected in its endorsement dated 27.10.2014 (Annexure-Q1 produced in W.P.No.49585/2014) issued to the petitioner-Girish Rithvik. It reads as follows:

"This is to inform you that the letter issued by us on 15th October 2014 discharging you from the institution is hereby withdrawn as the Rajiv Gandhi University of Health Sciences has considered your name for approval of admission for the academic year 2014-15 as per the directions of Rajya Vokkaligarha Sangha management."

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

20. The stand of *the College* preferring Mr.Girish Rithvik K.R. is more clearly reflected in its letter dated 27.10.2014 addressed to *the Medical Council*. It is relevant to extract the said letter dated 27.10.2014 which is produced by *the Medical Council* as Annexure-R2/1 along with its statement of objections in W.P.No.49585/2014. It reads as follows:

" KIMS:No/1637/2014-15

To,
The Secretary,
Medical Council of India
New Delhi.

Date:27-10-2014

Sir,

Subject: Inclusion of name of Mr. Girish Rithvik.K.R.
instead of Ms. Lekhashree.R

Ref: Letter by RGUHS dated 21-10-2014 clarifying
the admission status of both students.

With reference to the above, we had sent a letter to your office on 15th October 2014 to include name of Ms.Lekhashree.R instead of Mr.Girish Rithvik.K.R however RGUHS has issued a clarification that the list of student names submitted to the university on 01-10-2014 is final and names added after this date cannot be considered for approval. The list submitted by our college on 30-09-2014 contains the name of Mr.Girish Rithvik. K.R and therefore RGUHS has considered the name Mr.Girish Rithvik K.R for approval. **Hence we request you to kindly accept the name of Mr. Girish Rithvik. K.R for approval instead of Ms.Lekhashree.**

Sd/-

Dean and Principal
KEMPEGOWDA INSTITUTE
OF MEDICAL SCIENCES "

(Emphasis supplied)

It is clear from the above letter dated 27.10.2014 that *the College* preferred Mr.Girish Rithvik for the last seat. The

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

contention to the contrary by *the College* now cannot be accepted on any permissible ground. It is not the case of the other three petitioners that they have secured higher ranking in competitive entrance examination than Mr. Girish Rithvik to stake their claim for the last seat.

21. Let me now refer to the undertaking dated 14th August 2014, which is produced by *the College* itself as Annexure-R2 along with its statement of objections in W.P.No.49585/2014, which is admittedly obtained by *the College* from Sri K.R.Choudary, the father of the petitioner-Girish Rithvik. It reads as follows:

" I K.R.Choudary state that my son Girish Rithvik.K.R. has been provisionally admitted to I MBBS course for the academic year 2014-15. This admission is subject to approval by the RGUHS & MCI. We have been informed by the college, that this admission is in excess of the stipulated management seats(24 seats). In case of non approval of admission by the RGUHS/MCI, it is at our risk and responsibility, we accept the same. In any case the management and the college are not responsible for the non approval of admission.

However Management and college are responsible to return entire Fee of Rs.4,89,200-00 paid through DD bearing No.722916, dated 14.08.2014 on Karur Vysya Bank Ltd., Basavanagudi Branch, Bangalore, **Hospital Development Fund of Rs.65,00,000-00 vide receipt No.124486 dated 19.06.2014**, Rs.5000-00 vide receipt No.207 dated 19.06.2014, Rs.10,000-00 vide receipt No.124569 dated 19.06.2014, Rs.5000-00 vide receipt No.2255 dated 19.06.2014 and **Rs.47,00,000-00 cash paid to the Directors of Rajya Vokkaligara Sangha, Mr. A Ravi (Rs.30,00,000-00), Mr. Shekar (Rs.17,00,000-00).**

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

Signature of Parent

Witness:

- 1) Sd/- (Dr.V.Narayanaswamy)
- 2) Sd/- (D.Premananda)

K.R.CHOUDARY
Date: 14.08.2014
Place: Bangalore "

(Emphasis supplied)

It is very difficult to comprehend as to how a Medical College could obtain an undertaking like the above. This is more like a business transaction. The undertaking shows that Rs.65,00,000/- was paid to 'Hospital Development Fund' (receipt dated 19.06.2014 is at Annexure-C) and cash of Rs.47,00,000/- was paid to two Directors of *the Sangha* namely, Mr. A.Ravi (Rs.30,00,000/-) and Mr. Shekar (Rs.17,00,000/-). Having regard to the nature of the undertaking obtained by *the College* and the way the money was collected to give admission to a student for MBBS course, I am afraid, whether the *Sangha* is managing an educational institution or a business house. The undertaking reveals the malpractices that are taking place in *the College* and *the Sangha*. *Medical Council of India* and the Central Government shall take a serious note of the matter and shall take corrective measures *inter alia* to make the admission process transparent at all stages including applying for

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

admission to unfilled seats, management seats etc. with the help of technology.

22. In the context of the undertaking extracted above, it is relevant to refer to the following averments made in the statement of objections filed on behalf of *the College* in W.P.

No.49585/2014:

"3.
These Respondents deny absolutely claims of petitioner of various payments made as well as claim of it being towards grant of admission to MBBS Course and; if in collusion with some unscrupulous persons associated with Sangha; has made some contributions to the General and social activities of Vakkaligara Sangha; it was on his own and can not be contended as towards grant of any admission. At the risk of repetition this respondent denies as false as to the fact of admission having been granted to him in the manner narrated in the writ petition or of the payments made as alleged and petitioner is put to strict proof of the same.

4.
(t)
..... and in fact undertakings binding themselves not to hold the college as responsible for non-approval of their admissions were made by candidates likely to be affected thereby. Such an undertaking was given by the petitioner as well; duly accepting the fact that, it was a risk seat and admissions would be subject to the approval of the authorities. Copy of such an undertaking given by the Petitioner is produced herewith marked as Annexure-R2."

As could be seen from the above, *the College* has denied having received the payments stated by the petitioner-Girish Rithvik. This denial is falsified by the contents of the

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

undertaking obtained by *the College* from the father of Mr.Girish Rithvik. The undertaking which is extracted in para 21 above is produced by *the College* itself as Annexure-R2 along with its statement of objections in W.P.No.49585/2014.

23. In the result, I make the following order:

- (i) *The University and the Medical Council* are directed to approve the admission of Mr. Girish Rithvik (petitioner in W.P.No.49585/2014) to I year MBBS course commencing from the academic year 2014-15.
- (ii) The other three petitioners are not entitled for admission to the last seat in the light of the direction of the Supreme Court in *Priya Gupta* (para 47.6), as they have not obtained higher ranking than Mr.Girish Rithvik in the Competitive entrance examination. Further, their admissions made in excess of the *admission capacity of the College* being contrary to S.10A of the Indian Medical Council Act, 1956 cannot be directed to be regularized.
- (iii) The admission of students namely, Ms.Lekhashree, Mr.Sreekar Surapaneni and Ms.Vadaanya Venkatesh (petitioners in W.P.Nos.49627/2014, 49200/2014 & 49201/2014) to I year MBBS course made by *the College* was in excess of the *admission capacity*. *The*

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

College did not discharge them before the last date for admission i.e. before 30.9.2014. If *the College* had discharged them before the last date for admission by refunding the entire amount received from them, they would have joined some other College. The conduct of *the College*, to say the least, is most irresponsible. The act of *the College* in not discharging them and not refunding the amount received from them, well before the last date for admission has resulted in their losing one academic year and further landed them in unnecessary litigation creating uncertainty of their future and had to suffer unimaginable mental agony. On the facts of the case, it is appropriate that *the College* shall pay a compensation of Rs.1,00,00,000/- (Rupees One Crore) to each of the petitioners in W.P. Nos.49627/2014, 49200/2014 & 49201/2014. Further, *the College* and *the Sangha* shall refund whatever the amount they have collected from the said three petitioners and/or their parents which amount shall include the amount of Rs.60,00,000/- (Rupees Sixty Lakhs) collected by *the Sangha* from the father of Ms.Vadaanya Venkatesh as per the receipt dated 09.09.2014 produced as Annexure-C6 in W.P.No.49201/2014. In the receipt, father's name is described as Venkatesh B.L. F/o Vadaanya Venkatesh. The amount is stated to have been received as contribution towards V.S.Hospital Development Fund.

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

The Sangha shall also refund Rs.65,00,000/- (Rupees Sixty Five Lakhs) collected from Mr.Girish Rithvik's father as per the receipt dated 19.06.2014 produced as Annexure-C in W.P.No.49585/2014. In the receipt, father's name is described as Choudhary K.R. F/o Girish Rithvik K.R. The amount is stated to have been received as contribution towards V.S.Hospital Development Fund. The mentioning of the student's name in the above two receipts is a clear indicator that the amount was received as consideration to give admission to those students. Each of the four petitioners is entitled for costs of Rs.5,00,000/- (Rupees Five Lakhs) which shall be payable by *the College* for having driven them to this unnecessary litigation. All the aforesaid amounts shall be paid by *Kempegowda Institute of Medical Sciences (the College)* and *Rajya Vokkaligara Sangha (the Sangha)*, as directed above, within one month from today.

- (iv) This order will not come in the way of the petitioner-Girish Rithvik and/or his father Sri K.R.Choudary to initiate appropriate civil and criminal proceedings against the two Directors of *the Sangha* named in the undertaking extracted above, *inter alia* for recovery of the cash amount of Rupees Forty Seven Lakhs stated to have been paid to them.

W.P.No.49585/2014 c/w
W.P.Nos.49627/2014, 49200/2014 & 49201/2014

- (v) This order will not come in the way of *the Medical Council of India* or any other Statutory Authority to initiate appropriate action against *the College* and the *Sangha* in accordance with law for illegally admitting the three students contrary to the *rule of merit* laid down in *Priya Gupta's* case and also for admitting them in excess of the *admission capacity* of *the College*.
- (vi) The petitioners are at liberty to move this Court on the contempt side against all the concerned responsible for non-compliance of any of the directions given by the Supreme Court in *Priya Gupta's* case as such liberty is granted by the Supreme Court to all interested parties as could be seen from para 47.1 of the said judgment.

The writ petitions stand disposed of in terms stated above. In view of disposal of the writ petitions, all pending interlocutory applications do not survive for consideration; they stand disposed of accordingly.

Petitions disposed of.

Sd/-
JUDGE

hkh./BNS