

CHOWDHURY NAVIN HEMABHAI & ORS. A

v.

THE STATE OF GUJARAT & ORS.

(Civil Appeal No. 1925 of 2011)

FEBRUARY 18, 2011 B

[R.V. RAVEENDRAN AND A.K. PATNAIK, JJ.]

Education/ Educational Institutions:

*Gujarat Professional Medical Educational Colleges or C
Institutions (Regulation of Admission and Payment of Fees) D
Rules, 2008 – rr. 5 and 12 – Admission – Candidates E
belonging to the SC, ST and OBC, securing less than 40% F
marks in Physics, Chemistry and Biology in the common G
entrance test to MBBS Course for 2008-2009 – Admission H
of students to MBBS Course on basis of their merit –
Communication of Medical Council of India to discharge
students from MBBS course since they were not eligible for
admission in the MBBS course as per MCI Regulations –
Cancellation of admission – However, students allowed to
appear in the exam subject to final decision of MCI – Writ
petition – High Court refusing to quash the communication
of MCI – On appeal held: MCI Regulations require the
candidates belonging to the SC, ST and OBC to secure in
the competitive entrance examination for admission 40%
marks in the Physics, Chemistry and Biology taken together
whereas the State Rules, 2008 had prescribed a qualification
standard which was less than that of MCI – Qualification
requirements prescribed by the State cannot be lower than
those prescribed by the MCI – Admissions of the candidates
took place due to the fault of the rule-making authority in not
making the State Rules, 2008 in conformity of the MCI
Regulations –Candidates cannot to be blamed for having
secured admission in the MBBS course – They were selected
on basis of their merit and admitted into the MBBS course in*

A *accordance with the State Rules, 2008 and have pursued their studies for a year – In the interest of justice, the admissions of the appellants to the MBBS course in the college for 2008-2009 not to be disturbed – Regulations on Graduate Medical Education, 1997 – Clause 5(ii).*

B The appellants belong to Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes. They secured 40% marks in the qualifying examination in Physics, Chemistry and Biology. The appellants appeared in the common
C entrance test for admission to MBBS course conducted for Gujarat for 2008-2009, but secured less than 40% marks in Physics, Chemistry and Biology in the common
D entrance test. On basis of their merit, they were admitted to the MBBS course. The MCI sent a communication to the Colleges to discharge the appellants and as they had secured less than 40% marks in Physics, Chemistry and Biology in the common entrance test and were not eligible for admission in the MBBS course as per the MCI Regulations. Thereafter, the admission of the appellants
E was cancelled. However, on the request of the appellants, they were permitted to appear in the preliminary examination for First MBBS subject to the final decision of the MCI. The appellants filed a writ petition. The Division Bench of the High Court dismissed the writ
F petition, refusing to quash the communication of the Medical Council of India for discharging them from the MBBS course to which they had been admitted. Therefore, the appellants filed the instant appeal.

G Disposing of the appeal, the Court

HELD: 1.1 On a comparison of the minimum criteria for admission to the MBBS course laid down in the Regulations on Graduate Medical Education, 1977 and the Gujarat Professional Medical Educational Colleges or
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Institutions (Regulation of Admission and Payment of Fees) Rules, 2008, it is found that both the MCI Regulations and State Rules, 2008 insist that a candidate must have obtained 40% marks in the Physics, Chemistry and Biology in the qualifying examination. The only difference between the MCI Regulations and the State Rules, 2008 is that while the MCI Regulations require the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes to secure in the competitive entrance examination for admission 40% marks in the Physics, Chemistry and Biology taken together, the State Rules, 2008 do not contain such a requirement. Under the State Rules, 2008 candidates belonging to the Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes (excluding Creamy Layer) eligible for admission to the MBBS course were required to have 40% marks in the qualifying examination in Physics, Chemistry and Biology and must have appeared in the competitive entrance examination conducted in the current academic year. As the State Rules had prescribed a qualification standard which was less than that of MCI, the seven appellants, who took the Gujarat common entrance test for the academic year 2008-2009, got selected on the basis of their merit for the seats in the MBBS course reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes and got admitted in the college even though they had not secured 40% marks in Physics, Chemistry and Biology in the Gujarat common entrance test. The qualification requirements prescribed by the State cannot be lower than those prescribed by the MCI. Therefore, in law, the order of the High Court is right. However, this is a clear case where the admissions of the seven appellants took place due to the fault of the rule-making authority in not making the State Rules, 2008 in conformity of the MCI Regulations. For this fault of the rule-making authority if the appellants are discharged

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A from the MBBS course, they would suffer grave injustice. On the peculiar facts of the case, thus, it is a fit case where this Court should exercise its power under Article 142 of the Constitution to do complete justice between parties. [Paras 10, 11 and 12] [1084-B-H]

B 1.2 It is found that the appellants were not to be
 C blamed for having secured admission in the MBBS
 D course and the fault was entirely of the rule-making
 E authority in making the 2008 Rules and the appellants
 have gone through the pains of appearing in the
 common entrance test and have been selected on the
 basis of their merit and admitted into the MBBS course
 in the college in accordance with the State Rules, 2008
 and have pursued their studies for a year. Thus, even
 though under the MCI Regulations, the appellants were
 not eligible for admission to the MBBS course in the
 academic year 2008-2009, for the purpose of doing
 complete justice in the matter, it is directed that the
 admissions of the appellants to the MBBS course in the
 college during the academic year 2008-2009 would not
 be disturbed. However, the said direction would not be
 treated as a precedent. [Para 14] [1086-B-E]

F *Rajendra Prasad Mathur v. Karnataka University and*
Anr. 1986 (Supp) SCC 740; *A. Sudha v. University of Mysore*
 (1987) 4 SCC 537; *Ashok Chand Singhvi v. University of*
Jodhpur and Ors. (1989) 1 SCC 399; *M.A. Salam (II) v.*
Principal Secretary, Government of A.P. and Ors. (2005) 13
 SCC 677; *Medical Council of India v. State of Karnataka and*
Ors. (1998) 6 SCC 131; *Delhi Judicial Service Association,*
Tis Hazari Court, Delhi v. State of Gujarat and Ors. (1991) 4
 G SCC 406; *Sandeep Subhash Parate v. State of Maharashtra*
 (2006) 7 SCC 501 – referred to.

Case Law Reference:

H 1986 (Supp) SCC 740 Referred to Para 6

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(1987) 4 SCC 537	Referred to	Para 6	A
(1989) 1 SCC 399	Referred to	Para 6	
(2005) 13 SCC 677	Referred to	Para 6	
(1998) 6 SCC 131	Referred to	Para 7	B
(1991) 4 SCC 406	Referred to	Para 12	
(2006) 7 SCC 501	Referred to	Para 13	

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
1925 of 2011. C

From the Judgment & Order dated 09.10.2009 of the High
Court of Gujarat in Special Civil Application No. 9526 of 2009.

K.V. Vishwanathan, D. Verma, Neha S. Verma, A.
Venayagam Balan for the Appellants. D

Amarendra Sharan, Amit Kumar, Ritesh Ratnam, Maulik
Nanavati, Hemantika Wahi, Renuka Sahu, Nikhil Goel, Naveen
Goel, Marsook Bafaki, Dr. Vipin Gupta for the Respondents.

The Judgment of the Court was delivered by E

A. K. PATNAIK, J. 1. Leave granted.

2. The appellants belong to Scheduled Castes, Scheduled
Tribes and Socially and Educationally Backward Classes and
they have in this Civil Appeal challenged the judgment of the
Division Bench of the High Court of Gujarat in Special Civil
Application No. 9526 of 2009, refusing to quash the
communication of the Medical Council of India for discharging
them from the MBBS course to which they had been admitted. F
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3. The facts briefly are that the Medical Council of India
(for short "the MCI") prescribed *inter alia* in its regulations called
"The Regulations on Graduate Medical Education, 1997" (for
short "the MCI Regulations") that candidates belonging to H

A Scheduled Castes, Scheduled Tribes and Other Backward
 Classes must have obtained a minimum of 40% marks together
 in Physics, Chemistry and Biology at the qualifying examination
 and, in addition, 40% marks in Physics, Chemistry and Biology
 B taken together in the competitive examination for admission to
 the MBBS course. The State Government of Gujarat also made
 rules under the Gujarat Professional Medical Educational
 Colleges or Institutions (Regulation of Admission and Fixation
 of Fees) Act, 2007 called "The Gujarat Professional Medical
 C Educational Colleges or Institutions (Regulation of Admission
 and Payment of Fees) Rules, 2008" (for short "the State Rules,
 2008"). Rule 5 (1) (iv) of the State Rules, 2008 provided that
 for admission to a professional college, a candidate must have
 passed the qualifying examination and must have appeared in
 the common entrance test of Gujarat. A notification was issued
 D by the State Government under Rule 12 of the State Rules,
 2008 prescribing the minimum marks in the qualifying
 examination for admission to MBBS course for Scheduled
 Castes, Scheduled Tribes and Socially and Educationally
 Backward Classes (excluding Creamy layer) candidates as
 40% in Physics, Chemistry and Biology.

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 4. The appellants had secured 40% marks in the qualifying
 examination in Physics, Chemistry and Biology as prescribed
 in the notification issued under Section 12 of the State Rules,
 2008. The appellants also appeared in the common entrance
 F test conducted for Gujarat for 2008-2009, but secured less than
 40% marks in Physics, Chemistry and Biology in the common
 entrance test. As the appellants were placed in the merit list in
 the common entrance test, they were admitted to the MBBS
 course in Pramukhswami Medical College, Karamsad (for short
 G "the College"). After collecting information from the College, the
 MCI sent a communication dated 10.02.2009 to the College
 to discharge the seven appellants and one more student as
 they had secured less than 40% marks in Physics, Chemistry
 and Biology in the common entrance test and were not eligible
 H for admission in the MBBS course as per the MCI Regulations.

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The College entered into some correspondence with the MCI and the Admission Committee of the State Government and on 01.07.2009 cancelled the admission of the appellants on the insistence of the MCI in its letter dated 27.03.2009. The State Government addressed a communication to the MCI saying that the students were admitted in accordance with the State Rules, 2008 as per their merit and they may be allowed to pursue the medical education as they were not at fault. On the request of the appellants, the College permitted the appellants to appear in the preliminary examination for First MBBS in July 2009 subject to the final decision of the MCI.

5. The appellants then moved the High Court under Article 226 of the Constitution in Special Civil Application No.9526 of 2009 and by the impugned judgment, the Division Bench of the High Court dismissed the Writ Petition. The High Court held that Clause 5.5 (ii) of the MCI Regulations specifically stipulated that candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes must have obtained a minimum of 40% marks in Physics, Chemistry and Biology taken together in the qualifying examination and, in addition, must have come in the merit list prepared as a result of the competitive entrance examination by securing not less than 40% marks in Physics, Chemistry and Biology in the competitive entrance test and as the appellants have not satisfied this mandatory stipulation under clause 5.5 (ii) of the MCI Regulations, there was no illegality in the directions given by the MCI to discharge the appellants from the college. The High Court also struck down Rule 5(1)(iv) of the State Rules, 2008 which provided that a candidate who appeared in the Gujarat common entrance test was eligible for admission to the MBBS course even if he obtained less than 40% marks in Physics, Chemistry and Biology taken together in the common entrance test.

6. Mr. K.V. Vishwanathan, learned Senior Counsel for the appellants, submitted that the High Court erred in upholding the

- A directions of the MCI to discharge the appellants who had been validly admitted under the State Rules, 2008 and the validity of the State Rules, 2008 was not under challenge before the High Court. He submitted that rule 5 (1) (iv) of the State Rules, 2008 had been framed by the State Government of Gujarat in exercise
- B of its powers under Section 20(1) read with Section (4) of the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Fixation of Fees) Act, 2007 and it clearly provides that a candidate who had passed the qualifying examination and appeared in the Gujarat
- C common entrance test conducted in the current academic year was eligible for admission to the MBBS course. He submitted that as the appellants had not only passed the qualifying examination, but also appeared in the common entrance test for the academic year 2008-2009 they were clearly eligible for
- D admission to the college for the MBBS course. He submitted that although rule 5 (1) (iv) of the State Rules, 2008 was not under challenge, the High Court struck down the rule as invalid in the impugned judgment merely because the clause 5.5 (ii) of the MCI Regulations prescribed that a candidate has to
- E obtain 40% marks in Physics, Chemistry and Biology taken together in the competitive entrance examination on the basis of which the candidates were to be admitted and the appellants have not secured such 40% marks in the competitive entrance examination. He submitted that the mistake in making the State
- F Rules, 2008 consistent with the MCI Regulations was of the State Government and not of the candidates, who have been admitted to the MBBS course in accordance with the State Rules, 2008 and therefore the appellants should not be made to suffer for such mistake of the rule making authority. He submitted that this Court had adopted a sympathetic approach
- G in similar situations where admissions of students were in jeopardy for none of their fault in *Rajendra Prasad Mathur v. Karnataka University and Anr.* [1986 (Supp) SCC 740], *A. Sudha v. University of Mysore* [(1987) 4 SCC 537], *Ashok Chand Singhvi v. University of Jodhpur and others* [(1989) 1
- H SCC 399] and *M.A. Salam (II) v. Principal Secretary,*

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Government of A.P. and others [(2005) 13 SCC 677].

7. Mr. Amrendra Sharan, learned Senior Counsel appearing for the MCI, on the other hand, supported the impugned judgment of the High Court and submitted that for achieving the purposes of the "Indian Medical Council Act, 1956", the MCI has made the MCI Regulations which are statutory in nature and unless the State Government and the Universities cooperate with the MCI in enforcing these statutory regulations, the MCI will not be able to discharge its statutory obligations under the Act. He submitted that regulation 5.5 of the MCI Regulations lays down the procedure for selection to the MBBS course and clause 5.5 (ii) of these Regulations clearly provides that in case of admission on the basis of competitive entrance examination, a candidate belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must have secured a minimum of 40% marks taken together in Physics, Chemistry and Biology of the qualifying examination and, in addition, must have secured 40% marks in these subjects in the competitive entrance examination. He referred to the marks of the seven appellants and one more student admitted to the college to show that none of them fulfilled the eligibility criteria as mentioned in clause 5.5(ii) of the MCI Regulations. He submitted that the MCI, therefore, wrote to the Dean of the college in its letters dated 10.02.2009 and 27.03.2009 to discharge these eight students. He submitted that this Court had repeatedly held that the regulations made by the MCI are statutory, mandatory and binding in character and admissions to medical courses could not be made in violation of the MCI regulations. He cited the decision in *Medical Council of India v. State of Karnataka and others* [(1998) 6 SCC 131] in which this Court has held that the Indian Medical Council Act is relatable to Entry 66 of List I (Union List) of the Seventh Schedule of the Constitution and prevails over any State enactment to the extent that the State enactment is repugnant to the provisions of the Act. He submitted that the MCI Regulations will therefore prevail upon the State Rules,

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A 2008 and the contention on behalf of the appellants that the appellants were admitted in accordance with the State Rules, 2008 and their admissions are valid, even though contrary to the MCI Regulations, has no force.

B 8. Mr. Maulik Nanavati, appearing for the State of Gujarat, submitted that while making the State Rules, 2008, clause 5.5(ii) of the MCI Regulations was lost sight of and as a result admissions in the academic year 2008-2009 to the MBBS course in different colleges in the State of Gujarat were made only in accordance with the State Rules, 2008 and some candidates who did not fulfill the eligibility criteria mentioned in clause 5.5 (ii) of the MCI Regulations got admitted to the MBBS course during the year 2008-2009. He submitted that for the subsequent years, i.e. 2009-2010 onwards, the State Government has provided in the Rules that students belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must obtain 40% marks in Physics, Chemistry and Biology in the qualifying examination as well as in the common entrance test for admission into the MBBS course as prescribed in the MCI Regulations.

E 9. Clause 5.5(ii) of the MCI Regulations, which prescribes the procedure for selection and admission to the MBBS course on the basis of competitive entrance examination, reads as under:

F “(5) Procedure for selection to MBBS course be as follows:-

G (ii) In case of admission on the basis of competitive entrance examination under clause (2) to (4) of this regulation, a candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination as mentioned in clause (2) of regulation 4 in addition

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must have come in the merit list prepared as a result of such competitive entrance examination by securing not less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination. In respect of candidates belonging to Schedule Castes, Schedule Tribes, or Other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination and competitive entrance examination be 40% instead of 50% as stated above:

Provided that a candidate who has appeared in the qualifying examination the result of which has not been declared, he may be provisionally permitted to take up the competitive entrance examination and in case of selection for admission to the MBBS course, he shall not be admitted to the course until he fulfills the eligibility criteria under regulation 4."

It will be clear from a careful reading of this clause of the MCI Regulations that candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes must have secured 40% marks in Physics, Chemistry and Biology taken together in both the qualifying examination and must also secure 40% marks in the competitive entrance examination on the basis of which admission to the MBBS course is being made in a State.

10. The relevant provisions of Rule 5 and Rule 12 of the State Rules, 2008 are quoted herein below:

"5. Eligibility for Admission: (1) For the purpose of admission, a candidate shall have passed with "B-group" or "AB-group" the qualifying examination from, -

- (i) the Gujarat Board; or

- A (ii) the Central Board of Secondary Education Board provided that the school in which the candidate has studied, should have been located in the State of Gujarat; or
- B (iii) the Council of Indian School Certificate Examinations, New Delhi Board provided that the school in which the candidate has studied should have been located in the State of Gujarat; and
- C (iv) appeared in the Gujarat Common Entrance Test conducted in the current academic year.

12. Minimum qualifying standard for admission: (1) No student shall be admitted in the professional medical education course unless he/she fulfills the eligibility criteria, including the minimum qualifying marks (standard).

(2) The minimum qualifying standard for admission shall be notified by the State Government by order in the *Official Gazette* from time to time.”

- E The notification issued by the State Government under rule 12 (2) notifying the minimum qualifying standards for admission is extracted herein below:

“ORDER

- F Health and Family Welfare Department,
Sachivalaya, Gandhinagar,
Dated the 2nd June, 2008
- G Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Payment of Fees) Rules, 2008
- H No. MCG-1008-931-J: In pursuance to the power conferred by the sub rule (2) of rule 12 of the Institutions the Government of Gujarat here by notifies following minimum qualifying standard for admission to the

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first year of professional
medical educational courses
namely:-

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Minimum aggregate marks of external evaluation in
theory subjects in qualifying examination (Physics,
Chemistry and Biology)

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1. Medical and Dental Courses:

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| (a) for General Category Candidates | 70% |
| (b) for Schedule Castes, Scheduled Tribes, Socially & Educational Backward Classes (Excluding Creamy layer) Candidates | 40% |

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2. For Ayurved/ Nursing/ Homeopathy/ Physiotherapy/
Optometry/ Naturopathy/ Orthotics/ Occupational
Therapy Courses.

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| (a) for General Category Candidates | 50% |
| (b) for Schedule Castes, Scheduled Tribes, Socially & Educational Backward Classes (Excluding Creamy layer) Candidates | 40% |

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By the order and in the name of the Governor of Gujarat.

Sd/-
(A.K. Bhatt)

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Joint Secretary to the Government."

On a careful reading of the provisions of Rules 5 and 12 of the
State Rules, 2008 and the notification dated 02.06.2008 of the
State Government under Rule 12 (2) of the State Rules, 2008,
it will be clear that under the State Rules, 2008 candidates
belonging to the Scheduled Castes, Scheduled Tribes and
Socially and Educationally Backward Classes (excluding
Creamy Layer) eligible for admission to the MBBS course was
required to have 40% marks in the qualifying examination in

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A Physics, Chemistry and Biology and must have appeared in the competitive entrance examination conducted in the current academic year.

B 11. On a comparison of the minimum criteria for admission to the MBBS course laid down in the MCI Regulations and the State Rules 2008, we find that both the MCI Regulations and State Rules, 2008 insist that a candidate must have obtained 40% marks in the Physics, Chemistry and Biology in the qualifying examination. The only difference between the MCI Regulations and the State Rules, 2008 is that while the MCI
 C Regulations require the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes to secure in the competitive entrance examination for admission 40% marks in the Physics, Chemistry and Biology taken together, the State Rules, 2008 do not contain such a
 D requirement. But as the State Rules had prescribed a qualification standard which was less than that of MCI, the seven appellants, who took the Gujarat common entrance test for the academic year 2008-2009, got selected on the basis of their merit for the seats in the MBBS course reserved for the
 E Scheduled Castes, Scheduled Tribes and Other Backward Classes and got admitted in the college even though they had not secured 40% marks in Physics, Chemistry and Biology in the Gujarat common entrance test. The qualification requirements prescribed by the State cannot be lower than
 F those prescribed by the MCI. Therefore, in law, the order of the High Court is right.

G 12. This is, however, a clear case where the admissions of the seven appellants took place due to the fault of the rule-making authority in not making the State Rules, 2008 in conformity of the MCI Regulations. For this fault of the rule-making authority if the appellants are discharged from the MBBS course, they will suffer grave injustice. On the peculiar facts of the case, we are thus of the view that this is a fit case
 H where this Court should exercise its power under Article 142

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of the Constitution to do complete justice between parties. In *Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat and Others*. [(1991) 4 SCC 406] after examining the width of this power under Article 142 of the Constitution, this Court held:

“No enactment made by Central or State legislature can limit or restrict the power of this Court under Article 142 of the Constitution, though while exercising power under Article 142 of the Constitution, the court must take into consideration the statutory provisions regulating the matter in dispute. What would be the need of “complete justice” in a cause or matter would depend upon the facts and circumstances of each case and while exercising that power the Court would take into consideration the express provisions of a substantive statute. Once this Court has taken seisin of a case, cause or matter, it has power to pass any order or issue direction as may be necessary to do complete justice in the matter. This has been the consistent view of this Court as would appear from the decisions of this Court in *State of U.P. v. Poosu* [(1976) 3 SCC 1], *Ganga Bishan v. Jai Narain* [(1986) 1 SCC 75], *Navnit R. Kamani v. R.R. Kamani* [(1988) 4 SCC 387], *B.N. Nagarajan v. State of Mysore* [(1966) 3 SCR 682], *Special Reference No. 1 of 1964* [(1965) 1 SCR 413, 499] and *Harbans Singh v. State of U.P.* [(1982) 2 SCC 101].”

13. In *Sandeep Subhash Parate v. State of Maharashtra* [(2006) 7 SCC 501], this Court has also held that while exercising its discretion and jurisdiction and to do complete justice in terms of Article 142 of the Constitution, the Court must consider all relevant aspects of the matter including the decisions of this Court. In that case, the Court found that the Sandeep Subhash Parate did not lack *bona fides* in getting admission in the course of Bachelor of Engineering, Pune University, in a seat reserved for Scheduled Castes, and

A exercising its constitutional power under Article 142 of the Constitution the Court held that his studies in the professional course should not be disturbed as he might not be entirely responsible for the admission in a reserved seat.

B 14. In the facts of the present case, we have found that the appellants were not to be blamed for having secured admission in the MBBS course and the fault was entirely of the rule-making authority in making the 2008 Rules and the appellants have gone through the pains of appearing in the common entrance test and have been selected on the basis of their merit and
C admitted into the MBBS course in the college in accordance with the State Rules, 2008 and have pursued their studies for a year. Hence, even though under the MCI Regulations the appellants were not eligible for admission to the MBBS course
D in the academic year 2008-2009, for the purpose of doing complete justice in the matter before us, we direct that the admissions of the appellants to the MBBS course in the college during the academic year 2008-2009 will not be disturbed. This direction shall not, however, be treated as a precedent. The appeal is disposed of accordingly with no order as to costs.

E N.J.

Appeal disposed of.