DEEPA THOMAS & ORS. A

v.

MEDICAL COUNCIL OF INDIA & ORS.

(Civil Appeal No. 1015 of 2012)

JANUARY 25, 2012 B

[CYRIAC JOSEPH AND GYAN SUDHA MISRA, JJ.]

Education – Medical Education – MBBS course – Admission – Irregular admission – Relief under Art.142 of Constitution – Whether respondents including the MCI, the C *University of Calicut and the Mahatma Gandhi University, Kottayam should be directed to permit the appellants-students to continue and complete the MBBS course to which they were admitted in the different Private Unaided Medical Colleges in Kerala in the academic year 2007-08, though they were not* D *eligible for such admissions as per the Regulations of the MCI, but had satisfied all the eligibility criteria stipulated in the "Prospectus for MBBS Admission, 2007" issued by the respondent-Medical Colleges – Held: The instant case is an eminently fit case for invoking Supreme Court's powers under* E *Article 142 of the Constitution – On the strength of the interim orders passed by the High Court and subsequently by Supreme Court, the appellants continued their studies for 4½ years and appeared in the University examinations – Although the admissions of appellants were irregular as they* F *did not satisfy the requirement of securing not less than 50% marks in the CEE as prescribed in the MCI Regulations, in the special facts and circumstances, the appellants should be allowed to continue and complete their MBBS course and also permitted to appear in the University examinations as if they* G *had been regularly admitted to the course – Such an order is necessary for doing complete justice in the matter – However, since irregular admissions were made by respondent-Colleges in violation of the MCI Regulations,*

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though due to the mistake or omission in the Prospectus issued by the respondent colleges, they should be directed to surrender from the management quota, number of seats equal to the number of such irregular admissions – In facts and circumstances of the case, suggestion on behalf of MCI to impose penalty on the Colleges not accepted – Constitution of India, 1950 – Article 142.

The appellants are stated to be victims of a mistake or omission crept in the "Prospectus for MBBS Admission, 2007" issued by the respondent-Medical Colleges as regards the eligibility criteria for admission. When the Medical Council of India (MCI) Regulations insist on a minimum of 50% marks both in the qualifying examination and in the Competitive Entrance Examination ('CEE') separately, the Prospectus did not specify that separate 50% marks were required in the CEE also. Though the appellants secured more than 50% marks in the qualifying examination, they secured less than 50% marks in the CEE. Without noticing and without being aware of the difference between the MCI Regulations and the Prospectus in respect of the eligibility criteria, the appellants took admission in the medical colleges. Immediately after the admission the colleges sent the list of admitted students and their marks to the MCI. There was no objection from the MCI and the appellants continued their studies. However, several months thereafter, MCI directed the colleges concerned to discharge the appellants on the ground that they were not eligible for admission as they had secured less than 50% marks in the CEE. Though the appellants and the colleges represented to the MCI and requested to reconsider its decision, the MCI refused to change its stand. The appellants thereafter approached the High Court for redressal of their grievance and on the basis of interim orders passed by the High Court in the writ petitions filed by them, continued their studies and

appeared in the examinations conducted by the University. However, the writ petitions filed by the appellants were ultimately dismissed by the High Court. The High Court held that the regulations framed by the MCI were mandatory in nature; that the admission of the appellants was irregular and the MCI was justified in directing the colleges to discharge the appellants.

Faced with the threat of discharge from the colleges, the appellants came up before this Court pleading that the indulgence shown to the students by this Court in the *Monika Ranka's* case may be extended to the appellants.

The question that arose for consideration was whether this Court should direct the respondents including the MCI, the University of Calicut and the Mahatma Gandhi University, Kottayam to permit the appellants to continue and complete the MBBS course to which they were admitted in the different Private Unaided Medical Colleges in Kerala in the academic year 2007-08, though they were not eligible for such admissions as per the Regulations of the MCI, but had satisfied all the eligibility criteria stipulated in the "Prospectus for MBBS Admission, 2007" issued by the respondent-Medical Colleges.

Disposing of the appeals, the Court

HELD:1.1. On the strength of the interim orders passed by the High Court and subsequently by this Court, the appellants continued their studies for 4½ years and appeared in the University examinations. In the light of the peculiar facts and circumstances of the case, it is quite unjust and unfair to discharge the appellants at this stage. This is an eminently fit case for invoking this Court's powers under Article 142 of the Constitution of India to permit the appellants to continue and complete the MBBS course to which they were admitted in the year

A 2007. Such an order is necessary for doing complete justice in the matter. [Paras 20, 21] [26-G-H; 27-A-B]

1.2. In *Monika Ranka's* case, though the admission was held to be irregular, this Court showed indulgence B to the students and permitted them to continue and complete the course on the ground that there was nothing on record to show that the students were informed of the marks secured by them in the entrance examination and the students had already completed one C year of their MBBS course. In fact, the case of the appellants is much better than the case of the students in *Monika Ranka's* case. In *Monika Ranka's* case, there was no confusion regarding the eligibility criteria whereas in this case the Prospectus omitted to mention the requirement of securing minimum 50% marks for the D CEE as provided in the MCI Regulations. The appellants in *Monika Ranka's* case had completed only one year of their course, whereas in this case the appellants are completing the 4th year of the MBBS course. As in *Monika Ranka's* case, the appellants also were not informed of E the marks secured by them in the entrance examination. Though the appellants had specifically pleaded so in the writ petitions and also in these appeals, there is nothing on record to show that the marks secured by them in the entrance examination were communicated to them. The F High Court has noted in the impugned judgment that since there was nothing on record to show that the appellants in *Monika Ranka's* case were informed of the marks secured by them in the entrance examination, the Apex Court indulged to give them the personal relief of G permitting them to continue with the course. Even though the case of the appellants herein also is similar, the High Court has not given any reason for not extending the same relief to the appellants. There is also no finding anywhere in the judgment that the marks of the CEE were H communicated to the appellants. [Para 21] [27-C-H; 28-A]

Monika Ranka & Ors. v. Medical Council of India & Ors. **[Order dated 4th September, 2008 passed by Supreme Court in Civil Appeal Nos. 5518-5519 of 2008]; *Chowdhury Navin Hemabhai and Others* v. *State of Gujarat and Others* (2011) 3 SCC 617: 2011 (2) SCR 1071 – relied on.** A

2. Having regard to the special facts and circumstances of this case and the extra-ordinary situation arising in the case, this Court does not in any way feel inhibited to invoke its jurisdiction under Article 142 of the Constitution of India for doing complete justice. [Para 23] [29-G-H] B C

2.2. Although the admissions of the appellants were irregular as they did not satisfy the requirement of securing not less than 50% marks in the CEE as prescribed in the MCI Regulations, this Court is inclined to take a considerate view in the special facts and circumstances and hence it is directed that, as a special case, the appellants shall be allowed to continue and complete their MBBS course and also permit them to appear in the University examinations as if they had been regularly admitted to the course. [Para 24] [30-A-C] D E

2.3. Since irregular admissions were made by the respondent -Colleges in violation of the MCI Regulations, though due to the mistake or omission in the Prospectus issued by the respondent colleges, they should be directed to surrender from the management quota, number of seats equal to the number of such irregular admissions. Such surrenders shall be made in a phased manner starting with the admissions of the year 2012. However, any of the respondent-Colleges shall not be required to surrender more than eight (8) seats in one academic year. [Para 25] [30-D-E] F G

Supreme Court Bar Association v. *Union of India and Another* **(1998) 4 SCC 409 : 1998 (2) SCR 795 – relied on.** H

A 3. Though on behalf of the MCI it was pleaded that as a deterrent against irregular admissions in future a penalty or fine should be imposed on the respondent-Colleges and for the said purpose it was suggested that the respondent-Colleges may be directed to deposit with B the Legal Services Authority the entire amount of fees collected by the colleges from the appellant–students, having regard to the facts and circumstances of the case, there is no sufficient justification for such a harsh treatment as the irregularity in the admissions occurred C due to an inadvertent and bona fide mistake or omission on the part of the Colleges while issuing the Prospectus. Since the mistake or omission occurred even before the applications were invited, it is not possible to attribute any malafides on the part of the respondent-Colleges as it does not appear to be a deliberate act to violate the MCI D Regulations and since the irregular admissions have not resulted in any pecuniary gain for the management. Even if the appellants were not admitted, the Colleges could have admitted equal number of other candidates from the management quota and collected from them the very E same fees applicable to management quota students. There was also no attempt to favour the appellants, as the Colleges could not have anticipated that the appellants would apply and fail to secure 50% marks in the CEE. Moreover the respondent-Colleges inspite of F bonafide lapse are adequately punished as they have been directed to surrender equal number of seats from the management quota in the coming years. As a result of such surrender of management quota seats, there will be considerable reduction in the income of the Colleges G from the fees of the students, because, the fees to be paid by a student admitted in the management quota are admittedly much higher than the fees to be paid by the student admitted in the Government quota. Hence in the facts and circumstances of this case, the suggestion on

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behalf of MCI to impose a penalty on the Colleges is not accepted. [Para 26] [30-E-H; 31-A-E] A

Case Law Reference:

2011 (2) SCR 1071	**relied on**	**Para 22**
1998 (2) SCR 795	**relied on**	**Para 23**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1015 of 2012.

From the Judgment & Order dated 16.9.2010 of the High Court of Kerala in W.P. (C) No. 34270 of 2009. C

WITH

C.A. Nos. 1016-1017, 1018 & 1027 of 2012

D

Rajeev Dhawan, K.V. Viswanathan, A. Sharan, Shyam Diwan, Romy Chacko, Satya Mitra, E.M.S. Anam Fazlin Anam, Manoj V. George, Alex Joseph, K. Gireesh Kumar, Shilpa M. George, Ansar Ahmad Chaudhary, Raghenth Basant, Arjun Singh Bhati, Senthil Jagadeesan, Amit Kumar, Avijit Mani E Tripathi, Ashish Kumar, Somesh Chanda Jha, Kedar Nath Tripathy, V. Mohana, P.V. Dinesh for the appearing parties.

The Judgment of the Court was delivered by

CYRIAC JOSEPH, J. 1. Leave granted. F

2. The short question that arises for consideration in these Civil Appeals is whether this Court should direct the respondents including the Medical Council of India (for short 'MCI'), the University of Calicut and the Mahatma Gandhi G University, Kottayam to permit the appellants to continue and complete the MBBS course to which they were admitted in the different Private Unaided Medical Colleges in Kerala in the academic year 2007-08, though they were not eligible for such admissions as per the Regulations of the MCI, but had satisfied H

A all the eligibility criteria stipulated in the "Prospectus for MBBS Admission, 2007" issued by the respondent-Medical Colleges. The appellants are stated to be victims of a mistake or omission crept in the Prospectus as regards the eligibility criteria for admission. When the MCI Regulations insist on a minimum of B 50% marks both in the qualifying examination and in the Competitive Entrance Examination (for short 'CEE') separately, the Prospectus did not specify that separate 50% marks were required in the CEE also. Though the appellants had secured more than 50% marks in the qualifying examination, they could C secure only less than 50% marks in the CEE. Without noticing and without being aware of the difference between the MCI Regulations and the Prospectus in respect of the eligibility criteria, the appellants took admission in the medical colleges. Immediately after the admission the colleges sent the list of D admitted students and their marks to the MCI. There was no objection from the MCI and the appellants continued their studies. However, several months thereafter, MCI directed the colleges concerned to discharge the appellants on the ground that they were not eligible for admission as they had secured E only less than 50% marks in the CEE. Though the appellants and the colleges represented to the MCI and requested to reconsider its decision, the MCI refused to change its stand. Hence, the appellants were constrained to approach the High Court of Kerala for redressal of their grievance and on the basis F of interim orders passed by the High Court in the writ petitions filed by them, the appellants continued their studies and appeared in the examinations conducted by the University. However, the writ petitions filed by the appellants were ultimately dismissed by the High Court on 16th September, G 2010. Faced with the threat of discharge from the colleges, the appellants have filed these appeals by special leave. On the strength of the interim orders passed by this Court, the appellants continued their studies and appeared in the examinations and they are now in the fourth year of the MBBS course. The appellants claim that they are innocent victims of H

an inadvertent and bona fide mistake or omission crept in the Prospectus as regards the eligibility criteria for admission. They contend that even if there was some discrepancy between the eligibility criteria mentioned in the Prospectus and the eligibility criteria mentioned in the MCI Regulations, they were not in any way responsible for such discrepancy and they may not be penalised for no fault of theirs. The appellants seek intervention of this Court to save their career and future.

3. The appellants are students of Jubilee Medical Mission College and Research Institute, Thrissur, M.E.S. Medical College, Perinthalmanna, Malankara Orthodox Syrian Church Medical College, Kolenchery and Pushapagiri Institute of Medical Sciences & Research Centre, Thiruvalla. Admittedly all these medical colleges are members of the Kerala Private Medical College Management Association (for short, 'Management Association') and the Prospectus for admission to MBBS course, 2007 issued by the Management Association was followed by these medical colleges except the M.E.S. Medical College. The prospectus issued by the M.E.S. Medical College also contained identical provisions relating to eligibility criteria for admission.

4. As per Clause 1.1 of the Prospectus, it was made clear that the Management Association had decided to introduce a separate selection procedure for admission to MBBS course, 2007-2008 in the member colleges of the Management Association as per the directions of the Supreme Court in the matter.

As per Clause 2.2(i), the academic qualification required for admission was "Pass in Higher Secondary Examination of the Board of Higher Secondary Education of Kerala or examination recognised equivalent thereto with 60% marks in Biology separately and 60% marks in Physics, Chemistry and Biology put together or equivalent grade".

Clause 4.1 of the Prospectus provided as follows:

A "*Preparation of Merit List and Allotment of Candidates:* Admission will be on the basis of marks obtained in the entrance examination and marks obtained for Physics, Chemistry and Biology in the qualifying examination. The marks will be apportioned in the ratio of 50:50. After the
B entrance test, the marks obtained for the Physics, Chemistry and Biology at the qualifying examination will be added to the marks obtained at the entrance test and a combined merit list will be published. Separate merit list also will be published for categories for which seats are
C reserved. Allotment to colleges and admission will be on the basis of centralized counselling."

As per the above provisions in the Prospectus, even though a candidate was required to pass the Higher Secondary Examination of the Board of Higher Secondary Education of
D Kerala or examination recognised equivalent thereto with 60% marks in Biology separately and 60% marks in Physics, Chemistry and Biology put together, there was no requirement of any minimum marks in the entrance examination.

E 5. It cannot be disputed that admissions to MBBS Course in the respondent-Medical Colleges are governed by the MCI Regulations on Graduate Medical Education, 1997 (for short 'MCI Regulations').

F 6. According to Regulation 4(2) of the MCI Regulations, no candidate shall be allowed to be admitted to the MBBS course until he/she has passed one of the qualifying examinations mentioned therein. According to Regulation 5(2) of the MCI Regulations, in States having more than one University/Board/Examination Body conducting the qualifying
G examination or where there is more than one medical college under the administrative control of one authority, a competitive entrance examination should be held so as to achieve a uniform evaluation as there may be variation of standards of qualifying examinations conducted by the different agencies.

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Clause 5(ii) of Regulation 5 reads as follows: A

"5. Procedure for selection to MBBS course shall be as follows:

(i) xxx xxxx xxx B

(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% of marks taken C together in Physics Chemistry and Biology at the qualifying examination as mentioned in clause (2) of regulation 4 and in addition must have come in the merit list prepared as a result of such competitive entrance examination by securing not less then 50% marks in Physics, Chemistry D and Biology taken together competitive examination. In respect of candidates belonging to Schedule Caste, 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: E

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 F for admission to the MBBS course, he shall not be admitted to that course until he fulfils the eligibility criteria under regulation 4."

Thus, as per the MCI Regulations, in the case of admission G on the basis of competitive entrance examination, a candidate must have obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination and in addition, must have secured not less than 50% marks in Physics, Chemistry and Biology taken together in the H

competitive examination. However such a requirement of minimum 50% marks in Physics, Chemistry and Biology taken together in the competitive examination was not mentioned in the Prospectus issued by the colleges.

7. Admittedly the appellants were eligible for admission as per the criteria laid down in the Prospectus, but they were not eligible for admission as per the criteria laid down in the MCI Regulations, as they secured only less than 50% marks in Physics, Chemistry and Biology taken together in the competitive examination.

8. In the impugned judgment, the High Court has held that the regulations framed by the MCI are mandatory in nature. For this purpose, the High Court relied on the judgment dated 14th July, 2008 of the High Court of Madhya Pradesh in Writ Petition No. 13379 of 2007 and connected cases. In the said judgment, the High Court of Madhya Pradesh held that the Regulations framed by the MCI are mandatory in nature. In the order dated 4th September, 2008 passed in Civil Appeal Nos. 5518-5519 of 2008 (*Monika Ranka & Ors. v Medical Council of India & Ors.*) and Civil Appeal Nos.5520-5521 of 2008, this Court upheld the principle laid down by the High Court of Madhya Pradesh, though the appellants therein were granted personal relief treating it as a special case. Learned counsel for the appellants in these appeals did not seriously contest the proposition that the MCI regulations are mandatory in nature. They only pleaded that the indulgence shown to the students by this Court in the above-mentioned Monika Ranka's case may be extended to the appellants, as their case is better than the case of the students in Monika Ranka's case. Learned counsel for the appellants also did not dispute that the appellants had secured only less than 50% marks in the CEE. Therefore, the High Court was right in holding that the admission of the appellants was irregular and the MCI was justified in directing the colleges to discharge the appellants.

9. Therefore, the only question to be considered in these

appeals is whether, having regard to the facts and circumstances of these cases, the appellants should be allowed to continue and complete the MBBS course as was done by this Court in Monika Ranka's case. We may now refer to some of the aspects which are relevant for answering the above question.

10. The appellants had applied for admission in response to the Prospectus for admission to MBBS 2007 issued by the colleges. It was not disputed that the Prospectus was approved by the Admission Supervisory Committee constituted by the Government of Kerala under the Kerala Professional Colleges or Institutions (Prohibition of Capitation Fee, Regulation of Admission, Fixation of Non exploitative Fee and Other Measures to Ensure Equity and Excellence in Professional Education) Act 19 of 2006. The CEE was conducted and the merit list was prepared under the supervision of the said Committee.

11. However, there was a minor discrepancy between the eligibility criteria for admission prescribed by the MCI Regulations and the eligibility criteria mentioned in the Prospectus. The requirement of securing not less than 50% marks in the CEE was not mentioned in the Prospectus. According to the appellants and the colleges, it was only an inadvertent and bona fide mistake or omission while preparing the Prospectus. It was contended that Regulation 5(5)(ii) is clumsily worded, with the words "taken together" appearing in several places giving an impression that minimum 50% is required when the marks of qualifying examination and the marks of the CEE are taken together. It was also contended that such an omission or mistake occurred due to lack of sufficient clarity in Regulation 5(5)(ii). There is some substance in the contention.

12. It was pointed out that, when the MCI Regulations require only minimum 50% marks in the qualifying examination, the Prospectus issued by the Management Association

A stipulated a higher standard of minimum 60% marks in the qualifying examination and the appellants did satisfy the said requirement by securing 60% to 99% in the qualifying examination. Hence, it cannot be said that the appellants were not meritorious candidates, though unfortunately they could B secure only less than 50% marks in the CEE. The Prospectus however did not mention the requirement of minimum 50% marks in the CEE separately. The Prospectus was submitted to the Admission Supervisory Committee constituted under Act 19 of 2006 but the Committee did not raise any objection to C the eligibility criteria mentioned in the Prospectus. Possibly, the Admission Supervisory Committee also failed to notice the omission.

13. It was specifically averred by the appellants that the marks obtained in the CEE were not communicated to the D candidates and consequently the appellants were not aware that they had secured only less than 50% marks in the CEE. Hence it cannot be said that the appellants took admission knowing that they were not eligible for admission. The CEE was conducted under the supervision of the Admission E Supervisory Committee which scrutinized and approved the merit list. It was also averred that though the list of selected candidates was submitted by the colleges to the Admission Supervisory Committee, no objection was raised by the Committee to the admission of the appellants for a very long F time. In this context, it may be remembered that Section 4(6) of Act 19 of 2006 provides as hereunder:

> "The Admission Supervisory Committee shall supervise and guide the entire process of admission of students to G the unaided professional colleges or institutions with a view to ensure that the process is fair, transparent, merit based and non exploitative under the provisions of the Act".

In such circumstances, the appellants had no reason to suspect that they were ineligible for admission. The list of H admitted candidates, along with the marks obtained by them

in the qualifying examination and the CEE, was submitted by the colleges to the MCI immediately after the admissions. It was from the list of admitted candidates and their marks that the MCI found that the appellants had secured only less than 50% marks in the CEE. Possibly, in view of the delay in conducting the scrutiny, the above irregularity was brought to the notice of the colleges by the MCI long after they were admitted to the course. Having realised the mistake or omission in the Prospectus for the year 2007, the colleges rectified the mistake/ omission in the prospectus for the subsequent years.

14. The appellants have secured 60% to 99% marks in the qualifying examination as against the 50% required under the MCI Regulations. They have also secured more than 50% of the aggregate marks, if the marks of the qualifying examination and the CEE are taken together.

15. The High Court has noticed in the impugned judgment that the appellants in Writ Petition (C) Nos. 13810, 13817, 13818, 13819 and 21534 of 2010 contended that though they had not obtained 50% in the CEE, they had obtained more than 50% marks in other Competitive Entrance Examinations like the Entrance Test conducted by Christian Medical College, Ludhiana, the Karnataka Common Entrance Examination for Private Colleges and the Common Entrance Examination conducted by the Commissioner for Entrance Examinations, Government of Kerala. Some of the appellants claimed that in view of their admission in the respondent-Colleges, they gave up admissions offered to them in medical colleges outside Kerala.

16. Long before the MCI directed the colleges to discharge the appellants, admissions for the academic year 2007-2008 had been closed everywhere.

17. The respondent - Colleges or the MCI had not received any complaint against the admission of the appellants from any other candidate who sought admission to MBBS.

A 18. Realising that the admissions given to the appellants were irregular and that such irregularity occurred due to the inadvertent omission to include in the Prospectus the requirement of minimum 50% marks in the CEE, the respondent-Colleges except the M.E.S. College, through their B counsel offered before the High Court to surrender equal number of seats from the management quota to the Government quota in the next year. Though the offer has been noted by the High Court in paragraph 13 of the impugned judgment, it was not accepted by the High Court. Learned counsel for all the C respondent – Colleges including the M.E.S. College stated before this Court that the said Colleges are willing to surrender from the management quota number of seats equal to the number of students sought to be discharged. However, learned counsel for the M.E.S. College further submitted that D considering that the number of seats to be so surrendered by them is 27, the said college may be permitted to surrender them over a reasonable period.

19. The learned counsel for respondent-Colleges also submitted that the MCI has not been implementing the E Regulations uniformly. For example, admissions to MBBS course in the State of Tamilnadu are allowed to be made without any entrance test and only based on the marks in the qualifying examination. This was not disputed by the learned counsel for the MCI. It was also alleged that in State of Kerala F itself the MCI had regularized the irregular admissions in other Private Medical Colleges like the Gokulam Medical College, but the correctness of the allegation could not be verified by the learned counsel for MCI for want of time.

G 20. On the strength of the interim orders passed by the High Court and subsequently by this Court, the appellants have continued their studies for 4½ years and have appeared in the University examinations.

21. In the light of the peculiar facts and circumstances H stated above, we are of the view that it is quite unjust and unfair

to discharge the appellants at this stage. This is an eminently fit case for invoking this Court's powers under Article 142 of the Constitution of India to permit the appellants to continue and complete the MBBS course to which they were admitted in the year 2007. Such an order is necessary for doing complete justice in the matter. In taking such a view, we are supported by the precedent in the order dated 4th September, 2008 passed by a 3-Judge Bench of this Court in Civil Appeal Nos. 5518-5519 of 2008 (*Monika Ranka & Ors. v. Medical Council of India & Ors.*). In that case though the admission was held to be irregular, this Court showed indulgence to the students and permitted them to continue and complete the course on the ground that there was nothing on record to show that the students were informed of the marks secured by them in the entrance examination and the students had already completed one year of their MBBS course. In fact, the facts and circumstances pointed out in the earlier paragraphs show that the case of the appellants is much better than the case of the students in Monika Ranka's case. In Monika Ranka's case, there was no confusion regarding the eligibility criteria whereas in this case the Prospectus omitted to mention the requirement of securing minimum 50% marks for the CEE as provided in the MCI Regulations. The appellants in Monika Ranka's case had completed only one year of their course, whereas in this case the appellants are completing the 4th year of the MBBS course. As in Monika Ranka's case, the appellants herein also were not informed of the marks secured by them in the entrance examination. Though the appellants had specifically pleaded so in the writ petitions and also in these appeals, there is nothing on record to show that the marks secured by them in the entrance examination were communicated to them. The High Court has noted in the impugned judgment that since there was nothing on record to show that the appellants in Monika Ranka's case were informed of the marks secured by them in the entrance examination, the Apex Court indulged to give them the personal relief of permitting them to continue with the course. Even though the case of the appellants herein also is similar,

the High Court has not given any reason for not extending the same relief to the appellants. There is also no finding anywhere in the judgment that the marks of the CEE were communicated to the appellants.

22. We also notice that an almost identical situation arose in *Chowdhury Navin Hemabhai and Others* v. *State of Gujarat and Others* [(2011) 3 SCC 617]. In that case, the conflict was between the provisions in the MCI Regulations and the provisions in the Gujarat Professional Medical Educational Colleges or Institutions (Regulation of Admission and Payment of Fees) Rules, 2008 (for short, "State Rules"). Under the MCI Regulations, the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes were required to secure in the common entrance test a minimum of 40% marks in Physics, Chemistry and Biology taken together, but in the State Rules there was no such requirement. Thus, the State Rules had prescribed a qualification standard which was less than that of the MCI. The appellants before this Court belonged to Scheduled Castes, Scheduled Tribes and Other Backward Classes and though they did not secure 40% marks in Physics, Chemistry and Biology taken together, they were given admission to the MBBS course. The High Court of Gujarat had struck down the provision in the State Rules which provided that a candidate who appeared in the 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 and also upheld the directions given by the MCI to discharge the appellants from the college. This Court upheld the decision of the High Court observing that the qualification requirements prescribed by the State cannot be lower than those prescribed by the MCI. However, this Court also found that the admissions of the appellant-students took place due to the fault of the rule-making authority in not making the State Rules in conformity with the MCI Regulations and that if the appellants are discharged from the MBBS course for the fault of the rule-

making authority, they will suffer grave injustice. This Court further found that the appellants were not to be blamed for having secured admission in the MBBS course and that the fault was entirely on the rule-making authority in making the State Rules. Even though the appellants were not eligible for admission under the MCI Regulations, considering that the appellants had gone through the pains of appearing in the common entrance test and had been selected on the basis of their merit and admitted into the MBBS course in accordance with the State Rules and had pursued their studies for a year, this Court, for the purpose of doing complete justice in the matter, directed that the admissions of the appellants should not be disturbed. Though this Court observed that the said direction was not to be treated as a precedent, we find sufficient justification for giving a similar direction in the case of the appellants before us.

23. In *Supreme Court Bar Association* v. *Union of India and Another* [(1998) 4 SCC 409] (in para 48), a Constitution Bench of this Court held:

> "The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ***ordinarily*** it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. "

Having regard to the special facts and circumstances of this case and the extra-ordinary situation arising in the case, we do not in any way feel inhibited to invoke our jurisdiction under Article 142 of the Constitution of India for doing complete justice in the matter before us.

A 24. For the reasons stated above, we although agree with the view of the MCI and the High Court that the admissions of the appellants were irregular as they did not satisfy the requirement of securing not less than 50% marks in the CEE as prescribed in the MCI Regulations, we are inclined to take B a considerate view in the special facts and circumstances mentioned in the earlier paragraphs and hence we direct that, as a special case, the appellants shall be allowed to continue and complete their MBBS course and also permit them to appear in the University examinations as if they had been C regularly admitted to the course.

25. Since irregular admissions were made by the respondent -Colleges in violation of the MCI Regulations, though due to the mistake or omission in the Prospectus issued by the respondent colleges, they should be directed to surrender from D the management quota, number of seats equal to the number of such irregular admissions. Such surrenders shall be made in a phased manner starting with the admissions of the year 2012. However, any of the respondent-Colleges shall not be required to surrender more than eight (8) seats in one E academic year.

26. Learned counsel for the MCI strongly pleaded that as a deterrent against irregular admissions in future a penalty or fine should be imposed on the respondent-Colleges and for the F said purpose he suggested that the respondent-Colleges may be directed to deposit with the Legal Services Authority the entire amount of fees collected by the colleges from the appellant–students. Having regard to the facts and circumstances of the case, we do not find sufficient justification G for such a harsh treatment, as in our view, the irregularity in the admissions occurred due to an inadvertent and bona fide mistake or omission on the part of the Colleges while issuing the Prospectus. Since the mistake or omission occurred even before the applications were invited, it is not possible to attribute any malafides on the part of the respondent-Colleges H

as it does not appear to be a deliberate act to violate the MCI Regulations and since the irregular admissions have not resulted in any pecuniary gain for the management. Even if the appellants were not admitted, the Colleges could have admitted equal number of other candidates from the management quota and collected from them the very same fees applicable to management quota students. There was also no attempt to favour the appellants, as the Colleges could not have anticipated that the appellants would apply and fail to secure 50% marks in the CEE. Moreover the respondent-Colleges inspite of bonafide lapse are adequately punished as we have directed them to surrender equal number of seats from the management quota in the coming years. As a result of such surrender of management quota seats, there will be considerable reduction in the income of the Colleges from the fees of the students, because, the fees to be paid by a student admitted in the management quota are admittedly much higher than the fees to be paid by the student admitted in the Government quota. Hence in the facts and circumstances of this case, we are not persuaded to accept the suggestion of the learned counsel for the MCI to impose a penalty on the Colleges.

27. The appeals are disposed of in the above terms. There will be no order as to costs.

B.B.B. Appeals disposed of.