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PRIYA GUPTA

v.

STATE OF CHHATISHGARH & ORS.

(Civil Appeal No. 4318 of 2012)

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MAY 08, 2012

**[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]**

**EDUCATION/EDUCATIONAL INSTITUTIONS:**

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*Medical and Dental College - Admission to MBBS course - Tampering with the schedule specified under the Regulations and judgments of the Supreme Court with clear intent to grant admission to less meritorious candidates over and above candidates of higher merit - Held: Adherence to*

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*the principle of merit, compliance with the prescribed schedule, refraining from mid stream admission and adoption of admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme - From time to time, Supreme Court has given directions in relation*

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*to the manner of announcement of details, results and counseling for admission and its publication in newspaper - Schedules prescribed have the force of law in as much as they form part of the judgments of Supreme Court - No authority*

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*whether Medical Council of India, Government of India, State Government, University or selection bodies constituted at the college level for allotment of seat by way of counseling are vested with the power of relaxing, varying or disturbing the time schedule or the procedure of admission - There have been irregularities in maintaining the prescribed Schedule*

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*and that the last few days of the declared schedule are primarily being utilized in an exploitative manner on account of charging higher fees for securing admission and thereby defeating the principle of admission on merit - Adverse consequences of non-adherence to the time schedule stated and directions issued - In the instant appeal, two vacant seats*

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were available on 30th September, 2006 - Appellants were given admission on 30th September without effecting due publicity - State Government cancelled their admission on the ground that it was arbitrary and based on favouritism - High Court rightly dismissed the writ petition by appellants - There was nothing on record to show that all the candidates were informed of counseling on the last day - Appellants were stated to have been present in college and were given admission - Appellant no.2 was daughter of Director of medical education - From 23rd April 2006 to 29th September 2006, no record to show efforts to fill up vacant seats - Out of favouritism and arbitrariness, the appellants were given admission by completing the entire admission process within few hours on 30th September, 2006 - The entire exercise smacked of arbitrariness, unfairness and is discriminatory - On peculiar facts and circumstances, though there is no legal infirmity in judgment under appeal, but since by virtue of interim orders, the appellants had completed four years of studies during the High Court decision, in order to do complete justice within the ambit of Article 142 of the Constitution, the appellants permitted to complete their professional courses subject to the condition that each one of them pay a sum of Rs.5 lakhs to college, which amount shall be utilized for developing the infrastructure in the college - Initiation of proceedings directed under the Contempt of Courts Act against various authorities - Report of the Committee constituted to look into irregularity in admission to the effect that the admission to appellants was on State PMT merit was a mere eye-wash rather than a proper report upon examining the entire matter in its proper perspective - Committee acted in undue haste, in violation of the prescribed procedure of admission and certainly contrary to the judgments of Supreme Court - Constitution of India, 1950 - Articles 141, 142 - Costs.

Recognition granted to medical or dental college prior/ after 15th July of each year - Effect of.

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A The appellants had appeared in the Pre-Medical Test conducted by the State of Chhattisgarh for the academic year 2006. The results were declared in July 2006. Appellant No.1 secured general rank 1614 while appellant No.2 secured general rank 3893 and SC rank 396. The first counseling was held on 21-22nd July, 2006 but at that time, the Jagdalpur College was not given permission to commence admission to the MBBS course. The counseling was conducted for medical colleges at Raipur and Bilaspur and also for the Raipur Dental College. 18 per cent of seats were to be reserved for allotment under the All India Quota and the Central Pool quota. The State Government by its letter dated 14th August, 2006, granted permission for the starting of admission procedure for the academic year 2006-07 at the Jagdalpur College. Its annual admission capacity was 50 seats which were to be filled up by the candidates who had qualified PMT 2006 in the order of their merit. The State Government by letter dated 21st August, 2006 was stated to have informed the Jagdalpur College that two seats out of the total seats were reserved for allotment under the Central Pool Quota and no seats were reserved under All India Quota. Upon receipt of recognition, only 48 seats were offered for admission to the students on 22nd - 23rd August, 2006. The Central Pool Quota seats were not filled up and were allegedly not made available to the candidates who appeared for that counseling. The Dean of Jagdalpur College informed the Director, Medical Education on 30th September, 2006 that on that date, 48 candidates had taken admission and two seats were lying vacant. This information was sent in response to inquiry by the Director, Medical Education in this regard and directions were sought by the Jagdalpur College for filling up of vacant seats. On the same day, the Director, Medical Education, directed that the seats should be filled from the merit list and the candidates could be contacted on telephone and if contact was not possible,

admission could be given to the candidates who were available in the Jagdalpur College. On 30th September, 2006 itself, the two vacant seats were given to the appellants. The Dean of the Jagdalpur College informed the Director, Medical Education about the admission of the appellants.

On a complaint regarding irregularity in admission given to the appellants, a Committee was constituted which gave report to the effect that no admission was granted to any students in All India quota and the appellants got admission in Medical College Jagdalpur in 2006 by the State PMT merit on the last date of the admission i.e. 30th September 2006. The inquiry report was submitted by the Dean of Jagdalpur College to the Directorate (DGHS). However, on 22nd July, 2010, the Secretary, Department of Health and Family Welfare, Government of Chhattisgarh was informed by the Assistant Director General (Medical Education), Government of India that the admission of the appellants was on the basis of fake letters purported to be issued from the DGHS and that their admissions may be cancelled with immediate effect and action taken report be submitted to the DGHS. In furtherance to this letter, the Deputy Secretary, Medical and Family Welfare Department, Government of Chhattisgarh, issued order dated 10th September, 2010 stating that the admission of these two appellants was not in accordance with the provisions of the Rules and other guidelines/provisions with regard to allotment of seats under the All India Quota and the admission was cancelled with immediate effect. The appellants filed writ petitions before the High Court. The High Court held that admission to the appellants was given ignoring more meritorious and suitable candidates which amounted to violation of natural justice to such other candidates and declined to interfere with the order

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A of cancellation of admission. The instant appeals were filed challenging the order of the High Court.

Disposing of the appeals, the Court

B HELD: 1. Admission to professional colleges is governed by the judgment of this Court in the case of *TMA Pai Foundation & Ors. v. State of Karnataka & Ors.* [(2002) 8 SCC 481]. The framework of admissions to colleges was discussed in some detail by this Court. However, even in the case of *Dr. Pradeep Jain & Ors. v.*  
C *Union of India & Ors.* [(1984) 3 SCC 654], the concept of an All India quota came to be introduced while determining the validity of a domicile requirement in such admissions. Earlier, 30 per cent of seats in the under-graduate courses were reserved for this purpose, which  
D came to be modified to 15 per cent seats for All India quota in the case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* [(1985) 3 SCC 22]. In the case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* [(1987) 4 SCC 459], this Court also  
E passed directions in relation to the manner of notification/announcement of details, results and counseling for admission, in that case, for post graduate admissions, which were to be published in two successive issues of newspapers, including one national paper in English and  
F at least two local papers in the language of the State. Declaration of results would be made four weeks after the examination and academic courses were to mandatorily begin on the 2nd of May every year. Again, in the case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* [(1990) 4 SCC 627], as some of the States  
G were not adhering to the prescribed schedule, this Court took punitive action against the State of Uttar Pradesh and even contemplated action under the Contempt of Courts Act, 1971. Right from Dr. Pradeep Jain's case, this  
H Court has always directed that merit alone must be the

criteria for admission to MBBS courses. To make such admissions more subject-specific, transparent and systematic, certain further directions were issued by this Court in *Shrawan Kumar & etc. etc. v. Director General of Health Services & Anr. & etc.* [(1993) 3 SCC 332]. This Court clarified that candidates who have been allotted a seat in the second round of counseling will have to join the college within 15 days from the date of their personal appearance and the whole allotment and admission process to 15 per cent seats of All India quota will be over before the 30th September of each year, the remaining seats having been surrendered back to the college/State. Various judgments of this Court have sought to carry forward, with greater clarity, the fundamental requirement as stated in *TMA Pai* that the admission process should be fair, transparent and non-exploitative. Every subsequent judgment of this Court has attempted to elucidate one or other aspect of this principle. Having noticed that there have been irregularities in maintaining the prescribed schedule and that the last few days of the declared schedule are primarily being utilized in an exploitative manner, on account of charging higher fees for securing admission and thereby defeating the principle of admission on merit, a three Judge Bench of this Court in the case of *Mridul Dhar (Minor) & Anr. v. Union of India & Ors.* [(2005) 2 SCC 65] applied the schedule notified by the Medical Council of India (MCI) in Appendix 'E' of the Graduate Medical Education (Amendment) Regulations, 2004 and directed its strict adherence. The Court noticed that the holding of 10+2 examination and declaration of results is also of importance for the entire admission process and, therefore, directed strict adherence to the Schedule in all respects and by all concerned. The date of 30th September was stated not to be the date of normal admission but is to give opportunity to grant admission against stray vacancies. The Court clarified that adherence to the time schedule

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A by everyone was a paramount concern. In that case, the Court issued a specific direction to all the State  
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functionaries, particularly the Chief Secretaries and heads of the concerned Ministries/Departments participating in the States/Union Territories, adopting the time schedule and holding the State examination, to ensure declaration of results on or before 15th June, 2005. They were also required to ensure the appropriate utilization of All India quota, to fullest extent, by timely reporting to the DGHS by the Deans of various colleges or any other State authority, informing the DGHS of the acceptance or rejection of seats by the students after the first counseling of All India/State Quota. Further, this Court even took pains to declare the need for adherence to the schedule for receipt of applications for establishment of new medical colleges or seats and the process of the review and recommendation by the Central Government and the Medical Council of India. Lastly, in the case of *Priyadarshini Dental College & Hospital v. Union of India & Ors.* [(2011) 4 SCC 623], this Court cautioned all concerned that the schedule specified in *Mridul Dhar* should be maintained and regulations should be strictly followed. The Court suggested that the process of inspection of colleges, grant of permission or renewal of permission should also be done well in advance to allow time for setting right the deficiencies pointed out. [Paras 20, 21, 23] [805-D-H; 806-A-H; 808-C-H; 810-C-D]

*TMA Pai Foundation & Ors. v. State of Karnataka & Ors.* (2002) 8 SCC 481; 2002 (3) Suppl. SCR 587; *Dr. Pradeep Jain & Ors. v. Union of India & Ors.* (1984) 3 SCC 654; 1984 (3) SCR 942; *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* (1985) 3 SCC 22; 1985 (1) Suppl. SCR 41; *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* (1987) 4 SCC 459; 1988 (1) SCR 351; *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* (1990) 4 SCC 627; 1990 (1) Suppl. SCR 135; *Shrawan*

*Kumar & etc. etc. v. Director General of Health Services & Anr. & etc.* (1993) 3 SCC 332; *Mridul Dhar (Minor) & Anr. v. Union of India & Ors.* (2005) 2 SCC 65: 2005 (1) SCR 380; *Priyadarshini Dental College & Hospital v. Union of India & Ors.* (2011) 4 SCC 623: 2011 (2) SCR 945 - relied on.

2. In the case of *State of Bihar & Ors. v. Dr. Sanjay Kumar Sinha & Ors.* [(1990) 4 SCC 624], a Bench of this Court took exception to the non-adherence to the time schedules and reiterated that the admissions to medical colleges and post-graduate courses were governed by the orders of this Court and the regulations issued by the Medical Council of India, which must be strictly followed. This Court issued a warning, that if there was any violation in future, the same shall be treated as default and viewed very seriously. Further, in the case of *Medical Council of India v. Madhu Singh & Ors.* [(2002) 7 SCC 258], this Court declared two very important principles. Firstly, it declared that mid-stream admissions should not be permitted and secondly, noticing the practice of compassion in review of such admissions, this Court also held that late or mid-stream admission, even just four months after beginning of the classes, cannot be permitted. [Para 24] [810-E-H]

*State of Bihar & Ors. v. Dr. Sanjay Kumar Sinha & Ors.* (1990) 4 SCC 624: 1989 (2) Suppl. SCR 168 *Medical Council of India v. Madhu Singh & Ors.* (2002) 7 SCC 258: 2002 (2) Suppl. SCR 228 - relied on.

3. Admissions based on favouritism necessarily breach the rule of merit on the one hand, while on the other, they create frustration in the minds of the students who have attained higher rank in the competitive entrance examinations, but have not been admitted. Adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent,

A non-exploitative and fair are mandatory requirements of the entire scheme. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of the land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. None of these authorities are vested with the power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations. Inter alia, the disadvantages are:-

- (1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of *Muskan Dogra & Ors. v. State of Punjab & Ors.* [(2005) 9 SCC 186].
- (2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.
- (3) The delay in adherence to the schedule, delay

- in the commencement of courses etc., encourage lowering of the standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the chances of arbitrary and less meritorious admissions. A B
- (4) Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction. C D
- (5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices. E F
- (6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit. G
- (7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without H

A recourse to the prescribed rule of merit. [Para 26- 27] [811-E-H; 812-A-H; 813-A-G]

*Muskan Dogra & Ors. v. State of Punjab & Ors. (2005) 9 SCC 186 - relied on.*

B 4. The Medical and Dental Councils of India, the  
 Governments and the Universities are expected to act in  
 tandem with each other and ensure that the recognition  
 for starting of the medical courses and grant of admission  
 are strictly within the time frame declared by this Court  
 C and the regulations. However, despite warnings having  
 been issued by this Court and despite the observations  
 made by this Court, that default and non-adherence to  
 the time schedules shall be viewed very seriously,  
 matters have not improved. Persistent defaults by  
 D different authorities and colleges and granting of  
 admission arbitrarily and with favouritism have often  
 invited criticism from this Court. The consistent effort of  
 this Court to direct corrective measures and adherence  
 to law is not only being thwarted by motivated action on  
 the part of the concerned authorities, but there has also  
 E been a manifold increase in arbitrary admissions.  
 Repeated defaults have resulted in generating more and  
 more litigation with the passage of time. [Para 28] [813-  
 G-H; 814-A-F]

F *Arvind Kumar Kankane v. State of U.P. & Ors. (2001) 8  
 SCC 355; 2001 (1) Suppl. SCR 262; Chhavi Mehrotra (Miss)  
 v. DGHS (1994) 2 SCC 370 - relied on.*

G 5. The maxim *Boni iudicis est causas litium dirimere*  
 places an obligation upon the Court to ensure that it  
 resolves the causes of litigation in the country. Thus, the  
 need of the hour is that binding dicta be prescribed and  
 statutory regulations be enforced, so that all concerned  
 are mandatorily required to implement the time schedule  
 in its true spirit and substance. It is difficult and not even  
 H advisable to keep some windows open to meet a

particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the stated principles. Thus, the following directions *in rem* are issued for their strict compliance, without demur and default, by all concerned,.

(i) The commencement of new courses or increase 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.

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

(iii) 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.

- A (iv) 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 concerned authority and  
B that college would have no right to make  
admissions in the current academic year  
against such seats.
- C (v) 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 are the methods  
of selection and grant of admission to these  
D 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  
E admission can be given on the basis of 10+2  
exam marks, strictly in order of merit.
- F (vi) 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. The practice  
of giving admissions on 30th September of the  
academic year is strongly deprecated. In fact,  
that is the date by which, in exceptional  
G 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 case of *Ms. Neelu Arora*  
& *Anr. v. UOI & Ors.* [(2003) 3 SCC 366] and third  
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- counseling is not contemplated or permitted under the entire process of selection/grant of admission to these professional courses. A
- (vii) 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 counseling. 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. B  
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- (viii) No college may grant admissions without duly advertising the vacancies available and by publicizing 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. D  
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- (ix) 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 F  
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A 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  
 B which are anticipating grant of recognition, in  
 compliance with the date specified in these  
 directions. [Paras 29- 30] [814-G-H; 815-A-H;  
 816-A-H; 817-A-H]

*Ms. Neelu Arora & Anr. v. UOI & Ors.* (2003) 3 SCC 366:  
 2003 (1) SCR 562 - relied on.

C 6. 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  
 D 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:-

E a) 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  
 F interested party to take out the contempt  
 proceedings before the High Court having  
 jurisdiction over such Institution/State, etc.

G b) The person, member or authority found  
 responsible for any violation shall be  
 departmentally proceeded against and  
 punished in accordance with the Rules.  
 Violation of these directions or overreaching  
 them by any process shall tantamount to  
 H indiscipline, insubordination, misconduct and  
 being unworthy of becoming a public servant.

- c) 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. A
- d) 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 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. B  
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- e) 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. E  
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- f) 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. G
- g) It shall be mandatory on the part of each H

A 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.

h) No college shall fill up its seats in any other manner. [Para 31] [818-A-H; 819-A-F]

C 7. The instant case is a glaring example of calculated tampering with the schedule specified under the regulations and the judgments of this Court, with a clear intent to grant admission to less meritorious candidates over and above the candidates of higher merit. The High Court had cancelled the admission of the appellants by a detailed and well-reasoned judgment. However, as a result of interim orders granted by the Court, both the appellants had already completed four years of the studies at the time of the High Court decision. They are stated to have completed their final exam now. Despite having lost their case before the High Court, the appellants continued to pursue their professional courses because of the interim orders of the Court and, therefore, the plea of inequities was raised. On 30th September, 2006, the Director, Medical Education, Chhattisgarh, wrote a letter to the Dean of the College, Jagdalpur College, requiring that the Jagdalpur College provide the up-to-date list of the students admitted to it and if there were any seats remaining vacant, guidance was to be taken from the Directorate of the State Government. Another letter written by the Director, Medical Education, to the Dean of the Jagdalpur College and referring to their letter of the same date, which stated that two seats were vacant, in turn, ordered that those seats be filled up and the candidates be contacted over telephone. If contact

could not be established with any candidate, then the Jagdalpur College was directed to fill up the seats with the candidates physically present and available at the Jagdalpur College, according to merit. The Dean of the Jagdalpur College, on that very day, constituted a Committee to examine the certificates etc. of the available candidates and recommend the names on the basis of merit. Again, on that very day, the Committee recommended the names of the two appellants, declaring them to be eligible for getting admissions. More strangely, the Committee also noted that the fees from the candidates had been deposited and they could be given admission. Then, by another letter dated 30th September, 2006, the Dean of the College informed the Director, Medical Education that the two appellants were given admission and the admission process for 50 seats had been completed. There was nothing placed on the records of the Court as to what steps were taken by the Jagdalpur College to inform all the other candidates of counseling on the last date. Also strange was the direction of the Directorate that the candidates should be informed on telephone. Even if this direction was of some content and meaning, there is still no material to show how many candidates were actually informed on the telephone that there would be counseling for two seats. Thus, the questions remained open, as to the reason for total abandonment of the procedure of informing all eligible candidates, by appropriate means, that two seats were available for admissions, who all had actually appeared for the counseling, how only two candidates who even according to the State Government were not contacted on telephone, were alone present before the Committee and immediately found to be eligible for admission. This entire exercise smacked of arbitrariness, unfairness and was discriminatory ex facie. Respondent No.3, the Director of the Medical Education in Chhattisgarh, is the father of appellant no.2 and that

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A speaks volumes of how the admission had been granted to the appellants. [Paras 33, 36-37] [820-A-D; 821-D-H; 822-A-F]

8. The methodology adopted and the manner in which admissions were given to the appellants would show that this process was neither fair nor transparent. In fact, within a few hours, the entire process of admission was completed, indicating that the whole exercise was undertaken only with the object of granting admission to the appellants, that too, as if no other candidates of merit were available for these two seats. This view was entirely substantiated by the records produced before us. The prescribed procedure for grant of admission was given a go by and the rule of admission on merit stood frustrated as a consequence of such admission process. One fails to understand why no preventive steps or efforts to fill the vacant seats were taken by any of the competent authorities involved in the entire process of selection and admission to MBBS courses. The students who had undertaken the PMT examination had been allocated seats in the college on 23rd August, 2006. Not even a single document was placed on record of this Court from 23rd August, 2006 to 29th September, 2006 showing efforts to fill up vacant seats. Everybody waited for the last date which, in fact, was the date for joining the courses and not admission, whereafter the entire machinery in the Centre, State Government and the college acted so swiftly that within hours, the entire admission process was concluded to grant the admission to the appellants. It is a travesty of fairness and transparency that for 50 seats in the Jagdalpur College, the Directorate as well as the Committee constituted for counseling/selection could find only the candidates at Merit Nos. 3893 and 1614 suitable, completely ignoring all the candidates being higher in merit than these two appellants, who must also be waiting for admission to the MBBS course. Strangely,

the merit ranks of these two appellants, as given in the letter of the DGHS dated 8th August, 2006 were 2196 and 2203 respectively. From every angle only one conclusion is possible that the allocation of seats was totally arbitrary and contrary to the procedure laid down. The three members of the Selection Committee found only these two candidates eligible and fit to be granted admission to the MBBS courses on the last day for admissions. To say the least, this Committee acted in undue haste, in violation of the prescribed procedure of admission and certainly contrary to the judgments of this Court. The Dean of the Jagdalpur College is directed to convey the displeasure of this Court to the members of the Selection Committee and the same be placed on their respective service records. [Para 38] [822-G-H; 823-A-H; 824-A]

9. The Inquiry Committee returned a finding that the admission to the two appellants was not given in furtherance to the letter dated 8th August, 2006, but validly granted on 30th September, 2006 instead. Their report did not even mention if they had verified the fact that notices had been issued to all the concerned persons on 30th September, 2006 and if other students had been contacted for intimation of counseling or if any effort was even made on 30th September, 2006 or even prior thereto to put these two vacant seats on the internet or notice board of the colleges so as to enable the students of higher merit to seek admission to the MBBS course in the Jagdalpur College. This aspect attained a greater significance in view of the fact that the seats were not allotted in the second counseling itself on 22nd - 23rd August, 2006. The Jagdalpur College, the Directorate of the State Government as well as the Union of India made no effort and did not act in coordination, to allot these two seats to the candidates in accordance with merit in the PMT. The finding recorded by the Committee appears to be a mere eye-wash rather than a proper report upon

A examining the entire matter in its proper perspective. It  
 was not only expected of the Committee to examine the  
 documents which were made available to it, as is  
 recorded in the report, but also to call for all such  
 necessary documents which were relevant and could  
 B have bearing on the reference made to it. The Committee  
 did not even care to know why everything was  
 completed on 30th September, 2006 and how nobody  
 else except these two appellants were available for  
 admission from amongst candidates in the entire State.  
 C [Para 39] [824-B-H; 825-A-C]

10. Another aspect of this inquiry was that, even as  
 on 30th September, 2006, nobody was clear as to which  
 quota these two vacant seats belonged to. According to  
 the State of Chhattisgarh, these two seats were part of  
 D the 15 per cent All India quota which stood surrendered  
 after 23rd August, 2006. According to the appellants, they  
 were Central Pool quota seats which stood surrendered  
 to the State on 30th September, 2006 only. According to  
 the Union of India, they had not made any allotment to  
 E the appellants or anyone in the Jagdalpur College from  
 the All India Quota, and even the code number given on  
 the 8th August, 2006 letter is wrong. If the Directorate, the  
 Union of India and the Jagdalpur College itself were not  
 ad idem as to which quota the seats belonged to and  
 F who was the competent authority to allot the seats, none  
 of them had any business to allot these two seats in such  
 an arbitrary manner. Even now, there is no clarity as to  
 how and under what quota the Jagdalpur College has  
 granted admission to these two appellants. The inquiry  
 G report, in fact, did not help to resolve the issue and  
 cannot, thus, form the basis of returning any finding in  
 favour of or against any person. Ex facie, the findings  
 returned by the Inquiry Committee would appear to be  
 inconclusive, uncertain and vague. Be that as it may,  
 H there is no escape from returning the finding that

admission of both the appellants was made in a most improper and arbitrary manner. The whole exercise was undertaken on 30th September, 2006 with only one aim in mind, i.e., that these two appellants have to be given admission in the Jagdalpur College. [para 40] [825-C-H; 826-A]

11. The cancellation of the admission of the appellants was challenged by the appellants before the High Court, which allowed continuation of study under interim orders, though finally it dismissed the writ petitions filed by these appellants. At that time, they had already completed more than four years of the MBBS course to which they were admitted. Today, they have already appeared for their final examination. The Jagdalpur College ought to have declared these two seats as being available for admission when the counseling was held on 22nd - 23rd August, 2006 and that there was violation of the basic principles of equality of opportunity and of equal consideration for allotment of seats. Candidates of higher merit stand excluded. Another challenge which was raised on behalf of the appellants was that the order of cancellation dated 10th September, 2010 was passed without affording any opportunity of hearing to these two appellants and, therefore, the order was liable to be set aside, being violative of principles of natural justice. It is, in fact, not in dispute that no specific notice was given to the appellants before the impugned order was passed. It is not necessary for this Court to examine this submission in any greater detail because the appellants have now had two occasions to put forward their claim before the Court. The High Court considered various aspects of the case and gave a complete hearing to the appellants. No prejudice was caused to them, inasmuch as they have pursued their studies despite cancellation of admission and have now been duly heard by the High Court, as well

A as this Court. Hence, this ground of challenge did not, in any case, survive, particularly since it is held the admission to these appellants was given in a completely arbitrary and unfair manner. [Paras 42-43] [826-C-H; 827-A-C]

B 12. In the instant case, the fault is attributed to all the stakeholders involved in the process of admission, i.e., the concerned Ministry of the Union of India, Directorate of Medical Education in the State of Chhattisgarh, the Dean of the Jagdalpur College and all the three Members  
C of the Committee which granted admission to both the appellants on 30th September, 2006. But the students were also not innocent. They certainly took advantage of being persons of influence. The father of appellant No. 2  
D was the Director of Medical Education, State of Chhattisgarh at the relevant time, the entire process of admission was handled through the Directorate. The students well knew that the admissions could only be given on the basis of merit in the entrance test and they had not ranked so high that they were entitled to the admission on that basis alone. In fact, they were also  
E aware of the fact that no other candidate had been informed and that no one was present due to non-intimation. Out of favouritism and arbitrariness, they had been given admission by completing the entire admission process within a few hours on 30th September, 2006.  
F Balancing of equities by the Court itself is inequitable. Some party or the other would suffer a set back or adverse consequence from the order of the Court. On the one hand, if admissions are cancelled, the students who have practically completed their MBBS course would  
G lose their professional education as well as nearly five years of their life spent in such education. If their admissions are protected, then the standard of education, the merit of the candidates and the desirability of the persons of higher merit becoming doctors is negated.  
H The best solution to such problems is strict adherence

to the time schedule, procedure for selection/admission and strict observance of the Medical Council of India Regulations, by all concerned. Once these factors are adhered to, not only would such situation not arise, but also it will prevent avoidable litigation before the Courts. The persons who violate the time schedule to grant admissions in an arbitrary manner and by colourable exercise of power, who are not adhering to Medical Council of India Regulations and the judgments of this Court, should be dealt with strictly by punishment in accordance with law, to prevent such mischief from repeating. In the instant case, the appellants had already sat for their final examination and are about to complete their courses. Even if their admissions are protected on the ground of equity, they cannot be granted such relief except on appropriate terms. By their admissions, firstly, other candidates of higher merit have been denied admission in the MBBS course. Secondly, they have taken advantage of a very low professional college fee, as in private or colleges other than the government colleges, the fee payable would be Rs.1,95,000/- per year for general admission and for management quota, the fee payable would be Rs.4,00,000/- per year, but in government colleges, it is Rs.4,000/- per year. So, they have taken a double advantage. As per their merit, they obviously would not have got admission into the Jagdalpur College and would have been given admission in private colleges. The ranks that they obtained in the competitive examination clearly depict this possibility, because there were only 50 seats in the Jagdalpur College and there were hundreds of candidates above the appellants in the order of merit. They have also, arbitrarily and unfairly, benefitted from lower fees charged in the Jagdalpur College. On the peculiar facts and circumstances of the case, though there is no legal or other infirmity in the judgment under appeal, but to do complete justice between the parties

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A within the ambit of Article 142 of the Constitution of India, the appellants are permitted to complete their professional courses, subject to the condition that each one of them pay a sum of Rs.5 lakhs to the Jagdalpur College, which amount shall be utilized for developing the  
B infrastructure in the Jagdalpur College. Heavy cost is imposed upon these appellants to ensure that such admissions are neither accepted nor granted leave to complete their medical courses in future. [Paras 48-51] [828-G-H; 829-A-H; 830-A-H]

C 13. Accordingly, it is ordered that though, there is no merit in the appeal preferred by the appellants and the judgment of the High Court does not suffer from any infirmity, still, in the peculiar facts and circumstances of the case, the appellants are permitted to complete their  
D MBBS course as general candidates in the Government Medical College, Jagdalpur, subject to their paying a sum of Rs. 5 lakhs each, within one week from today. In the event of default of payment or failure to file proof of payment in the Registry of this Court, not only will the  
E present appeal stand dismissed on merits, but the exam results of the defaulting appellant will not be declared, they will not be conferred with the degree of MBBS by the Jagdalpur College and the Medical Council of India shall not register their names on the rolls maintained by  
F it or the State Council, as the case may be. For these reasons, if their admissions are cancelled, there being no claimants for these seats, the seats will go waste and the entire expenditure incurred by the State would also be wasted. After so many years, it would be an exercise in  
G futility to cancel their admissions, which, but for the interim orders, could be avoided. An undue advantage from the interim orders has accrued in favour of the appellants. The High Courts are requested to ensure strict adherence to the prescribed time schedule, process of selection and to the rule of merit. Except in very  
H exceptional cases, the High Court may consider it

appropriate to decline interim orders and hear the main petitions finally, subject to convenience of the Court. All the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of judgments of this Court and the regulations of the Medical Council of India as well as not to overlook the arbitrary and colourable exercise of power by the concerned authorities/colleges. Therefore, initiation of proceedings is directed under the provisions of the Contempt of Courts Act, 1971 against the Additional Secretary, Ministry of Health & Family Welfare, Union of India, Dr. S.L. Adile, Director, Medical Education, Dean of the Jagdalpur College, Dr. M.S. Banjan, Member of the Selection Committee, Dr. P.D. Agarwal, Member of the Selection Committee, Shri Padmakar Sasane, Member of the Selection Committee, Director General, Directorate of Health Services, Union of India. All concerned authorities are hereby directed to carry out the directions and orders contained in this judgment, particularly paragraphs 30 and 31 of the judgment forthwith. The directions shall be applicable for the academic year 2012-2013 itself. [Para 53] [831-C-H; 832-A-H; 833-A-C]

*State of M.P. & Ors. v. Gopal D. Tirthani & Ors.* (2003) 7 SCC 83; 2003 (1) Suppl. SCR 797; *Bharati Vidyapeeth (Deemed University) & Ors. v. State of Maharashtra & Anr.* (2004) 11 SCC 755; 2004 (2) SCR 775; *Chowdhury Navin. Hemabhai & Ors. v. State of Gujarat & Ors.* (2011) 3 SCC 617; 2011 (2) SCR 1071 *Harish Verma & Ors. v. Ajay Srivastava & Ors.* (2003) 8 SCC 69; 2003 (3 ) Suppl. SCR 833; *A. Sudha v. University of Mysore & Anr.* (1987) 4 SCC 537; 1988 (1) SCR 368; *Amandeep Jaswal v. State of Punjab*

- A (2006) 9 SCC 597; *R. Vishwanatha Pillai v. State of Kerala & Ors.* (2004) 2 SCC 105; 2004 (1) SCR 360; *Chowdhary Navin Hemabhai & Ors. v. The State of Gujarat & Ors.* (2011) 3 SCC 617; 2011 (2) SCR 1071; *Medical Council of India v. Rajiv Gandhi University of Health Sciences* (2004) 6 SCC 76:  
 B 2004 (3) SCR 1119 - referred to.

## Case Law Reference:

	2002 (3) Suppl. SCR 587	relied on	Para 20
C	1984 (3) SCR 942	relied on	Para 20
	1985 (1) Suppl. SCR 41	relied on	Para 20
	1988 (1) SCR 351	relied on	Para 20
	1990 (1) Suppl. SCR 135	relied on	Para 20
D	(1993) 3 SCC 332	relied on	Para 20
	2005 (1) SCR 380	relied on	Para 20
	2011 (2) SCR 945	relied on	Para 23
E	1989 (2) Suppl. SCR 168	relied on	Para 24
	2002 (2) Suppl. SCR 228	relied on	Para 24
	2003 (1) Suppl. SCR 797	referred to	Para 25
F	2004 (2) SCR 775	referred to	Para 205
	2011 (2) SCR 1071	referred to	Para 25
	2003 (3) Suppl. SCR 833	referred to	Para 25
	(2005) 9 SCC 186	relied on	Para 27
G	2001 (1) Suppl. SCR 262	relied on	Para 29
	(1994) 2 SCC 370	relied on	Para 29
	2003 (1) SCR 562	referred to	Para 30
H	1988 (1) SCR 368	referred to	Para 46, 47

(2006) 9 SCC 597	referred to	Para 46	A
2004 (1) SCR 360	referred to	Para 46,	
2011 (2) SCR 1071	referred to	Para 46, 47	
2004 (3) SCR 1119	referred to	Para 4	B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4318 of 2012.

From the Judgment & Order dated 09.08.2011 of the High Court of Chattisgarh at Bilaspur (C.G.) in Writ Petition (C) No. 5488 of 2010. C

WITH

C.A. No. 4319 of 2012.

Dr. Rajiv Dhawan, Mukul Rohtagi, Sushil Kumar Jain, Puneet Jain, Pratibha Jain, Sanjeeb Panigrahi, Subas Acharya, L. Nidhiram Sharma, Siddhartha Chowdhury for the Appellants. D

Ashok Bhan, S.S. Rawat, D.S. Mahra, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha for the Respondent. E

The Judgment of the Court was delivered by

**SWATANTER KUMAR, J.** 1. Leave granted.

2. The Department of Medical and Family Welfare, Government of Chhattisgarh, vide its letter dated 10th September, 2010 cancelled the admission granted to Akansha Adile and Priya Gupta in the MBBS course for the academic year 2006-07 in the Government NMDC Medical College, Jagdalpur (for short, the Jagdalpur College) with immediate effect. F G

3. Aggrieved by this order of the Government, both the students challenged the legality and correctness of this action in separate writ petitions under Article 226 of the Constitution H

A of India. The High Court, vide its judgment dated 9th August, 2011, held that admission to these petitioners had been given ignoring more meritorious and suitable candidates, which amounted to violation of natural justice to such other candidates and declined to interfere in the impugned order dated 10th  
B September 2010, hence giving rise to the present appeals. The appellants had appeared in the Pre-Medical Test conducted by the State of Chhattisgarh for the academic year 2006. The results were declared in July 2006 and Appellant No.1, Priya Gupta, secured general rank 1614 while Appellant No.2,  
C Akansha Adile, secured general rank 3893. As the latter belonged to the Scheduled Caste category, her rank in that category was 396. This entrance exam was conducted by the State as per the notification of the State Government dated 8th March, 2006 under the 'Chhattishgarh Medical and Dental  
D Graduate Examination Rules, 2006' (Chhatisgarh Chikitsha Tatha Dant Chikitsha Snatak Pravesh Pariksha Niyam, 2006) (for short, 'the Rules'). These Rules provided for allocation of seats and reservation, the process for admission to the vacant seats, selection procedure as well as cancellation of admission and the matters incidental thereto.

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4. The State Government, vide its letter dated 14th August, 2006, had granted permission for the starting of admission procedure for the academic year 2006-07 at the Jagdalpur College. The annual admission capacity was 50 seats which  
F were to be filled up by the candidates who had qualified PMT 2006 in the order of their merit.

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5. The first counseling was held on 21-22nd July, 2006 but obviously, at that time, the Jagdalpur College had not been given permission to commence admission to the MBBS course. The counseling was conducted for medical colleges at Raipur and Bilaspur and also for the Raipur Dental College. 18 per cent of seats were to be reserved for allotment under the All India Quota and the Central Pool quota. However, the State  
H Government vide letter dated 21st August, 2006 is stated to

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[SWATANTER KUMAR, J.]

have informed the Jagdalpur College that two seats out of the total seats were reserved for allotment under the Central Pool Quota and no seats were reserved under All India Quota. Upon receipt of recognition, only 48 seats were offered for admission to the students on 22nd - 23rd August, 2006. The Central Pool Quota seats were not filled up and were allegedly not made available to the candidates who appeared for that counseling. The Dean of Jagdalpur College informed the Director, Medical Education, State of Chhattisgarh on 30th September, 2006 that on that date, 48 candidates had taken admission and two seats were lying vacant. This information was sent in response to inquiry by the Director, Medical Education in this regard and directions were sought by the Jagdalpur College for filling up of vacant seats. On the same day, the Director, Medical Education, directed that the seats should be filled from the merit list and the candidates could be contacted on telephone. If contact was not possible, admission could be given to the candidates who were available in the Jagdalpur College. On 30th September, 2006 itself, the two vacant seats were given to the available candidates, who are the appellants herein.

6. As already noticed, the Jagdalpur College was granted permission for starting the academic procedure for the session 2006-2007 by the Government of Chhattisgarh. This letter reads as under:-

"Consequent to the letter No. U.12012/206/2005/M.E.(P.II) dated 15th July, 2006 of the Health and Family Welfare Department, Government of India, the State Government hereby grants permission for starting admission procedure for the academic session 2006-07 in the Government Medical College, Jagdalpur.

2. The annual admission capacity of the said Medical College would be 50 seats and the candidates qualified in P.M.T. 2006 would be given admission on the basis of merit. Necessary action be ensured as per the aforesaid."

A 7. 48 students under different categories were given  
 admission as per the list published by the Jagdalpur College  
 on 30th September, 2006. Vide letter dated 30th September,  
 2006, the Jagdalpur College and other medical colleges in the  
 B State had been informed by the Directorate of Medical  
 Education, State of Chhatisgarh that 30th September, 2006  
 being the last date for admission as per the judgment of the  
 Supreme Court, a list of the students who had been given  
 admission may be sent to the Directorate and guidance sought  
 from the Directorate, if any seats were lying vacant. The  
 C guidance was received by the Jagdalpur College by letter dated  
 30th September, 2006, which reads as under :-

D "On the above subject, information about 2 vacant seats  
 has been given by you. In order to fill these up contact the  
 candidates over telephone. If contact could not be  
 established with any candidate then fill up the vacant seats  
 from amongst the candidates available in the college  
 according to merit."

E 8. On that very date, inter alia, an order was issued by the  
 Dean of Jagdalpur College constituting a Committee to give  
 admission to the available candidates in accordance with mer  
 t of the PMT. This letter reads as under:-

F "As per the directions received from the Directorate of  
 Medical Education, the vacant seats are to be filled from  
 the available candidates according to the merit in P.M.T.  
 For this purpose, Counseling Committee is constituted as  
 follows:-

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1. Dr. M.S. Banjari, Assistant Vice Principal
  2. Dr. P.D. Agarwal, Assistant Vice Principal
  3. Shri Padmakar Sasane, Demonstrator

H The aforesaid Committee after examining the certificates

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etc. of the available candidates recommend for admission on the basis of merit." A

9. The Dean of the Jagdalpur College was further informed by the Committee, on 30th September, 2006 itself, that only two candidates, i.e., the appellants were available and they were given admission to the vacant seats. This letter reads as under:- B

"In compliance of your letter No. 233/GAMC/06 Jagdalpur, dated 20.9.2006 the certificates etc. of the candidates available on today's date have been examined. Only the following two candidates, who were present have been found to be eligible to be given admission - C

1. Ku. Priya Gupta Merit No. UR 1614

2. Ku. Akanksha Adile Merit No. SC 396 /3893 D

Prescribed fees have been got deposited from the aforesaid candidates. They can be given admission against the vacant seats."

10. Having granted admission to these two appellants, the Dean of the Jagdalpur College informed the Director, Medical Education as follows:- E

"With reference to the above, it is submitted that according to the directions given by you in the letter under reference the following two candidates, present on 30.9.2006, have been given admission in the 2 seats remained vacant in this college. F

1. Ku. Priya Gupta Merit No. UR 1614

2. Ku. Akanksha Adile Merit No. SC 396/3893 G

It is further submitted that the admission procedure for all the 50 seats of this college has been completed."

11. As is evident from the above letters, all the events had H

A taken place on 30th September, 2006 itself. Appellant No.2, Akansha Adile is stated to be daughter of the Director, Medical Education Government of Chhattisgarh, one Dr. S.L. Adile, who is supposed to be the highest authority in the State directly responsible for admission to the medical colleges, including Jagdalpur College. The appellants were given admission and they joined the course of MBBS.

12. The State of Chhattisgarh, vide notification No. F-16-1/2001/75/55 dated 8th March, 2006 had framed the Rules. Under Sub-Rule (1) of Rule 4 of these Rules it had been specifically prescribed that in all Government Medical and Dental Colleges, there will be a reservation of 15 per cent of seats under All India quota and these seats will be filled on the basis of All India Entrance Examination. Further, under sub-rule (2), it was specified that in the said colleges, there shall be a prescribed quota of 3 per cent reserved for admissions from the Central Pool, which would be filled from the names nominated by the concerned/authorised officer.

13. It emerges from the record that a Right to Information application was filed before the Directorate General of Medical Services, Medical Examination Cell, New Delhi by one Dr. Anil Khakhariya. The Assistant Director General, ME, Government of India, had forwarded the complaint to the State Government and the Jagdalpur College, and vide letter dated 13th September, 2009 informed Dr. Anil Khakhariya that an inquiry committee consisting of three members had been constituted by the Director, Medical Education, State of Chhattisgarh to examine whether the admission of the two candidates, namely Akansha Adile and Priya Gupta, was valid or not. The Committee submitted its Report with the following findings:-

"A. No Admission was granted to any students in All India quota on the basis of letter of Director General of Health Services (ME), Ministry of Health & Family Welfare, Govt. Of India no. U-11011/1/2006-ME dated 08/08/2006.

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B. Two students namely Miss. Akansha Adile & Miss Priya Gupta got admission in Medical College Jagdalpur in 2006 by the state PMT merit on the last date of the admission i.e. 30/09/2006." A

14. The above inquiry report was submitted by the Dean of Jagdalpur College to the Directorate. However, on 22nd July, 2010, the Secretary, Department of Health and Family Welfare, Government of Chhattisgarh was informed by the Assistant Director General (Medical Education), Government of India that the admission of Akanksha and Priya had been on the basis of fake letters purported to be issued from the Directorate General of Health Services (DGHS) and that their admissions may be cancelled with immediate effect and action taken report be submitted to the DGHS. In furtherance to this letter, the Deputy Secretary, Medical and Family Welfare Department, Government of Chhattisgarh, issued an order dated 10th September, 2010 stating that the admission of these two appellants was not in accordance with the provisions of the Rules and other guidelines/provisions with regard to allotment of seats under the All India Quota and the admission was cancelled with immediate effect. As already noticed, this letter of cancellation of admission was challenged by the appellants before the High Court. B  
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15. The Assistant Director General, (Medical Education), New Delhi, has filed an affidavit taking up the stand that the Central Board for Secondary Education, New Delhi had been entrusted with the responsibility to conduct All India Pre-Medical and Pre-Dental Examinations, but allotment of seats would be undertaken by the DGHS. The candidates equal to the number of seats available for allotment, together with the wait-listed candidates are called for counseling. The allotment of seats is made on merit and only two rounds of counseling are permitted. In the counseling, the candidates have to appear in person. In Chhattisgarh, the allotment of All India Quota seats in the Pt. JLN Medical College, Raipur was made vide letter dated 8th F  
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A August, 2006 on the basis of vacancy position furnished by that college. The allotment of Akansha Adile and Priya Gupta in the Jagdalpur College, was also allegedly made by the same letter under 15 per cent All India Quota of 2006. However, the DGHS denies making any allotment of seats to the appellants by such letter.

16. Therefore, according to the Union of India, it was a case of fake admission to the Jagdalpur College, taken up in furtherance to a purported letter issued by the answering respondents, which was now found fake. Vide letter dated 19th April, 2010, the Secretary, Department of Health and Family Welfare, State of Chhattisgarh had been requested to personally look into whether the allegations made by Dr. Anil Khakharia under the Right to Information Act, as mentioned above, were correct. Letters dated 6th August, 2010 and 24th August 2010 were also exchanged between the parties. In response to the letter of the DGHS dated 6th August, 2010, the Secretary, Department of Health and Family Welfare, Raipur, Chhattisgarh, vide letter dated 24th September, 2010, communicated the information that admissions given to Akansha Adile and Priya Gutpa in the MBBS course for the academic year 2006-07 were against the norms and the Rules and the admission was cancelled immediately by the Department vide order dated 10th September, 2010. Further, it is the clear stand of the Union of India that the order dated 10th September, 2010 was passed in accordance with law and the judgment of the High Court dismissing the writ petition does not call for any interference.

17. The petitioners have impugned the judgment of the High Court on the following grounds:

- (1) The order dated 10th September, 2010 has been passed in violation of the principles of natural justice. Neither hearing nor copy of the inquiry report was given to them prior to cancellation of admission.

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- (2) The report submitted by the Inquiry Committee had specifically recorded a finding that the admission of both the appellants was not granted in furtherance to the letter of the DGHS dated 8th August, 2006 and that they had received admission in the Jagdalpur College through the State PMT on the basis of merit on the last date of admission, i.e. 30th September, 2006 and only upon recommendation of a duly constituted counseling Committee. In face of these positive findings, the order of cancellation of admission suffers from legal infirmity and as such, the judgment of the High Court sustaining this order is in error of law. A  
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- (3) The Jagdalpur College was granted permission to admit students by the Central Government vide its letter dated 15th July, 2006 and by the Government of the State of Chhattisgarh only on 14th August, 2006. Two seats had not been offered for admission in the counseling held on 22nd -23rd August, 2006 and 48 seats were offered for admission. The two remaining seats reverted from the Central Pool quota to the State Government only on 30th September, 2006 which were then given to the appellants in accordance with the Rules. Therefore, no fault is attributable to the appellants. D  
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- (4) The petitioners have already pursued the MBBS course for a considerable period and, in fact, have completed a major part of the course, having written their final examination and thus, to cancel their admission at this stage would be unjust and unfair. It will be inequitable to the petitioners to cancel their admission at this stage and would cause them irreparable loss and damage, besides wasting the seats and public money. F  
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A (5) The High Court judgment is also challenged on the ground that no candidate entitled to admission has been denied admission and also that no candidate has complained about or objected to the admission of the appellants.

B 18. It deserves to be noticed that the stands taken by the Union of India and the State of Chhattisgarh in the present petitions are not exactly the same. According to the DGHS, Respondent No.2 herein, the letter dated 8th August, 2006 is fake and no seats had been allotted to the Jagdalpur College. C Seats were allotted only to Pt. JLN Medical College, Raipur. The letter dated 8th August, 2006 is alleged to have been sent by the Assistant Director General (ME), Ministry of Health and Welfare, Nirman Bhawan, New Delhi. Having found the letter to be fake, the DGHS directed cancellation of the admission D granted to both the appellants. According to the State of Chhattisgarh, the State had to distribute only 41 seats of the Jagdalpur College as 15 per cent were reserved for All India quota and three per cent for Central Pool quota. It is their stand that Dr. S.L. Adile, Respondent No.3 is the father of Akanksha E Adile and is the highest officer in the State for controlling pre-medical education and post graduate admission. Seats reserved, if any, would have reverted back on 23rd August, 2006 to Respondent No.3 and no action was taken to fill up these seats at that time. Suspiciously, the seats were filled only F on 30th September, 2006, by giving the seats to the appellants. They support the case of the Union of India that the letter dated 8th August, 2006 is fake and claim that the two seats were deliberately not offered for the second round of counseling, which was held on 22nd-23rd August, 2006. All other G candidates had been absent on 30th September, 2006 as they had not been contacted. The entire admission process of the appellants was vitiated by fraud.

H 19. The admission to MBBS and BDS courses, whether at State level or All India level has ever been a matter of

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concern for the courts. Large number of writ petitions are filed challenging the admission process or admission of some particular candidates on varied grounds, like admission being contrary to Rules, the principle of merit being disturbed, admissions being arbitrary, etc. and there is still flagrant violation of the dicta of this Court, as issued in various judgments, as well as of the Rules and Regulations wherever framed by the State or Central Government or Medical or Dental Council of India. The present case is one example of violation of procedure and admissions being arbitrary. Before we examine the intricacies of procedural irregularities in the present case and the arbitrary admission of the appellants, we must examine the background in which admissions of the present kind are normally questioned before the courts of competent jurisdiction.

20. Admission to professional colleges are governed by the judgment of this Court in the case of *TMA Pai Foundation & Ors. v. State of Karnataka & Ors.* [(2002) 8 SCC 481]. The framework of admissions to colleges was discussed in some detail by this Court. However, even in the case of *Dr. Pradeep Jain & Ors. v. Union of India & Ors.* [(1984) 3 SCC 654], the concept of an All India quota came to be introduced while determining the validity of a domicile requirement in such admissions. Earlier, 30 per cent of seats in the under-graduate courses were reserved for this purpose, which came to be modified to 15 per cent seats for All India quota in the case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* [(1985) 3 SCC 22]. In the case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* [(1987) 4 SCC 459], this Court also passed directions in relation to the manner of notification/announcement of details, results and counseling for admission, in that case, for post graduate admissions, which were to be published in two successive issues of newspapers, including one national paper in English and at least two local papers in the language of the State. Declaration of results would be made four weeks after

A the examination and academic courses were to mandatorily begin on the 2nd of May every year. Again, in the case of *Dr. Dinesh Kumar & Ors. v. Moti Lal Nehru College, Allahabad & Ors.* [(1990) 4 SCC 627], as some of the States were not adhering to the prescribed schedule, this Court took punitive action against the State of Uttar Pradesh and even contemplated action under the Contempt of Courts Act, 1971. Right from *Dr. Pradeep Jain's* case (supra), this Court has always directed that merit alone must be the criteria for admission to MBBS courses. To make such admissions more subject-specific, transparent and systematic, certain further directions were issued by this Court in *Shrawan Kumar & etc. etc. v. Director General of Health Services & Anr. & etc.* [(1993) 3 SCC 332]. This Court clarified that candidates who have been allotted a seat in the second round of counseling will have to join the college within 15 days from the date of their personal appearance and the whole allotment and admission process to 15 per cent seats of All India quota will be over before the 30th September of each year, the remaining seats having been surrendered back to the college/State. Various judgments of this Court have sought to carry forward, with greater clarity, the fundamental requirement as stated in *TMA Pai* (supra) that the admission process should be fair, transparent and non-exploitative. Every subsequent judgment of this Court has attempted to elucidate one or other aspect of this principle. Having noticed that there have been irregularities in maintaining the prescribed schedule and that the last few days of the declared schedule are primarily being utilized in an exploitative manner, on account of charging higher fees for securing admission and thereby defeating the principle of admission on merit, a three Judge Bench of this Court in the case of *Mridul Dhar (Minor) & Anr. v. Union of India & Ors.* [(2005) 2 SCC 65] applied the schedule notified by the Medical Council of India (MCI) in Appendix 'E' of the Graduate Medical Education (Amendment) Regulations, 2004 and directed its strict adherence. The said Schedule reads as under :

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"APPENDIX E

A

TIME SCHEDULE FOR COMPLETION OF THE  
 ADMISSION PROCESS  
 FOR FIRST MBBS COURSE

<i>Schedule for admission</i>	<i>Seats filled up by the Government through All-India Entrance Examination</i>	<i>Seats filled up by the Central Governments/ State Governments/ institutions</i>	B
Conduct of entrance examination	Month of May	Month of May	C
Declaration of result of qualifying exam/ entrance exam	By 5th June	By 15th June	D
First round of counseling/ admission	To be over by 30th June	To be over by 25th July	E
Last date for joining the allotted college and course	Within 15 days from the date of allotment of seats	31st July	
Second round of counseling for allotment of seats from waiting list	To be over by 8th August	Up to 28th August	F
Last date for joining for candidates allotted seats in second round of counseling from the waiting list	Within 15 days from the date of allotment of seat (seats vacant after 22nd August will be surrendered back to the States/ colleges)	31st August	G
			H

- |   |  |                 |
|---|--|-----------------|
| A | Commencement of academic session               | 1st of August   |
|   | Last date up to which students can be admitted | 30th September" |
| B | against vacancies arising due to any reason    |                 |

21. The Court noticed that the holding of 10+2 examination and declaration of results is also of importance for the entire admission process and, therefore, directed strict adherence to the Schedule in all respects and by all concerned. The date of 30th September was stated not to be the date of normal admission but is to give opportunity to grant admission against stray vacancies. The Court clarified that adherence to the time schedule by everyone was a paramount concern. In that case, the Court issued a specific direction to all the State functionaries, particularly the Chief Secretaries and heads of the concerned Ministries/Departments participating in the States/Union Territories, adopting the time schedule and holding the State examination, to ensure declaration of results on or before 15th June, 2005. They were also required to ensure the appropriate utilization of All India quota, to fullest extent, by timely reporting to the DGHS by the Deans of various colleges or any other State authority, informing the DGHS of the acceptance or rejection of seats by the students after the first counseling of All India/State Quota.

22. Further, this Court even took pains to declare the need for adherence to the schedule for receipt of applications for establishment of new medical colleges or seats and the process of the review and recommendation by the Central Government and the Medical Council of India. In para 28 of the judgment, the Schedule under the 1999 Regulations are referred to, that reads as under :

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[SWATANTER KUMAR, J.]

"SCHEDULE FOR RECEIPT OF APPLICATIONS FOR ESTABLISHMENT OF NEW MEDICAL COLLEGES AND PROCESSING OF THE APPLICATIONS BY THE CENTRAL GOVERNMENT AND THE MEDICAL COUNCIL OF INDIA

	<i>Stage of processing</i>	<i>Last date</i>	B
1.	Receipt of applications by the Central Government	From 1st August to 31st August (both days inclusive) of any year	C
2.	Receipt of applications by MCI from the Central Government	30th September	D
3.	Recommendations of the Medical Council of India to the Central Government for issue of letter of intent	31st December	E
4.	Issue of letter of intent by the Central Government	31st January	F
5.	Receipt of reply from the applicant by the Central Government requesting for letter of permission	28th February	G
6.	Receipt of letter from the Central Government by the Medical Council of India for consideration for issue of letter of permission	15th March	H
7.	Recommendations of the Medical Council of India to the Central Government for issue of letter of permission	15th June	
8.	Issue of letter of permission by the Central Government	15th July	

Note: (1) The information given by the applicant in Part I

A of the application for setting up a medical college that is  
 information regarding organisation, basic infrastructural  
 facilities, managerial and financial capabilities of the applicant  
 shall be scrutinised by the Medical Council of India through an  
 inspection and thereafter the Council may recommend issue  
 B of letter of intent by the Central Government.

(2) Renewal of permission shall not be granted to a  
 medical college if the above schedule for opening a medical  
 college is not adhered to and admissions shall not be made  
 without prior approval of the Central Government."

C  
 23. Lastly, in the case of *Priyadarshini Dental College &  
 Hospital v. Union of India & Ors.* [(2011) 4 SCC 623], this Court  
 cautioned all concerned that the schedule specified in *Mridul  
 Dhar* (supra) should be maintained and regulations should be  
 D strictly followed. The Court suggested that the process of  
 inspection of colleges, grant of permission or renewal of  
 permission should also be done well in advance to allow time  
 for setting right the deficiencies pointed out.

E  
 24. In the case of *State of Bihar & Ors. v. Dr. Sanjay  
 Kumar Sinha & Ors.* [(1990) 4 SCC 624], a Bench of this Court  
 took exception to the non-adherence to the time schedules and  
 reiterated that the admissions to medical colleges and post-  
 graduate courses were governed by the orders of this Court  
 and the regulations issued by the Medical Council of India,  
 F which must be strictly followed. This Court issued a warning,  
 that if there was any violation in future, the same shall be  
 treated as default and viewed very seriously. Further, in the  
 case of *Medical Council of India v. Madhu Singh & Ors.*  
 [(2002) 7 SCC 258], this Court declared two very important  
 G principles. Firstly, it declared that mid-stream admissions  
 should not be permitted and secondly, noticing the practice of  
 compassion in review of such admissions, this Court also held  
 that late or mid-stream admission, even just four months after  
 beginning of the classes, cannot be permitted.

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25. A consistent and clear view held by this Court is that the regulations framed by the MCI are binding and these standards cannot be deviated from. Reference can be made to *State of M.P. & Ors. v. Gopal D. Tirthani & Ors.* [(2003) 7 SCC 83 - paras 24 and 26]; *Bharati Vidyapeeth (Deemed University) & Ors. v. State of Maharashtra & Anr.* [(2004) 11 SCC 755 - para 20]; *Chowdhury Navin Hemabhai & Ors. v. State of Gujarat & Ors.* [(2011) 3 SCC 617 - paras 7, 11, 12, 14 and 18] and *Harish Verma & Ors. v. Ajay Srivastava & Ors.* [(2003) 8 SCC 69 - paras 14 to 21].

26. What is of greater significance is that this Court has not so far considered or stated as a principle, what consequences should follow where the Central Government, or the State Government or Medical Council of India or the College itself, with impunity, violate the time schedule, regulations and order of merit to give admission to students in an arbitrary and nepotistic manner. Also, we must consider what preventive steps can be taken to avoid such repetitive and intentional defaults, as well as undue exploitation of the class of students. Admissions based on favouritism necessarily breach the rule of merit on the one hand, while on the other, they create frustration in the minds of the students who have attained higher rank in the competitive entrance examinations, but have not been admitted. We propose to specifically address this concern in this judgment. From the above discussion and reference to various judgments of this Court, it is clear that adherence to the principle of merit, compliance with the prescribed schedule, refraining from mid-stream admissions and adoption of an admission process that is transparent, non-exploitative and fair are mandatory requirements of the entire scheme.

27. Now, let us examine the adverse consequences of non-adherence to the prescribed schedules. The schedules prescribed have the force of law, in as much as they form part of the judgments of this Court, which are the declared law of

A the land in terms of Article 141 of the Constitution of India and form part of the regulations of the Medical Council of India, which also have the force of law and are binding on all concerned. It is difficult to comprehend that any authority can have the discretion to alter these schedules to suit a given  
 B situation, whether such authority is the Medical Council of India, the Government of India, State Government, University or the selection bodies constituted at the college level for allotment of seats by way of counseling. We have no hesitation in clearly declaring that none of these authorities are vested with the  
 C power of relaxing, varying or disturbing the time schedule, or the procedures of admission, as provided in the judgments of this Court and the Medical Council of India Regulations. Inter alia, the disadvantages are:-

D (1) Delay and unauthorized extension of schedules defeat the principle of admission on merit, especially in relation to preferential choice of colleges and courses. Magnanimity in this respect, by condoning delayed admission, need not be shown by the Courts as it would clearly be at the  
 E cost of more meritorious students. The principle of merit cannot be so blatantly compromised. This was also affirmed by this Court in the case of *Muskan Dogra & Ors. v. State of Punjab & Ors.* [(2005) 9 SCC 186].

F (2) Mid-stream admissions are being permitted under the garb of extended counseling or by extension of periods for admission which, again, is impermissible.

G (3) The delay in adherence to the schedule, delay in the commencement of courses etc., encourage lowering of the standards of education in the Medical/Dental Colleges by shortening the duration of the academic courses and promoting the  
 H chances of arbitrary and less meritorious

admissions.

A

(4). Inequities are created which are prejudicial to the interests of the students and the colleges and more importantly, affect the maintenance of prescribed standard of education. These inequities arise because the candidates secure admission, with or without active connivance, by the manipulation and arbitrary handling of the prescribed schedules, at the cost of more meritorious candidates. When admissions are challenged, these students would run the risk of losing their seats though they may have completed their course while litigation was pending in the court of competent jurisdiction.

B

C

(5) The highly competitive standards for admission to such colleges stand frustrated because of non-adherence to the prescribed time schedules. The admissions are stretched to the last date and then admissions are arbitrarily given by adopting impermissible practices.

D

(6) Timely non-inclusion of the recognised/approved colleges and seats deprives the students of their right of fair choice of college/course, on the strength of their merit.

E

(7) Preference should be to fill up all vacant seats, but under the garb that seats should not go waste, it would be impermissible to give admissions in an arbitrary manner and without recourse to the prescribed rule of merit.

F

28. The Medical and Dental Councils of India, the Governments and the Universities are expected to act in tandem with each other and ensure that the recognition for starting of the medical courses and grant of admission are strictly within the time frame declared by this Court and the

G

H

A regulations. It has come to the notice of this Court that despite warnings having been issued by this Court and despite the observations made by this Court, that default and non-adherence to the time schedules shall be viewed very seriously, matters have not improved. Persistent defaults by different

B authorities and colleges and granting of admission arbitrarily and with favouritism have often invited criticism from this Court. In the case of *Arvind Kumar Kankane v. State of U.P. & Ors.* (2001) 8 SCC 355], the Court observed that the process of counseling cannot go on continuously for a long period and the resultant chain reaction should be checked. Some seats may

C have to be left vacant per compulsion, but, the process of admission should stand the test of rationality. There should be exceptional and fortuitous circumstances to justify late admission. In the case of *Chhavi Mehrotra (Miss) v. DGHS* [(1994) 2 SCC 370], the Court was even compelled to issue

D notice of contempt to the Director General of Health Services as to why proceedings under the Contempt of Courts Act, 1971 be not taken for non-compliance with the scheme framed by the Court for consideration of applications for transfer of

E students between colleges and they be not punished accordingly. The consistent effort of this Court to direct corrective measures and adherence to law is not only being thwarted by motivated action on the part of the concerned

F authorities, but there has also been a manifold increase in arbitrary admissions. Repeated defaults have resulted in generating more and more litigation with the passage of time. This Court, thus, now views this matter with greater emphasis on directions that should be made to curb incidents of disobedience.

G 29. The maxim *Boni iudicis est causas litium dirimere* places an obligation upon the Court to ensure that it resolves the causes of litigation in the country.

H 30. Thus, the need of the hour is that binding dicta be prescribed and statutory regulations be enforced, so that all concerned are mandatorily required to implement the time

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schedule in its true spirit and substance. It is difficult and not even advisable to keep some windows open to meet a particular situation of exception, as it may pose impediments to the smooth implementation of laws and defeat the very object of the scheme. These schedules have been prescribed upon serious consideration by all concerned. They are to be applied *stricto sensu* and cannot be moulded to suit the convenience of some economic or other interest of any institution, especially, in a manner that is bound to result in compromise of the above-stated principles. 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,.

- (i) 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.
- (ii) The Medical Council of India shall, immediately thereafter, issue appropriate directions and ensure the implementation and commencement of admission process within one week thereafter.
- (iii) 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.

- A (iv) 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 concerned authority and that college would  
B have no right to make admissions in the current  
academic year against such seats.
- (v) The admission to the medical or dental colleges  
shall be granted only through the respective  
entrance tests conducted by the competitive  
C 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,  
D 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.
- E (vi) 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  
F 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  
G counseling should be the final counseling, as this  
Court has already held in the case of *Ms. Neelu  
Arora & Anr. v. UOI & Ors.* [(2003) 3 SCC 366] and  
third counseling is not contemplated or permitted  
under the entire process of selection/grant of  
H admission to these professional courses.

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- (vii) 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 counseling. 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. A  
B
- (viii) No college may grant admissions without duly advertising the vacancies available and by publicizing 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. C  
D
- (ix) 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. E  
F  
G  
H

A 31. 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  
 B default in compliance with these conditions or attempt to  
 overreach these directions shall, without fail, invite the following  
 consequences and penal actions:-

C (a) 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.

D (b) The person, member or authority found responsible  
 for any violation shall be departmentally proceeded  
 against and punished in accordance with the Rules.  
 E 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.

F (c) 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.

G (d) 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 shall act in tandem and strictly as  
 H per the prescribed schedule. In other words, there

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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.

A

(e) 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.

B

C

(f) 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.

D

(g) 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.

E

F

(h) No college shall fill up its seats in any other manner.

32. Having dealt with, in general, the directions that this Court would issue to prevent the evils of arbitrariness and discrimination from creeping into these selection/admission processes, which are required to be transparent, fair and non-exploitative, we shall now proceed to deal with the facts of the present case.

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A 33. The present case is a glaring example of calculated  
 tampering with the schedule specified under the regulations and  
 the judgments of this Court, with a clear intent to grant admission  
 to less meritorious candidates over and above the candidates  
 of higher merit. To put it simply, it is a case of favouritism and  
 B arbitrariness. This also chronicles how, either way, the careers  
 of the students are jeopardised. The High Court had cancelled  
 the admission of the appellants by a detailed and well-reasoned  
 judgment. However, as a result of interim orders granted by the  
 Court, both the appellants had already completed four years of  
 C the studies at the time of the High Court decision. They are  
 stated to have completed their final exam now. Despite having  
 lost their case before the High Court, the appellants continued  
 to pursue their professional courses because of the interim  
 orders of the Court. Now, the plea of inequities is being raised.

D 34. From the facts narrated above, it is clear that the  
 admission relates to the academic year 2006. The Central  
 Government vide its letter dated 15th July, 2006 had granted  
 approval and leave to admit the students to the Jagdalpur  
 College. Thereafter, permission to commence admission was  
 E granted by the Governor of the State of Chhattisgarh on 14th  
 August, 2006. The name of Jagdalpur College was not in the  
 brochure published for admission. The first counseling was, in  
 fact, conducted by 25th - 26th July, 2006 in which the College  
 did not participate and the second counseling was done on  
 F 22nd-23rd August, 2006.

35. In paragraph 2 of State Government's approval letter,  
 it was clearly stated that the capacity of the Jagdalpur College  
 would be 50 seats and the candidates qualified in the PMT  
 2006 would be given admission on the basis of merit. After  
 G issuance of this letter, the college was included in the second  
 counseling and as already noticed, it had allocated 48 out of  
 the 50 seats.

H 36. On 8th August, 2006, a letter is stated to have been  
 issued by the DGHS stating that 15 per cent of the total seats

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reserved for All India Quota, 2006, if remaining vacant, on or after 23rd August, 2006, may be treated as surrendered to the State Quota. To this letter a statement of the same date was annexed, which allegedly gave two seats from the All India Quota to the present appellants. As per that statement, the seats were allocated on 8th August, 2006. From the record before us, it is clear that between 14th August, 2006 and 30th September, 2006, no correspondence was exchanged between the parties. This is despite the fact that the Government of India had required the college and the State Authorities to inform them of the details of the admissions given to the students as well as the details of the Quota seats, if the seats were vacant. All India Quota seats, which had not been filled till 22nd August, 2006 would be surrendered in favour of the State. Strangely, nothing has been placed on record to show that any of the concerned State authorities, including the college, adhered to the requirement of informing the DGHS or other authorities with regard to the status of admissions. On 30th September, 2006, the Director, Medical Education, Chhattisgarh, wrote a letter to the Dean of the College, requiring that the Jagdalpur College provide the up-to-date list of the students admitted to it and if there were any seats remaining vacant, guidance was to be taken from the Directorate of the State Government.

37. Another letter written by the Director, Medical Education, to the Dean of the Jagdalpur College and referring to their letter of the same date, which stated that two seats were vacant, in turn, ordered that those seats be filled up and the candidates be contacted over telephone. If contact could not be established with any candidate, then the Jagdalpur College was directed to fill up the seats with the candidates physically present and available at the Jagdalpur College, according to merit. The Dean of the Jagdalpur College, on that very day, constituted a Committee of Asst. Vice-Principals and Demonstrator of the Jagdalpur College to examine the certificates etc. of the available candidates and recommend the names on the basis of merit. Again, on that very day, the

A Committee recommended the names of the two appellants, declaring them to be eligible for getting admissions. More strangely, the Committee also notes that the fees from the candidates had been deposited and they could be given admission. Then, vide another letter dated 30th September, 2006, the Dean of the College informed the Director, Medical Education that the two appellants have been given admission and the admission process for 50 seats had been completed. We must notice that there is nothing placed on the records of the Court as to what steps were taken by the Jagdalpur College to inform all the other candidates of counseling on the last date. Also strange was the direction of the Directorate that the candidates should be informed on telephone. Even if this direction was of some content and meaning, there is still no material to show how many candidates were actually informed on the telephone that there would be counseling for two seats. Thus, the questions remain open, as to the reason for total abandonment of the procedure of informing all eligible candidates, by appropriate means, that two seats were available for admissions, who all had actually appeared for the counseling, how only two candidates who even according to the State Government were not contacted on telephone, were alone present before the Committee and immediately found to be eligible for admission. This entire exercise smacks of arbitrariness, unfairness and is discriminatory *ex facie*. It is brought to our notice and is clear from the record that the Respondent No.3, the Director of the Medical Education in Chhattisgarh, is the father of Akansha Adile, Appellant no.2 and that speaks volumes of how the admission had been granted to the two appellants.

G 38. The methodology adopted and the manner in which admissions were given to the present appellants leaves no doubt in the mind of the Court that this process was neither fair nor transparent. In fact, within a few hours, the entire process of admission was completed, indicating that the whole exercise was undertaken only with the object of granting admission to

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the appellants, that too, as if no other candidates of merit were available for these two seats. This view is entirely substantiated by the records produced before us. The prescribed procedure for grant of admission was given a go by and the rule of admission on merit stood frustrated as a consequence of such admission process. One fails to understand why no preventive steps or efforts to fill the vacant seats were taken by any of the competent authorities involved in the entire process of selection and admission to MBBS courses. The students who had undertaken the PMT examination had been allocated seats in the college on 23rd August, 2006. Not even a single document has been placed on record of this Court from 23rd August, 2006 to 29th September, 2006 showing efforts to fill up vacant seats. Everybody waits for the last date which, in fact, is the date for joining the courses and not admission, whereafter the entire machinery in the Centre, State Government and the college acts so swiftly that within hours, the entire admission process is concluded to grant the admission to the appellants. It is a travesty of fairness and transparency that for 50 seats in the Jagdalpur College, the Directorate as well as the Committee constituted for counseling/selection could find only the candidates at Merit Nos. 3893 and 1614 suitable, completely ignoring all the candidates being higher in merit than these two appellants, who must also be waiting for admission to the MBBS course. Strangely, the merit ranks of these two appellants, as given in the letter of the DGHS dated 8th August, 2006 were 2196 and 2203 respectively. From whatever angle this case is examined, only one conclusion is possible and that is, that the allocation of seats was totally arbitrary and contrary to the procedure laid down. We also would like to make a clear mention of the displeasure of this Court to the three members of the Selection Committee who found only these two candidates eligible and fit to be granted admission to the MBBS courses on the last day for admissions. To say the least, this Committee acted in undue haste, in violation of the prescribed procedure of admission and certainly contrary to the judgments

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A of this Court. We direct the Dean of the Jagdalpur College to convey the displeasure of this Court to the members of the Selection Committee and the same be placed on their respective service records.

B 39. Now, we may come to the inquiry that was conducted by a three member committee and which recorded the finding that we have already noticed in paragraph 13 of the judgment. This inquiry was initiated in furtherance to an application made under the Right to Information Act, regarding the letter dated 8th August, 2006 according to which the admission in the Jagdalpur College, particularly to these two appellants, was made in an arbitrary and unfair manner. The stand of the Union of India before this Court is that the letter dated 8th August, 2006 was never issued by the DGHS and is a fabricated document. In face of that stand, we are unable to appreciate as to how the Inquiry Committee returned a finding that the admission to the two appellants was not given in furtherance to the letter dated 8th August, 2006, but validly granted on 30th September, 2006 instead. They were expected to examine this matter in greater depth and record proper findings. We also cannot understand as to how they have recorded that both the appellants got admission in the Jagdalpur College by State PMT merit. Their report does not even mention if they had verified the fact that notices had been issued to all the concerned persons on 30th September, 2006 and if other students had been contacted for intimation of counseling or if any effort was even made on 30th September, 2006 or even prior thereto to put these two vacant seats on the internet or notice board of the colleges so as to enable the students of higher merit to seek admission to the MBBS course in the Jagdalpur College. This aspect attains a greater significance in view of the fact that the seats were not allotted in the second counseling itself on 22nd - 23rd August, 2006. The Jagdalpur College, the Directorate of the State Government as well as the Union of India made no effort and did not act in coordination, to allot these two seats to the candidates in accordance with

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merit in the PMT. The finding recorded by the Committee appears to be a mere eye-wash rather than a proper report upon examining the entire matter in its proper perspective. It was not only expected of the Committee to examine the documents which were made available to it, as is recorded in the report, but also to call for all such necessary documents which were relevant and could have bearing on the reference made to it. The Committee has not even cared to know why everything was completed on 30th September, 2006 and how nobody else except these two appellants were available for admission from amongst candidates in the entire State.

40. Another aspect of this inquiry is that, even as on 30th September, 2006, nobody was clear as to which quota these two vacant seats belonged to. According to the State of Chhattisgarh, these two seats were part of the 15 per cent All India quota which stood surrendered after 23rd August, 2006. According to the appellants, they were Central Pool quota seats which stood surrendered to the State on 30th September, 2006 only. According to the Union of India, they had not made any allotment to the appellants or anyone in the Jagdalpur College from the All India Quota, and even the code number given on the 8th August, 2006 letter is wrong. If the Directorate, the Union of India and the Jagdalpur College itself were not ad idem as to which quota the seats belonged to and who was the competent authority to allot the seats, none of them had any business to allot these two seats in such an arbitrary manner. Even now, there is no clarity as to how and under what quota the Jagdalpur College has granted admission to these two appellants. The inquiry report, in fact, does not help to resolve the issue and cannot, thus, form the basis of returning any finding in favour of or against any person. Ex facie, the findings returned by the Inquiry Committee appear to be inconclusive, uncertain and vague. Be that as it may, there is no escape from returning the finding that admission of both the appellants was made in a most improper and arbitrary manner. The whole exercise was undertaken on 30th September, 2006 with only

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A one aim in mind, i.e., that these two appellants have to be given admission in the Jagdalpur College.

B 41. The Government of India, taking the view that these were All India Quota seats which had been wrongly allocated to these two appellants in a manner contrary to the relevant Rules, vide its letter dated 22nd March, 2010, directed cancellation of the admissions of both the appellants. In furtherance to the letter issued by the Central Government, the State Government vide its letter dated 10th September, 2010, actually cancelled the admissions of both the appellants.

C 42. This cancellation was challenged by the appellants before the High Court, which allowed continuation of study under interim orders, though finally it dismissed the writ petitions filed by these appellants. At that time, they had already completed more than four years of the MBBS course to which they were admitted. Today, they have already appeared for their final examination.

E 43. We are also in agreement with the findings recorded by the High Court that the Jagdalpur College ought to have declared these two seats as being available for admission when the counseling was held on 22nd - 23rd August, 2006 and that there was violation of the basic principles of equality of opportunity and of equal consideration for allotment of seats. Candidates of higher merit stand excluded. Another challenge F which has been raised on behalf of the appellants before us is that the order of cancellation dated 10th September, 2010 was passed without affording any opportunity of hearing to these two appellants and, therefore, the order is liable to be set aside, being violative of principles of natural justice. It is, in fact, not in dispute before us that no specific notice had been given to G the appellants before the impugned order was passed. We are of the considered view that it is not necessary for this Court to examine this submission in any greater detail because the appellants have now had two occasions to put forward their H claim before the Court. The High Court has considered various

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aspects of the case and has given a complete hearing to the appellants. We have also heard the appellants at great length and have examined their challenge to the order dated 10th September, 2010. No prejudice has been caused to them, inasmuch as they have pursued their studies despite cancellation of admission and have now been duly heard by the High Court, as well as this Court. Hence, this ground of challenge does not, in any case, survive, particularly in view of the fact that we have also held that the admission to these appellants was given in a completely arbitrary and unfair manner.

44. The admission of the appellants was cancelled by the State Government which, even under the Rules, is the final competent authority for such purposes. In the present case, the mischief played by the concerned persons came to the notice of the Central Government which directed cancellation of the seats and required the State Government to act in accordance with law.

45. The learned counsel appearing for the appellants, by way of last resort, advanced an argument that even if the admissions are found to be irregular by the Court, still, to balance the equities, the Court can direct surrender or creation of equal number of seats in the next academic year by the Jagdalpur College. Further, it is also contended that since the appellants have already completed substantial part of their professional course, it will cause serious prejudice and irreparable loss to them if their admissions are cancelled, particularly when the students are not at fault and it is the Jagdalpur College or the Directorate of the State Government which were instrumental in allotting two seats to these students. To further substantiate this plea, another argument advanced is that in the Government Colleges, the admission fee is very low and the Government spends a considerable sum in imparting the medical education to the students of those

A colleges. Thus, even that expenditure of the State would be wasted if admissions were now cancelled.

B 46. It was also argued with some emphasis that the appellants are not at fault. They had taken the entrance examination and were given seats by the concerned authorities. Even if the authorities have committed some irregularity, the appellants should not be made to suffer at the very end of their professional course. To substantiate this premise, they relied upon the judgments of this Court in the cases of A. *Sudha v. University of Mysore & Anr.* (1987) 4 SCC 537, *Amandeep Jaswal v. State of Punjab* (2006) 9 SCC 597, *R. Vishwanatha Pillai v. State of Kerala & Ors.* (2004) 2 SCC 105 and *Chowdhary Navin Hemabhai & Ors. v. The State of Gujarat & Ors.* (2011) 3 SCC 617.

D 47. We have perused the judgments of this Court relied upon by the petitioners. Firstly, they were delivered on their own facts and the Court has not stated any absolute principle of law, which would operate as a valid and binding precedent. Secondly, in all these cases, the Court had returned the finding that other authorities or rule-making bodies concerned were at fault and not the students. In the case of *Chowdhary Navin Hemabhai* (supra), the Court had noticed that the fault was of the rule making authority in not formulating the State Rules, 2008 in conformity with the Medical Council of India Regulations, while in the case of *A. Sudha* (supra), the Court found that the Principal of the institute was at fault and he had made incorrect statements in writing, which were acted upon by the students bona fide.

G 48. In the present case, we have no doubt in our mind that the fault is attributed to all the stakeholders involved in the process of admission, i.e., the concerned Ministry of the Union of India, Directorate of Medical Education in the State of Chhattisgarh, the Dean of the Jagdalpur College and all the three Members of the Committee which granted admission to

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both the appellants on 30th September, 2006. But the students are also not innocent. They have certainly taken advantage of being persons of influence. The father of the Appellant No. 2, Akansha Adile was the Director of Medical Education, State of Chhattisgarh at the relevant time and as noticed above, the entire process of admission was handled through the Directorate. The students well knew that the admissions can only be given on the basis of merit in the entrance test and they had not ranked so high that they were entitled to the admission on that basis alone. In fact, they were also aware of the fact that no other candidate had been informed and that no one was present due to non-intimation. Out of favouritism and arbitrariness, they had been given admission by completing the entire admission process within a few hours on 30th September, 2006.

49. Balancing of equities by the Court itself is inequitable. Some party or the other would suffer a set back or adverse consequence from the order of the Court. On the one hand, if admissions are cancelled, the students who have practically completed their MBBS course would lose their professional education as well as nearly five years of their life spent in such education. If their admissions are protected, then the standard of education, the merit of the candidates and the desirability of the persons of higher merit becoming doctors is negated. The best solution to such problems is strict adherence to the time schedule, procedure for selection/admission and strict observance of the Medical Council of India Regulations, by all concerned. Once these factors are adhered to, not only would such situation not arise, but also it will prevent avoidable litigation before the Courts. The persons who violate the time schedule to grant admissions in an arbitrary manner and by colourable exercise of power, who are not adhering to Medical Council of India Regulations and the judgments of this Court, should be dealt with strictly by punishment in accordance with law, to prevent such mischief from repeating. In the present case, we are informed that the students have already sat for

A their final examination and are about to complete their courses. Even if we have to protect their admissions on the ground of equity, they cannot be granted such relief except on appropriate terms. By their admissions, firstly, other candidates of higher merit have been denied admission in the MBBS

B course. Secondly, they have taken advantage of a very low professional college fee, as in private or colleges other than the government colleges, the fee payable would be Rs.1,95,000/- per year for general admission and for management quota, the fee payable would be Rs.4,00,000/-

C per year, but in government colleges, it is Rs.4,000/- per year. So, they have taken a double advantage. As per their merit, they obviously would not have got admission into the Jagdalpur College and would have been given admission in private colleges. The ranks that they obtained in the competitive

D examination clearly depict this possibility, because there were only 50 seats in the Jagdalpur College and there are hundreds of candidates above the appellants in the order of merit. They have also, arbitrarily and unfairly, benefitted from lower fees charged in the Jagdalpur College.

E 50. On the peculiar facts and circumstances of the case, though we find no legal or other infirmity in the judgment under appeal, but to do complete justice between the parties within the ambit of Article 142 of the Constitution of India, we would permit the appellants to complete their professional courses,

F subject to the condition that each one of them pay a sum of Rs.5 lakhs to the Jagdalpur College, which amount shall be utilized for developing the infrastructure in the Jagdalpur College.

G 51. We have not and should not be even understood to have stated any precedent for the cases like grant of admission and leave to complete the course like the appellants in the present case.

H 52. We are imposing heavy costs upon these appellants to ensure that such admissions are neither accepted nor granted leave to complete their medical courses in future.

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53. We would, thus, hereby issue directions on the one hand and order initiation of contempt proceedings against all the defaulting parties under the provisions of Contempt of Courts Act, 1971 read with Article 129 of the Constitution of India.

**ORDER :**

Accordingly, we order as follows: -

1. Though, we find no merit in the appeal preferred by the appellants and the judgment of the High Court does not suffer from any infirmity, still, in the peculiar facts and circumstances of the case, we permit the appellants to complete their MBBS course as general candidates in the Government Medical College, Jagdalpur, subject to their paying a sum of Rs. 5 lakhs each, within one week from today.
2. In the event of default of payment or failure to file proof of payment in the Registry of this Court, not only will the present appeal stand dismissed on merits, but we also direct that the exam results of the defaulting appellant will not be declared, they will not be conferred with the degree of MBBS by the Jagdalpur College and the Medical Council of India shall not register their names on the rolls maintained by it or the State Council, as the case may be.
3. For the reasons afore-stated, if their admissions are cancelled, there being no claimants for these seats, the seats will go waste and the entire expenditure incurred by the State would also be wasted. After so many years, it would be an exercise in futility to cancel their admissions, which, but for the interim orders, could be avoided. An undue advantage from the interim orders has accrued in favour of the appellants.

A 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.

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

C 4. We have categorically returned a finding that all the relevant stakeholders have failed to perform their duty/obligation in accordance with law. Where the time schedules have not been complied with, and rule of merit has been defeated, there  
 D nepotism and manipulation have prevailed. The stands of various authorities are at variance with each other and none admits to fault. Thus, it is imperative for this Court to ensure proper implementation of judgments of this Court and the regulations of the Medical Council of India as well as not to  
 E overlook the arbitrary and colourable exercise of power by the concerned authorities/colleges.

F 5. Therefore, we hereby direct initiation of proceedings against the following under the provisions of the Contempt of Courts Act, 1971. Let notice be issued to the following, to show cause why they be not punished in accordance with law.

- a. Additional Secretary, Ministry of Health & Family Welfare, Union of India.
- G b. Dr. S.L. Adile, Director, Medical Education.
- c. Dean of the Jagdalpur College.
- d. Dr. M.S. Banjan, Member of the Selection Committee.
- H e. Dr. P.D. Agarwal, Member of the Selection Committee.

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f. Shri Padmakar Sasane, Member of the Selection Committee. A

g. Director General, Directorate of Health Services, Union of India.

5. Notice be issued returnable in two weeks, on which day the matter shall be listed before this Court. Registry shall maintain separate file for that purpose. B

6. All concerned authorities are hereby directed to carry out the directions and orders contained in this judgment, particularly paragraphs 30 and 31 of the judgment forthwith. The directions shall be applicable for the academic year 2012-2013 itself. C

54. A copy of this judgment shall be sent to all concerned authorities; forthwith, for strict compliance and adherence, without demur and default. D

55. Both the appeals are disposed of with the above directions.

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Appeals disposed of. E