

RISHABH CHOUDHARY

v.

UNION OF INDIA & ORS.

(Writ Petition (Civil) No. 677 of 2016)

JANUARY 23, 2017

[MADAN B. LOKUR AND PRAFULLA C. PANT, JJ.]

*Education – Admissions – MBBS Course – Writ petitioner granted admission in MBBS by the respondent-Medical College, through an examination called CGMAT-2016, in contravention of Supreme Court's order dated 11<sup>th</sup> April 2016 directing that admission to MBBS course would only be through National Eligibility-cum-Entrance Test (NEET) Validity of – Held: Notification dated 21<sup>st</sup> Dec. 2010 issued by the Medical Council of India (MCI) was resurrected by Supreme Court's order dated 11<sup>th</sup> April 2016, recalling its judgment dated 18<sup>th</sup> July 2013 in Christian Medical College, Vellore's case, implying that admission to MBBS course would only be through NEET-I and NEET-II and by no other process of admission – Thus, there was absolutely no occasion for the College to have conducted the counseling of the petitioner on 19<sup>th</sup> April 2016 i.e. after recall order dated 11<sup>th</sup> April 2016 – Further, the examination conducted by the college on 3<sup>rd</sup> April, 2016 was also in defiance of the schedule prescribed by the MCI (and approved by Supreme Court) for holding MBBS entrance examinations – Therefore, admission granted to petitioner set aside – Petitioner, a victim of maladministration of the College and the State of Chhattisgarh and his plight is unfortunate but it cannot be helped - Constitution of India – Art.32.*

**Dismissing the writ petitions, the Court**

**HELD: 1.1.** By an order dated 11<sup>th</sup> April 2016 in *Medical Council of India v. Christian Medical College, Vellore & Ors.* a bench of five learned judges of this Court recalled the decision rendered in *\*Christian Medical College, Vellore & Ors. v. Medical Council of India* which quashed notification dated 21<sup>st</sup> Dec. 2010 which made admissions to MBBS course possible only through National Eligibility-cum-Entrance Test (NEET). [Paras 2, 3] [562-B-D]

A *Christian Medical College, Vellore & Ors. v. Union of India & Ors.* (2014) 2 SCC 305 : [2013] 7 SCR 908 – referred to.

*Medical Council of India v. Christian Medical College, Vellore & Ors.* (2016) 4 SCC 342 – relied on.

B 1.2 Thus, in view of this order and various other orders passed by this Court from time to time, it was clear that the notification dated 21<sup>st</sup> December, 2010 stood resurrected and that admissions to the MBBS course could only be through NEET-I and NEET-II. No other process of admission was permissible.

C [Para 11] [564-B]

*Sankalp Charitable Trust & Anr. v. Union of India & Ors.* (2016) 7 SCC 487 – relied on.

D 1.3 The examination CGMAT-2016 conducted by the College on 3<sup>rd</sup> April, 2016 was also contrary to the schedule prescribed by Medical Council of India (MCI) (and approved by this Court) for holding the MBBS entrance examinations. [Para 13] [564-D-E]

*Ashish Ranjan v. Union of India* 2016 (4) SCALE 370 – relied on.

E 1.4 Furthermore, the petitioner's counseling was carried out on 19<sup>th</sup> April, 2016 which was after the decision of this Court on 11<sup>th</sup> April, 2016 recalling the decision dated 18<sup>th</sup> July, 2013. There was absolutely no occasion for the College to have conducted the counseling after the recall order passed by this Court on 11<sup>th</sup> April, 2016. The effect of the recall order was that the notification issued by the Medical Council of India on 21<sup>st</sup> December, 2010 effectively stood revived in the sense that NEET was the only option available for admission to the MBBS course. The College and the State of Chhattisgarh ought to have been aware of these facts, but seem to have turned a blind eye not only

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G the orders of this Court but to the notifications issued by the Medical Council of India. [Para 14] [564-G-H; 565-A-B]

H 2. The College and the State of Chhattisgarh have not adhered to the law with the result that the petitioner became a victim of circumstances giving him a cause of action to proceed

against the College and the State of Chhattisgarh being a victim of their maladministration. The plight of the petitioner is unfortunate but it cannot be helped. However, the petitioner is at liberty to proceed against the College and the State of Chhattisgarh in any appropriate manner. [Paras 15, 17] [565-C-D, F]

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Case Law Reference

[2013] 7 SCR 908	referred to	Para 2	
(2016) 4 SCC 342	relied on	Para 3	
2016 (4) SCALE 370	relied on	Para 7	C
(2016) 7 SCC 487	relied on	Paras 8, 9	

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 677 of 2016.

Under Article 32 of the Constitution of India.

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WITH

W. P. (C) No. 862 of 2016.

Kapil Sibal, Dr. Abhishek Manu Singhvi, Subramanian Prasad, Sr. Advs., S. Udaya Kumar Sagar, Ms. Bina Madhavan, Krishna Kumar Singh, Mrityunjai Singh, Vaibhav Srivastava, Harsh Parashar, Advs. for the Petitioner.

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Vikas Singh, Sr. Adv., Gaurav Sharma, Prateek Bhatia, Dhaval Mohan, Ms. Amandeep Kaur, Ms. Vara Gaur, Ms. Deepeika Kalia, Ajay Sharma, Saudamini Sharma, Ms. Rekha Pandey, R. K. Rathore, G.S. Makker, Ajay Marwah, Aniruddha P. Mayee, A. Selvin Raja, Advs. for the Respondents.

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The Judgment of the Court was delivered by

**MADAN B. LOKUR, J. W. P. (C) No. 677 OF 2016** 1. The question for consideration in this writ petition filed under Article 32 of the Constitution concerns the validity of admission granted to the petitioner by respondent No.3 (C.M. Medical College & Hospital - for short the College) to the MBBS course. In our opinion, the admission granted by the College to the petitioner was unjustified and therefore his admission is set aside.

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2. On 21<sup>st</sup> December, 2010 a gazette notification was issued by

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A the Medical Council of India amending the “Regulations on Graduate  
 Medical Education, 1997” to the effect, *inter alia*, that admissions to  
 the MBBS course shall be based solely on marks obtained in the National  
 Eligibility-cum-Entrance Test (for short NEET). This notification was  
 challenged by, amongst others, Christian Medical College Vellore in a  
 B batch of petitions before this Court which came to be allowed. The  
 decision of this Court is dated 18<sup>th</sup> July, 2013 and is reported as *Christian  
 Medical College, Vellore & Ors. v. Union of India & Ors.*<sup>1</sup> The gazette  
 notification dated 21<sup>st</sup> December, 2010 was quashed. As a result,  
 admission of a student to the MBBS course through NEET was no  
 longer mandatory.

C 3. Subsequently, petitions were filed for a review of the decision  
 rendered by this Court and these review petitions ultimately came to be  
 referred to a Bench of five learned judges of this Court. By an order  
 dated 11<sup>th</sup> April, 2016 in *Medical Council of India v. Christian Medical  
 College, Vellore & Ors.*<sup>2</sup> the review petitions were allowed and the  
 D decision rendered by this Court on 18<sup>th</sup> July, 2013 was recalled and it  
 was directed that all the matters be considered afresh.

E 4. Prior to this, the College wrote to the State of Chhattisgarh on  
 or about 29<sup>th</sup> October, 2015 seeking permission to conduct examinations  
 for the management quota and NRI seats for the MBBS course for the  
 academic year 2016-17. The State of Chhattisgarh granted permission  
 to the College to conduct examinations by its letter dated 5<sup>th</sup> November,  
 2015.

F 5. Consequent upon the permission granted by the State of  
 Chhattisgarh to conduct examinations, the College issued an  
 advertisement inviting applications on 28<sup>th</sup> January, 2016 and eventually  
 conducted the examination on 3<sup>rd</sup> April, 2016. The examination called  
 CGMAT-2016 was monitored by the State of Chhattisgarh and according  
 to the College as well as the State there were no irregularities in the  
 conduct of the examination.

G 6. The result of the examination was declared on 11<sup>th</sup> April, 2016  
 and the petitioner qualified in the examination. On 19<sup>th</sup> April, 2016 that  
 is after this Court had decided to review its decision and had recalled the  
 judgment dated 18<sup>th</sup> July, 2013, counseling was conducted for the  
 petitioner and he was granted admission for the MBBS course by the

<sup>1</sup>(2014) 2 SCC 305

H <sup>2</sup>(2016) 4 SCC 342

College after all formalities were completed.

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7. At this stage, it may be mentioned that the Medical Council of India published a notification in 2015 amending the “Regulations on Graduate Medical Education, 1997” whereby a time schedule for completion of the admission process for First MBBS Course was prescribed. This notification is reproduced and the Schedule given therein was approved in *Ashish Ranjan v. Union of India*<sup>3</sup> decided on 18<sup>th</sup> January, 2016. As per the prescribed schedule, the conduct of entrance examination was to take place between 1<sup>st</sup> and 7<sup>th</sup> May and the result of the qualifying examination/entrance examination was to be declared by 1<sup>st</sup> June. In other words, the examination conducted by the College on 3<sup>rd</sup> April, 2016 being CGMAT-2016 was in defiance of the notification issued by the Medical Council of India, and the schedule approved by this Court. Similarly, admission granted to the petitioner on 19<sup>th</sup> April, 2016 was notwithstanding the orders of this Court passed on 11<sup>th</sup> April, 2016 read with the notification dated 21<sup>st</sup> December, 2010 and the schedule prescribed by the Medical Council of India.

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8. There are a few other orders passed by this Court which are of some significance. On 28<sup>th</sup> April, 2016 it was directed by this Court in *Sankalp Charitable Trust & Anr. v. Union of India & Ors.*<sup>4</sup> that NEET Phase I would be held in terms of the notification dated 21<sup>st</sup> December, 2010 issued by the Medical Council of India. The All India Pre-Medical Test would be held on 1<sup>st</sup> May, 2016. Thereafter, Phase II of NEET for the left out candidates would be held on 24<sup>th</sup> July, 2016. It was made clear that since the judgment and order dated 18<sup>th</sup> July, 2013 had been recalled, the notification dated 21<sup>st</sup> December, 2010 was in operation.

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9. By an order dated 6<sup>th</sup> May, 2016 in *Sankalp Charitable Trust* it was made clear that no examination shall be permitted to be held for admission for MBBS studies by any private college or association or any private/deemed University.

10. Subsequently on 9<sup>th</sup> May, 2016 this Court declined to modify the order dated 28<sup>th</sup> April, 2016. An order was also passed making it clear that all such candidates who could not appear in NEET-I and those who had appeared but had an apprehension that they had not prepared well, would be permitted to appear in NEET-II subject to an option from

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<sup>3</sup> (2016) 11 SCC 225

<sup>4</sup> (2016) 7 SCC 487

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A these candidates to give up their candidature for NEET-I. It was further clarified that only NEET would enable students to get admission to MBBS studies.

11. In view of all these orders passed by this Court from time to time, it is more than abundantly clear that the notification dated 21<sup>st</sup> B December, 2010 stood resurrected and that admissions to the MBBS course could only through NEET-I and NEET-II. No other process of admission was permissible. Given this background, the Director of Medical Education in Chhattisgarh wrote to the College on or about 13<sup>th</sup> C July, 2016 to take steps to cancel all the admissions made by the College in terms of the examination CGMAT – 2016 held for students for the management quota and NRI quota. Eventually by a letter dated 28<sup>th</sup> July, 2016 the Director of Medical Education in Chhattisgarh recommended to the College to cancel admissions made to the MBBS course. This prompted the petitioner to file a writ petition in this Court.

12. It is submitted and prayed by the petitioner that since he had D already been granted admission by the College after the examination CGMAT-2016 was conducted by the College and supervised and monitored by the State of Chhattisgarh and in which there were no allegations of impropriety, his admission should not be disturbed. It is submitted that the petitioner was certainly not at fault and there is no E reason why he should be the victim of an apparent wrong committed by the College as also by the State of Chhattisgarh.

13. We have considered the submissions made by learned counsel F appearing on behalf of the petitioner and the College supporting him but are not inclined to accept them. It is quite clear that the examination CGMAT-2016 was conducted by the College on 3<sup>rd</sup> April, 2016 contrary to the schedule prescribed by the Medical Council of India (and approved by this Court) for holding the MBBS entrance examinations. The question is not of any impropriety in the conduct of the examination but the question is really one of adhering to a particular discipline laid down by the Medical Council of India and approved by this Court.

G 14. Furthermore we find that counseling was carried out insofar as the petitioner is concerned on 19<sup>th</sup> April, 2016 which is after the decision of this Court on 11<sup>th</sup> April, 2016 recalling the decision dated 18<sup>th</sup> July, 2013. There was absolutely no occasion for the College to have conducted the counseling after the recall order passed by this Court on

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11<sup>th</sup> April, 2016. The effect of the recall order, as mentioned above, was that the notification issued by the Medical Council of India on 21<sup>st</sup> December, 2010 effectively stood revived in the sense that NEET was the only option available for admission to the MBBS course. The College and the State of Chhattisgarh ought to have been aware of these facts, but seem to have turned a blind eye not only to the orders of this Court but to the notifications issued by the Medical Council of India.

15. The question before this Court is not who is to be blamed for the present state of affairs - whether it is the students or the College or the State of Chhattisgarh. The question is really whether the rule of law should prevail or not. In our opinion, the answer is unambiguously in the affirmative. The College and the State of Chhattisgarh have not adhered to the law with the result that the petitioner became a victim of circumstances giving him a cause of action to proceed against the College and the State of Chhattisgarh being a victim of their maladministration. The plight of the petitioner is unfortunate but it cannot be helped.

16. We were told during the course of submissions that some similarly placed students participated in NEET and qualified in the examination. Those students like the petitioner who did not participate in NEET and placed their trust only in the College and the State of Chhattisgarh took a gamble and that gamble has unfortunately not succeeded. While our sympathies may be with the petitioner and similarly placed students, we cannot go contrary to the orders passed by this Court from time to time only for their benefit.

17. Under the circumstances, we find no ground has been made out for granting relief to the petitioner. There is no merit in this writ petition and it is accordingly dismissed. However, we make it clear that the petitioner is at liberty to proceed against the College and the State of Chhattisgarh in any appropriate manner.

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18. We find no reason to entertain this petition under Article 32 of the Constitution and it is accordingly dismissed.

19. In view of the order passed in the writ petition the application for impleadment stands disposed of.