

(2014) 4 MLJ 572

Madras High Court

Case No: Writ Petition No's. 23089, 23090 and 28833 of 2013 and connected Mps

E. Reshmi Irene

APPELLANT

Vs

DD Medical College
and DD Hospitals and
Others

D.D.Medical

College and DD

Hospital Vs The

Medical Council of

India, Tamilnadu Dr.

M.G.R. Medical

University and The

Secretary Ministry of

Health and Family

Welfare

RESPONDENT

Date of Decision: Jan. 20, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- General Clauses Act, 1897 - Section 21
- Indian Medical Council Act, 1956 - Section 10A 19 33

Citation: (2014) 4 MLJ 572

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: Nalini Chidambaram, for Mrs. C. Uma in W.P. Nos. 23089, 23090, 27366 and 27367 of 2013, Mr. V. Prakash, for Mr. S. Ashok Kumar in W.P. No. 28833 of 2013, for the Appellant; R. Maheswari SCGSC for Union of India, Mr. V.P. Raman for Medical Council of India, Mr. P.H. Aravindh Pandian A.A.G. Assisted by Mr. Anand David for Dr. M.G.R. Medical University, Mr. A.L. Somayaji, Advocate General Assisted by Mr. D. Krishnakumar, Spl. Govt. Pleader for Tamil Nadu Government, for the Respondent

Judgement

K.K. Sasidharan, J.

The writ petitions in W.P. Nos. 23089, 23090, 27366 and 27367 of 2013 are at the instance of D.D. Medical College MBBS Students Welfare Association and a student of 2011-2012 MBBS Batch and the substantial prayer is to direct the Government of Tamil Nadu to take over D.D. Medical College and to direct the Medical Council of India and Dr. M.G.R. Medical University to recognise the illegal admission made by the management for the years 2011-2012 and 2012-2013. The writ petition in W.P. No. 28833 of 2013 is at the instance of D.D. Medical College and Hospitals and the challenge is to the order dated 14 October 2013 declaring the admission for the years 2011-2012 and 2012-2013 as illegal and permitting the Government of Tamil Nadu to accommodate 150 students of 2010-2011 batch in Government Medical Colleges by creating additional seats, besides debarring and blacklisting the institution permanently from making application for establishment of Medical College in India.

The Conspectus of Facts:

2. The Government of Tamil Nadu issued Essentiality Certificate to D.D. Medical and Educational Trust to establish a medical college at Kunnavalam, Tiruvallur District. The Medical Council of India on the basis of the Essentiality Certificate and after conducting inspection granted permission vide proceedings dated 12 July 2010. The permission was to admit students for the year 2010-2011 with an intake of 150 students. The D.D. Medical College (hereinafter referred to as "the institution") admitted 150 students for the academic year 2010-2011. The application for renewal of permission for the academic year 2011-2012 was rejected. The institution admitted 103 students during the year 2011-2012 without permission from the Medical Council of India (hereinafter referred to as "MCI"). The order passed by the MCI dated 19 May 2011 rejecting the application for renewal of permission was challenged in W.P. No. 13052 of 2011. The writ petition was allowed on the ground of violation of principles of natural justice. The MCI challenged the said order in W.A. No. 1664 of 2011. The institution also challenged the order in W.A. No. 1500 of 2011, in view of the failure to issue a positive direction. The Division Bench while confirming the order passed by the learned Single Judge, directed MCI to conduct fresh inspection. The MCI challenged the said judgment in SLP (Civil) Nos. 27723 and 27724 of 2011 and obtained an interim stay. The Special Leave Petitions are now pending before the Supreme Court.

3. The institution submitted an application for renewal of permission for the year 2012-2013. The MCI refused to issue renewal. However, the institution admitted 150 students for the year 2012-2013 without permission. The writ petition filed by the institution challenging the decision taken by MCI not to grant permission for 2012-2013 was upheld by the learned Single Judge and Division Bench. The SLP filed against the judgment was dismissed by the Supreme Court.

4. The students of 2011-2012 and 2012-2013 batch wanted to regularise the admission made by the institution. The students filed writ petitions in W.P. Nos. 20190 and 20191 of 2013 to direct the Tamil Nadu Dr. M.G.R. Medical University to permit them to write the examination pending disposal of the Special Leave Petitions in SLP Nos. 27723 and 27724 of 2011. The writ petitions were dismissed. The order dated 30 July 2013 was upheld by the Division Bench in W.A. No. 1623 of 2013.

5. The students having found that they were cheated by the institution and the Tamil Nadu Dr. M.G.R. University (hereinafter referred to as "The Medical University") assisted the institution to commit fraud, formed an Association. The Association along with a student of 2011-2012 batch have filed W.P. Nos. 27366 and 27367 2013 for a direction to the State to take over the institution and to direct the MCI to regularise the admission.

6. The MCI in the meantime took action to withdraw the letter of permission and to debar the institution permanently. The MCI finally took a decision to withdraw permission. The institution was blacklisted permanently. The said order is challenged by the institution in W.P. No. 28833 of 2013, alleging mala fides against MCI besides violation of statutory provisions and principles of natural justice.

Submissions of parties:

7. Mrs. Nalini Chidambaram appearing for the students Association petitioner in W.P. Nos. 27366 and 27367 of 2013 and the student petitioner in W.P. Nos. 23089 and 23090 of 2013 made the following submissions:

(i) The State Government Issued the Essentiality Certificate agreeing to take over the institution in case the institution failed to provide facilities as per the MCI Regulations. Since the MCI refused to renew permission on the ground of lack of institutional facilities, the Government of Tamil Nadu is bound to protect the interest of students.

(ii) The Medical University and the Health Minister, who is also the Pro-Chancellor of the University colluded with the management of the Institution and projected a rosy picture about the institution. Since the State and its instrumentalities abetted in the act of cheating by the institution, the State is liable to the students, who were cheated.

(iii) The University while issuing extension of affiliation permitted the institution to admit students by following a transparent procedure. The University was aware of the refusal to grant renewal of permission by the MCI. Still they issued an order to make it appear that the institution was having permission to admit students.

(iv) The institution admitted students by taking substantial capitation fee without statutory permission. The MCI was therefore correct in withdrawing the permission.

(v) The students were not aware of the failure to obtain permission from MCI. Neither the MCI nor the Medical University or State Government made attempts to inform the public

about the actual status of the institution. The students were therefore not having an occasion to suspect the bona fides of the representation made by the institution that they were having valid permission to admit students for 2011-2012 and 2012-2013. The statutory authorities having failed in their duty, must compensate the innocent students by taking over the College and regularising the admission.

(vi) There are no pending proceedings before the Supreme Court with regard to the prayer made in the present writ petition and as such the writ petitions are maintainable before this Court.

8. Thiru V. Prakash, learned Senior Counsel for the institution while attacking the order passed by the MCI dated 14 October 2013 and opposing the prayer to take over the institution submitted the following:

(i) The students for the years 2011-12 and 2012-2013 were admitted on the strength of the consent of affiliation given by the medical University. The University as per its proceedings permitted the institution to admit students. The institution showed those proceedings to the applicants before admission. It is true that there was no renewal of permission from MCI. Since the matter was pending in Court, the institution was under the bona fide belief that permission would be given in the meantime. Therefore there was no intention of cheating.

(ii) Even though the institution forwarded a list of 250 selected students for the year 2011-2012 to the MCI only 103 students were actually admitted for the said academic year. The MCI therefore erred in observing that 250 students were admitted. The relevant materials were therefore not before MCI while taking a decision to withdraw permission on account of alleged unauthorised admission.

(iii) Section 10A of the Indian Medical Council Act, 1956 does not give power to the MCI to withdraw the permission.

(iv) Section 19 of the Indian Medical Council Act deals with withdrawal of recognition. This provision is not applicable to withdrawal of permission. MCI is therefore not legally correct to withdraw the permission.

(v) Before taking a decision to blacklist the institution, notice was not given. The order debarring the institution permanently is liable to be set aside solely on the ground of violation of principles of natural justice.

(vi) The institution preferred complaint against the Secretary, MCI on account of her illegal demand. It was only thereafter, penal actions were taken against the institution. The action taken by MCI is nothing but mala fide exercise of power.

(vii) The inspecting officials of Medical University certified that the institution is having all the required facilities. The MCI was therefore not correct in taking a contra decision to

refuse grant of renewal of permission.

(viii) The MCI has no authority to grant permission to the State to take over students from a private institution and accommodate in Government Medical Colleges.

9. Thiru V.P. Raman, learned Standing Counsel for MCI by placing reliance on various proceedings available on record, made the following submissions:

(i) The institution enrolled students for the years 2011-2012 and 2012-2013 without permission. The MCI was therefore fully justified in taking action to withdraw the permission.

(ii) The institution has forwarded a list of 250 students admitted for the year 2011-2012. Since the select list was forwarded by the institution, they cannot contend later that only 103 students were actually admitted. In any case, entire admission was made without permission.

(iii) The MCI issued show cause notice to the institution and only after following the principles of natural justice, the impugned order dated 14 October 2013 was issued.

(iv) The permission was issued by MCI. Therefore MCI is entitled to withdraw the permission on account of serious illegalities committed by the institution.

10. Thiru Aravind Pandian, learned Additional Advocate General appearing on behalf of the Medical University while making the following submissions made an attempt to show that the Medical University acted only in accordance with the Regulations.

(i) The extension of affiliation was given in the prescribed format. The indication regarding new admission was made in the routine manner and not to assist the institution in its act of cheating.

(ii) The University after obtaining information about the non grant of permission by MCI, intimated the students about the factual position.

(iii) The students cannot be permitted to continue the course in view of their illegal admission. Therefore, it is not possible to regularise the admission.

11. The learned Advocate General initially argued that the writ petition to direct the State to take over a private institution by legislation is not maintainable. According to the Advocate General, the students have joined in an un-approved institution and as such the State cannot be directed either to regularise the admission or to give admission in Government Medical College.

Statement made by Advocate General:

12. The learned Advocate General made a statement on 28 November 2013 that the State is prepared to consider taking over the institution, provided the assets and liabilities are disclosed. The learned Advocate General as an alternative submitted that the State is prepared to comply with the direction, in case the Court directs the State to take over the institution without liability. Discussion:

13. The factual matrix shows that Deen Dayal Medical and Educational Trust, Chennai submitted application for Essentiality Certificate for establishing a Medical College at Kunnavalam, Thiruvallur District. The Government of Tamil Nadu issued an Essentiality Certificate dated 29 August 2008 certifying the following:

(a) The applicant owns and manages a 350 bedded functional Hospital in the campus of the proposed location.

(b) It is desirable to establish a Medical College in the public interest.

(c) Establishment of Medical College at Kunnavalam Post, Tiruvallur Taluk and District by the Chairman, Deen Dayal Medical and Educational Trust, Anna Nagar, Chennai-40 is feasible.

(d) Clinical material available.

Daily outpatients 1220

Daily Inpatients-350

It is further certified that in case the applicant fails to create infrastructure for the Medical College as per Medical Council of India norms, and fresh admissions are stopped by the Central Government, the State Government shall take over the responsibility of students already admitted in the College with the permission of the Central Government."

14. The Government of Tamil Nadu therefore agreed to take over the responsibility of students admitted on the strength of Essentiality Certificate, in case the institution failed to provide the institutional and infrastructural facilities as per MCI norms.

15. The nature and scope of an Essentiality Certificate was indicated by the Supreme Court in [Government of Andhra Pradesh and Another Vs. Medwin Educational Society and Others](#), .

27. Grant of the said certificate in the prescribed form, therefore, emanates from the scheme framed under the parliamentary legislation. The said form is a part of the Regulations which are required to be considered in the light of the parliamentary Acts.

28. By reason of clause 11(d), a responsibility has been cast upon the State Government to give an undertaking that in case the applicant who seeks to establish a medical college, fails to create infrastructure for the medical college as per the norms laid down by

the Council and in the event fresh admissions are stopped by the Central Government, the State Government shall be obligated to take over the responsibility of the students already admitted in the college. Such an undertaking on the part of the State Government is unequivocal and unambiguous.

16. The MCI vide proceedings dated 12 July 2010 granted approval for establishing a new Medical College with an annual intake of 150 students. The institution was specifically informed that permission was granted only for one year with effect from the academic year 2010-2011. while granting permission to admit first batch of students, MCI made it clear that the next batch of students shall not be admitted unless renewal of permission is granted.

17. The Government of Tamil Nadu for reasons best known to it recommended increase in intake from 150 to 250 from the year 2011-2012 even before MCI inspects the institution and to decide whether renewal of permission could be granted. The fresh Essentiality Certificate for 250 students was given on 30 November 2010.

18. The MCI refused to renew permission for the year 2011-2012 vide proceedings dated 19 May 2011. Since the Supreme Court is now seized of the matter relating to the said proceedings, I do not propose to deal with the correctness of the finding, except to record here that the direction given by the Division Bench after setting aside the refusal order is now under stay.

19. The institution notwithstanding the rejection order dated 19 May 2011 admitted 250 students for the year 2011-2012 and forwarded the select list with the names of candidates to the Central Government. The select list dated 4 October 2011 was forwarded to the MCI by Central Government. It was only at that point of time the MCI came to know the illegality committed by the institution and its violation of the conditions of norms and letter of permission.

20. The institution has come up with a contention that they have admitted only 103 students for the year 2011-2012 and it was on the basis of renewal of affiliation by the Medical University.

21. The institution notwithstanding the currency of the order refusing permission for the year 2011-2012 submitted application for renewal of permission for the year 2012-2013.

22. The MCI declined to grant permission for the year 2012-2013 by its proceedings dated 29 June 2012. The said order has become final consequent to the dismissal of legal proceedings initiated by the institution.

23. The refusal of permission or dismissal of writ petition, related Writ Appeal or Special Leave Petitions does not matter much to the management of this institution. The management admitted 150 students for the year 2012-2013 by false representation that it had the statutory approval and forwarded the select list to the Central Government with a

covering letter dated 9 October 2012.

24. The MCI issued notice dated 13 February 2013 to the institution as to why action should not be taken for violating the Indian Medical Council Act and related Regulations. The Institution submitted an explanation to the show cause notice on 27 March 2013.

25. The Board of Governors at its meeting held on 7 May 2013 considered the show cause notice and the explanation given by the institution. The MCI took a decision to request the Central Government to withdraw the letter of permission forthwith.

26. The Central Government considered the proposal made by the MCI for withdrawal of permission. The Central Government vide letter dated 11 June 2013 advised the MCI to take a decision in the matter in view of the legal position that power to grant letter of permission lies with the MCI.

27. The MCI vide its letter dated 21 June 2013 sought further clarification from Government of India.

28. The Central Government vide communication dated 19 July 2013 permitted the MCI to consider the closure of medical College in view of the large scale violations and the related recommendation made by the Government of Tamil Nadu in the larger interest of students.

29. The Central Government vide communication dated 30 July 2013 once again entrusted the matter to the MCI to take appropriate action against the institution.

30. The Board of Governors of MCI at its meeting held on 9 October 2013 considered the entire matter once again and taking into account multiple violations committed by the institution, violation of mandatory norms and fraudulent act of cheating the innocent students, resolved to withdraw the letter of permission and blacklisting the trust permanently for making application for establishing medical college in India.

The issues now arising

31. (a) Whether the State, MCI and Medical University are bound to regularise the illegal admissions made by D.D. Medical College.

(b) Whether the State should be directed to take over the institution.

(c) Whether the State Government is bound to take over the responsibility of students admitted for the years 2011-2012 and 2012-2013 in view of the specific undertaking given in the Essentiality Certificate and the favourable stand taken by the University to help the institution to make illegal admissions.

(d) Whether MCI was correct in withdrawing the letter of permission.

(e) Whether MCI was justified in blacklisting the trust permanently for making application for establishing Medical College.

Discussion regarding specific issues

32. The issue Nos. (a) to (c) are interconnected and as such those issues are taken together for better appreciation of facts and disposal.

33. The background facts give a very clear indication that the Government of Tamil Nadu and the Medical University have shown undue interest to help this institution. The Medical University ably assisted the institution in its attempt to cheat the poor students.

34. The Government of Tamil Nadu in its Essentiality Certificate made a statement that the institution owns and manages 350 bedded functional hospital and that it had 1220 outpatients besides 350 inpatients. The Government as a measure of justification for a new college, observed that a medical college in Thiruvallur District is necessary and as such the request is feasible. The undertaking given by the State Government agreeing to take up the responsibility of students, in case the college fails to provide facilities, must be seen in this factual ground. In case there are materials to suggest that the State or its instrumentalities assisted the institution to make illegal admissions without providing facilities to the satisfaction of MCI, such admissions also would come under the ambit of the undertaking given by the State to take over students.

35. The undue interest shown by the State and University is apparent on the face of record. Even before the satisfactory completion of the first academic year (2010-2011) the State Government issued a fresh Essentiality Certificate to increase the intake from 150 to 250. This was done even before conducting inspection by the MCI.

36. The Medical University without any concern for the future of students (illegally admitted for the year 2011-2012), caused inspection of the institution for grant of continuation of provisional affiliation for the year 2012-2013. The Committee deputed by the University in its report certified that the College satisfied the MCI norms and recommended continuation of affiliation for the year 2012-2013. The concluding paragraph of the report reads thus:

The above institution has fulfilled the Medical Council of India norms and the University norms with reference to the buildings, equipments, infrastructure facilities, staff members, clinical, non clinical and Para medical, all the parameters fixed by the MCI & University norms and functioning successfully, Inspection of the above Medical College has been physically, jointly carried by us and other member along with verification of teaching faculties for teaching, non teaching and other staff with buildings, infrastructures facilities and medical equipments, and other required documents for the DD Medical College and DD Hospital.

Hence, we recommended for continuation/Provisional Affiliation for continuing/starting 3rd year M.B.B.S., Degree course with 150 seats in the year of 2012-2013 and also for 250 admission last year. MCI conducted inspection and recommended (copy of MCI Report enclosed) based on we verified physically infrastructures facilities with reference buildings, equipments, 1200 bedded hospital, staff members, clinical and non clinical fulfill the MCI, University Norms and we recommended consent of affiliation for the academic year 2012-2013 onwards for DD Medical College and DD Hospital, Tiruvallur Dt., Chennai 631 210.

37. The report submitted by the inspecting team was accepted by the University without any reservation. Therefore it is clear that the University was in favour of admitting students for the year 2012-2013 by the institution.

38. The University was eager to help the institution in its attempt to make easy money and it is evident by the fact that provisional affiliation for the years 2011-2012 and 2012-2013 were given on the very same day viz., 30 May 2012. The University has worded the order granting provisional affiliation in such a way that it would appear as if the Medical College had statutory permission to admit students. The following recital in the provisional affiliation order would reveal this.

Name of institution/college

The name of the course

Continuation of provisional affiliation granted for academic year 2011-2012

Intake of students

D.D. Medical College & Hospital, No. 7, D.D. Nagar, Kunnavalam Post,
Thiruvallur Taluk & District, Chennai-631 210.

MBBS Degree Course

1. The first batch of students admitted in 2010-2011 can continue their course of study.

150 (One hundred and fifty only)

2. The rule of reservation of the Government of Tamil Nadu shall be adopted for admission.

3. The admission procedure of the Government as per the scheme of admission enunciated by the Supreme Court of India should be followed.

4. Any other condition, which the University considers necessary to impose from time to time.

39. The learned Senior Counsel for the institution on instructions submitted that the order dated 30 May 2012 was used by the College for making admission for the year 2012-2013. This would clearly prove the collusion between the State University and the

private institution to cheat the innocent students.

40. The letter sent by the University to MCI dated 15 September 2012, on behalf of the Minister for Health, Government of Tamil Nadu (who is also the Pro-Chancellor of Medical University) and the Vice Chancellor shows the continuous effort taken by the State to promote the vested interest of the institution. The letter reads thus:

THE TAMIL NADU DR. MGR MEDICAL UNIVERSITY, CHENNAI

69, ANNA SALAI, GUINDY, CHENNAI-600 032.

Website: www.tnmgrmu.ac.in 22353574, 22353576-79, 22301760-63, 22353093-94

Email: tnmgrmu@gmail.com

Fax: 91-44-22353698

R.K. SIVASANGEETHA, MD
REGISTRAR (FAC)

15.09.2012

To
The Secretary
Medical Council of India
Dwaraka
New Delhi.

Respected Sir,

The undersigned was directed by the Pro-Chancellor (Health Minister of Tamil Nadu) and the Vice-Chancellor to appraise the view of the State and the University before your good office with regard to the approval by Medical Council of India in respect of DD Medical College & DD Hospital, Chennai, Tamil Nadu for the academic year 2012-2013.

In continuation of our earlier letter dated 11.09.12, we wish to submit that the college was having the infrastructure on the higher side than what is required during our inspection for the academic year 2012-2013 and on that the Continuous Provisional Affiliation was granted. The Inspection Report of the MCI has also not mentioned about the infrastructure deficiencies only certain comments were made in the report which has been taken note of by MCI which is not in the norms. Even the inspection report of the MCI for the academic year 2011-2012 did not mention about any deficiency but the renewal permission by the MCI has not been given so far for some other allegations, but the RTI reply of the MCI says that there is no complaint for the said allegations and the matter for 250 admission is pending in the Hon"ble Supreme Court for the academic year 2011-2012.

The private entrepreneurs are not coming forward to establish medical institutions with the Government and there is no new medical college established in the State during the past two years. The present day the Society requires fast developing health care system and the patient doctor ratio is very less in our country and particularly in the State. The College is likely to come up as a renowned medical institution in the State with a vision to establish 141 departments with nearly 6000 crores investment as per the prospect report of the college.

The DD Medical College and DD Hospital, Chennai has got adequate infrastructural facilities than the required norms as per MCI inspection report. The college if allowed will become one of the best medical college and hospital in Asia and in Tamil Nadu State with state of art technology in the Medical Field. The said college is prepared to rectify the deficiencies that are pointed out by the MCI within a reasonable time.

Hence, it is requested on behalf of the University and the State that any conditional approval may be given to the said college for the academic year 2012-2013 by the MCI in this regard.

Thanking you,

yours sincerely,

Sd/-REGISTRAR (FAC)

41. The fact that the Minister for Health wanted the University to take up the issue on behalf of the institution indicates the unholy alliance.

42. The University never took any action to inform the public and students till 11 February 2013 about the actual position and the ineligibility of the institution to make new admissions.

43. Since these basic materials were not available with this Court earlier, observation was made in W.P. Nos. 20190 and 20191 of 2013 that the students should have exercised reasonable care. It was only in the present litigation, voluminous documents were produced to show the active role played by the State University to help the institution to make illegal admissions.

44. The petitioner in W.P. No. 23089 of 2013 made a statement on oath that even as on the date of signing the affidavit filed in support of the writ petition, the website of the University has posted the information that application forms can be down loaded for the failed candidates of 2011-2012 and 2012-2013 batch of D.D. Medical College to write the first year examination on 1 August 2013. This statement has not been specifically denied by the University. This also shows the part played by the University to help the institution. The above materials justified the stand taken by the students that they were misled by the information provided by the University with regard to the status of the institution and the statement regarding admission made in the order of affiliation for the year 2011-2012 and

2012-2013.

45. The Supreme Court in [Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others](#), held that a party who has, acting in reliance on a promise or representation made by the Government, altered his position, is entitled to enforce the promise or the representation against the Government, even though the promise or representation is not in the form of a formal contract.

46. The Supreme Court in [Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another](#), observed that, "Public bodies are as much bound as private individuals to carry out representation of facts and promises made by them, relying on which other persons have altered their position to their prejudice."

47. The representation given by the instrumentalities of the Government would equally bind the Government, more on account of the fact that the Minister in his capacity as the pro-chancellor was also a party to the representation.

48. The Secretary to Government, Health Department, Government of Tami Nadu by D.O. letters dated 3 June 2013, 3 July 2013 and 30 August 2013 expressed the willingness of the State Government to take over the institution or in the alternative to permit the 2010-2011 students to be admitted in Government Medical Colleges. There is a reference in those letters about the undertaking given in the Essentiality Certificate with regard to re-deployment of students. This would make the position clear that the State is agreeable to take over the institution and the students.

49. The students referred to in the Essentiality Certificate would include those admitted illegally by the institution with the assistance of the State and its University, the only exception being that the illegally admitted students cannot direct the MCI to regularise the admission by permitting to continue the study.

50. The State now wanted this Court to give permission to take over the institution. The State is the best Judge to take a decision in a matter of this nature. The jurisdiction under Article 226 is not an advisory jurisdiction to advise the State in the matter of administration. It is for the State to take a policy decision in larger public interest.

51. The Court is concerned only with the future of the students of 2011-2012 and 2012-2013 batch.

52. There is no question of directing the MCI to regularise the admission and the State to take over the students, so as to enable the students to complete the course in Government Medical Colleges. The attempt of Court in a case of this nature should be to protect the interest of students without flouting the statutory provisions and norms prescribed by statutory bodies like MCI.

53. The State has already initiated action to transfer the students of 2010-2011 batch to various Government Medical Colleges. The MCI permitted the State to increase seats with a view to accommodate the students. This process has already been completed. The request made by the State to take over the institution is pending before the MCI.

54. According to MCI, the institution has no infrastructural and institutional facilities to seek extension of permission for the years 2011-2012 and 2012-2013. The statutory inspection was conducted long back. Nothing prevented the MCI from issuing a notification or informing the State Government and University to give a warning to the students not to join the institution in question. It is a matter of record that only on 13 January 2013 the MCI informed the State Government and University that admissions were made without permission and the illegal admission would not be recognised. The MCI wanted the State and University to inform the students that their admission is illegal. The MCI called upon the State to take action against the institution for cheating and misrepresenting the students. The University thereafter issued a public notice by way of press release dated 18 January 2013 informing the public and students that the institution has no statutory permission. Therefore, it is clear that the statutory authorities have all failed to act swiftly, resulting in making illegal admission by the institution.

55. The MCI violated its own Regulations by not intimating the State and University with regard to the status of the institution before the commencement of relevant academic year.

56. Regulation 4 of Medical Council of India (Criteria for Identification of Students Admitted in Excess of Admission Capacity of Medical Colleges) Regulations, 1997 reads thus:

4. Sanctioned intake capacity in medical college:-The Council shall every year, prior to the start of undergraduate/postgraduate academic medical course, intimate the medical colleges and State/Union Territory Governments, the sanctioned intake capacity of the students for undergraduate/postgraduate courses in medical colleges.

57. The MCI has no case that they have complied with Regulation 4. Therefore the MCI also failed to discharge its statutory obligation by preventing the institution from making illegal admission for the years 2011-2012 and 2012-2013. Since the institution admitted students during the year 2011-2012 without permission, the MCI should have been vigilant to see that no such illegal admission is made during the year 2012-2013.

58. The students have lost valuable time on account of the illegal action taken by a greedy management of a medical college. The Government of Tamil Nadu till 2010 considered this institution as an adopted child and tried its level best to nurture it in all the possible ways. The State and its instrumentality aided the institution directly and indirectly to cheat the students. There is no point in punishing the students in view of the fact that they are victims of circumstances. The students appear to have been carried away by the

misrepresentation made by the management on the basis of the affiliation given by the University. The students of 2011-2012 batch lost three valuable years. Similarly, the students of 2012-2013 lost two years by now. The question therefore is how to remedy the situation. The State and statutory bodies were all at fault in this matter. The students have already been punished for their fault in taking admission in an institution without conducting thorough enquiry. The students in these cases appear to be from the middle class. The learned Senior Counsel for students submitted that many of the parents have mortgaged their property to pay the capitation fees and tuition fees.

59. The State having taken the responsibility of accommodating the students of 2010-2011 batch in Government Medical Colleges should have shown the very indulgence to the students of 2011-2012 and 2012-2013 batch. This is more so on account of the passive and active support given by the State and its University to the institution in its attempt to make illegal admission. As stated earlier, the undertaking given by the State in the Essentiality Certificate to accommodate the students would cover the cases of even students who were admitted without statutory approval and with the direct and indirect assistance given by the instrumentalities of State.

60. The Court would not be justified in directing the State to take over the private medical colleges. Such decision could be taken by the State by taking a policy decision. The permission of the Court is not necessary for the State to take a decision in public interest.

61. The action to take over the College would not help the students of 2011-2012 and 2012-2013 batch. They have to wait till the policy is translated into action and the resultant legal proceedings are over. By the time the students would complete the maximum age prescribed for medical admission. Therefore, I am of the view that a workable solution should be arrived at in the matter, by balancing the equities.

62. The Supreme Court in [State of Maharashtra and Others Vs. Prabhu](#), considered the scope of equity jurisdiction of High Court under Article 226 of the Constitution of India and observed thus:-

It is the responsibility of the High Court as custodian of the Constitution to maintain the social balance by interfering where necessary for sake of justice and refusing to interfere where it is against the social interest and public good.

63. The Supreme Court in [Ritesh Tewari and Another Vs. State of U.P. and Others](#), indicated the discretionary jurisdiction of High Court under Article 226 in the following words:-

26. The power under Article 226 of the Constitution is discretionary and supervisory in nature. It is not issued merely because it is lawful to do so. The extraordinary power in the writ jurisdiction does not exist to set right mere errors of law which do not occasion any substantial injustice. A writ can be issued only in case of a grave miscarriage of justice or where there has been a flagrant violation of law. The writ court has not only to protect a

person from being subjected to a violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the court. However, being that the power is discretionary, the court has to balance competing interests, keeping in mind that the interests of justice and public interest coalesce generally. A court of equity, when exercising its equitable jurisdiction must act so as to prevent perpetration of a legal fraud and promote good faith and equity. An order in equity is one which is equitable to all the parties concerned. The petition can be entertained only after being fully satisfied about the factual statements and not in a casual and cavalier manner.

64. The scope of a proceeding under Article 226 of the Constitution of India was indicated by the Supreme Court in [RBF Rig Corporation, Mumbai Vs. The Commissioner of Customs \(Imports\), Mumbai](#), :

19. Article 226 of the Constitution confers powers on the High Court to issue certain writs for the enforcement of fundamental rights conferred by Part III of the Constitution or for any other purpose. The question, whether any particular relief should be granted under Article 226 of the Constitution, depends on the facts of each case. The guiding principle in all cases is promotion of justice and prevention of injustice.

65. The next question is whether a mandamus at the first instance should be issued to direct the State Government and MCI to consider the case of the students. Since the next academic year is fast approaching and in view of the peculiar facts and background of this litigation, I consider it deem and fit to issue a positive direction.

66. The Supreme Court in [Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another](#), made it clear that in appropriate cases it is open to the High Court to issue a positive direction instead of directing consideration by the authorities.

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority

should have passed or given had it properly and lawfully exercised its discretion.

67. The students of 2010-2011 batch are now undergoing their fourth year study in Government medical Colleges. Though the students of 2011-2012 and 2012-2013 are not entitled to pursue their course by continuing the course by giving due weight to the academic year in which they were admitted, still they are entitled to seek new admission during the next academic year. The State is bound to accommodate these students in Government Medical Colleges during the ensuing academic year.

W.P. No. 28833 of 2013

68. The management of D.D. Medical College challenges the decision taken by the MCI to revoke the letter of permission and blacklisting the trust permanently from applying for establishing Medical College in India.

69. The challenge is primarily on the ground of lack of jurisdiction and violation of the principles of natural justice.

Position of MCI and its authority to withdraw permission:

70. The Parliament have enacted the Indian Medical Council Act, 1956 to constitute MCI as the Apex Body to monitor the Medical Profession. The MCI was given responsibility to ensure that only those institutes which fulfill the eligibility criteria are permitted to open new Medical Colleges. Section 10A of the Indian Medical Council Act deals with permission for establishment of new Medical Colleges or new course of study. The previous permission of the Central Government is required to establish a new Medical College. The Central Government have to act in accordance with the recommendation given by the Medical Council of India. The Central Government cannot overrule the report submitted by the expert body.

71. The Medical Council of India in exercise of powers conferred u/s 10A read with Section 33 of the Indian Medical Council Act framed the Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993.

72. The Scheme of 1993 Regulation clearly shows the task assigned to MCI. The permission would be given initially for a period of one year. It would be renewed every year upto five years, subject to fulfilment of norms. The norms would be different for the subsequent years. It is only when the College satisfactorily complied with all the norms for five years, it would be eligible for permanent recognition.

73. The permission to establish the Medical College in question was issued by MCI. The MCI acted as the delegatee of Central Government. The MCI having found that the institution indulged in illegal activities, by admitting students for the years 2011-2012 and 2012-2013 even after rejecting the application for renewal of permission for the year

2011-2012, has withdrawn the permission. The MCI having issued the permission was equally entitled to withdraw it. Section 21 of the General Clauses Act, 1897 provides that power to issue would include power to rescind. Therefore, I reject the contention taken by the institution regarding the authority of MCI to withdraw the permission.

The legality and correctness of the order of withdrawal:

74. The next issue relates to the correctness of the decision taken by MCI to withdraw the permission.

75. The MCI issued permission to the trust to establish a new Medical College, with effect from the academic year 2010-2011. The MCI made it clear in its proceedings dated 12 July 2010 that only one batch of students should be admitted on the strength of the letter of permission. The relevant application should be given before the commencement of next academic session. The application for renewal was rejected by MCI. Even then the institution unilaterally admitted 250 students for the year 2011-2012 and forwarded a list of such selected candidates to the Central Government and MCI. Similarly application for renewal of permission for year 2012-2013 was also rejected and even then the institution admitted 150 students, and forwarded the list to the MCI.

76. The institution at all point of time behaved in a manner unbecoming of an educational institution. The institution by admitting students without permission and in violation of the Indian Medical Council Act and related Regulations waged a war against the established system and the Rule of law.

77. The admission was not only for the year 2011-2012. Even after the MCI refused to grant permission for 2011-2012, the institution admitted students for the next academic year. The poor students were cheated by misrepresenting the factual position.

78. The MCI before withdrawing permission issued a notice dated 13 February 2013 to the institution to show cause as to why action should not be taken for making illegal admission. The institution submitted a reply dated 27 March 2013 admitting the factual position regarding illegal admission for the year 2011-2012 and 2012-2013. It was only after considering the reply and having found that the institution violated the mandatory condition prescribed in the letter of permission, and the provisions of Act 102 of 1956 and the Regulations, the MCI passed the impugned order withdrawing permission. The MCI has followed the principles of natural justice before passing the order withdrawing permission.

79. In [Manohar Lal Sharma Vs. M.C.I. and Others](#), , in the context of the power of MCI to grant permission, the Supreme Court observed:

19. MCI, while deciding to grant permission or not to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority. Rigid rules of natural justice are, therefore, not contemplated or envisaged.

80. The concern of the Supreme Court with regard to the unethical procedure adopted by the Medical College was indicated in [Rohilkhand Medical College and Hospital, Bareilly Vs. Medical Council of India and Another, .](#)

38. We think, this is an apt occasion to ponder over whether we have achieved the desired goals, eloquently highlighted by the Constitution Bench judgments of this Court in [T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others,](#) and [P.A. Inamdar and Others Vs. State of Maharashtra and Others,](#) . TMA Pai Foundation case (supra) has stated that there is nothing wrong if the entrance test being held by self financial institutions or by a group of institutions but the entrance test they conduct should satisfy the triple test of being fair, transparent and not exploitative. TMA Pai Foundation (supra) and Inamdar (supra) repeatedly stated that the object of establishing an educational institution is not to make profit and imparting education is charitable in nature. Court has repeatedly said that the common entrance test conducted by private educational institutions must be one enjoined to ensure the fulfillment of twin object of transparency and merits and no capitation fee be charged and there should not be profiteering. Facts, however, give contrary picture. In Inamdar, this Court, in categorical terms, has declared that no capitation fee be permitted to be charged and no seat can be permitted to be appropriated by payment of capitation fee.

40. Mushrooming of large number of medical, engineering, nursing and pharmaceutical colleges, which has definitely affected the quality of education in this country, especially in the medical field which call for serious introspection. Private medical educational institutions are always demanding more number of seats in their colleges even though many of them have no sufficient infrastructural facilities, clinical materials, faculty members, etc. Reports appear in every now and then that many of the private institutions which are conducting medical colleges are demanding lakhs and sometimes crores of rupees for MBBS and for post-graduate admission in their respective colleges. Recently, it is reported that few MBBS seats were sold in private colleges of Chennai. We cannot lose sight of the fact that these things are happening in our country irrespective of the constitutional pronouncements by this Court in TMA Pai Foundation that there shall not be any profiteering or acceptance of capitation fee etc. Central Government, Ministry of Health and Family Welfare, Central Bureau of Investigation or the Intelligence Wing have to take effective steps to undo such unethical practices or else self-financing institutions will turn to be students financing institutions.

41. We notice that the current policy of the Central Government in the higher education is to provide autonomy of institutions, but adoption of unfair practices is a serious violation of the law. Few States, like Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra, Kerala, Delhi etc. have passed some legislation to prohibit demand/collection of capitation fee which have no teeth, the institutions who indulges in such practices can get away by paying some fine, which is meager.

42. We, therefore, emphasise the extreme necessity of a Parliamentary Legislation for curbing these unfair practices, which is the demand of our society. The Prohibition of Unfair Practices in Technical Educational Institutions, Medical Educational Institutions and University Bill, 2010 has already been presented to both the Houses of Parliament. It is reported that the States have welcomed such a legislation, but no further follow up action has been taken. We are confident, earnest efforts would be made to bring in proper legislation, so that unethical and unfair practices prevalent in higher technical and medical institutions can be effectively curbed in the larger public interest.

Conclusion with regard to withdrawal of permission:

81. The MCI considered all the vital aspects before withdrawing the letter of permission. When it is made out that the institution has violated the law of the land and cheated the innocent students, the MCI was correct in withdrawing the permission. I therefore hold that the MCI was justified in withdrawing the letter of permission.

Legality of the order blacklisting the Trust:

82. The MCI after withdrawing the permission passed a further order debarring and blacklisting D.D. Medical Educational Trust and its Trustees permanently from making any application for establishment of Medical Colleges in India.

83. There is no dispute that the show cause notice issued to the institution was not for blacklisting the trust. It was only to take action consequent to the violation of the terms and conditions of the letter of permission, besides the provisions of Indian Medical Council Act and Regulations. The show cause notice nowhere stated that the MCI contemplated to take action to debar and blacklist the Trust.

84. The decision to withdraw the letter of permission on account of the violation of a mandatory condition was a consequential action. However that is not the case of blacklisting the trust. The order blacklisting the trust would involve serious civil consequences to the trust and its members. The MCI should have issued a separate show cause notice to the trust and trustees with regard to the proposed action to blacklist the trust and debarring it from making application for establishment of Medical Colleges in India.

85. The Supreme Court in [Kulja Industries Limited Vs. Chief Gen. Manager W.T. Proj. BSNL and Others.](#) while examining the order blacklisting a contractor indicted the need for a prior hearing.

17. That apart the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to

enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.

86. The show cause notice dated 13 February 2013 was for a different purpose. It was issued only to the Dean of the College. The notice was not issued to the Trust or its members. The MCI violated the principles of natural justice by blacklisting the institution without issuing a specific prior notice. I am therefore inclined to set aside the order dated 14 October, 2013 insofar as the blacklisting part alone is concerned.

Direction:

87. The Medical Council of India and State of Tami Nadu are directed to give admission to the students of 2011-2012 and 2012-2013 batch of D.D. Medical College during the ensuing academic year. The MCI is further directed to issue appropriate orders in the line of earlier order dated 14 October 2013 permitting the State Government to accommodate all the students of 2011-2012 and 2012-2013 batch in 19 Government Colleges in the State of Tamil Nadu, so as to enable the students to join the first year M.B.B.S. Course during the academic year 2014-2015. This should be done as a one time increase to accommodate the students of DD Medical College for the years 2011-2012 and 2012-2013. The allotment of seats to the students should be made by the State in the same manner in which students of 2010-2011 batch were admitted pursuant to the decision taken by the Board of Governors at its meeting held on 9 October 2013 and indicated in the proceedings dated 14 October 2013. The MCI is directed to permit the State Government to create the required additional seats in Government Medical Colleges for the year 2014-2015 and distribute the students of 2011-2012 and 2012-2013 batch proportionately in those medical colleges either on the basis of merit or choice of students as done earlier. These students would be treated as fresh batch commencing from the academic year 2014-2015. There would not be any other right to the students on account of their earlier illegal admission or the public examination undertaken by them. The proceedings regarding the increase of seats and accommodating the students in Government institutions must be issued by MCI and the Government of Tamil Nadu as early as possible and in any case on or before 28 February 2014.

Disposition:

88. The impugned order dated 14 October 2013 is upheld insofar as the direction regarding accommodating the students of 2010-2011 batch in Government Colleges and withdrawing the letter of permission are concerned. The order dated 14 October 2013 insofar as the decision of the MCI to debar and blacklist the trust and trustees from making application u/s 10A of the Act to establish Medical College in India henceforth is set aside and the said issue is remitted to MCI for fresh consideration. It is open to the MCI to take a decision in the matter (regarding debarring and blacklisting) after issuing notice to the Trust and its Trustees and giving them a reasonable opportunity to submit explanation.

89. The writ petition in W.P. Nos. 23089, 23090, 27366, 27367 of 2013 are allowed as indicated above. The writ petition filed by D.D. Medical College and Hospitals in W.P. No. 28833 of 2013 is allowed in part as indicated above. Consequently, the connected miscellaneous petitions are closed. No costs.

Concluding Remarks:

The State and its instrumentalities, and statutory authorities like Medical Council of India must rise to the occasion to prevent recurrence of this kind of cheating by educational institutions. The authorities well before commencement of academic year and new admissions, must publish the list of eligible professional institutions and its sanctioned intake. This would enable the students to check the status of professional colleges before seeking admission. The management of the professional institutions must change their mind set. They should not spoil the future of innocent students. In case all the stake holders in the field of higher education join together and resolve to put an end to the unethical and unfair practices prevalent now, in the sphere of technical and medical education, the Society as a whole would be benefited. It would also reduce the burden of courts considerably.