CASE NO.:
Appeal (civil) 8485 of 2001
Appeal (civil) 8486-8488 of 2001

PETITIONER:
K. S. BHOIR

Vs.

RESPONDENT:
STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 12/12/2001

BENCH:
V.N. Khare & B.N. Agrawal

JUDGMENT:

V. N. KHARE, J.

Leave granted.

This group of appeals gives rise to following two questions for our decisions :

1) Whether, in view of an extraordinary situation having arisen, the Central Government was justified in rejecting the request of the State Government to grant one time increase in admission capacity in Medicine (MBBS) and Dentistry (BDS) courses run in various medical colleges located within the State of Maharashtra.

2) Whether, in view of the facts and circumstances of the case, the High Court in exercise of its power under Article 226 of the Constitution ought to have issued directions to the Central Government to grant one time increase in admission capacity in Medicine (MBBS) and Dentistry (BDS) courses undertaken by various medical colleges (government run as well as private management run colleges) in the State of Maharashtra.

The aforesaid questions have arisen in the context of the facts and circumstances stated hereinafter. On 29.4.2001, the Maharashtra Health Sciences Common Entrance Test (hereinafter referred to as MH-CET 2001) was conducted for health sciences courses such as Medicine (MBBS), Dentistry (BDS), Ayurved (BAMS), Homeopathy (BHMS), Unani Medicine (MUMS), Physio Therapy (BPTH), Occupational Therapy, Audio and Speech Therapy (BASLP) and Prosthetics and Orthotics (BP & O). In the said examination about 67,563 students appeared throughout the State of Maharashtra. With a view to see that there is no chance for any unfair means, the question papers were prepared in four versions and they were marked as versions 11, 12, 33 and 44. The questions in all the versions were the same. But there was a change in their order. Thus, the students answering the examination were given papers of different versions one after another i.e. version 11, 22, 33, and 44 and thereafter version 11, 22, 33 and 44 and so on which would have made copying or use of unfair means very difficult. The result of the said examination was declared on 17.5.2001. On the basis of the result of the said examination a merit list was prepared for

purposes of admission in various colleges. Those who were higher in merit were given admission in colleges of their choice and adjusted against free seats. In other words, admissions against free seat and payment seat in various courses and disciplines were made according to the merit list. Many selected students on the basis of the said merit list took admission in various medical colleges and seats meant for Medicine and Dentistry were particularly filled up. After the result was declared, the writ petitioners in writ petition No. 1658/2000 before the High Court found that they have received lesser marks in biology paper answered by them than their expectations. The writ petitioners before the High Court suspected that there was obviously some error in the evaluation of biology paper in the MH-CET 2001. Some newspapers printed and published from Mumbai also reported that some mistakes have occurred in the process of computerization in the master copy for answer paper in version 33. It is under such circumstances, the writ petitioners filed a petition under Article 226 of the Constitution praying for re-valuation of biology paper of the said examination. After filing of the writ petition, the State Government got a re-verification of answer sheets carried out by six Examiners. The Examiners reported that there were mistakes/errors in the model key answer sheet of version 33 in the subject of biology. In view of the aforesaid mistake and error, the respondents decided to reevaluate all the answer sheets of version 33. After revaluation of the answer sheets of version 33 the directorate prepared revised merit list showing the correct ranking of the students in the light of re-verification and undertook the entire admission process afresh in respect of all the candidates, including those who have already been admitted. In view of the aforesaid decision by the State Government, the writ petitioners before the High Court got the writ petition amended and sought directions to the respondents to publish and implement the revised merit list and grant admission to them in the colleges of their choice in accordance with their respective position in the revised merit list. The said amendment was allowed.

The consequences of the preparation of the revised merit list were that at least 350 students from version 33 who ought to have been admitted in Medicine and Dentistry at the first instance but for the wrong evaluation of their answer sheets were denied admissions were to displace the students already admitted in Medicine and Dentistry and other courses. The displaced students were to be sent downwards and adjusted against seats in various other Medical Colleges or other disciplines as per their ranking in the revised merit list. In fact, an extraordinary situation arose due to mistake at the hands of the paper setters and examiners. Under such circumstances, to meet such an extra-ordinary situation, the State Government wrote to the Central Government for grant of one time increase in admission seats in the MBBS and BDS courses in various medical colleges in the State of Maharashtra, but the same was refused by the Central Government on account of non-compliance of the provisions of Section 10A and the regulations. In that view of the matter, the High Court, in order to meet the extraordinary situation, by the impugned judgment while allowing the writ petitions, issued several directions to accommodate those students who were already admitted on the basis of first merit list in various courses and dislodged by the revised merit list.

Aggrieved, the students who were displaced due to revised merit list having prepared and others have filed these appeals.

Shri T.R. Andhyarujina, learned senior counsel, appearing for the appellants referred to certain passages of the impugned judgment which we shall advert slightly later and, on the strength of the said passages argued that in view of the extraordinary situation having arisen, it was incumbent upon the Central government to have granted one time increase in admissions in Medicine (MBBS) and Dentistry (BDS) courses in various medical colleges in the State of Maharashtra. His further argument is that provisions of Section 10-A of the Act apply only to such a situation where medical colleges apply for regular and permanent admissions capacity.

According to the learned counsel, there being no provision to comply with the requirement for grant of one time increase in admission capacity in various medical colleges, in the interest of the students who have suffered for no fault of their own in a particular year, the Central Government acted illegally in refusing to grant permission for one time increase in admissions capacity in various Medical Colleges. He also argued that in any case, the High Court, in view of an extraordinary situation having arisen, as noticed by it, ought to have issued directions to the Central Government to grant one time increase in admission capacity in Medicine (MBBS) and Dentistry (BDS) courses in various colleges in the State of Maharashtra.

Learned counsel, appearing for the Central Government and Medical Council of India argued that the view taken by the Central Government while refusing to grant one time increase in admission capacity in Medicine (MBBS) and Dentistry (BDS) courses was fully justified and was in accordance with law. It was also argued that the High Court acted within the parameter of law while refusing to issue writ of mandamus to the Central government to increase one time admission capacity in Medicine (MBBS) and Dentistry (BDS) courses.

Coming to the first question, since long time past, establishing of a medical college and medical education therein are governed by the Indian Medical Council Act, 1956 (hereinafter referred to as the Act ) and Dentist Act, 1948. Despite there being such provisions, it was experienced that large number of persons and institutions established medical colleges without providing therein the minimum necessary and proportionate infrastructure i.e. teaching and other facilities required for them. As a result it was found that there was sharp decline in the maintenance of higher standard of medical education. In order to put check on unregulated mushroom growth of medical colleges and maintain high standard of medical education, it was thought to bring more stringent provisions in the Act. With the aforesaid view of the matter, in the year 1993, Sections 10A, 10B and 10C were inserted in the Medical Council Act by amending Act 31/93. Similarly, the provisions of Sections 10A, 10B and 10C were also incorporated in the Dentists Act, 1948. Sub-section (1) of Section 10A of the Act provides that no person shall establish a medical college or no medical college shall open a new or higher course of study or training or increase its admission capacity in any course of study or training except with the previous permission of the Central Government obtained in accordance with the provisions of the Act. Sub-section (2) thereof provides that every person or medical college desirous of opening a medical college or increase its admission capacity in any course of study or training, including a post graduate course of study or training shall submit to the Central Government a scheme prepared in accordance with the provisions of the Act and the Central government shall refer the said scheme to the Medical Council for its recommendation. Sub-section (3) of Section 10A further provides that on receipt of such a scheme by the Council, it may obtain such other particulars, as may be considered necessary and consider the said scheme having regard to the factor referred to in sub-section (7) of Section 10-A of the Act and send its recommendations to the Central Government. Under sub-section (4) of Section 10A, the Central government, on receipt of the recommendation of the Medical Council is empowered to either approve or disapprove the scheme. It may grant or refuse permission to open a medical college or increase its admission capacity. If it is found that the scheme is not in conformity with the provisions of the Act and regulations framed thereunder, it may refuse to accord permission to increase the admission capacity in any course of study or training. Section 33 of the Act empowers the Medical Council to make regulations for carrying out the purposes of the Act. The Medical Council, in exercise of power conferred by Section 33 read with Section 10A of the Act, has framed regulations known as 'Establishment of New Medical Colleges, Opening of Higher Courses of Study and Increase of Admission Capacity in Medical Colleges Regulation, 1993' (hereafter referred to as the 'regulations'). The said regulation provides for eligibility criteria to be complied with even for making an application and part of the said regulations deal with the requirements to be

complied with when any medical college applies for increase in admission capacity in the college. A perusal of the provisions of Section 10A read with regulations shows that it is mandatory on the part of the institution or management desirous of increasing its admission capacity in any course of study to submit a scheme complying with the provisions of sub-section (7) of Section 10A and the requirements envisages under the regulations. If any of the infrastructure facilities, as required either under sub-section (7) or under the regulations are absent, it is open to the Central Government to refuse permission for increase in the admission capacity in any course of study in a medical college. The object of compliance of requirements mentioned in sub-section (7) of Section 10A and the regulation is to ensure the maintenance of highest standard of education. In Medical Council of India vs. State of Karnataka and others 1998 (6) SCC 131 and Dr. Preeti Srivastava and another etc. vs. State of Madhya Pradesh and others etc. 1999 (7) SCC 120, it was held that the regulations framed by the Medical Council under Section 33 of the Act are mandatory. In Medical Council of India vs. State of Kartanaka (supra), while dealing with the admission made in excess of intake capacity fixed by the Council, this Court observed thus:

" .A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study."

The compliance of the requirements under the Act and the regulations being mandatory, in the absence of its compliance, no permission can be granted by the Central Government for increase in admission capacity in any course in any medical college. In the present case, the State Government sought one time increase in admission capacity in various medical colleges on the premise that medical colleges possessed all the facilities. This was not sufficient. What was required, was that medical colleges desirous of one time increase in admission capacity should have submitted a scheme prepared in accordance with the Act and the regulation to the Central Government. No such scheme was submitted to the Central Government and medical council has no occasion to verify the sufficiency of the facilities and other requirements. There being no compliance of requirements under the Act, the Central Government was justified in refusing the permission for one time increase in the admission capacity in the medical colleges. We do not, therefore, find any infirmity in the order of the Central Government when it refused to grant permission to the State Government to have one time increase in admission capacity in Medicine and Dentistry in various medical colleges located in the State of Maharashtra.

It was then urged by the learned counsel appearing for the appellants that the provisions of Section 10A do not prohibit the possibility of one time enhancement of intake capacity for admission to medical colleges and, thus, permission ought to have been granted by the Central government for such a one time enhancement or creation of additional number of seats beyond 150 in view of extraordinary situation and the refusal on the part of the Central Government to grant such permission was erroneous. It was also argued that sub-sections (1) to (5) of Section 10A being merely procedural, sub-section (7) of Section 10A providing for factors to be taken into consideration for an increase in the admission capacity in a medical college has an overriding effect on the procedural provisions of sub-sections (1) to

(5) and, therefore, the Central Government committed an error in refusing to permit one time increase in admission capacity in Medicine and Dentistry courses in the medical colleges. We do not find any merit in the submission. Sub-section (1) of Section 10A is a substantive provision in itself and begins with non-obstante clause "notwithstanding anything contained in the Act..", it means there is a prohibition in the matter of an increase in the admission capacity in a medical college unless previous permission of the Central Government is obtained in accordance with the recommendation of the Medical Council of India. The entire scheme of Section 10A of the Act has to be read in consonance with other sub-sections to further the object behind the amending Act. The object being to achieve highest standard of medical education. The said objective can be achieved only by ensuring that a medical college has the requisite infrastructure to impart medical education. As noticed earlier, the object of amending Sections 10A, 10B and 10C was for a specific purpose of controlling and restricting the unchecked and unregulated mushroomed growth of medical colleges without requisite infrastructure resulting in decline in the maintenance of highest standard of education. The highest standard of medical education is only possible when the requirement of provisions of Section 10A and the regulations are complied with. It has been experienced that unless there is required infrastructure available in the medical college, the standard of medical education has declined. Unless an institution can provide complete and full facilities for training to each student who is admitted in various discipline, the medical education would remain incomplete and the medical college would be turning out half-baked doctors which, in turn, would adversely affect the health of public in general. Thus, for every increase in the admission capacity either it is one time or permanent, the Council is obliged to ensure a proportionate increase of infrastructure facilities. The Medical Council can only make recommendations to the Central Government for grant of permission for one time intake capacity in seats only when it is satisfied that scheme to be submitted by the medical colleges fulfils all the requirements. Unless such a scheme providing for all the requirements provided for in the Act and the regulations is submitted to the Central Government and the Medical Council is satisfied that the scheme complies with all the requirement and makes a recommendation to that effect, only then the Central government can consider for grant of permission for increase of admission capacity in a medical college. Similarly, the Central Government without compliance of the Act and the regulations cannot grant, without recommendation of the Medical Council, any permission for one time increase in admission capacity in various courses conducted by the medical colleges. For the aforesaid reasons, we are of the view that the Central Government was fully justified when it rejected the request of the State Government for grant of permission for one time increase in the admission capacity in medicine and Dentistry courses in various medical colleges in the State of Maharashtra.

Coming to the second question, it is no doubt true that the High Court while deciding the writ petitions made the following observations :

"The seats meant for Medicine and Dentistry were particularly all filled in.. Just as the petitioners were wrongfully denied admissions to the courses and colleges of their choice are innocent students, those students, who were already admitted to different courses, were equally innocent. They had in the meanwhile taken their admissions, paid fees and bought costly equipments and books and had incurred expenditure of around 10,000/- per student apart from fees.

This was an extraordinary situation. The problem cropped up because of mistakes at the hands of the paper-setters and examiners. The Court was told that these were bonafide mistakes and no body disputed that position. The fact however remains

that at least 350 students from version 33, who would have gone up in Medicine and Dentistry or other course, had suffered because of the wrong evaluation and thousands of students had been given wrong placements. On the other hand, thousands of students had already been admitted in the meantime in different colleges. We therefore thought that the proposal of the State government to get the seats increased as a one time measure for this year was worth consideration. The government had already approached the Medical Council of India. Therefore, we thought that this effort deserved to be followed up. This was particularly on the background of the statement of the Government lawyers that the Government and Municipal Medical Colleges did have all the necessary facilities to take care of these additional seats."

The aforesaid observations by the High Court were in the context of the extraordinary and difficult situation that had arisen due to revision of the merit list. It is in this light the aforesaid observation has to be read and understood. It is no doubt true that a large number of students who were already admitted in the colleges and incurred a lot of expenditure in taking admissions were to be dislodged by issue of the revised merit list. In such a situation one can sympathise with the plight of such students who for no fault of their own were to be dislodged. However, the compassion and sympathy has no role to play where a rule of law is required to be enforced. The High Court has rightly declined to issue any direction to the Central Government to grant one time increase in the admission capacity in the medical colleges, otherwise it would not have been proper exercise of jurisdiction under Article 226 of the Constitution. Adjusting equities in exercise of extraordinary jurisdiction under Article 226 is one thing, and the High Court assuming the role of the Central Government and the Medical Council under Section 10A of the Act is a different thing. The Court cannot direct to waive the mandatory requirement of law in exercise of its extraordinary power under Article 226. It is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law. However, it does not mean that the High Court is powerless in that regard. It can do so only when it finds that there was some illegality in the order of the Central government in refusing to increase the admission capacity in various colleges. The increase in admission capacity is permissible only when a scheme, in accordance with the regulations, is submitted by a medical college under Section 10A of the Act to the Central Government and the Medical Council is satisfied that the scheme complies with the requirement of the Act and regulations and thereafter the Medical Council recommends for such an increase in admission capacity. So long as the requirements under Section 10A of the Act are not complied with, no permission can be granted by the Central Government. If any direction is issued by the High Court to the Central Government to increase the admission capacity in a medical college, it would be in the teeth of the statutory provisions and amounted to amending the provisions of Section 10A. It is not permissible for the High Court to direct an authority under the Act to act contrary to the statutory provisions. The power conferred on the High Court by virtue of Article 226 is to enforce the rule of law and ensure that the State and other statutory authorities act in accordance with law.

In A.P. Christian Medical Society vs. Government of A.P. 1986 (2) SCC 667, it was held thus:

" any direction of the nature sought by Shri

Venugopal would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the stature to which it owes its existence and regulations made by the university itself. We cannot imagine anything more destructive of the rule of law than a direction by the court to disobey the loss."

In State of Punjab & Ors. vs. Renuka Singla & Ors. 1994 (1) SCC 175, it was held thus:

"The High Courts or the Supreme Court cannot be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. Technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admission, on 'compassionate ground'. The High Courts should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. There does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent 1 on 'compassionate ground' and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10A and Section 10B(3) of the Dentists Act."

For the aforesaid reasons, we are of the view that the High Court acted within its parameters when it refrained itself from issuing direction to the Central Government to grant one time increase in admission capacity in various courses in different medical colleges in the State of Maharashtra.

We are further of the view that in the facts and circumstances of the case, the High Court was justified in issuing various final orders and directions while allowing the writ petitions, excepting direction No. F (3), which was not appropriate and the same is set aside.

For the aforesaid reasons, except for the aforesaid modification in the judgment, we affirm the judgment of the High Court. Consequently, the appeals fail and are accordingly dismissed. There shall be no order as to costs.

.J.
(V. N. Khare)

J.
(B. N. Agrawal)

December 12, 2001

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