

CASE NO.:
Writ Petition (civil) 306 of 2004

PETITIONER:
Mridul Dhar (Minor) & Anr.

RESPONDENT:
Union of India & Ors.

DATE OF JUDGMENT: 12/01/2005

BENCH:
Y.K. Sabharwal, D.M. Dharmadhikari & Tarun Chatterjee

JUDGMENT:
J U D G M E N T

[With W.P. (C) Nos.308 and 345/2004]

Y.K. Sabharwal, J.

About two decades ago, on June 22, 1984 in Dr. Pradeep Jain & Ors. v. Union of India & Ors. [(1984) 3 SCC 654], it was directed that admissions in medical colleges or institutions run by the Union of India or State Government or a Municipal or other local authorities for MBBS and BDS courses to the extent of at least 30% shall be granted on the basis of All India Entrance Examination and 50% in respect of post graduate courses. The percentage of seats to be allotted on All India basis was modified in Dr. Dinesh Kumar & Ors. (II) v. Motilal Nehru Medical College, Allahabad & Ors. [(1985) 3 SCC 22] and in Dr. Dinesh Kumar & Ors. (II) v. Motilal Nehru Medical College, Allahabad & Ors. [(1986) 3 SCC 727]. For MBBS/BDS courses, the All India Quota was directed to be 15% of the total number of seats and 25% of total number of seats for post-graduate courses. The percentage of post-graduate courses has been increased to 50% {Saurabh Chaudri & Ors. v. Union of India & Ors. [(2003) 11 SCC 146]}. The higher percentage would be operational from the academic year 2005 {[Dr. Saurabh Chaudri & Ors. v. Union of India & Ors. [(2004) 5 SCC 618]}]. The question whether the All India Quota of MBBS/BDS courses shall be increased from its present 15% is one aspect but the real and main aspect to be considered is about giving full effect to 15% quota by including all seats while working out 15% quota and by strictly adhering to the time schedule by the State colleges and institutions. The aforesaid aspects come to light when this petition was filed on 10th July, 2004 by two students through their father, as legal guardian, they being minors, apprehending that they may be deprived of seat in All India Quota despite having secured fairly high ranking on merits in All India Entrance Examination taken by about 2,00,000 students. It was, inter alia, brought to the notice of the Court that various States had not complied with the time schedule for completion of the admission process and had not given full information to DGHS besides not taking into consideration many seats while working out 15% All India Quota. On 29th July, 17 States/Union Territories through their Chief Secretaries and Secretaries of their Health Department were directed to supply to the Director General Health Services (DGHS), the requisite information as to the date of the tests conducted by the States, the dates of first counseling and the dates of joining of the candidates. This information was of paramount importance as the second counseling for the allotment of 15% All India Quota was to commence from 1st August. In absence of the requisite correct information, meritorious students looking for admission in this category on the basis of All India Entrance Examination could be seriously prejudiced. The importance of the time frame has been noticed in brief in the order dated 2nd August, 2004 which reads as under :

"In Regulations (Graduate Medical Education

(Amendment) Regulations, 2004 published in the Gazette of India dated 1st March, 2004, a time schedule for the completion of the admission procedure for the First MBBS Course has been provided for (Appendix \026 E). The said time schedule provides that the second round of counseling for allotment of seats from waiting list from All India Entrance Examination shall be filled by the Central Government by 8th August. It also provides that first round of counseling/admission of seats filled up by the state/governments/union territories/institutions shall be over by 25th of July of each year. The time gap of two weeks between the first round of counseling/admission of seats by the State Governments/Union Territories and second round of counseling for allotment of seats from the All India quota seems to have been provided for so that such of the students who, in the first instance may have got admission out of the allocation by the Central Government, may change over to the seat allotted by the state government/union territory so that seats becoming available would be known by the time the second counseling by the Central Government is over. It appears that the second round of counseling for allotment of Central Government seats have already commenced with effect from 30th July. It further appears that many of the State Governments/Union Territories have not even commenced the first counseling which was required to be over by 25th of July. We direct the State Governments/Union Territories to file affidavits giving details of the dates of counseling and the reasons for delay. We may note that ordinarily the 15% seats of the quota under All India Entrance Examination cannot be permitted to be made ineffective and many of the seats therefrom reverted back to the States/Union Territories. The affidavits shall also be filed by the Director General of Health Services, Ministry of Health, Government of India as also by the Medical Council of India. The petitioners are also given opportunity to file additional affidavits. The affidavits shall be filed within four days.

We wish and hope that at least by the next date of hearing the first counseling by the State Governments/Union Territories would be completed."

On 9th August, 2004, it was directed that in whichever State, the first counseling of the State quota seats in Government Medical Colleges is not complete, it shall positively be completed by 20th August and latest by 21st August, 2004, the seats of all India 15% that may become available as a result of such counseling, shall be intimated to the DGHS, further directing that all India 15% quota would not revert back to the State quota till further orders, despite the fact that the second counseling of the all India 15% quota may have been already over, its last date being 8th August, 2004. On 31st August, 2004, it was noticed that out of 93 medical colleges participating and contributing to 15% all India Medical quota, 15 colleges had not supplied the requisite information and likewise out of 25 dental colleges, five colleges had not supplied the said information. These colleges were directed to supply the requisite information on that very day by 9.00 pm to the DGHS. The requisite information was supplied as noticed in the order dated 1st September, 2004. Out of 1550 MBBS seats,

122 seats had fallen vacant and out of 144 seats in dental colleges, 38 seats had fallen vacant. As a special case and without it being treated as a precedent, the court permitted a limited continuation of the second counseling so as to minimize the hardship to the students but not permitting the continued second counseling to everyone but limiting it in the manner stated in the order as under :

"The continued second counseling would be confined to only those, as per merit, who have not already been admitted in MBBS Course in any of the Government Medical College in the country. If a student has already been admitted there would be no question of such a student being permitted counseling again so as to change the medical college with a view to get admission in some other medical college. The students who, as a result of the counseling already held, have taken admission in Dental Colleges would, however, be permitted to participate in the counseling for getting a chance for admission in the MBBS on their merit position. Further, as a consequence, certain seats in Dental Colleges may fall vacant. They would be given as per merit in the ranking in the All India Quota. We make it clear that those admitted in MBBS would not be permitted to change the college. Those who have taken admission in Dental College would also not be permitted to change one Dental College to another Dental College. The information about continued counseling would be given to all concerned by publication in electronic and print media by DGHS. The continued counseling must be over by 8th September, 2004. The students must join by 13th September, 2004. It is necessary to adhere to this schedule so that the remaining unfilled seats can revert and be filled by the State and only bare minimum number of seats may lapse. The States shall also take timely action so that the seats to a great extent may not lapse and all the admissions and joining by students are over by 30th September, 2004.

We make it clear that under no circumstances, we are inclined to extend the date beyond 30th September, 2004. The order shall not be treated as a precedent so as to open floodgates of litigation in other cases in the country.

To consider the issue of further directions for the next academic year, list the matter on 5th October, 2004."

The aforesaid direction did not undo injustice to all the students because we permitted only limited counseling but it was necessary to adopt that course in larger interests of students and medical education as by reopening the entire counseling, there would have been considerable amount of delay in commencement of course in various colleges. The admission process could have gone on till end of the year and that is why permission was granted for only limited counseling.

Having regard to the utter chaos and confusion mainly on account of non-adherence of the time schedule, we permitted parties to file suggestions so that directions could be issued to streamline admissions from the next year. The suggestions have been filed by the Ministry of Health, Government of India, Medical Council of India and some individual parents. We have heard Mr. Mohan Parasaran, learned Additional Solicitor General, appearing for the Central Government, Mr. Vivek

Tankha, Advocate who placed before us the point of view of students and medical colleges, Mr. Maninder Singh, Advocate representing Medical Council of India (MCI), Mr. A.K. Ganguly for West Bengal Government and Mr. Minocha-in-person.

It is a matter of anguish that despite various decisions of this Court and laying down of time schedule for completion of admission process, the time schedule has not been adhered to at various stages by various authorities resulting in otherwise avoidable discontentment and hardship to the candidates. The observance of the time schedule is paramount for effective utilization to All India Quota of medical and dental seats. The denial of a seat in college of choice on the basis of one's merit position leads to frustration and results in injustice to the young students. The admission to a professional course based on merit position is paramount for the career of a student. The omission and commission in respect of admissions this year, as is evident from orders aforementioned, adversely affected the career of meritorious students in their not getting admission in the college of their choice. Any frustration and feeling of injustice at an impressionable age at which the students compete in All India Competition is neither desirable from the point of view of either the young students nor for country's future. We are concerned with the career of those bright candidates who compete in a tough all India competition. In this background, it is necessary to examine the acts of omission and commission at various levels, the suggestions that have been made and submissions put forth, to consider the issuance of directions for streamlining admissions from the next academic year in MBBS/BDS courses.

In *Medical Council of India v. Madhu Singh & Ors.* [(2002) 7 SCC 258], while making it clear that no admissions can be granted after the scheduled date, which essentially should be the date for commencement of the course, MCI was directed to ensure that the examining bodies fix a time schedule specifying the duration of the course, the date of its commencement and the last date for admission. It was further directed that different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time and no variation of the schedule so far as admissions are concerned shall be allowed. In case of any deviation by the institution concerned, action as prescribed shall be taken by MCI.

The Ministry of Health of Family Welfare, Government of India convened a meeting of the State Health/Medical Education Secretaries and the Vice-Chancellors of the universities of health sciences and as a result of discussion issued a directive dated 14th May, 2003 to the Secretaries of Health and Medical Education in all the States and Union Territories and to all universities awarding medical/dental degrees laying down the policy guidelines on admission of students and other allied matters, inter alia, having regard to the decision in *Madhu Singh's* case (supra), laying down the schedule for completion of the various stages of admission process, commencing of academic session and closure of admissions in courses of medicine and dentistry to be applicable to all medical and dental colleges in the country from the academic session 2003-04 onwards. All State Governments, universities, medical and dental institutions in the country and any other authorities concerned were directed to strictly abide by the time frame for completion of each of the stages of admission process indicated in the time schedule. It also directed that neither any student shall be admitted in any course of medicine or dentistry after expiry of the last date prescribed for course of admission in that course nor any university shall register any such admission sought to be made. The State Governments were directed to take all necessary steps to prevent deviation from the prescribed schedule.

The directive dated 14th May, 2003 also stipulates the cancellation of admission granted after the last date of closure of admission and warns the candidates of the consequences of taking admission after the last date for closure of admissions. Paragraphs 8.4 and 8.5 of the directive read as under :

"8.4 In exercise of the powers conferred by the

Hon'ble Supreme Court, the Medical Council of India or the Dental Council of India may direct that any student identified as having obtained admission after the last date for closure of admission be discharged from the course of study; or any medical or dental qualification granted to such a student shall not be a recognized qualification for the purpose of the Indian Medical Council Act, 1956 or the Dentist Act, 1948, as the case may be. The Institution which grants admission to any student after the last date prescribed for the same shall also be liable to face such action as may be prescribed by MCI or DCI.

8.5 The Time Schedule for completion of the admission process as in the Annexure shall also be printed in the Bulletin of Information for the candidates or the Prospectus for admission to the concerned course. The candidates shall be clearly warned of the consequences of taking admission in any institution after the last date for closure of admissions."

The time schedule for completion of the admission process for medical and dental courses is as under :

"Schedule for
Admission
First MBBS/BDS Course
Postgraduate Courses
Super
Speciality
Course

All India
Quota
State
Quota
All India
Quota
State Quota

Conduct of Entrance
Examination:
Month of
May
Month of
May
2nd Sunday
of January
Mid Jan. To
Mid-Feb.
May-June
Declaration of Result of
Qualifying Exam.
/Entrance Exam.
By 5th June
By 15th June
3rd Week of
Feb.
By 28th
February
By 30th June
1st round of counseling/

admission:
20th to 29th
June
To be over
by 17th
July
5th March to
22nd March
To be over
by 25th April
To be over by
25th July
Last date for joining the
allotted College and
Course:
18th July @
29th July
7th April
1st May
31st July
2nd round of counseling
or allotment of seats
from Waiting List:
01st August
to 08th
August
25th to 28th
August
No 2nd
Counseling
No 2nd
Counseling
No 2nd
Counseling
Last date for joining for
candidates allotted
seats in 2nd round of
Counseling or from the
Waiting List:
22nd August
(Seats
vacant after
this date will
be
surrendered
back to the
State/
Colleges)
30th
August
After 7th
April,
vacant
seats will
stand
surrendered
back to the
States/
Colleges
Not
applicable
Not
applicable
Commencement of
academic session:

Between 01st August to
31st August
02nd May
01st August
Last date up to which
students can be
admitted against
vacancies arising due
to any reason :
30th September
31st May
30th
September

NOTE : @ Head of the Colleges should intimate the vacancies existing after 18th July in respect of the All India Quota of seats to the DGHS latest by 25th of July."

Reference may also be made to notification dated 25th February, 2004 issued by the Medical Council of India in exercise of the powers conferred by Section 33 of the Indian Medical Council Act, 1956 (for short, 'the Act') with the approval of the Central Government, making the "Graduate Medical Education (Amendment) Regulations, 2004, laying down the time schedule for completion for admission process for first MBBS course. It is on same lines as the aforequoted time schedule. Time schedule (Appendix-E) to the regulation reads as under :

"APPENDIX-E

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

Schedule for Admission	Seats filled up by Central Govt. through All India Entrance Examination	Seats filled up by The State Govts./ Institutions
Conduct of Entrance Examination	Month of May	Month of May
Declaration of Result of Qualifying Exam./ Entrance Exam.	By 5th June	By 15th June
1st round of counseling/admission :	To be over by 30th June	To be over by 25th July
Last date for joining the allotted College	Within 15th days from the	31st July
And Course : date of allotment of seats		
2nd round of counseling for allotment of	To be over by 8th August	Up to 28th A
ugust		
seats from Waiting List :		

Last date for joining for candidates allotted	Within 15 days from the 31st August
Seats in 2nd round of counseling from the	date of allotment of seat
Waiting List (Seats vacant after 22nd	
August will be surrendered	
Back to the States/Colleges)	

Commencement of academic session :	1st of August
Last date up to which students can be admitted	30th September"
Against vacancies arising due to any reason :	

In various States, the first counseling and admissions in respect of State quota seats was not over, many States had not even commenced the process even though second round of counseling for allotment of seats from waiting list for All India Quota becoming vacant, as a result of candidates getting admission under State quota, was to commence on 1st August, to be completed by 8th August. The effect of the aforesaid inaction and also not sending timely intimation to DGHS is to deprive those who are high up in the merit list of All India Entrance Examination and waiting to get admission in such vacated seats which otherwise would revert back to the State quota. The result is to effectively reduce 15% All India Quota and

increase State quota seats. Directions that were issued to get requisite information from various States in respect of holding of counseling, and reporting of vacant seats to DGHS for admissions for 2004-05 have been earlier noticed. As stated above, despite such directions full and complete justice could not be meted out to all meritorious students regarding college of their choice as per their position in the merit list, on account of the time frame and its all India consequences on admissions and the possible result of extending the admissions much beyond the schedule date contrary to the aforesaid statutory regulations and resulting in grant of midstream admissions. To an extent possible, the seats of All India Quota should not revert to State Quota. It was brought to our notice that in some cases deliberately the time schedule is not adhered to so that more number of seats may revert to State Quota. If that be so, we deprecate the practice with a fond hope that such a practice would be discontinued failing which persons responsible therefor will have to face the consequences. The total impartiality is the need of the time and not the so-called loyalty to the State.

The academic session commences between 1st August and 31st August and the last date for joining MBBS/BDS courses is 30th August. However, students can be admitted against vacancies arising due to any reason by 30th September. The date 30th September is not for normal admission but is to give opportunity to grant admissions against stray vacancies. The adherence to the time schedule by everyone is paramount for the timely grant of admissions, commencement of academic session and for closure of the admissions after 30th September each year. In fact, the timely holding of 10+2 examination and declaration of its results is also of paramount importance for the entire admission process. If the results of CBSE or other equivalent examination are not declared well before the commencement of first round of counseling/admission of All India Quota seats, i.e., 20th June, it is likely to adversely affect the candidates who may otherwise be toppers in the All India Entrance Examination. A candidate may be in the first 200 position, out of about 2,00,000 candidates in the merit ranking but if the results of his qualifying examination of CBSE or its equivalent are not available to him or to DGHS responsible for counseling, the candidate would lose chance to get admission in college of his choice despite his merit position.

Government of India has suggested that for effective implementation of scheme for allotment of 15% all India seats for medical and dental colleges, it is imperative that all participating State and Union Territory Boards of Secondary Education must declare 10+2 result well in advance, at least one week before start of first round of counseling. This suggestion was given as West Bengal Secondary Education Board did not declare 10+2 examination result of their candidates before start of first round of counseling of 15% All India Quota during 2003 and 2004. Due to non-declaration of result, a couple of candidates qualifying in CBSE merit list could not appear in the first round of counseling. In this competitive world, real struggle of students for their career, in almost all the fields, starts after passing 10+2 examination. The results of this examination is important for almost all competitions. Therefore, the timely holding of these examinations and timely declaration of result is of utmost importance, in particular, by all participating States and Union Territories in All India Entrance Examination for medical and dental seats. It is imperative that the CBSE or equivalent results are declared and the mark-sheets are made available to the candidates not later than five days before the commencement of first round of counseling. In other words, the mark-sheet shall be made available to the candidates by 15th June. A candidate may have to travel long distance to participate in the counseling which commences at Delhi from 20th June. In response to directions of this Court suggesting timely holding of 10+2 examination by all States/Union Territories so that the results thereof are not delayed beyond 10th June, at least from the year 2005, the only State Government which has put forth difficulties in so doing is the State of West Bengal.

The West Bengal Council of Higher Secondary Education has stated that Schedule for 2005 examinations has already been announced on 27th July, 2004, according to which, the theory examination for higher

secondary conclude on 11th April, 2005 and it takes three months therefrom to publish the results. As per this schedule, the results would be declared by 11th July, 2005. It also states that if the dates for board examination for class XII are advanced, the students will face mental trauma due to lack of preparation. We are not suggesting the advancement of the date for the year 2005 for holding board examination for class XII. By maintaining the dates already fixed, if not the result of all students, at least the results of those who participate in the All India Entrance Examination and are in high merit ranking can be declared and mark-sheets made available to them by 15th June so as to enable them to participate in the first counseling in All India Quota. Going by the past figures, the candidates requiring such facility may be only about 100. Only the candidates in the merit list up to 2500 may need such a facility and cooperation from the State Authorities. From the year 2006, the State Government/West Bengal Council of Higher Secondary Education shall arrange its affairs in such a manner that the examinations are held timely, results are declared by 10th June and mark sheets made available to the students by 15th June. The other States/Union Territories would ensure declaration of result by 10th June and availability of mark sheet to the students by 15th June from the academic year 2005.

Another connected aspect is declaration of result of qualifying Examination/Entrance Examination for State quota seats. The State Governments, as per the time schedule are required to declare the said results by 15th June of every year. The timely declaration of result will enable the students to take a decision about participation in All India counseling or State counseling. The Central Government has rightly pointed out that due to late declaration of result of State level entrance examination, candidates and their parents travel from all over the country to participate in All India Quota Counseling which is conducted in Delhi and then travel to allotted medical/dental colleges. Later on, if the candidates get admission in the colleges of their choice in their respective States through State counseling, they have to travel back to the college allotted through All India Quota to get their college leaving certificate and other documents which are deposited with allotted college before joining the State college. By timely declaration of the results of the State level entrance examination i.e. by 15th June, which is before the start of All India Quota counseling, candidates and their parents can be saved from facing undesirable hardships.

We see no reasons for non-observance of the time schedule which has been provided after discussion with all the States' functionaries. The Chief Secretaries and Head of concerned Ministries/Departments in participating States/Union Territories shall file affidavits before this Court within four weeks placing on record time table in regard to holding of State examination and declaration of results thereof on or before 15th June, 2005.

For utilisation of All India Quota to its fullest extent, another vital stage of admission process is timely reporting to DGHS by Deans or any other authority whatever be the designation responsible for giving information as to the joining and/or non-joining of students after first round of counseling/admission of the State quota seats. The counseling for allocation of seats of All India Quota is conducted by DGHS at Delhi. The reporting to be made to DGHS has to be sincere and accurate as wrong reporting has chain reaction. As per time schedule, the first round of counseling for State Quota is to be over by 17th July. There is no reason why this time schedule shall not be adhered to. After this counseling, the last date for joining the allotted college and course under State Quota is 29th July. The object of the admission and last date of joining college in State Quota before the start of second round of counseling or allotment of seat from waiting list in All India Quota clearly is that the correct factual position as to the availability of the seats ought to be known to the DGHS before start of second round of counseling. If it is not done, number of seats would be lost to the merit ranking candidates from All India Entrance Examination. They, though otherwise entitled, would be deprived of those seats and to that extent All India 15 per cent quota would stand reduced. Such seats get reverted to State quota for no fault of the candidates on All

India Quota, thus, reducing the All India Quota and increasing the State Quota. The Head of the Colleges are required to intimate their vacancies existing after 18th July in respect of All India Quota seats to the DGHS by 25th July. This gives about a week to the DGHS before it starts second round of counseling on 1st August. This year (2004) it was found that the time schedule in this regard by most of the States, was not complied. As per Appendix-E to the notification dated 25th February, 2004, the first round of counseling/admission of seats filled up by State Governments/Institution is to be over by 25th July. For State Quota seats, one week after completion of first round of counseling to join the allotted college is sufficient. The date 29th July, mentioned in the time schedule attached to the directive dated 14th May, 2003 shall be suitably changed and the date 25th July shall be mentioned to make it consistent with the date mentioned in the notification dated 25th February, 2004. The intimation is required to be sent to the DGHS well before the commencement of second round of All India Quota counseling by it. The details about the vacancy position shall be signed/counter signed by three top functionaries responsible for admission of State Quota seats.

To an extent possible, all possible facilities shall be afforded to students and their parents. Due advantage can be taken of advanced I.T. technology. In respect of counseling of All India Quota seats conducted by the DGHS at Delhi, with the advancement of IT technology, it should be feasible to conduct counseling of outstation students by availing the facilities of video conferencing. It seems that every State capital has the facility of video conferencing. The use of this facility would save time and money of not only the candidates and their parents but in the long term, it may be beneficial to the DGHS as well. Counseling by the video conferencing can commence from the year 2005, making a beginning from 20th June, 2005. Before issue of directions in this regard, we deem it proper to direct that this aspect be examined first by the Ministry of Health, the DGHS and the States/Union Territories officers in consultation with the officers of National Informatics Centre (NIC) and a report filed thereafter in this Court. Final directions will be issued on consideration of the report.

We may also note suggestions of Mr. Arun Minocha, father and legal guardian of one of the students that intake of All India Quota shall be increased from 15% to 20% and the number of candidates to be placed on waiting list deserves to be increased from present 70% to 100% so that in case of availability of seats, the same may not go waste and the candidates on merit list are in a position to utilize the All India Quota to the fullest extent. According to him, having regard to the fact that many seats in medical and dental course, though existing as having been enhanced many years earlier, were not taken into consideration while working All India Quota of 15% and the original direction in Dr. Pradeep Jain's case (supra) was of 30% reduced later to 15% in case of Dr. Dinesh Kumar's case and Post-graduate seats having been increased from 25% to 50% and two decades having passed, the All India Quota deserves to be increased. We have no difficulty in accepting the suggestion regarding increase of waiting list from 70% to 100%, since its only effect is a little additional paper work for the DGHS, without any adverse effect on anybody and possibly the advantage may be to more number of candidates as per their merit position depending upon the availability of seats. Regarding the suggestion for the increase of intake from 15% to 20%, we are of the view that it deserves to be first examined by the Central Government and the DGHS in consultation with States/Union Territories and report filed in this Court within four months so that the issue can be examined with reference to admissions to be made for All India Quota from the academic year 2006-07.

Yet another issue is about not taking into consideration, for determining All India Quota, those seats which are created under Section 10-A of the Act. In the writ petition, number of seats which were not taken into consideration have been mentioned. According to MCI, only seats recognized under Section 11 are taken into consideration and not seats which are permitted under Section 10-A of the Act. For deciding this issue, it is necessary to examine the provisions of the Act and the Regulations issued thereunder. Another connected issue also is regarding the

establishment/renewal granted to medical and dental colleges including grant of permission to increase intake of the students. There is also the issue about the allocation of seats in respect of which, the letter granting permission is issued as per time schedule by the Central Government by 15th July.

Section 10(A) of the Act which was inserted by the Indian Medical Council (Amendment) Act, 1993 (Act 31 of 1993) with effect from 27th August, 1992, makes it imperative to seek permission for establishment of a new medical college, new course of study. In view of this Section, with effect from 1st June, 1992 prior permission is necessary. Section 10(A), inter alia, provides that notwithstanding anything contained in the Act or any other law for the time being in force\027

- (a) no person shall establish a medical college; or
- (b) no medical college shall\027

(i) open a new or higher course of study or training (including a postgraduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a postgraduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Section 10-A (2) (a) provides that every person or medical college shall, for the purpose of obtaining permission under sub-section (1) submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

Along with Section 10-A, clause (fa) was also inserted in Section 33 to empower MCI to make regulations to provide for the form of the scheme, the particulars to be given in such scheme, the manner in which the scheme is to be preferred and the fee payable with the scheme under clause (b) of sub-section (2) of Section 10-A.

Section 11(1) of the Act, inter alia, provides that medical qualifications granted by any University or medical institution in India which are included in the First Schedule shall be recognised medical qualifications for the purposes of this Act. Section 11 (2) provides that any University or medical institution in India which grants a medical qualification not included in the First Schedule may apply to the Central Government to have such qualification recognised, and the Central Government, after consulting Council, may, by notification in the Official Gazettee, amend the First Schedule so as to include such qualification therein, and any such notification may also direct that an entry shall be made in the last column of the First Schedule against such medical qualification declaring that it shall be a recognized medical qualification only when granted after a specified date.

In exercise of the powers conferred by Section 10-A read with Section 33 of the Act, the MCI made the establishment of new medical colleges, opening of higher courses of study and increase of admission capacity in Medical College Regulation, 1993. The Regulations, inter alia, provided as a qualifying criteria that the eligible organization shall abide by Indian Medical Council Act, 1956 as modified from time to time and the regulations framed thereunder and shall qualify to apply for permission to establish new medical colleges only if the conditions therein are fulfilled. One of the conditions is that Essential Certificate regarding the desirability and feasibility of having the proposed medical college at the proposed

location has been obtained and that the adequate clinical material is available as per Medical Council of India requirements has been obtained by the applicant from the respective State Government or the Union Territory Administration. It also provides that the applicant owns and manages a hospital of not less than 300 beds with necessary infrastructural facilities and capable of being developed into a teaching institution as prescribed by the Medical Council of India, in the vicinity of proposed medical college. The MCI has also made the Establishment of Medical College Regulations, 1999 in exercise of powers conferred by Section 10-A and Section 33 of the Act, inter alia, prescribing the form of Essentiality Certificate as a qualifying criteria to make application for permission to establish a medical college. These Regulations stipulate that Essentiality Certificate in Form-2 regarding No objection of the State Government/Union Territory Administration for the establishment of the proposed medical college at the proposed site and availability of adequate clinical material as per the council regulations, have been obtained by the person from the concerned State Government/Union Territory Administration. The Form of Essentiality Certificate requires a Certificate from the Competent Authority to the following effect :

"It is certified that:-

(a) The applicant owns and manages a 300 bedded hospital which was established in \005\005\005\005\005

(b) it is desirable to establish a medical college in the public interest.

(c) Establishment of a medical college at \005\005\005\005\005\005. by (the name of Society/Trust) is feasible.

(d) Adequate clinical material as per the Medical Council of India norms is available.

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

The time schedule for the receipt of applications for establishment of new medical colleges and processing of the applications by Central Government and the Medical Council of India is fixed under the schedule to 1999 Regulations. The said schedule is as under:-

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

Stage of Processing

Last date

1.

Receipt of applications by the Central Govt.

From 1st August to 31st August (both days inclusive) of any year

2.

Receipt of applications by the MCI from Central

- Govt.
30th September
3.
Recommendations of Medical Council of India to
Central Government for issue of Letter of Intent
31st December
4.
Issue of Letter of Intent by the Central Government
31st January
5.
Receipt of reply from the applicant by the Central
Government requesting for Letter of Permission
28th February
6.
Receipt of Letter from Central Government by the
Medical Council of India for consideration for issue
of Letter of Permission
15th March
7.
Recommendations of Medical Council of India to
Central Government for issue of Letter of
Permission
15th June
8.
Issue of Letter of Permission by the Central
Government
15th July

Note: (1) The information given by the applicant in Part-I of the application for setting up a medical college that is information regarding organization, basic infrastructural facilities, managerial and financial capabilities of the applicant shall be scrutinized by the Medical Council of India through an inspection and thereafter the Council may recommend issue of Letter of intent by the Central Government.

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

According to Regulation 8 (3) of 1999 Regulations, the permission to establish a medical college and admit students may be granted initially for a period of one year and may be renewed on yearly basis subject to verification of the achievements of annual targets. It shall be the responsibility of the person to apply to the Medical Council of India for purpose of renewal six months prior to the expiry of the initial permission. This process of renewal of permission will continue till such time the establishment of the medical college and expansion of the hospital facilities are completed and a formal recognition of the medical college is granted. Further admissions shall not be made at any stage unless the requirements of the Council are fulfilled. The Central Government may at any stage convey the deficiencies to the applicant and provide him an opportunity and time to rectify the deficiencies. It cannot be doubted that proper facilities and infrastructure including teaching faculty and Doctors is absolutely necessary and so also the adherence to time schedule for imparting teaching of highest standards thereby making available to the community best possible medical practitioners. It cannot be said that such facilities are not insisted upon for Section 10-A seats. No instance has been brought to our notice where Section 10-A seat in a Government college has not been recognized under Section 11. The All India Quota seats are applicable only to Government colleges. In many colleges, full-fledged seats for all intent and purposes in so far as medical education is concerned, whether in a new medical

college or increase intake in an existing college, are continuing as 10-A seats. Prima facie, we see no reason why such seats shall not be taken into consideration for calculating 15% share of All India Quota. The 15% quota seats get substantially reduced by not taking into account Section 10-A seats. We direct the Central Government, DGHS and MCI to examine this aspect in detail and submit a report, on consideration whereof we would finally decide the matter regarding inclusion of Section 10-A seats for working out 15% All India Quota.

The time schedule for post-graduate and superspeciality course admissions may also be noted as under :

"TIME SCHEDULE FOR POSTGRADUATE AND
SUPERSPECIALITY COURSES ADMISSIONS

Schedule for admission
Postgraduate Courses
Super-speciality
Courses

All India Quota
State Quota

Conduct of entrance
examination

2nd Sunday of

January

Mid-Jan

Mid-Feb.

May-

June

Declaration of result of
qualifying exam.

3rd week of Feb.

By 28th

February.

By 30th June

1st round of

counseling/

admissions

5th March to 22nd

March.

To be over by

25th April.

To be over by

25th July

Last date for joining

the allotted college

and course

7th April.

1st May.

31st July.

2nd round of

counseling or

allotment of seats from

waiting list.

No 2nd counseling

No 2nd

counseling

No 2nd

counseling

Last date for joining for

candidates allotted

seats in 2nd round of

counseling or from the

waiting list.

After 7th April

vacant seats will
stand surrendered
back to the
states/colleges
Not applicable
Not applicable
Commencement of
academic session
2nd May
1st August
Last date up to which
students can be
admitted against
vacancies arising due
to any reason
31st May.
30th September"

Having regard to the professional courses into consideration, it deserves to be emphasized that all concerned including Governments, State and Central both, MCI/DCI, colleges, new or old, students, Boards, universities, examining authorities etc. are required to strictly adhere to time schedule wherever provided for; there should not be mid-stream admission; admission should not be in excess of sanctioned intake capacity or in excess of quota of any one, whether State or Management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible. Before we come to matter of issue of directions, some other small aspects may also be considered. All seats under All India Quota deserve to be fully disclosed and published by a date to be specified by the DGHS so that at a glance, if required, it may be possible to verify whether the said quota has been correctly worked out or not. The States shall file compliance report in regard to admission with the DGHS about annual admissions indicating adherence to the schedule and the seats taken into consideration for working out All India Quota and giving details of other seats. The compliance report shall give details of filling up of seats with names of students admitted and dates of admission. It shall be signed by the Principal/Director or Head of the medical institution by whatever name called and by Vice-Chancellor. The recalcitrant States, particularly officers personally will have to face consequences.

It was suggested by Mr. Tankha that MCI/DCI and also colleges shall be made answerable to a high-powered Committee which may be directed to be constituted for not following a fair and transparent procedure in its duties and obligation including carrying out inspections and sending reports by MCI/DCI to the Central Government on the basis whereof the requisite recognition is granted and to also look into other medical admissions related matters and matters relating to establishment of medical colleges and increase of intake etc. Various petitions are pending in this Court where grievance have been made in regard to inspections carried out by MCI/DCI and other aspects pointed out by learned senior counsel. The suggestion made about constituting a body like Ombudsman to which above authorities may be answerable deserves to be examined in depth by Ministry of Health and a report submitted to this Court.

Having regard to the aforesaid, we issue the following directions:-

1. All participating States and Union Territories, Board of Secondary Education shall declare 10 + 2 result by 10th June of every year and make available the marksheet to the students by 15th June.

The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed, the West Bengal would make available to the concerned students the marksheets by 15th June, 2005

Heads of Boards would be personally liable to ensure compliance.

2. The time table mentioned in Notification dated 25th February, 2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State Medical/Dental Entrance Examination shall be declared before 15th of June.

3. The States/Union Territories shall complete the admission process of first round of State Level Medical/Dental College admission by 25th July i.e. a week before start of second round counseling or allotment of seats under All India Quota. The correct vacancy position shall be intimated by the Chief Secretary to the DGHS by 26th July. It shall be verified by the Head of the Institution/or Head of the Medical Institution/Health Department in the State.

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territories and/or Health Secretaries to ensure compliance of the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

5. All seats in All India Quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.

6. By 31st October, the State through Chief Secretaries/Health Secretaries shall file a report in regard to admissions with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant States, particularly officers personally will have to face consequences for violation.

7. The DGHS shall file by 31st January, 2005 report in regard to feasibility of conducting counseling through the process of video conferencing.

8. The DGHS shall file report within three months on the aspect of Section 10-A seats being subjected to 15 per cent All India Quota and about the increase of the quota from 15 per cent to 20 per cent.

9. The DGHS shall also file a report within three months on the aspect of constitution of high-power Committee/Ombudsman.

10. The seats allotted upto 15th July, shall also be subjected to respective State Quotas.

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

12. The time schedule for grant of admission to postgraduate courses shall also be adhered to.

13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. Time schedule provided in Regulations shall be strictly adhered to by all concerned failing which defaulting party would be liable to be personally proceeded with.

16. Copy of the judgment shall be sent to Chief Secretaries of all States/Union Territories for compliance.

List the case in 3rd week of February, 2005.