



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Special Appeal Writ No. 1046/2022

In

S.B. Civil Writ Petition No. 6207/2020

1. Madhu Saini D/o B.S. Saini, Aged 33 Years, R/o 6-G10 Mahaveer Nagar Extension, Kota.
2. Kavad Ishwar S/o Jashu Bhai, Aged 29 Years, R/o A-25 Ganesh Nagar Society, Amroli, Surat Gujarat.
3. Vinod Kumar Pal S/o Raj Narayan Pal, Aged 33 Years, R/o M-19 Plot No. 304, Global City, Palghar, Maharashtra.
4. Richa Tripathi D/o Rejeshwar Tripathi, Aged 43 Years, R/o 365, Civil Lines, Narayan Nagar, Etah, UP.
5. Taak Amrit Kaur S/o Manjit Singh Taak, Aged 29 Years, R/o 4, Mahesh Naresh Co-Operative Society, Ghodasar, Ahemdabad, Gujarat.
6. Rahul Vaid S/o Surinder Kumar Vaid, Aged 43 Years, R/o B-61A, Defence Colony, Meerut, UP.
7. Umang Kanwar D/o Kuldeep Singh, Aged 39 Years, R/o 72, Sector No. 1, Trikola Nagar, J & K.
8. Chowdhary Humatalat D/o Munir Azhar, Aged 30 Years, R/o Near Old Tidke, Nagpur.
9. Rahul Mehta S/o Amrik Singh Mehta, Aged 24 Years, R/o Duplex Banglow, Bhopal M.P.
10. Raj Kamal Grewal S/o Randhir Singh Grewal, Aged 34 Years, R/o 260/11 Shastri Nagar, Ambala City, Haryana.
11. G. Dessai Sidhee Ramesh D/o Ramesh Gauns Dessai, Aged 36 Years, R/o Flat-Fo/1, A Building, Kurtarkar Excellency, Gogal Margo, Goa.
12. Rajat Kumar S/o Chandra Bhan, Aged 43 Years, R/o 1/101 Ashok Vihar, Phase-I, Delhi.
13. Kunal Vuthoo S/o R.K. Vuthoo, R/o 675/A, Sector-3, Bhagwati Nagar, Canal Road, Jammu, J & K.
14. Chauhan Bhunit Kumar S/o Iswar Lal, Aged 30 Years, R/o Jalaram Society, Taluka Gandevi, Navsari, Gujarat.
15. Vishal Vuthoo S/o R.K. Vuthoo, Aged 39 Years, R/o 675/A, Sector-3, Bhagwati Nagar, Canal Road, Jammu, J & K.





16. Lalit Chopra S/o Shanti Swaroop Chopra, Aged 30 Years,  
Housing Colony, Nai Abadi, Gali No. 1, Bhind, M.P.

----Appellants/Petitioners

Versus

1. Rajasthan University of Health Sciences, Through its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Jaipur.
2. Daswani Dental College, Kota, Through its Principal ITB-19, RIICO Industrial Area, Ranpur, Kota.
3. Dental Council of India, Through its Secretary, Awan-E-Galib Marg, Kotla Road, New Delhi - 110002.
4. P.G. Medical/Dental Admission Board 2017, Through its Chairman, Admission Board and Principal and Controller, SMS Medical College, Jaipur.

----Respondents

Connected With

D.B. Special Appeal Writ No. 1047/2022

In

S.B. Civil Writ Petition No. 6233/2021

1. Madhu Saini D/o B.S. Saini, Aged 35 Years, R/o 6-G10 Mahaveer Nagar Extension, Kota.
2. Kavad Ishwar S/o Jashu Bhai, Aged 29 Years, R/o A-25 Ganesh Nagar Society Amroli, Surat, Gujarat.
3. Vinod Kumar Pal S/o Raj Narayan Pal, Aged 33 Years, R/o M-19 Plot No. 304, Global City, Palghar, Maharashtra.
4. Richa Tripathi D/o Rejeshwar Tripathi, Aged 43 Years, R/o 365, Civil Lines, Narayan Nagar, Etah, Up.
5. Taak Amrit Kaur S/o Manjit Singh Taak, Aged 29 Years, R/o 4, Mahesh Naresh Cooperative Society, Ghodasar, Ahemedabad, Gujarat.
6. Rahul Vaid S/o Surinder Kumar Vaid, Aged 43 Years, R/o B-61A, Defence Colony, Meerut, UP.
7. Umang Kanwar D/o Kuldeep Singh, Aged 39 Years, R/o 72, Sector No. 1, Trikola Nagar, J & K.
8. Chowdhary Humatalat D/o Munir Azhar, Aged 30 Years, R/o Near Old Tidke, Nagpur.
9. Rahul Mehta S/o Amrik Singh Mehta, Aged 24 Years, R/o Duplex Banglow, Bhopal M.P.



10. Raj Kamal Grewal S/o Randhir Singh Grewal, Aged 34 Years, R/o 260/11, Shastri Nagar, Ambala City, Haryana.
11. G. Dessai Sidhee Ramesh D/o Ramesh Gauns Dessai, Aged 36 Years, R/o Flat - Fo/1, A Building, Kurtakar Excellency, Gogal Margo, Goa.
12. Rajat Kumar S/o Chandra Bhan, Aged 43 Years, R/o 1/101 Ashok Vihar, Phase-I, Delhi.
13. Kunal Vuthoo S/o R.K. Vuthoo, R/o 675/A, Sector-3, Bhagwati Nagar, Canal Road, Jammu J & K.
14. Chauhan Bhunit Kumar S/o Iswar Lal, Aged 30 Years, R/o Jalaram Society, Taluka Gandevi, Navsari, Gujarat.
15. Vishal Vuthoo S/o R.K. Vuthoo, Aged 39 Years, R/o 675/A, Sector-3, Bhagwati Nagar, Canal Road, Jammu J & K.
16. Lalit Chopra S/o Shanti Swaroop Chopra, Aged 30 Years, Housing Colony, Nai Abadi, Gali No. 1, Bhind, M.P.

-----Appellants/Petitioners

Versus

1. Dental Council of India, Through its Secretary, Awan-E-Galib Marg, Kotla Road, New Delhi-110002.
2. The National Board of Examination, NEET MDS 2017, Medicare Enclave, Ansari Nagar Ring Road, New Delhi-110029 Through its Chairman.
3. Rajasthan University of Health Sciences, Through its Registrar, Sector-18, Kumbha Marg, Pratap Nagar, Jaipur.
4. Daswani Dental College, kota, Through its Principal ITB-19, RIICO Industrial Area, Ranpur, Kota.
5. P.G. Medical/Dental Admission Board 2017, Through its Chairman, Admission Board and Principal and Controller, SMS Medical College, Jaipur.

-----Respondents

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For Appellant(s) : Mr. K.K. Sharma, Sr. Advocate  
assisted by Mr. Yash Sharma,  
Mr. Ashish Sharma, Mr. Daksh  
Gautam and Mr. Aman Lodha



For Respondent(s) : Mr. Virendra Lodha, Sr. Advocate  
 assisted by Mr. Raunak Singhvi,  
 Mr. Rachit Sharma  
 Mr. Harshal Tholia on behalf of  
 Dr. V.B. Sharma, AAG  
 Ms. Manorma Sharma,  
 Mr. Arvind Sharma and Mr. Angad  
 Mirdha



**HON'BLE THE CHIEF JUSTICE MR. PANKAJ MITHAL  
 THROUGH VC AT JODHPUR  
 HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Judgment**

**Reportable:**

**Reserved on :: November 07, 2022**

**Pronounced on :: November 25, 2022**

**By the Court: (Per ANOOP KUMAR DHAND, J.)**

1. The issue involved in these special appeals is that 'whether the appellants can be given admission by the Dental College in Master in Dental Surgery (for short 'MDS Course') contrary to the decisions of the Hon'ble Supreme Court in the cases of **Modern Dental Medical College & Research Centre & Ors., Vs State of Madhya Pradesh & Ors., (2016) 7 SCC 353** and **State of Madhya Pradesh Vs Jainarayan Chouksey and Ors., (2016) 9 SCC 412**, without participation of the appellants in the centralized NEET P.G. Counselling?'

2. Both these appeals arise out of the impugned judgment dated 03.08.2022 passed by the learned Single Judge by which the writ petitions submitted by the appellants have been dismissed and the respondent- Daswani Dental College (for short 'respondent-College) has been directed to pay a sum of Rs.



10,00,000/- to each of the appellants as compensation and the Vice Chancellor of the respondent-Rajasthan University of Health Sciences (for short 'the University') has been directed to initiate disciplinary proceedings against the erring officers who have admitted the appellants in MDS Course, 2017 in contravention of the order passed by this Court.

3. In exercising the powers conferred by Section 20 of the Dentists Act, 1948 (for short 'Act of 1948'), the Dental Council of India (for short 'the DCI') with the previous sanction of the Central Government, enacted Dental Council of India Revised MDS Course Regulations, 2007 (for short 'the Regulation, 2007') vide Notification dated 31.05.2012 for selection and admission of the candidates for Post Graduate Courses. As per Clause 3 (1) of this Regulation, there shall be single eligibility-cum-entrance examination namely; National Eligibility-cum-Entrance Test for admission to Post Graduate Medical Courses (for short 'NEET PG') in each academic year.

4. In pursuance of the Regulation, 2007, the NEET PG Examination-2017 was conducted for selection and admission of the candidates in MDS Course. The appellants/petitioners No. 2, 5, 7, 12 to 15 appeared in the said NEET PG test and only appellants/petitioners No.5 and 15 qualified but did not participate in the centralized counselling and the rest did not qualify. The appellants-petitioners No.1, 3, 4, 6, 8 to 11 and 16 have not even appeared in the said test, even then all the appellants got admission in MDS Course in the respondent-College in contravention of the Regulations, 2007 after the cut off date i.e 31.05.2017.



5. Vide letter dated 17.05.2017, the DCI directed all the Dental Colleges to upload the details of the students admitted in MDS Course for the academic session 2017-18. In pursuance of the said letter, the respondent-College uploaded details of 20 candidates admitted in MDS Course. On verification from Chairman, NEET PG (Medical/Dental) Admission Board, 2017, it was found that none of the appellants/petitioners was admitted by the NEET PG Board. Thereafter, the Executive Committee of the DCI took a decision in its meeting dated 23.08.2018 to discharge all the appellants because the counselling authority had not verified/confirmed the admission of these appellants in MDS Course at Daswani Dental College for the academic session 2017-18. The said decision was communicated by the DCI to the respondent-College vide letter dated 12.09.2018 followed by its reminder letters dated 31.10.2018 and 08.02.2019.

6. In-spite of receipt of these letters dated 12.09.2018, 31.10.2018 and 08.02.2019, the respondent-College did not discharge the appellants and cancel their admissions for the reasons best known to the College.

7. At this juncture, the appellants submitted S.B. Civil Writ Petition No. 6207/2020 before the learned Single Bench seeking directions against the respondent-University to permit them to fill online examination forms and to participate in MDS Final Year (Main) Examination to be held in June 2020, without disclosing the complete facts. The learned Single Judge vide interim order dated 15.06.2020 allowed the appellants to provisionally fill the examination forms to participate in MDS Final Year Examination. Against the said order dated 15.06.2020, the University submitted D.B. Special Appeal (Writ) No.394/2020 before this Court and the



same was dismissed vide order dated 24.06.2020 with a direction that the result of the appellants shall not be declared by the University without direction of the learned Single Judge and their examination shall be subject to decision of the writ petition.

8. Thereafter, the appellants submitted another S.B. Writ Petition No. 6233/2021 seeking prospective application of the Notifications dated 01.09.2017 and 05.11.2017. The appellants prayed that their admission in MDS Course, 2017 was valid without requirement of being taken through NEET PG. They also prayed for quashing the DCI orders/letters dated 12.09.2018 and 08.02.2019 with the declaration that they were validly admitted in respondent-College, Kota and they are not liable to be discharged from the MDS Course. After hearing arguments, the learned Single Judge dismissed both these petitions vide judgment dated 03.08.2022.

9. Feeling aggrieved and dissatisfied by the impugned judgment dated 03.08.2022, the appellants have submitted these two special appeals before this Court.

10. Learned counsel for the appellants submits that the appellants got admission in MDS Course in the respondent-College in May, 2017 while the Notification for NEET PG requirement was issued in November, 2017. Counsel submits that the appellants were having a valid degree of BDS Course and they were having eligibility to get admission in MDS Course. Counsel submits that several seats of MDS Course remained vacant due to the prescribed cut off of 50 percentile, hence a decision was taken by the PG Medical/ Dental Admission Board, 2017 to allow these candidates in mop up counselling round, who were not registered with the State NEET PG Medical and Dental Admission and



Counselling Board, 2017. Counsel submits that only four students got admission through NEET PG and rest of the seats remained vacant. Hence, the appellants got admission in the respondent-College. Counsel submits that for the Batches of years 2014, 2015 and 2016, direct admission was given to the students by the private dental Colleges without any examination and counselling.

11. Counsel submits that the appellants have completed their MDS Course and cancellation of their admission at this stage would not serve any useful purpose and no prejudice would be caused to any other students. In support of his contentions, learned counsel has relied upon the following judgments:-

1. **Ashok Chand Singhvi Vs. University of Jodhpur & Ors., AIR 1989 SC 823**
2. **A. Sudha Vs. University of Mysore & Ors., AIR 1987 SC 2305**
3. **Rajendra Prasad Mathur Vs. Karnataka University & Ors., AIR 1986 SC 1448**
4. **Priya Gupta Vs. State of Chattisgarh & Ors., AIR 2012 SC 2413**
5. **Saraswati Educational Chartiabale Trust & Anr. Vs. Union of India & Ors., 2021 SCC Online SC 137**
6. **Rajan Purohit & Ors. Vs. Rajasthan University of Health Science, (2012) 10 SCC 770**
7. **Union of India Vs. Federation of Self Financed Ayurvedic Colleges, Punjab & Ors., (2020) 12 SCC 115**
8. **Deepa Thomas & Ors. Vs. Medical Council of India and Ors., (2012) 3 SCC 430**
9. **Monika Ranka & Ors. Vs. Medical Council of India, (2010) 10 SCC 233**

12. Learned counsel for the respondent-College submits that no illegality has been committed by the respondent-College while





admitting the appellants in MDS Course from open quota after mop up round. Counsel submits that NEET Notification, 2017 was issued in November 2017, while the admissions were given in May 2017, as per the previous prevailing norms.

13. Per contra, counsel for the respondents-University, DCI and PG Medical/Dental Admission Board, opposed the arguments raised by the counsel for appellants/petitioners and the respondent-College and submitted that the admissions were given to the appellants by the respondent-College in utter violation of the Regulations of 2007 & 2017. Counsel submits that for getting admissions in MDS Course, the candidates were required to pass National Eligibility-cum-Entrance Test (for short 'the NEET') and participate in the counselling after following the statutory provisions. The appellants, however, got admissions straight away in the respondent-College. Counsel submitted that the appellants were admitted by the respondent-College through backdoor entry. It is submitted that their admissions are the result of collusion between the respondent-College and the appellants. It is further submitted that the respondent-College and the appellants were well aware about the Regulations of 2007, which clearly provides for admission through NEET PG only, even then, the appellants were given admission by the respondent-College by conducting private counselling, which is not permissible in law and as such, the appellants who entered through backdoor entry are not entitled to any equitable relief.

14. Counsel for the respondent-University and the DCI submits that despite order for discharge of the appellants by the DCI as early as on 12.09.2018, the same was not acted upon by the respondent-College and the appellants were allowed to continue



in-spite of repeated communications dated 31.10.2018 and 08.02.2019. Counsel submits that the admitted position is that the appellants did not undergo the centralised counselling and they were well aware from day one that their admission in the respondent-College was irregular and illegal. Despite this, they continued at their own peril. Hence, they cannot claim equity in their favour. In support of their contentions, they have relied upon the judgments of Hon'ble Apex Court in the case of **Abdul Ahad & Ors. Vs. Union of India & Ors., reported in 2021 SCC Online SC 627**. They have also relied upon a judgment of Delhi High Court in the case of **Deepanshu Bhadoriya & Ors., Vs. Medical Council of India & Ors. (LPA No.581/2019) decided on 09.09.2021**, upheld by the Hon'ble Apex Court on 17.10.2022 in **Special Leave to Appeal (Civil) No.20300/2021** titled as **Rahul Soni & Ors. Vs. Medical Council of India & Ors.**, and the judgment of Karnataka High Court in the case of **Sri Venkateshwara Dental College & Hospital Vs. The State of Karnataka & Ors.** in **WP No.12902/2022** dated 07.09.2022.

15. Counsel submits that in-spite of specific restraint and directions of this Court in DB SAW No.394/2020, the degrees of MDS Course were distributed to the appellants in utter violation of the order dated 24.06.2020. Counsel submits that while deciding the above special appeal, the appellants were provisionally allowed to participate in MDS Final Year Examination but a direction was issued that the result of the appellants shall not be declared by the respondent-University without directions of the learned Single Judge and their examinations shall be subject to the decision of the writ petition. Counsel for the DCI submits that in-spite of issuing a notice/corrigendum, the appellants have not



deposited their degrees. Counsel submits that the appellants may misuse their degrees, hence appropriate order be passed.

16. Heard and considered the arguments of both sides.

17. The Constitutional Bench of the Hon'ble Supreme Court vide its judgment dated 02.05.2016 in the case of **Modern Dental College and Research Centre (supra)** has held that admissions to all government and private medical colleges in the country would be done through centralised counselling system on the basis of NEET examination. It has been observed in Para Nos. 168 to 169 as under:-

"168. Having regard to the prevailing conditions relating to admissions in private professional educational institutions in the State of Madhya Pradesh, the legislature in its wisdom has taken the view that merit based admissions can be ensured only through a common entrance test followed by centralised counselling either by the State or by an agency authorised by the State. In order to ensure rights of the applicants aspiring for medical courses under Articles 14, 15 and 16 of the Constitution of India, legislature by the impugned legislation introduced the system of common entrance test (CET) to secure merit-based admission on a transparent basis. If private unaided educational institutions are given unfettered right to devise their own admission procedure and fee structure, it would lead to situation where it would impinge upon the "right to equality" of the students who aspire to take admissions in such educational institutions. Common entrance test by State or its agency will ensure equal opportunity to all meritorious and suitable candidates and meritorious candidates can be identified for being allotted to different institutions depending on the courses of study, the number of seats and other relevant factors. This would ensure twin objects:

- (i) fairness and transparency, and
- (ii) merit apart from preventing maladministration.

Thus, having regard to the larger interest and welfare of the student community to promote merit and achieve excellence and curb malpractices, it



would be permissible for the State to regulate admissions by providing a centralised and single-window procedure. Holding such CET followed by centralised counselling or single-window system regulating admissions does not cause any dent on the fundamental rights of the institutions in running the institution. While private educational institutions have a "right of occupation" in running the educational institutions, equally they have the responsibility of selecting meritorious and suitable candidates, in order to bring out professionals with excellence. Rights of private educational institutions have to yield to the larger interest of the community.

169. By holding common entrance test and identifying meritorious candidates, the State is merely providing the merit list of the candidates prepared on the basis of a fair common entrance test. If the screening test is conducted on merit basis, no loss will be caused to the private educational institutions. There is neither restriction on the entry of the students in the sanctioned intake of the institutions nor on their right to collect fees from the students. The freedom of private educational institutions to establish and run institution, impart education, recruit staff, take disciplinary action, admit students, participate in fixation of fees is in no way being abridged by the impugned legislation; it remains intact."

18. In spite of the above specific directions issued by the Hon'ble Apex Court, some of the private colleges had conducted their own counselling for admitting students in their respective colleges. Hence, the State of Madhya Pradesh submitted a Contempt Petition before the Hon'ble Apex Court and the same was decided in **State of Madhya Pradesh Vs Jainarayan Chouksey and Ors., (2016) 9 SCC 412** and it was held in para Nos. 5 & 6 as under:-

"5. We have heard the learned counsel for the parties at length. We observe that mandate of our judgment [**Modern Dental College and Research Centre v. State of M.P., (2016) 7 SCC 353**] was to hold centralised entrance test followed by centralised State counselling by the State to make it a one composite process. We,



therefore, direct that admission to all medical seats shall be conducted by centralised counselling only by the State Government and none else.

6. If any counselling has been done by any college or university and any admission to any medical seat has been given so far, such admission shall stand cancelled forthwith and admission shall be given only as per centralised counselling done by the State Government."



19. This fact is not in dispute that the NEET was conducted by the National Board of Examination (NBE) for admissions to the MDS Course, 2017 and passing of this NEET-MDS was an eligibility to get admission in Dental PG Course. No other criteria or test was prescribed for getting admission in the government or private dental colleges. As per the terms and conditions mentioned in the information booklet, for admission in NEET-MDS, it was necessary for a candidate to secure minimum 50 percentile in NEET and for the candidates of reserved category, the minimum marks were 40 percentile. When suitable number of candidates were not available, a decision was taken to reduce the percentile and a chance was given to the candidates to participate in the mop up round counselling. The Admission Board nowhere gave any opportunity to any of the dental Colleges to admit the students on their own after the mop up round.

20. The undisputed fact is that in September, 2016, NBE issued an Information Booklet for NEET for admission to MDS Course, 2017. This Information Booklet clearly provides that each candidate is required to obtain minimum qualifying score, as provided in the NEET Entrance Examination.

21. The NEET-MDS, 2017 advertisement was issued and Information Booklet for State Dental Post Graduate seats was also issued by the Chairman, NEET PG Admission/Counselling Board.



The appellants No.2, 7 and 12 to 14 appeared in the above tests but could not qualify the same. The appellants No.5 and 15 appeared in the test and qualified the same but did not appear in the counselling. The remaining appellants did not even appear in the above NEET Examination.

22. From the facts narrated above, it is clear that the appellants did not undergo the centralized counselling and they were well aware from the day one that their admissions in the respondent-College were irregular and illegal- being in the teeth of the judgment of Hon'ble Apex Court in the case of **Modern Dental College and Research Centre (supra)**. The admission given by the respondent-college to the appellants were contrary to the Notification issued by the respondent authorities.

23. The admissions were given to the appellants outside the centralized counselling conducted by the PG Medical/Dental Admission Board. The admissions were granted to the appellants by crossing and exceeding the jurisdiction by the respondent-College which was not vested in it. Obviously, the admissions were granted to the appellants collusively, as they were under the teeth of the judgment of the Hon'ble Supreme Court in the case of **Modern Dental and Research College (supra)**.

24. We find no force in the arguments of the counsel for the appellants and the respondent-College that when sufficient number of seats remained vacant, the same were required to be filled in as per the prevailing past practice because the appellants were neither registered with the State NEET PG Dental Admission/Counselling Board, nor they qualified the NEET examination which was mandatory to get admission in MDS Course.



25. The similar controversy came before the Hon'ble Supreme Court in the case of **Abdul Ahad (supra)** and the same was decided observing in para Nos.25 to 40 as under:-

"25. It could thus clearly be seen that the private counselling by local Medical College was conducted contrary to the Notification issued by the State of Uttar Pradesh, which Notification, in turn, was based on the judgment of this Court in the case of **Modern Dental College and Research Centre (supra)**, which was decided on 2.5.2016. Not only that, but this Court by order dated 22.9.2016 had further clarified the position.

26. It will further be pertinent to note that the Division Bench of the Allahabad High Court vide judgment dated 15.9.2016 had negated the challenge to the Notification dated 22.8.2016.

27. In the light of this position, it was not at all permissible for the Glocal Medical College to have conducted private counselling. The admissions which were conducted through the said private counselling cannot be termed as anything else but *per se* illegal.

28. Though we have all the sympathies with the students, we will not be in a position to do anything to protect the admissions, which were done in a patently illegal manner.

29. It will be apposite to refer to the following observations made by this Court in the case of **Guru Nanak Dev University v. Parminder Kr. Bansal and others, reported in (1993) 4 SCC 401:-**

"In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the *prima facie* legal position. Such orders cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions."

30. It will further be appropriate to refer to the following observations of this Court in the case of **Gurdeep Singh v. State of J & K and Others, 1995 Supp (1) SCC 188-**



"12. What remains to be considered is whether the selection of Respondent 6 should be quashed. We are afraid, unduly lenient view of the courts on the basis of human consideration in regard to such excesses on the part of the authorities, has served to create an impression that even where an advantage is secured by stratagem and trickery, it could be rationalised in courts of law. Courts do and should take human and sympathetic view of matters. That is the very essence of justice. But considerations of judicial policy also dictate that a tendency of this kind where advantage gained by illegal means is permitted to be retained will jeopardise the purity of selection process itself; engender cynical disrespect towards the judicial process and in the last analysis embolden errant authorities and candidates into a sense of complacency and impunity that gains achieved by such wrongs could be retained by an appeal to the sympathy of the court. Such instances reduce the jurisdiction and discretion of courts into private benevolence. This tendency should be stopped. The selection of Respondent 6 in the sports category was, on the material placed before us, thoroughly unjustified. He was not eligible in the sports category. He would not be entitled on the basis of his marks, to a seat in general merit category. Attribution of eligibility long after the selection process was over, in our opinion, is misuse of power. While we have sympathy for the predicament of Respondent 6, it should not lose sight of the fact that the situation is the result of his own making. We think in order to uphold the purity of academic processes, we should quash the selection and admission of Respondent 6. We do so, though, however, reluctantly."



RAJASTHAN HIGH COURT





31. Similar observations have been made by this Court in **K.S. Bhoir v. State of Maharashtra and others, (2001) 10 SCC 264.**

32. The facts in the present case are somewhat similar with the facts, which fell for consideration in the case of **Mahatma Gandhi University and Another v. GIS Jose and Others, reported in (2008) 17 SCC 611.**

33. In the said case, the admissions were given for M.Sc. Computer Science course in violation of admission rules. The High Court had directed to declare the withheld result of such students. Reversing the judgment of the High Court, this Court observed thus:-

"10. The misplaced sympathies should not have been shown in total breach of the rules. In our opinion, that is precisely what has happened. Such a course was disapproved by this Court in **CBSE v. Sheena Peethambaran [(2003) 7 SCC 719]**. In para 6 of the judgment, this Court observed as follows: (SCC p. 724).

"6. This Court has on several occasions earlier deprecated the practice of permitting the students to pursue their studies and to appear in the examination under the interim orders passed in the petitions. In most of such cases, it is ultimately pleaded that since the course was over or the result had been declared, the matter deserves to be considered sympathetically. It results in very awkward and difficult situations. Rules stare straight into the face of the plea of sympathy and concessions, against the legal provisions....."

11. In the present case, the college where the student was admitted, in breach of all possible rules allowed her not only to complete the course but also to write the examination which was totally illegal."

34. It will further be relevant to refer to the following observations of this Court in the case of **National Council for Teacher Education and another v. Venus Public Education Society and others, reported in (2013) 1 SCC 223:-**





“3. It is to be clearly stated that an institution that is engaged or interested in getting involved in imparting a course for training has to obey the command of law in letter and spirit. There cannot be any deviation. But, unfortunately, some of the institutions flagrantly violate the norms with adamant audacity and seek indulgence of the court either in the name of mercy or sympathy for the students or financial constraint of the institution or they have been inappropriately treated by the statutory regulatory bodies. None of these grounds justify deviation. The case at hand graphically depicts deviations but the High Court, putting the blame on the statutory authority has granted relief to the respondent institution which is impermissible.”

35. In the backdrop of this legal position laid down in various judgments of this Court, it will not be possible to consider the cases of the review petitioners sympathetically. The Notification issued by the State of Uttar Pradesh on the basis of the law laid down by this Court clearly provided that the admissions were to be done only through the centralized admission process. Glocal Medical College in contravention of the said Notification conducted private counselling, which was not at all permissible in law. The students cannot be said to be ignorant about the Notification issued by the State of Uttar Pradesh.

36. In such a situation, no sympathies can be shown to such students who have entered through backdoor. Apart from that, MCI vide order dated 27.1.2017 had discharged the said students, who were not admitted through centralized admission process. It is pertinent to note that 25 students admitted in the same college, who were admitted through the centralized admission process, were very much absorbed by the DGME in other colleges. As such, the contention of the review petitioners that they came to know about the discharge order dated 27.1.2017 issued by MCI only when they had filed a petition in the High Court in 2019 does not stand to reason.

37. Insofar as the contention with regard to the interim order passed by this Court dated 20.3.2017 is concerned, the same would clearly show that though the students were permitted to appear in the examination, their results were





directed not to be published. There is no other order modifying the said order.

38. It is difficult to appreciate as to how the results of the students were declared for the 1st year MBBS examination, how they were admitted in the 2nd year MBBS course and how they cleared the 2<sup>nd</sup> year MBBS examination, despite the fact that MCI had discharged the students vide order dated 27.1.2017.

39. Insofar as the observations of this Court in order dated 18.9.2017 in the writ petition filed by Glocal Medical College challenging the discharge order is concerned, the observation could not be construed to have vacated or modified the specific directions issued by this Court on 20.3.2017.

40. In the result, the Review Petitions are without merit and as such dismissed. Consequently, all pending applications, including the application(s) for intervention/ impleadment shall stand disposed of."

26. Again the similar issue came before the Delhi High Court in the case of **Deepanshu Bhadoriya (supra)** and the same was decided in para Nos. 9, 17, 24 & 25, 36 to 38 observing as under:-

"9. After the process of admission was closed, the statement furnished by the respondent college, as well as by the State of M.P. to the MCI was reconciled, and it was found that the 5 petitioners herein had been granted admission by the respondent Medical College without their undergoing the centralized counselling conducted by the DME. Consequently, the MCI issued letters of discharge in respect of the 5 petitioners, firstly, on 26.04.2017. This communication was followed by 7 subsequent communications issued on 19.07.2017, 23.08.2017, 06.09.2017, 30.12.2017, 13.02.2018, 25.08.2018 and 21.09.2018. Neither the petitioners, nor the respondent Medical College, apparently, paid any heed to these communications. The respondent Medical College continued to treat the petitioners as their students, and allowed them to attend the course, appear in the examinations: and; get promoted.

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17. Mr. Singhdev - learned counsel for the MCI, submits that despite discharge of the petitioners by the MCI - as early as on 26.04.2017, the same was not acted upon - either by the respondent Medical College, or by the petitioners, and they have continued to ignore the same, even after repeated communications taken note of hereinabove. He submits that there was no interim order obtained by the petitioners- either in their writ petition, or in any other proceedings. Despite that, the petitioners continued to take admissions in subsequent years and undertake examinations at the respondent College. He submits that this was done by them at their own peril, and they cannot claim equity in their favour. He submits that the admitted position is that the petitioners did not undergo the centralized counselling and they were well aware from day one, that their admission in the respondent college were irregular and illegal - being in the teeth of the judgement of the Supreme Court in **Modern Dental College** (supra).

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24. Moreover, later a Three-Judge Bench decision of the Supreme Court-which Bench was also headed by the same learned Judge who headed the Bench which decided **Saraswati Educational Charitable Trust** (supra), has clearly held that in the case of backdoor entries, i.e. grant of admissions in Medical Colleges by bye-passing the central counselling system, the Court would not allow the students to continue their course on equitable considerations.

25. In this regard, he has drawn our attention to the judgment of the Supreme Court in Review Petition (Civil) Nos. 1835-1836/2020 in I.A. No. 183249/2019 in Special Leave Petition (Civil) Nos. 31037-31038/2016, Abdul Ahad and Ors. Vs. Union of India and Ors. alongwith other cases, decided on 17.08.2021. Mr. Singhdev submits that the facts of





this case dealt with by the Supreme Court, were much better for the petitioner before it inasmuch, as, the students were permitted - under interim orders, to continue with the course, which is not the case in hand. He has specifically placed reliance on the following passages of the said decision, which was preceded by consideration of several earlier decisions of the Supreme Court on the aspect of grant of equitable/ sympathetic relief to students/ candidates who took admissions to academic institutions irregularly. The decisions considered were: **Guru Nanak Dev University v. Parminder Kr. Bansal, (1993) 4 SCC 401; Gurdeep Singh Vs. State of J&K, 1995 Supp (1) SCC 188; K.S. Bhoir v. State of Maharashtra, (2001) 10 SCC 264; Mahatma Gandhi University v. GIS Jose, (2008) 17 SCC 611;** and **National Council for Teacher Education v. Venus Public Education Society, (2013) 1 SCC 223.** The conclusion drawn by the Supreme Court after discussing the aforesaid decisions, reads as follows:-

"35. In the backdrop of this legal position laid down in various judgments of this Court, it will not be possible to consider the cases of the review petitioners sympathetically. The Notification issued by the State of Uttar Pradesh on the basis of the law laid down by this Court clearly provided that the admissions were to be done only through the centralized admission process. Glocal Medical College in contravention of the said Notification conducted private counselling, which was not at all permissible in law. The students cannot be said to be ignorant about the Notification issued by the State of Uttar Pradesh.

36. In such a situation, no sympathies can be shown to such students who have entered through backdoor. Apart from that, MCI vide order dated 27.1.2017 had discharged the said students, who were not admitted through centralized admission process. It is pertinent to note that 25 students admitted in the same college, who were admitted through the centralized admission process, were very much absorbed by the DGME in other colleges. As such, the contention of the review petitioners that they came to know about the discharge order dated 27.1.2017 issued by MCI only when they had filed a





petition in the High Court in 2019 does not stand to reason.

37. Insofar as the contention with regard to the interim order passed by this Court dated 20.3.2017 is concerned. The same would clearly show that though the students were permitted to appear in the examination, their results were directed not to be published. There is no other order modifying the said order.

38. It is difficult to appreciate as to how the results of the students were declared for the 1st year MBBS examination, how they were admitted in the 2nd year MBBS course and how they cleared the 2nd year MBBS examination, despite the fact that MCI had discharged the students vide order dated 27.1.2017.

39. Insofar as the observations of this Court in order dated 18.9.2017 in the writ petition filed by Glocal Medical College challenging the discharge order is concerned. The observation could not be construed to have vacated or modified the specific directions issued by this Court on 20.3.2017.

40. In the result, the Review Petitions are without merit and as such dismissed. Consequently, all pending applications including the application(s) for intervention/impleadment shall stand disposed of."

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36. In any event of the matter, the admissions granted to the petitioners were, admittedly, outside the centralised counselling conducted by the DME of the State of Madhya Pradesh. If the vacancies position had been communicated to the DME by the respondent Medical College on, or before 07.10.2016, the DME could have sent the names of



candidates post counselling. However, it appears that was not done by the respondent Medical College, which proceeded to grant admission to the five petitioners much earlier, i.e. between 04.09.2016 and 28.09.2016. Obviously, these admissions were granted to the petitioners collusively. They are in the teeth of the judgment of the Supreme Court in **Modern Dental College & Research Centre** (supra). Pertinently, even after the Supreme Court passed the order dated 22.09.2016 in **Jainarayan Chaouksey** (supra), the respondent Medical College appears to have brazenly gone ahead to grant admission to petitioners No.1, 2, 3 & 5 between 24.09.2016 and 28.09.2016. The conduct of the petitioners and the respondent Medical College is, in fact, in gross contempt of not only the judgment in **Modern Dental College & Research Centre** (supra), but also the order dated 22.09.2016 in **Jainarayan Chaouksey** (supra).

37. The distinction sought to be drawn by Mr. Gupta in the case of the petitioners by contending that they ranked higher in the NEET examination than even those who were granted admission through the central counselling conducted by the DME in relation to the respondent Medical College, and therefore, they should be shown leniency as in the case of Saraswati Educational Charitable Trust (supra), and the decision in Abdul Ahad (supra) should not be invoked in their case, also has no merit. This is for the reason that, if the respondent Medical College had informed the vacancy position to the DME on time, the DME would have conducted further counselling and sent names on merit on the basis of the NEET examination conducted in 2016. It is quite possible that the names of other candidates, more meritorious than the five petitioners, may have been sent. Since the respondent Medical College does not appear to have informed the DME of the vacancy position, and they proceeded to grant admissions to the five petitioners much before the close of the date of admission on 07.10.2016, the other meritorious students, obviously, remained unaware that they could stake a claim against a seat in the respondent Medical College on the basis of their merit. Thus, to say that no other meritorious candidate has showed up, is neither here nor there.

38. It is high time that such backdoor entries in educational institutions, including Medical Colleges, should stop. Lakhs of students all over the country work hard and toil to secure admissions to educational institutions on the basis of their merit.





To permit any backdoor entry to any educational institution would be grossly unfair to those who are denied admission, despite being more meritorious, on account of the seats being taken and blocked by such backdoor entrants. The petitioners have only themselves to blame for the mess that they find themselves in. Had they acted in terms of the discharge letter dated 26.04.2017, they would have saved four years of their lives. But they did not, and acted recklessly. Despite not having any interim orders in their favour in their writ petition, they continued to attend the course - obviously, at their own peril."



27. The above judgment of Delhi High Court in the case of **Deepanshu Bhadoriya (supra)** was challenged before the Hon'ble Supreme Court in **Rahul Soni & Ors. (supra)** and the same was upheld.

28. The judgments cited by the counsel for the appellants, particularly the case of **Saraswati Educational Charitable Trust (supra)** does not give any benefit to the appellants because the said judgment was passed by the Hon'ble Apex Court in the peculiar circumstances of that case and it was observed by the Hon'ble Apex Court that this judgment shall not be treated as precedent.

29. At this stage, it is needed to be mentioned that an identical issue has arisen before the Hon'ble Supreme Court in **Rishabh Choudhary Vs. Union of India & Ors. reported in (2017) 3 SCC 652**, where the question for consideration was the validity of admission granted to the petitioner by Respondent C.M. Medical College & Hospital to the MBBS course. A plea was advanced that since the petitioner was already granted admission by the college after the examination CGMAT-2016 was conducted by the college and supervised and monitored by the State Government and in





which there was no allegation of impropriety, his admission should not be disturbed. It was also pleaded that the petitioner was certainly not at fault and he should not be rendered victim of an apparent wrong committed by the college as also by the State Government. In the said case, examination was conducted by the college contrary to the Gazette Notification issued by the Medical Council of India amending the regulations on Graduate Medical Education, 1997 to the effect, *inter alia*, that admissions to MBBS Course shall be based solely on marks obtained in NEET. After considering the submissions advanced on behalf of the petitioner and the college supporting him, the Supreme Court dismissed the writ petition filed under Article 32 of the Constitution of India observing as under:—

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

(emphasis supplied)

30. The Supreme Court further held that the question is not of any impropriety in conducting of the examination but the question is really one of adhering to a particular discipline laid down by the Medical Council of India which has been approved by the Court. The Supreme Court said that the plight of petitioner is unfortunate but it cannot be helped.



31. In **Guru Nanak Dev University v. Parminder Kumar Bansal**, reported in (1993) 4 SCC 401 relating to admission in disregard to the eligibility of the candidates in academic matters, the Supreme Court said as follows:—

**“7..... We are afraid that this kind of administration of interlocutory remedies, more guided by sympathy quite often wholly misplaced, does no service to anyone. From the series of orders that keep coming before us in academic matters, we find that loose, ill-conceived sympathy masquerades as interlocutory justice unhexposing judicial discretion to the criticism of degenerating into private benevolence. This is subversive of academic discipline, or whatever is left of it, leading to serious impasse in academic life. Admissions cannot be ordered without regard to the eligibility of the candidates. Decisions cannot be deferred or decided later when serious complications might ensue from the interim order itself. In the present case, the High Court was apparently moved by sympathy for the candidates than by an accurate assessment of even the prima facie legal position. Such order cannot be allowed to stand. The courts should not embarrass academic authorities by themselves taking over their functions.”**

(emphasis supplied)

32. In **CBSE v. P. Sunil Kumar**, reported in (1998) 5 SCC 377, the institution whose students were permitted to undertake the examination of the CBSE were not entitled to appear in the examination. They were, however, allowed to appear in the examination under the interim order granted by the High Court.

In that context, the Supreme Court observed as under:—

**“4.....But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to**



subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students....”

33. In view of the discussions made here-in-above, we find that the appellants did not undergo the centralized counselling and they were well aware from the day one that their admission in the respondent-college was irregular and illegal- being in the teeth of the judgments of the Hon'ble Apex Court in the cases of **Modern Dental Medical College (supra)** & **Jainarayan Chouksey (supra)**. The appellants are not entitled to get any equitable relief in view of the judgment of the Hon'ble Apex Court in the case of **Abdul Ahad (supra)**.

34. Under these circumstances, we find that no ground has been made out for granting relief to the appellants. There is no merit in these appeals and the same are accordingly dismissed. However, we make it clear that the appellants would be at liberty to proceed against the respondent-College to get the amount of compensation of Rs.10,00,000/- (each) in pursuance of the directions issued by the learned Single Judge in accordance with law.

35. Before parting with the judgment, we would like to observe that the time has come where such backdoor entries in educational institutions should be stopped and discouraged. To permit any backdoor entry to any educational institution would be *de hors* the Rules and Regulations. The respondent-College was well aware of the fact that admissions cannot be granted to the appellants contrary to the regulations, even then, the College permitted the appellants to continue their studies in-spite of the



directions by the Dental Medical Council to discharge the appellants. Such an intentional and deliberate violation of the Regulations by the respondent-College while granting admissions to the appellants in the academic year-2017 cannot be condoned. Hence, for the above unauthorized act, the respondent-College is liable to pay and deposit the costs of Rs. 25,00,000/- with the Rajasthan State Legal Services Authority (RSLSA) within a period of three months from today. RSLSA shall recover the same from the respondent-College in accordance with law.

36. The respondent-University and the College have distributed the degrees of MDS Course to the appellants in violation of the orders passed by this Court and the appellants, despite being well aware of the order dated 24.06.2020, have received the degrees and not deposited the same with the University, the appellants are hereby directed to deposit the degrees with the University within one month from today, failing which the respondent-University would be at liberty to initiate contempt proceedings against the appellants.

37. All pending application(s), if any, stand(s) disposed of.

38. The Registry is directed to place a copy of this judgment in the connected case file.

39. Registry is directed to forward a copy of this judgment to RSLSA for necessary compliance.

(ANOOP KUMAR DHAND),J

(PANKAJ MITHAL),CJ

PRAVESH/6-7