IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Moushumi Bhattacharya.

WPA 18122 of 2021

Sri Daksh Singhal & Ors.

Vs.

The State of West Bengal and Others

with

WPA 80 of 2022

with

IA No : CAN/1/2022

Supriya Bakshi

Vs.

Union of India & Ors.

For the Petitioner	: Mr. Suddhasatva Banerjee, Adv.
in WPA 18122 of 2022	: Mr. Supratic Roy, Adv.
	: Mr. Amit Dey, Adv.
For the Petitioner	: Mr. Biswaroop Bhattacharyya, Adv.
in WPA 80 of 2022	Mr. Rahul Karmokar, Adv.
	Mr. Saptarshi Kumar Mal, Adv.
For the State	: Mr. Swapan Kumar Dutta, Adv.
in WPA 18122 of 2022	Mr. Rajat Dutta, Adv.
For the State	: Mr. T.M. Siddiqui, Adv.
in WPA 80 of 2022	Mr. Nilotpal Chatterjee, Adv.

For Respondent No. 4	: Mr. Soumya Majumdar, Adv.
in WPA 18122 of 2022	Mr. Sumanta Biswas, Adv.
& Respondent No. 7	Mr. D. K. Jain, Adv.
in WPA 80 of 2022	Mr. Bikash Shaw, Adv.
For the Respondent No. 6	: Mr. D.N. Maiti, Adv.
in WPA 80 of 2022	
For the Respondent Nos. 5 & 6	: Mr. L.K. Gupta, Adv.
in WPA 18122 of 2021	Mr. Sandip Ghosh, Adv.
& Respondent Nos.	Mr. Debayan Ghosh, Adv.
8 and 9 in WPA 80 of 2022	Mr. Asim Kumar Chatterjee, Adv.
For the National Medical	: Mr. Indranil Roy, Adv.
Commission.	Mr. Sunit Kumar Roy, Adv.
Last Heard on	: 20.05.2022.
Judgment on	: 23.06.2022.

Moushumi Bhattacharya, J.

1. The issue in the two writ petitions is whether a nomination can be made by a non-State body for admission to post-graduate medical courses to the Institute of Post-Graduate Medical Education & Research (IPGEM&R) which is a Government hospital and medical college in the State of West Bengal. The petitioners say that the nominations were made *dehors* The Medical Council of India Postgraduate Medical Education Regulations, 2000 as amended on 05.04.2018.

2. The petitioners and the private respondents successfully participated in the NEET-PG, 2021 and underwent the internal examination conducted by the respondent no. 4 (Rai Bahadur Seth Sukhlal Karnani Chandanmull Karnani Trust) for being nominated to a post-graduate medical seat in IPGME&R which is a reputed institution founded by the respondent no. 4 Trust. Private respondent Nos. 5 and 6 in WPA 18122 of 2021 and the private respondent nos. 8 and 9 in WPA 80 of 2022 were selected by the respondent no. 4 for nomination to the post-graduate medical seats in IPGME&R. The petitioners contend that the private respondents scored lower marks compared to the petitioners in NEET–PG, 2021 and the nominations were hence contrary to the MCI Regulations, 2000.

3. The Trust contends that the writ petitions are not maintainable since the respondent no. 4 is a private Trust. The second argument on maintainability is that the petitioners cannot challenge the nomination after having participated in the process.

The maintainability argument

4. In *Shri Andi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust vs V.R. Rudani; (1989) 2 SCC 691* the Supreme Court expounded the widening contours of the law relating to issue of *mandamus*. It was held that the term 'authority' used in Article 226 of the Constitution must be given a liberal meaning unlike the term in Article 12 and that 'authority' may cover any person or body performing a public duty. The Court explained that the duty must be judged in the light of a positive obligation

owed by the person or authority to the affected party and a *mandamus* cannot be denied where a positive obligation exists. The widening of the field of Article 226 with reference to the expression 'person or authority' received a similar meaning in *Marwari Balika Vidyalaya vs Asha Srivastava; (2020) 14 SCC 449* where the Supreme Court dealt with the issue whether the service of teachers of a private school could be terminated without conducting an enquiry. The Supreme Court held that the writ petition was maintainable since the words used in Article 226 would not be confined only to statutory authorities and instrumentalities of the State and may cover any other person or body performing a public duty.

5. In the present case, in nominating candidates for post-graduate medical seats in a State-aided college the respondent no. 4 Trust is performing a public function since the nomination would have a bearing on the dissemination and quality of medical services which would ultimately be provided by the selected candidates. The Trust therefore, owes a positive obligation to the affected party, in this case, the public at large. It may be reiterated that a *mandamus* may be issued by the Court when the applicant establishes that he has a legal right to the performance of a legal duty by the party against whom the *mandamus* is sought and that the right claimed was subsisting on the date of the petition; Ref : *State of U.P. vs Harish Chandra; (1996) 9 SCC 309*. The writ petitioners are also aggrieved by the role of the State respondents being the Department of Health & Family Welfare and the Director of Medical Education, Government of West Bengal, in accepting the nominations made by the

respondent no. 4 Trust. The cause of action is hence a composite bundle of facts which further dilutes the maintainability argument.

6. The first objection raised by the respondents is accordingly found to be untenable.

7. The second contention of the petitioners being estopped by their conduct as a result of the petitioners participating in the selection procedure conducted by the Trust is logically unacceptable. The petitioners could not have had any knowledge about the outcome of the selection process at the time of applying for the nominations or during the evaluation process. The legality of the selection process would never be questioned through judicial review if candidates are denied access to courts on the ground of having participated in the selection process. Such a view would also disqualify a candidate who has not participated in the process on the ground of the candidate not having *locus* and being an unaffected party. *Dr. (Major) Meeta Sahai vs State of Bihar; (2019) 20 SCC 17* dealt with a similar issue where the respondents before the Supreme Court questioned the maintainability of the appellant's challenge on the ground that a candidate who had participated in a recruitment process could afterwards not challenge the correctness of it particularly where the candidate failed in the selection. The Supreme Court held that in agreeing to participate in the selection process a candidate only accepts the prescribed procedure and not the illegality of it. It was also held that a candidate may not have the *locus* to assail the derogation of the constitutional safeguards unless he/she participates in the selection process. The Supreme Court came to a

similar finding in *S. Krishna Sradha vs The State of Andhra Pradesh; 2019 SCC OnLine SC 1609* although on a slightly different factual premise concerning the cut-off date for admission to the MBBS course.

8. *Dhananjay Malik vs State of Uttaranchal; (2008) 4 SCC 171* dealt with a situation where the writ petitioners unsuccessfully participated in a recruitment process. The Supreme Court held that since the writ petitioners had done so without any demur, they were estopped from challenging the selection criteria of the educational qualification being contrary to the U.P. Subordinate Educational Service Rules, 1983. In *Union of India vs N.Y. Apte; (1998) 6 SCC 741* the Supreme Court found that the respondents were not even in the zone of consideration for promotion to the concerned post when they filed the writ petition before the Delhi High Court. In *Madras Institute of Development Studies vs K. Sivasubramaniyan; (2016) 1 SCC 454* the Supreme Court relied on *G. Sarana vs University of Lucknow; (1976) 3 SCC 585* to hold that once a candidate voluntarily appears before the concerned selection committee and takes a chance, the candidate cannot question the constitution of the committee.

9. None of the aforesaid cases assist the respondents in their plea of ousting the petitioners' challenge. Since this kind of question often crops up before a Court, it is important to make a distinction between the cases where the petitioner participated in a selection process being fully aware either of the constitution of the selection committee or the evaluation process involved or the possible outcome of the evaluation and cases where the petitioner was

completely unaware of any of the relevant incidents of the assessment criteria or the nature of the outcome. It is one thing to say that an unsuccessful candidate having all the material information at his/her disposal at the relevant point of time is estopped from mounting a challenge to the selection process; and quite a different point where the candidate was kept in the dark on any vital aspect of the evaluation or could not have foreseen the outcome of the process on the information available to him/her. The present case falls in the latter category where the petitioners could not have known the criteria for selection or the applicability of the 2000 MCI Regulations to the evaluation.

10. The court is therefore not inclined to accept the maintainability argument and holds that the writ petitions are maintainable under Article 226 of the Constitution of India.

The substantive challenge

11. The issue is whether a non-State body can nominate candidates for post-graduate medical seats to medical courses in a government college *dehors* the Medical Council of India Post Graduate Medical Education Regulations, 2000 as amended.

12. The petitioners through their learned counsel, Mr. Suddhasatva Banerjee and Mr. Biswaroop Bhattacharya urge that the respondent no. 4 Trust could not have nominated the private respondents to the PG medical seats in IPGME&R.

13. The respondent no. 4, through its learned counsel, Mr. Soumya Majumdar, relies on at least three precedents on the issue in the form of three judgments delivered by Single and Division Benches of this Court upholding the right of the respondent no. 4 Trust to nominate candidates under an agreement dated 7th July, 1954. The Trust also contends that the nominations are not contrary to the MCI Regulations of 2000 and traces the amendments of the Regulations from 2000 to 2018. It is submitted that the MCI Regulations which came in much later would not have the effect of reversing the three judgments relied upon. Counsel places a decision of the Supreme Court in *Tamil Nadu Medical Officers Association vs Union of India; (2021) 6 SCC 568* to submit that a separate source of entry for in-service doctors by way of executive instructions was upheld by the Supreme Court notwithstanding the prevailing MCI Regulations.

14. The State respondents, through their learned counsel Mr. Swapan Kumar Dutta rely on the agreement dated 17th July, 1954 which was executed between the State of West Bengal and the respondent no. 4 Trust for valuable consideration. Counsel places Clause 6 of the said agreement under which the Trust has the power to recommend a student for post-graduate training for every session if the student is otherwise eligible for such admission. Counsel submits that the State is hence under a contractual obligation and cannot resile from the terms of the agreement. Counsel relies on the precedential value of the judgments of 1984-1992 of the learned Judges. It is also submitted that the respondent no. 4 has followed the MCI Regulations since the nominations are made from the State merit list.

15. Mr. L.K. Gupta, learned senior counsel appearing for the private respondents relies on the agreement executed between the Trust and the State in the name of the Governor of West Bengal in conformity with Article 166 (2) of the Constitution of India. Counsel submits that the 2000 Regulations have undergone several changes from 2008 onwards and that the only requirement of Regulation 9(4) is for candidates to be admitted to PG Courses from the merit list which is a departure from the earlier Regulation 9(4) as it stood in 2008 and 2010. Counsel submits that the judgments passed by the learned Judges of this Court operate as binding precedents.

16. The National Medical Commission (formerly, Medical Council of India) is represented by learned counsel, Mr. Indranil Roy. The stand taken is that the nomination by the Trust and the acceptance of it by the State is covered by Regulation 9(4) of the 2000 Regulations and is a reservation under the applicable laws. Counsel submits that the nominated candidates are required to fulfill the eligibility criteria laid down in Regulation 9(3), namely, the candidates must obtain the minimum marks as applicable in their respective category in the National Eligibility-cum-Entrance Test for Postgraduate courses held for the said academic year. Counsel submits that once the candidates fulfill these conditions, it is not open for the National Medical Commission to scrutinize the procedure. Counsel urges the Court not to interfere with the admission process for the academic session 2021 which has already been completed.

17. The arguments advanced by learned counsel appearing for the parties will be dealt with in the following sequence:

i) Whether the judgments delivered in 1984-1992 can be treated as binding precedents.

ii) The MCI Regulations, 2000.

iii) What Regulation 9(4) entails.

iv) The position of the private respondents *vis-à-vis* the petitioners.

v) Has the Trust conformed with Regulation 9(4) in nominating the private respondents?

vi) Is the State under an obligation to accept the nominations?

Whether the judgments delivered in 1984-1992 can be treated as binding precedents

18. The orders/judgments are as follows:

- *Justice Padma Khastgir* passed an order on 19th September, 1984 in Matter No. 1695 of 1983 on an application made by the trustees of the respondent no. 4 Trust in respect of a refusal by the Government of West Bengal to induct a nominee of the Trust on the Board of the SSKM Hospital. The learned Judge issued a mandamus on the State of West Bengal directing them to act in accordance with agreement between the Governor of West Bengal and the trustees of Raibahadur Sukhlal Chandan Mull Karnani Trust and accept the recommendation of the Trust for admitting

an eligible student to the post-graduate training and research department of the SSKM Hospital.

- *Justice Susanta Chatterji* passed a judgment dated 25th February, 1991 in Matter No. 5298 of 1989 in a writ petition filed by the Managing Director of the respondent no. 4 Trust for directing the respondent authorities to act in accordance with the agreement dated 17th July, 1954 executed between the Trust and the Governor of West Bengal. The University of Calcutta was the answering respondent in the matter. The stand of the University was that the University was not bound by the terms of the agreement of 17th July, 1954. The Court upon considering the agreement executed between the Trust and the State and the effect given to it by the Trust in terms of donation of Rs. 17 lacs to the State of West Bengal in 1954, held that the University is bound to discharge the obligation attached to the terms of the agreement since it has received the benefit of the same. The Court also held that the University cannot deny the recommendation made by the Trust of admitting a candidate to the concerned course. The respondent University was accordingly directed to act in terms of the agreement dated 17th July, 1954 and admit students who had been recommended to the Institute of Post Graduate Medical Education and Research (IPGME&R).
- *Justice Ajoy Nath Ray* gave a dissenting judgment in the appeal filed by the University of Calcutta from the judgment dated 25th

February, 1991. In his dissenting judgment, Justice A.N. Ray, agreed with the view of Justice Susanta Chatterji and held that the 1954 agreement did not contain any illegality. The learned Judge observed that the donation had been given by the Trust for the larger benefit of the State and that being a private body, the Trust is not bound by public law. It was further observed that there was nothing wrong in a large donation for an educational purpose where only a small number of seats are reserved and made possible by the said donation.

[*Justice A.M. Bhattacharjee* disagreed with the view of Justice A.N. Ray and held that the names recommended by the Trust under Clause 6 of the deed of 1954 cannot be admitted unless they are otherwise found to the eligible in accordance with the relevant Rules of the University.]

- *Justice Suhas Chandra Sen* agreed with the view of Justice A.N. Ray in a reference made under Clause 36 of the Letters Patent of this Court. The learned Judge rejected the stand of the University in refusing to be bound by the agreement of 17th July 1954 on the ground that the University is not an autonomous body independent of the Government and is hence bound to admit any student to the post-graduate medical course under an agreement entered into by the Government. The Court observed that the State as well as the University are jointly trying to circumvent the agreement entered into by the State with the Karnani Trust and

attempting to frustrate the nominations of two candidates to the post-graduate medical course. It was further observed that the University having taken advantage of the facilities created by the donation of the Trust cannot renege from its obligations created by the agreement. The Court held that giving the Government of West Bengal liberty to abandon such an agreement after enjoying the benefit of the said agreement would be against public policy. The Court accordingly held in favour of the nominations made by the Trust of candidates who were otherwise eligible to the medical course.

19. There are three reasons for holding that the above judgments cannot be seen as binding precedents, far less as *res judicata,* in relation to the obligations of the State to comply with the terms of the agreement executed between the Trust and the Governor of West Bengal on 17th July, 1954.

20. First, the facts before the Court in Matter No. 5298 of 1989 were different. The Court was considering whether the Calcutta University could be directed to accept the recommendations of the Trust in respect of admission of students to the medical course. The Calcutta University as well as State had opposed the recommendation made by the Trust and had been united in their stand of the agreement not being binding on them. Second, the question of admission of the most meritorious candidates, though briefly considered by Justice Ajoy Nath Ray in his dissenting judgment, was without the statutory framework of the Medical Council of India Regulations which came much later

in 2000. Justice Ray's views were largely coloured by the fact that (a) the donation was given for public benefit; (b) the Trust was a private body and (c) the State had benefited from the donation made by the Trust. The judgment also proceeded on the basis that having made the donation, the Trust had a right to *"keep strings attached to the donation"*.

21. The most important distinguishing factor however remains the Post-Graduate Medical Education Regulations, 2000 enacted under sections 20 and 33 of the Indian Medical Council Act, 1956 which brought in a wholly different and self-contained scheme for post-graduate medical education and its related aspects. Whether the 2000 Regulations would have a bearing on the 1954 agreement will be considered later in this judgment. The fact however of the three decisions of 1984-1992 being prior to the Regulations in point of time changes the contours of consideration altogether and dilutes the impact of the decisions.

22. *Sahu Madho Das vs Pandit Mukand Ram; AIR 1955 SC 481*, relied on by the private respondents, proceeded on the peculiar facts of the case where the Supreme Court held that even though Mukand Ram was not a party to the particular litigation and the decision therefore did not bind him, the decision operated as a judicial precedent on the construction of the concerned document; namely a Will of 1864.

23. As stated above, the facts in the present case are quite different and even though the State and the respondent no. 4 Trust were parties to the earlier litigation, they cannot claim the judgments rendered therein to be binding precedents when they were delivered before governing Regulations were

brought into effect in 2000. The argument of the respondent no. 4 and the private respondents are hence rejected on this score.

The Post-graduate Medical Education Regulations, 2000, as amended from 2008-2018.

24. Regulation 9 which deals with the procedure for selection of candidates for post-graduate courses is the relevant Regulation for the present writ petition.

- On 22nd August, 2000, when the Regulations were notified, Regulation 9(1) read as follows.

> *"Students for Postgraduate medical courses shall be selected STRICTLY ON THE BASIS OF THEIR ACADEMIC MERIT."*

- Regulation 9(1)(a) was substituted in terms of a Notification published on 20th October, 2008 and became as follows.

> *"Students for Postgraduate medical courses shall be selected STRICTLY ON THE BASIS OF THEIR INTER-SE ACADEMIC MERIT"*

- Clause 9 was again substituted by a Notification dated 21st December, 2010 and became as follows,

> *"The reservation of seats in medical colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate courses from the said merit lists only.*
>
> *....."*

- The above Notification was quashed by the Supreme Court on 18th July, 2013 and was revived on 11th April, 2016 by the Supreme Court in a review of the decision in *Medical Council of India vs Christian Medical College, Vellore; (2016) 4 SCC 342.*
- Regulation 9(1) to (11) was substituted on 5th April, 2014 as follows. The relevant part i.e. 9(4) is set out.

> *"The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate Courses from the said merit lists only."*

- The most recent change to Regulation 9 was in terms of a Notification published on 5th April, 2018. The relevant part of 9(4) is set out.

> *"The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate courses from the said merit lists only."*

- This is the present form of Regulation 9(4) of the 2000 Regulations.

> *"(4) The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate Courses from the said merit lists only.*

> *Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."*

25. The changes, pointed out on behalf of the Trust and the private respondents is that the requirement of students being selected *"strictly on the basis of their academic merit"* (2000) → *"strictly on the basis of their inter se academic merit"* (2008) → *"shall be admitted to Post-graduate courses from the said merit lists only"* means that the only requirement which the Trust must satisfy is selecting candidates from the merit list. In other words, the respondents construe the changes to mean that the only requirement is to select candidates from the merit list of the NEET-PG test. There is hence no requirement of selecting candidates on the basis of their *inter se* academic merit. The respondents hence contend that candidates need not be selected in accordance with their position in the merit list and that the Trust is under no obligation to respect their *inter se* academic position as reflected in the list.

26. This Court is unable to accept the construction of Regulation 9(4) as sought to be given by the Trust and the private respondents,

<u>What Regulation 9(4) of the 2000 Regulations presently entails</u>

27. The relevant clauses of Regulation 9, as of today, are as follows,

"9. Procedure for selection of candidate for Post-graduate courses shall be as follows. (1) There shall be a uniform entrance examination to all medical educational institutions at the Post-graduate level namely "National Eligibility-cum-Entrance Test" for admission to post-graduate courses in each academic year and shall be conducted under the overall supervision of the Ministry of Health & Family Welfare, Government of India.

.....

(3) In order to be eligible for admission to Post-graduate Course for an academic year, it shall be necessary for a candidate to obtain minimum of marks at 50th percentile in the "National Eligibility-Cum-Entrance Test for Post-graduate courses" held for the said academic year. However, in respect of candidates belonging to Scheduled Castes, Scheduled Tribes, and Other Backward Classes, the minimum marks shall be at 40th percentile. In respect of candidates with benchmark disabilities specified under the Rights of Persons with Disabilities Act, 2016, the minimum marks shall be at 45th percentile for General Category and 40th percentile for SC/ST/OBC. The percentile shall be determined on the basis of highest marks secured in the All India Common merit list in National Eligibility-cum-Entrance Test for Post-graduate courses.

Provided when sufficient number of candidates in the respective categories fail to secure minimum marks as prescribed in National Eligibility-cum-Entrance Test held for any academic year for admission to Post-graduate Courses, the Central Government in consultation with Medical Council of India may at its discretion lower the minimum marks required for admission to Post-Graduate Course for candidates belonging to respective categories and marks so lowered by the Central Government shall be applicable for the academic year only."

28. The contentious issue revolves around Regulation 9(4), which is set out once again along with the *proviso* for ease of reference.

> *"9. (4) The reservation of seats in Medical Colleges/institutions for respective categories shall be as per applicable laws prevailing in States/Union Territories. An all India merit list as well as State-wise merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test and candidates shall be admitted to Post-graduate Courses from the said merit lists only.*
>
> *Provided that in determining the merit of candidates who are in service of Government/public authority, weightage in the marks may be given by the Government/Competent Authority as an incentive upto 10% of the marks obtained for each year of service in remote and/or difficult areas or Rural areas upto maximum of 30% of the marks obtained in National Eligibility-cum-Entrance Test. The remote and/or difficult areas or Rural areas shall be as notified by State Government/Competent authority from time to time."*

29. A plain and literal construction of the provision is that an all India and a State-wise merit list of eligible candidates will be prepared according to the marks obtained in NEET-PG which would in turn determine the priority of admission of the candidates to the PG courses.

30. NEET-PG is an eligibility-cum-written examination prescribed as the single entrance examination for admission to MD/MS and PG Diploma Courses under section 61(2) of the National Medical Commission Act, 2019 read with section 10D of the Indian Medical Council Act, 1956 (as inserted with effect from 24th May, 2016).

31. A merit list can only mean one thing; that candidates are ranked in order of the marks obtained by them. Unless the merit list is prepared in a reverse order, i.e., the candidate with the lowest mark being placed on top, a logical

(and the only) interpretation of the requirement of 9(4) is that candidates would be admitted to the PG courses in sequential order from the top of the merit list. Simply put, the candidate who is placed in the 1st position in the merit list would have the 1st shot at admission, followed by the 2nd and then the 3rd and so on and so forth.

32. The words in 9(4) *".....merit list of the eligible candidates shall be prepared on the basis of the marks obtained in National Eligibility-cum-Entrance Test....."* should be read in tandem with the concluding part of the phrase *"....and candidates shall be admitted to Post-graduate courses from the said merit lists only"* . Read together, the mandate would be to admit candidates in the order of merit. Regulation 9(4) cannot be interpreted in any other way.

33. The *proviso* to Regulation 9(4) allows for weightage to be given to candidates in the form of an incentive for service rendered in remote, difficult or rural areas; the last two being subject to notifications of the State Government/competent authority as may be issued from time to time.

34. 9(4) has also to be read with 9(1) which calls for a uniform entrance examination to all medical educational institutions at the Post-graduate level for admission to Post-graduate courses in each academic year. The uniformity of the evaluation-system is reinforced by designating the authority, namely, the Ministry of Health and Family Welfare, Government of India, for overall supervision of the procedure. The Information Bulletin of NEET-PG records that no other entrance examination either at the State or the institutional level shall be valid for admission or entry to the said courses. The preamble to the

Post-Graduate Medical Education Regulations, 2000 as amended further states, *inter alia*, that the National Eligibility-cum-Entrance Test is the *uniform entrance examination to all medical educational institutions at the post-graduate level and shall continue to be the uniform entrance examination to all medical educational institutions at the post-graduate level.*

35. The above makes it clear that the NEET-PG examination is the only prescribed entrance test for admission to Post-graduate medical courses. Regulation 9 including clause (4) thereof bolsters the uniformity and exclusivity of the entrance test by requiring admission to be made only on the basis of the order of merit of the candidates. The reliance placed by the respondents on the transformed 9(4) does not give any clarity on the intention of the legislation. The progression from "strictly on the basis of their academic merit" → "strictly on the basis of their *inter se* academic merit" → "from the said merit list only" does not mean that the rank of the candidates can be given a go-by. Indeed, if candidates are selected for admission in a random order without due regard to their position and rank, the entire objective of The Indian Medical Council Act, as amended and the Post-graduate Medical Education Regulations, 2000 would be rendered meaningless.

36. This Court is therefore unable to accept that the only condition which the Trust was required to fulfill was selecting candidates from the merit list or that such selection could be made by way of a parallel assessment without due regard to the rank obtained by the candidates. Admittedly, the Trust conducts a separate process of assessment for selecting candidates for admission to the

PG Medical Courses. The selection process involves a test after which the selected candidates are recommended by the Trust to the concerned college authority for admission. The affidavit of the State respondents in paragraph 7 specifically states that the Trust recommends candidates on the basis of its own selection test which has no relation with the NEET-PG ranking. This assertion further persuades the Court to hold that the Trust has acted in violation of the 1956 Act and the 2000 Regulations in conducting an exclusive and a parallel selection process for admission to PG Medical Courses outside the statutory framework of the Indian Medical Council Act and the Regulations.

The position of the private respondents *vis-a-vis* the petitioners in the NEET-PG test

37. The petitioners and the private respondent nos. 5 and 6 in WPA 18122 of 2021 and private respondent nos. 8 and 9 in WPA 80 of 2022 have successfully participated in the NEET-PG - 2021. The rank of the parties are as follows.

Supriya Bakshi (Petitioner in WPA 80 of 2022)	-	Rank 58471	-	Score 363
Daksh Singhal (Petitioner no.1 in WPA 18122 of 2021	-	Rank 60748	-	Score 357
Parna Chakraborty (Petitioner no.3 in WPA 18122 of 2021)	-	Rank 67453	-	Score 340
Nikhil S. Kumar (Petitioner No. 2 in WPA 18122 of 2021)	-	Rank 99703	-	Score 265

.....

Moinak Chakraborty - Rank 82423 - Score 304
(Respondent No.5 in WPA 18122 of 2021)

Sonia Ghosh - Rank 85417 - Score 297
(Respondent No.6 in WPA 18122 of 2021)

38. The above position is undisputed and would also appear from the pleadings before the Court.

Has the Trust conformed to Regulation 9(4) in nominating the private respondents?

39. The Agreement executed between the Trust and the Governor of West Bengal on 17th July, 1954 entitles the Trust to nominate two candidates for Post-graduate Medical Course in IPGME&R "*if otherwise eligible for such admission*" (Clause 6 of the Agreement). The twin determinants for admission of a candidate to the PG course are that the candidate must qualify in the NEET-PG Examination and that the admission to medical courses must be in accordance with the merit list. The Trust has admittedly recommended the private respondents for admission to medical course despite the private respondents being placed lower in the order of merit compared to the petitioners in the NEET-PG Examination. In discounting the positions obtained by the petitioners in the NEET-PG Examination, the Trust has failed to conform with Regulation 9 including Clause (4) thereunder of the 2000 Regulations.

40. The Trust has also violated the single-point entry to admission to PG courses and the single-umbrella supervision to the process of admission mandated under the Regulations. The Trust, in fact, has created a separate channel of entry to admission to PG courses guided by selection criteria which are exclusive to the Trust and without the sanction of the supervising authority under Regulation 9. The Trust acknowledges that the dissemination of information of the selection test conducted by the Trust is but to a limited few; the mode of dissemination is erratic and benefits only those who chance upon the advertisement or get to know of such through word of mouth.

41. There is hence a built-in unfairness in the whole process. While the PG medical seats are a limited few in number, the aspirants to these seats are in lakhs. The information of the nomination by the Trust is fortuitous and the selection criteria unknown and un-published. It hence raises a presumption that the Trust is controlling a separate entry under its own particular evaluation mechanism leaving out those who remain unaware of the nominations which may also include those who performed better in the NEET-PG than the candidates nominated by the Trust. The Trust hence renders itself vulnerable and subject to judicial scrutiny on all scores. The conclusion is that the nominations made by the Trust are in violation of the 2000 Regulations.

Is the State under an obligation to accept the nominations made by the Trust?

42. The State accepted a donation of Rs.17 lakhs from the Trust under the terms of the Agreement dated 17th July, 1954, in exchange of several returned

promises. The State continues to accept the recommendations made by the Trust for admission to the PG Medical courses in the IPGME&R. The State argues that it has a continuing contractual obligation to fulfill in return of the donation of Rs. 17 lakhs which was accepted by the State in 1954. The question is not whether the 17 lakhs in 1954 would translate to Rs. 340 lakhs in 2021 if interest is compounded at 4.5% p.a.; the question is whether the State can allow nominations made in contradiction of an existing statutory regime and act in terms of such nominations. This Court is of the view that the State cannot.

43. The State is fully aware of the statutory regime which is prevailing since 1956, as amended in 2016 and lent muscle by an enactment of the Regulations in 2000. The State is also aware that the nominations have not been sanctioned or recognised within the framework of the 2000 Regulations or by the Courts after 2000 Regulations came into force. The State cannot therefore hold on to its promise in the garb of a contractual obligation when the fulfillment of such obligation is *dehors* the existing statutory framework. The acceptance of the nominations by the State is hence contrary to law and cannot be accorded judicial sanction in any form.

44. In *Sudhir N. vs State of Kerala; (2015) 6 SCC 685* the Supreme Court held that Regulation 9 is a complete code and further that merit should be the sole basis of admission for candidates belonging to any given category. The Supreme Court was of the view that *inter se* merit cannot be overlooked to promote seniority which has no place in the scheme of the MCI Regulations.

Although, *Sudhir N.* referred to Regulation 9 containing the "inter se academic merit" condition was also partly overruled in *The Tamil Nadu Medical Officers* case, the Supreme Court clarified in paragraph 21 of *Tamil Nadu Medical Officers* that Regulation 9 may not be construed with respect to providing reservation for a separate source of entry for in-service candidates within the State quota. The Supreme Court in *Tamil Nadu Medical Officers* case however did not disturb the primacy given to merit in *Sudhir N. 1988 (Supp) SCC 30 (Bhagat Ram Sharma vs Union of India)* was cited to explain the effect of amendment to an existing statute. The effect is of repeal of the existing provision where the earlier provision is deleted and completely replaced with the amended provision. This decision was cited with regard to the 2014/2018 amendment to Regulation 9 of the 2000 Regulations and the substitution of the expression "academic merit" and "*inter se* merit" with "from the merit list only". Since it has already been held that the 2014/2018 amendments would not come to the aid of the respondents in discounting the order of merit, this decision does not assist the respondents.

45. *M/s Burrakur Coal Co. Ltd. vs Union of India ; AIR 1961 SC 954* is for the proposition that the Preamble of an Act may be looked into for understanding the import of the various clauses contained in the Act and must be disregarded where the language of the Act is clear. Since this Court has construed Regulation 9 as it stands today with reference to its earlier *avatar*, the Preamble of the Indian Medical Council Act as amended or the National

Medical Commission Act, 2019 has not been taken as the sole guiding factor of this decision.

Would *Tamil Nadu Medical Officers Association vs Union of India; (2021) 6 SCC 568*, have a bearing on the nominations made by the Trust?

46. The Trust has sought to rely on the above decision to urge that "reservation" as a separate source of entry can be provided by the State through executive instructions. The Trust has also argued that the bar under MCI Regulations has to be expressed and that once a minimum entry standard has been achieved under Regulation 9, the State can provide independent channel of entry by making a variation to the merit list.

47. On a careful consideration of the *Tamil Nadu Medical Officers* case, it is found that the issues involved in the said decision pertains to the power of the State to legislate and frame a law in respect of in-service candidates under the *proviso* to Regulation 9(4). This would be evident from paragraph 9.3 of the report which sets out the issues for consideration and include whether the State is denuded of its power to legislate on the manner and method of the postgraduate medical courses, more particularly, in relation to special provisions for in-service candidates in the postgraduate degree/diploma courses.

48. The scope of the present writ petitions is wholly different from the issues before the Supreme Court in *Tamil Nadu Medical Officers*. First, the question is not of in-service candidates or whether the State can make a legislation for

variation of the merit list under the *proviso* to Regulation 9. Second, a separate channel of admission which the Trust seeks to create has not been given any recognition by the State in the form of a law or otherwise. The State has also not sought to exercise any power under List III of the Seventh Schedule of the Constitution of India for framing a law in respect of the nominations made by the Trust. The argument of the Trust being a private trust, which has been discussed and rejected above, would also be inconsistent with the argument of applicability of this decision to the present case.

49. Paragraphs 11.4 and 12 of *Tamil Nadu Medical Officers* further makes it clear that the scope of inquiry was also whether the MCI is conferred with any authority to frame regulations with respect to reservation in medical courses for providing a separate source of entry for in-service candidates seeking admission to Post-graduate degree courses. Regulation 9 of the MCI Regulations, 2000 was considered only for this aspect. The Supreme Court held that Regulation 9 does not deal with provisions for reservation or effect the legislative competence of the States to make reservation for providing a separate source of entry for in-service candidates for admission to Post-graduate degree courses. In essence, the whole issue before the Supreme Court was to do with in-service candidates, namely, those candidates in the States of West Bengal and Tamil Nadu who were already serving as medical officers in State-run establishments and were seeking admission to Post-graduate degree courses. The decision deals with the competence of the State to frame notifications for giving additional weightage in the form of incentives to medical

officers who had served in areas which could be considered to be rural, difficult or remote. The in-service candidates were hence within the umbrella and control of the State which is a fact wholly distinct from the facts before this court. *Tamil Nadu Medical Officers* hence does not have any relevance to the present matter.

50. In conclusion therefore, the only consideration for selection of candidates for admission to Post-graduate medical courses within the statutory framework as it exists today is,

"Merit and merit alone"

51. The Indian Medical Council Act, 1956 as amended and the Post-graduate Medical Education Regulations, 2000, particularly Regulation 9 thereunder, not only reinforce a unitary and single-point entry for admission to PG medical courses by way of a common eligibility test, but also that the order of merit cannot be tinkered with. The scope of the *proviso* to Regulation 9(4) was considered in detail in *Tamil Nadu Medical Officers* and was limited to the State not being denuded of its power to legislate on special provisions for in-service candidates in PG Medical Courses. The present case is wholly different since it concerns the authority of a Trust to nominate candidates for admission to PG Courses in IPGME&R ignoring the rank and position of the candidates in the NEET-PG Test.

52. Even if this Court disregards the suggestion made on behalf of the petitioners of the Trust taking recourse to extraneous considerations in the

selection of candidates including of accepting undisclosed sums of money from the candidates for admission, the method of assessment used by the Trust remains shrouded in secrecy. In *Christian Medical College, Vellore Association vs Union of India; (2020) 8 SCC 705* a 3-judge bench of the Supreme Court had cautioned against individual examinations conducted by institutions and further observed that the system is riddled with unscrupulous elements encouraging dubious means to be adopted to defeat merit. The need for a centralized examination was reiterated by the Supreme Court in *Yatinkumar Jasubhai Patel vs State of Gujarat; (2019) 10 SCC 1*.

53. There is no intelligible benchmark disclosed by the Trust as to the reason why the private respondents were recommended for admission despite having lower ranks compared to the petitioners in the NEET - PG Test. The assessment hence is a parallel selection process outside the recommended statutory framework and is subversive of the Act and the Regulations. The Trust has not only turned a blind eye to merit but has doffed its hat to the dilution of merit. The State is hence precluded by law to accept the recommendations.

54. Any exclusive selection of candidates which is unmonitored within the recommended guidelines would have particularly dangerous ramifications when the selection pertains to doctors and medical officers. A statutory framework is devised in such cases only to safeguard the transparency of the selection process and to prevent random picking of candidates through parallel channels without due regard to the merit position of the unified examination

test. Candidates who are placed higher in rank would naturally have a legitimate expectation to be recommended for the medical courses in the order of priority. The need to preserve merit at the superspeciality level was recognized by the Supreme Court in *Faculty Association of All India Institute of Medical Sciences vs Union of India; (2013) 11 SCC 246* where relying upon the decision of a 9-Judgde bench of the Supreme Court in *Indra Sawhney vs. Union of India; 1992 Supp (3) SCC 215* it was held that there could be no compromise with merit at the superspeciality stage (also ref : *Jagdish Saran vs. Union of India: (1980) 2 SCC 768, Pradeep Jain vs. Union of India; (1984) 3 SCC 654* and *Preeti Srivastava vs. State of M.P.; (1999) 7 SCC 120*). The grievance finds basis in the Acts and Regulations and this court is in agreement with the justifiability of the complaint.

55. A distinction should be made between the facts of this case and awards and scholarships given by private bodies, some of which are globally recognised. These instances of private rewards/sponsorship are not governed by a unitary statutory framework regulating the selection and admission of the candidates. These are essentially private grants for sponsoring the particular course, that is, the private body is itself the sponsorer. Not only is the present case concerned with a statute governing the admission of candidates to medical courses without any deviation from the same being permitted, the Trust's obligations ends with the recommendations. It is the State which bankrolls the recommended candidates. The burden is ultimately hence on the

public who are ironically put at the receiving end of sponsoring future-doctors without knowing whether they are the best of the pick.

56. WPA 18122 of 2021 and WPA 80 of 2022 are hence allowed. The nominations made by the respondent no. 4 in WPA 18122 of 2021 being the Managing Trustee of the Rai Bahadur Seth Sukhlal Chandanmull Karnani Trust for admission of the private respondents to the medical courses in IPGME&R are set aside. The State respondents are restrained from giving effect to such nominations which are subject matter of the present writ petition under the donor quota at IPGME&R. If the nominations have already been acted upon, the State respondents are directed to take appropriate steps for reversing the effect of the nominations. Since this Court has not accepted the separate entry created by the Trust, the prayer of the petitioners for admission to the courses is declined.

57. CAN 1 of 2022 filed in WPA 80 of 2022 for cancelling the nominations of the private respondent no. 8 is not being gone into by reason of the decision in the two writ petitions.

58. The writ petitions are accordingly disposed of in terms of the above.

59. The respondent no. 4 Trust and the private respondents pray for stay of the operation of this judgment. Considering the law on the subject and the ramifications of the dispute brought before the Court, such prayer is considered and refused.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)