

Rishabh Choudhary vs Union Of India And Ors on 23 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 609, 2017 (3) SCC 652, AIR 2017 SC (CIVIL) 1455, (2017) 1 SCT 603, (2017) 4 SERVLR 53, (2017) 1 ALL WC 1039, (2017) 1 SCALE 632, (2017) 2 PAT LJR 92, (2017) 1 ESC 147, (2017) 1 JLJR 477, (2017) 171 ALLINDCAS 89 (SC), (2017) 122 ALL LR 11, (2017) 2 CAL LJ 1, 2017 (2) KCCR SN 67 (SC), 2017 (7) ADJ 74 NOC

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Bench: Prafulla C. Pant, Madan B. Lokur

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 677 OF 2016

Rishabh Choudhary

.....Petitioner

versus

Union of India & Ors.

....Respondents

WITH

WRIT PETITION (CIVIL) NO. 862 OF 2016

Sandeep Kumar & Anr.

....Petitioners

versus

State of Chhattisgarh & Ors.

....Respondents

J U D G M E N T

Madan B. Lokur, J.

W.P. (C) No. 677 OF 2016

1. The question for consideration in this writ petition filed under Article 32 of the Constitution concerns the validity of admission granted to the petitioner by respondent No.3 (C.M. Medical College & Hospital - for short the College) to the MBBS course. In our opinion, the admission granted by the College to the petitioner was unjustified and therefore his admission is set aside.
2. On 21st December, 2010 a gazette notification was issued by the Medical Council of India amending the “Regulations on Graduate Medical Education, 1997” to the effect, inter alia, that admissions to the MBBS course shall be based solely on marks obtained in the National Eligibility-cum-Entrance Test (for short NEET). This notification was challenged by, amongst others, Christian Medical College Vellore in a batch of petitions before this Court which came to be allowed. The decision of this Court is dated 18th July, 2013 and is reported as Christian Medical College, Vellore & Ors. v. Union of India & Ors.[1] The gazette notification dated 21st December, 2010 was quashed. As a result, admission of a student to the MBBS course through NEET was no longer mandatory.
3. Subsequently, petitions were filed for a review of the decision rendered by this Court and these review petitions ultimately came to be referred to a Bench of five learned judges of this Court. By an order dated 11th April, 2016 in Medical Council of India v. Christian Medical College, Vellore & Ors.[2] the review petitions were allowed and the decision rendered by this Court on 18th July, 2013 was recalled and it was directed that all the matters be considered afresh.
4. Prior to this, the College wrote to the State of Chhattisgarh on or about 29th October, 2015 seeking permission to conduct examinations for the management quota and NRI seats for the MBBS course for the academic year 2016-17. The State of Chhattisgarh granted permission to the College to conduct examinations by its letter dated 5th November, 2015.
5. Consequent upon the permission granted by the State of Chhattisgarh to conduct examinations, the College issued an advertisement inviting applications on 28th January, 2016 and eventually conducted the examination on 3rd April, 2016. The examination called CGMAT-2016 was monitored by the State of Chhattisgarh and according to the College as well as the State there were no irregularities in the conduct of the examination.
6. The result of the examination was declared on 11th April, 2016 and the petitioner qualified in the examination. On 19th April, 2016 that is after this Court had decided to review its decision and had recalled the judgment dated 18th July, 2013, counseling was conducted for the petitioner and he was granted admission for the MBBS course by the College after all formalities were completed.
7. At this stage, it may be mentioned that the Medical Council of India published a notification in 2015 amending the “Regulations on Graduate Medical Education, 1997” whereby a time schedule for completion of the admission process for First MBBS Course was prescribed. This notification is reproduced and the Schedule given therein was approved in Ashish Ranjan v. Union of India[3] decided on 18th January, 2016. As per the prescribed schedule, the conduct of entrance examination was to take place between 1st and 7th May and the result of the qualifying examination/entrance

examination was to be declared by 1st June. In other words, the examination conducted by the College on 3rd April, 2016 being CGMAT-2016 was in defiance of the notification issued by the Medical Council of India, and the schedule approved by this Court. Similarly, admission granted to the petitioner on 19th April, 2016 was notwithstanding the orders of this Court passed on 11th April, 2016 read with the notification dated 21st December, 2010 and the schedule prescribed by the Medical Council of India.

8. There are a few other orders passed by this Court which are of some significance. On 28th April, 2016 it was directed by this Court in *Sankalp Charitable Trust & Anr. v. Union of India & Ors.*[4] that NEET Phase I would be held in terms of the notification dated 21st December, 2010 issued by the Medical Council of India. The All India Pre-Medical Test would be held on 1st May, 2016. Thereafter, Phase II of NEET for the left out candidates would be held on 24th July, 2016. It was made clear that since the judgment and order dated 18th July, 2013 had been recalled, the notification dated 21st December, 2010 was in operation.

9. By an order dated 6th May, 2016 in *Sankalp Charitable Trust* it was made clear that no examination shall be permitted to be held for admission for MBBS studies by any private college or association or any private/deemed University.

10. Subsequently on 9th May, 2016 this Court declined to modify the order dated 28th April, 2016. An order was also passed making it clear that all such candidates who could not appear in NEET-I and those who had appeared but had an apprehension that they had not prepared well, would be permitted to appear in NEET-II subject to an option from these candidates to give up their candidature for NEET-1. It was further clarified that only NEET would enable students to get admission to MBBS studies.

11. In view of all these orders passed by this Court from time to time, it is more than abundantly clear that the notification dated 21st December, 2010 stood resurrected and that admissions to the MBBS course could only through NEET-I and NEET-II. No other process of admission was permissible. Given this background, the Director of Medical Education in Chhattisgarh wrote to the College on or about 13th July, 2016 to take steps to cancel all the admissions made by the College in terms of the examination CGMAT – 2016 held for students for the management quota and NRI quota. Eventually by a letter dated 28th July, 2016 the Director of Medical Education in Chhattisgarh recommended to the College to cancel admissions made to the MBBS course. This prompted the petitioner to file a writ petition in this Court.

12. It is submitted and prayed by the petitioner that since he had already been granted admission by the College after the examination CGMAT- 2016 was conducted by the College and supervised and monitored by the State of Chhattisgarh and in which there were no allegations of impropriety, his admission should not be disturbed. It is submitted that the petitioner was certainly not at fault and there is no reason why he should be the victim of an apparent wrong committed by the College as also by the State of Chhattisgarh.

13. We have considered the submissions made by learned counsel appearing on behalf of the petitioner and the College supporting him but are not inclined to accept them. It is quite clear that the examination CGMAT-2016 was conducted by the College on 3rd April, 2016 contrary to the schedule prescribed by the Medical Council of India (and approved by this Court) for holding the MBBS entrance examinations. The question is not of any impropriety in the conduct of the examination but the question is really one of adhering to a particular discipline laid down by the Medical Council of India and approved by this Court.

14. Furthermore we find that counseling was carried out insofar as the petitioner is concerned on 19th April, 2016 which is after the decision of this Court on 11th April, 2016 recalling the decision dated 18th July, 2013. There was absolutely no occasion for the College to have conducted the counseling after the recall order passed by this Court on 11th April, 2016. The effect of the recall order, as mentioned above, was that the notification issued by the Medical Council of India on 21st December, 2010 effectively stood revived in the sense that NEET was the only option available for admission to the MBBS course. The College and the State of Chhattisgarh ought to have been aware of these facts, but seem to have turned a blind eye not only to the orders of this Court but to the notifications issued by the Medical Council of India.

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.

16. We were told during the course of submissions that some similarly placed students participated in NEET and qualified in the examination. Those students like the petitioner who did not participate in NEET and placed their trust only in the College and the State of Chhattisgarh took a gamble and that gamble has unfortunately not succeeded. While our sympathies may be with the petitioner and similarly placed students, we cannot go contrary to the orders passed by this Court from time to time only for their benefit.

17. Under the circumstances, we find no ground has been made out for granting relief to the petitioner. There is no merit in this writ petition and it is accordingly dismissed. However, we make it clear that the petitioner is at liberty to proceed against the College and the State of Chhattisgarh in any appropriate manner.

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18. We find no reason to entertain this petition under Article 32 of the Constitution and it is accordingly dismissed.

19. In view of the order passed in the writ petition the application for impleadment stands disposed of.

.....J
(Madan B. Lokur

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New Delhi

.....J.

January 23, 2017

(Prafulla C. Pant)

[1] [2] (2014) 2 SCC 305
[3] [4] (2016) 4 SCC 342
[5] [6] (2016) 11 SCC 225
[7] [8] (2016) 7 SCC 487