

A ABDUL AHAD AND ORS.

v.

UNION OF INDIA AND ORS.

(Review Petition (Civil) Nos.1835-1836 of 2020 in I.A. No.183249 of
B 2019 in Special Leave Petition (Civil) Nos. 31037-31038 of 2016)

AUGUST 17, 2021

[L. NAGESWARA RAO, B.R. GAVAI AND
KRISHNA MURARI, JJ.]

C *Education/Educational Institutions: Admission to MBBS/BDS*
Courses – Conduct of centralized counselling – On facts, admission
of students to 1st year Professional MBBS Course for Academic
Session 2016-17 in the Medical College – Admission carried out in
contravention of the Notification that provided that admission were
to be done only through the centralized admission process and not
D *by way of private counselling – 67 students admitted by the Medical*
College, discharged by Medical Council of India – Challenge to –
Matter reached till Review Petition in Supreme Court – Review
petitioners' case that having qualified NEET exam, they became
eligible to get admission; that they were admitted through counselling
E *conducted by the medical college; and that they have cleared 1st*
and 2nd year examination – Held: Notification issued by the State
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 – Medical College in contravention of the said
Notification conducted private counselling, which was not at all
F *permissible in law – Admissions conducted through the said private*
counselling per se illegal – Students cannot be said to be ignorant
about the Notification issued by the State – In such a situation, no
sympathies can be shown to such students who have entered through
backdoor.

G **Dismissing the review petitions, the Court**

HELD: 1.1 Though minority institutions were allowed to
admit the students of their community based on Centralized
Counselling held by the State on the basis of NEET 2016, the
same was to be done without deviating from the merit of the said
H **students. The Notification 22.08.2016 is only an administrative**

instruction and therefore not binding, cannot be accepted. [Para 21, 22][1013-H; 1014-A-B] A

1.2 The private counselling by Glocal 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* case, decided on 2.5.2016. Not only that, but this Court by order dated 22.9.2016 had further clarified the position. 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. [Para 25, 26][1016-B-D] B C

1.3 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. Though there is sympathy with the students, but this Court will not be in a position to do anything to protect the admissions, which were done in a patently illegal manner. [Para 27, 28][1016-D-E] D

1.4 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. 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 E F G

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- A 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. [Para 35, 36][1018-G-H; 1019-A-D]

- 1.5 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. 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. 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. [Para 37-39][1019-D-F]

- Modern Dental College and Research Centre and Others v. State of Madhya Pradesh and Others* (2016) 7 SCC 353 : [2016] 3 SCR 579; *State of Madhya Pradesh v. Jainarayan Chouksey and Others* (2016) 9 SCC 412; *Guru Nanak Dev University v. Parminder Kr. Bansal and Others* (1993) 4 SCC 401; *Gurdeep Singh v. State of J & K and Others* (1995) 1 Suppl. SCC 188; *K.S. Bhoir v. State of Maharashtra and Others* (2001) 10 SCC 264 : [2001] 5 Suppl. SCR 593; *Mahatma Gandhi University and Another v. GIS Jose and Others* (2008) 17 SCC 611 : [2008] 13 SCR 201; *National Council for Teacher Education and Another v. Venus Public Education Society and Others* (2013) 1 SCC 223 : [2012] 10 SCR 919 – referred to.

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Case Law Reference

[2016] 3 SCR 579	referred to	Para 23
(2016) 9 SCC 412	referred to	Para 24
(1993) 4 SCC 401	referred to	Para 29

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(1995) 1 Suppl. SCC 188 referred to Para 30 A
 [2001] 5 Suppl. SCR 593 referred to Para 31
 [2008] 13 SCR 201 referred to Para 32
 [2012] 10 SCR 919 referred to Para 34

INHERENT JURISDICTION: Review Petition (Civil) Nos.1835-1836 of 2020 in I.A. No.183249 of 2019 in Special Leave Petition (Civil) Nos.31037-31038 of 2016. B

From the Judgment and Order dated 20.07.2020 of the Supreme Court of India in SLP (civil) No.31037-31038 of 2016.

With C

Review Petition (Civil) No.1988-1989 of 2020 in I.A. No.183249 of 2019 in Special Leave Petition (Civil) Nos. 31037-31038 of 2016.

Neeraj Kishan Kaul, Sr. Adv., Alakh Alok, Ms. Pritha Suri, Chandan Kumar Singh, Advs. for the Petitioners. D

Ms. Aishwarya Bhati, ASG, Ankit Goel, Birendra Mishra, Abdhesh Chaudhary, Ambrish Singh Yadav, Ms. Manisha Suri, Nailendu Vatsyayan, Nishi Kant Singh, Ms. Geetanjali Setia, S. R. Setia, Dr. P. George Giri, Ms. Jasmin Kurian Giri, Ravi Sagar, Linto K.B., Saratendu Kumar Bose, Naveen Kumar Dass, Anil Kumar Shukla, Gurmeet Singh Makkar, Apoorva Kurup, Ms. Ruchi Kohli, Ms. Aakanksha Kaul, Shiv Mangal Sharma, B.V. Balaram Das, Pradeep Kumar Mittal, Mrs. Mona K. Rajvanshi, Dhawal Mohan, Gaurav Sharma, Prateek Bhatia, Advs. for the Respondents. E

The Judgment of the Court was delivered by F

B. R. GAVAI, J.

1. The review petitioners have approached this Court seeking review of the order passed by this Court dated 20.7.2020 thereby dismissing the Special Leave Petition (Civil) Nos. 31037-31038 of 2016 filed by Glocal University, Glocal Medical College, Super Specialty Hospital and Research Centre (hereinafter referred to as ‘Glocal Medical College’) and Abdul Waheeb Education and Charitable Trust (hereinafter referred to as ‘original writ petitioners’). G

2. The review petitioners were not a party to the said petitions. They were admitted in 1st year Professional MBBS course for the H

A Academic Session 2016-2017 in Glocal Medical College, which was affiliated to the Glocal University, a deemed University.

3. The bare necessary facts giving rise to the present review petitions are thus:

B 4. The review petitioners appeared in the National Eligibility-cum-Entrance Test (hereinafter referred to as 'NEET'), 2016 and qualified the same. According to the review petitioners, therefore, they became eligible to get admission in MBBS course.

C 5. Vide Notification dated 31.8.2016, the State of Uttar Pradesh issued a direction for conducting centralized counselling for admission to MBBS/BDS course in all colleges/universities in the State of Uttar Pradesh, including private colleges and minority institutions and further prescribed the schedule and procedure for counselling, reservation, eligibility criteria for admission, etc.

D 6. Vide another Notification dated 2.9.2016, the State of Uttar Pradesh directed that 50% of the sanctioned intake of private institutions shall be reserved for students who had domicile of State of Uttar Pradesh. The said direction was issued in respect of all the private institutions (excluding minority institutions) after deducting the pool of 15% for All India quota.

E 7. The said Notification dated 2.9.2016 came to be challenged before the High Court of Allahabad by way of Writ Petition No.20575 of 2016 and other connected writ petitions. The said petitions were decided on 15.9.2016 by the Division Bench of the Allahabad High Court. The order dated 15.9.2016 passed by the Division Bench of the Allahabad High Court came to be challenged by the original writ petitioners before F this Court by way of Special Leave Petition (Civil) Nos. 31037-31038 of 2016.

G 8. It appears that in the interregnum, the original writ petitioners had conducted their private counselling despite Notifications issued by the State of Uttar Pradesh regarding common counselling. It further appears that in the meantime, some petitions for special leave to appeal also came to be filed by some of the students being SLP(C) No. 28886 of 2016. By a common order passed in the petitions for special leave to appeal, including the one filed by Madhvi Goel & others [SLP(C) No.28886 of 2016] and the one filed by Glocal University & others

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[SLP(C) No.31037-31038 of 2016], this Court passed the following order A
on 20.3.2017:

“As an interim measure, it is directed that the students prosecuting their studies in the petitioner-University in S.L.P. (C) Nos. 31037-31038 of 2016, may appear in the examination, but their results shall not be published. Needless to say, no equity shall be claimed B
on the basis of the present interim order.”

9. It further appears that in the meantime, the Medical Council of India (hereinafter referred to as ‘MCI’) issued a discharge letter dated 27.1.2017 to the Glocal Medical College and directed to discharge 67 students admitted by it, whose names did not figure in the list supplied by C
the Director General of Medical Education & Training (hereinafter referred to as ‘DGME’).

10. The said order dated 27.1.2017 of MCI came to be challenged by Glocal Medical College in this Court by way of Writ Petition (Civil) No. 411 of 2017. This Court vide order dated 18.9.2017, while disposing D
of the said petition with certain directions, observed thus:

“The students who have been admitted in pursuance of the letter of permission granted for the year 2016-2017 shall be permitted to continue their studies.”

11. According to the review petitioners, they appeared for First E
Year Professional MBBS examination and cleared the same. However, Glocal Medical College did not conduct the examination for the 2nd year MBBS and further the classes and practicals were also suspended by the College. According to the review petitioners, this gave them a cause of action to file Writ Petition No.19399 of 2019 before the Allahabad F
High Court. According to the review petitioners, only during the hearing of the said petition, they came to know about the discharge order dated 27.1.2017 issued by MCI.

12. The review petitioners therefore filed writ petition being Writ G
Petition No.26367 of 2019 before the Allahabad High Court assailing the order of MCI dated 27.1.2017. The Allahabad High Court disposed of the said writ petition with liberty to approach this Court.

13. The review petitioners therefore filed Writ Petition (Civil) No.1287 of 2019 before this Court challenging the discharge order, but the same was dismissed with liberty to file an application for intervention H

- A in the pending Special Leave Petition (Civil) Nos. 31037-31038 of 2016 filed by the original writ petitioners, as stated above. The review petitioners therefore filed Intervention Application being I.A. No. 183249 of 2019 in the said Special Leave Petition (Civil) Nos. 31037-31038 of 2016. By the order under review dated 20.7.2020, the Special Leave
B Petition (Civil) Nos. 31037-31038 of 2016 as well as Intervention Application being I.A. No. 183249 of 2019 came to be dismissed by this Court.

14. Seeking review, the present Review Petitions are filed by the review petitioners. This Court on 6.10.2020 passed the following order in the present Review Petitions:

- C “After carefully examining the Review Petitions we are of the considered view that the application for hearing in the open Court deserves to be allowed.

Delay condoned.

- D Issue notice.

List the Review Petition in Court.”

15. Accordingly, we have heard the learned counsel for the parties in the Court.

- E 16. We have extensively heard Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the review petitioners, Shri Dhawal Mohan, learned counsel appearing on behalf of MCI and Shri Ankit Goel, learned counsel appearing on behalf of the respondent – State of Uttar Pradesh.

- F 17. Shri Neeraj Kishan Kaul, learned Senior Counsel appearing for the review petitioners would submit that the review petitioners were duly qualified to be admitted inasmuch as, they had cleared the NEET examination. He further submitted that the review petitioners were admitted through the counselling conducted by the Glocal Medical College. Not only that, but they have also cleared the 1st year and 2nd
G year examination. It is therefore submitted that it will not be in the interest of justice to throw the review petitioners at this point of time.

- H 18. As against this, learned counsel for MCI as well as learned counsel for the State of Uttar Pradesh submitted that the review petitioners were admitted by backdoor entry. It is submitted that their

admission is the result of collusion between the Glocal Medical College and the review petitioners. It is further submitted that Glocal Medical College, being very well aware about the Notification dated 22.8.2016, had conducted private counselling, which was not permissible in law and as such, the review petitioners, who entered through backdoor entry, are not entitled to any equitable relief. A

19. It will be relevant to refer to the following paragraph of Notification dated 22.8.2016: B

“1. After due consideration and in continuation to the aforesaid notification dated 20.08.2016, decision has been taken for getting conducted counselling of universities of private sector/minorities universities of private sector/deemed university of private sector through combined counselling board constituted according to above.” C

20. The said Notification dated 22.8.2016 came to be challenged by various petitioners including Glocal University before a Division Bench of the Allahabad High Court. The Allahabad High Court by an elaborate judgment dated 15.9.2016 found no fault with the Notification issued by the State of Uttar Pradesh prescribing centralized counselling for all institutions for admission to MBBS/BDS course in the State, based on NEET 2016. It will be relevant to refer to the following observations in the operative part of the judgment of the Allahabad High Court dated 15.9.2016, which read thus: D

“(i) Subject to what has been held hereinabove, the impugned orders prescribing a Centralized Counselling for all institutions for admission to MBBS/BDS medical courses in the State based on NEET 2016, do not suffer from any error. F

(ii) Minority institutions shall be allowed to admit the students of their community based on Centralized Counselling held by the State on the basis of NEET 2016, to the extent permissible, but, without deviating from the merit of such students as reflected in the NEET list 2016, so as to subserve their minority status under Article 30(1) of the Constitution of India.” G

21. It could thus clearly be seen that though minority institutions were allowed to admit the students of their community based on H

- A Centralized Counselling held by the State on the basis of NEET 2016, the same was to be done without deviating from the merit of the said students.

22. Though Shri Neeraj Kishan Kaul, learned Senior Counsel, tried to submit that the Notification dated 22.8.2016 is only an administrative instruction and therefore not binding, we are unable to accept the same.
- B

23. It will be relevant to refer to the following observations of this Court in the case of *Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others*¹:

- C “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:
- D
- E
- F

(i) fairness and transparency, and

(ii) merit apart from preventing maladministration.

- G 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

H ¹ (2016) 7 SCC 353

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.”

24. It will further be apposite to note that some private medical colleges had conducted their own counselling for admitting students in their respective colleges and as such, the State of Madhya Pradesh had filed a contempt petition. The said contempt petition was decided by this Court in *State of Madhya Pradesh v. Jainarayan Chouksey and others*². It will be relevant to refer to paragraphs 5 and 6 in *Jainarayan Chouksey* (supra), which read thus:

“**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 353:7 SCEC 1] 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.

²(2016) 9 SCC 412

A 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.”

B 25. It could thus clearly be seen that the private counselling by Glocal 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.

C 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.

D 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.

E 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*³.

F “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.”

G 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*⁴.

³(1993) 4 SCC 401

H ⁴1995 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.”

31. Similar observations have been made by this Court in **K. S. Bhoir v. State of Maharashtra and others**⁵.

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**⁶.

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:

⁵ (2001) 10 SCC 264

⁶ (2008) 17 SCC 611

A “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)

B “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.”

C
D “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*⁷.

E “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.”

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G 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

H ⁷(2013) 1 SCC 223

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. A

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. B C

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. D

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. E

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. F

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. G