

NATIONAL MEDICAL COMMISSION & ANR

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v.

ANNASAHEB CHUDAMAN PATIL MEMORIAL MEDICAL
COLLEGE & ORS

(Civil Appeal No. 966 of 2023)

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FEBRUARY 10, 2023

**[DR. DHANANJAYA Y CHANDRACHUD, CJI,
PAMIDIGHANTAM SRI NARASIMHA AND
J B PARDIWALA, JJ.]**

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Education/Educational institutions: MBBS courses – Admission – Respondent-Medical College was established in 1990 with an annual intake capacity of 100 seats for the MBBS degree course – The renewal of its recognition became due in 2021 – On 25 November 2021, a letter of permission was issued by which the application submitted by the Medical College for increase in the intake capacity from 100 to 150 MBBS seats for 2021-22 was approved, on a condition that it would be withdrawn if minimum standard was not found to be maintained – On the basis of assessor's report (Inspection report), the letter of permission was withdrawn resulting in stoppage of admission for academic year 2021-22 – Writ petition filed before the High Court – High Court upheld the order of the appellants to the extent to which the letter of permission was withdrawn qua 50 MBBS Seats and held that the Medical college is entitled to admit students for 100 MBBS seats for 2021-22 – In the instant appeal, this Court had stayed the operation of the operative direction contained in the judgment of the High Court permitting the Medical College to admit 100 MBBS students for the academic year 2021-22 – Despite the order of stay granted by this Court, the Medical College continued to admit students for 2021-22 – The subsequent inspection conducted in pursuance of the interim order of this Court did not entitle the Medical College to take the law for granted – Giving due regard to the fate of 100 students, while exercising jurisdiction u/Art.142, their admission should not be disturbed on a condition that Medical college would deposit an amount of Rs 2.5 crores as penalty within a period of four weeks – The amount shall be deposited with the AIIMS Delhi –

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- A *The amount of penalty shall not be recoverable from the students in any manner – Constitution of India – Art. 142 – Indian Medical Council Act – s.11.*

Disposing of the appeals, the Court

- B **HELD : 1.**When this Court was moved in these proceedings, an order was passed on 8 April 2022 issuing notice. This Court was apprised of the fact that after the judgment of the High Court, a notice to show cause was issued on 7 March 2022 to the Medical College to show cause as to why the recognition which was granted on 15 July 2021 and the permission to start and/or conduct post graduate courses should not be withdrawn. In the meantime, the Medical College was directed to stop admissions in pursuance of the deficiencies which were noted during the course of the investigation which was carried out on 14/15 January 2022. This Court stayed the operation of the operative direction contained in paragraph 37 of the judgment of the High Court permitting the Medical College to admit 100 MBBS students for the academic year 2021-22. The National Medical Commission and the Medical Assessment and Rating Board were granted liberty to carry out a fresh inspection within a period of two months for the purpose of determining as to whether any deficiencies in complying with the required norms continue to exist. In pursuance of the directions of this Court, an inspection of the Medical College was carried out on 28/29 April 2022 for 2021-22. In view of the inspection report, the appellants have permitted the Medical College to admit 100 students. The position as it has emerged before this Court is that despite the order of stay granted by this Court, the Medical College continued to admit students for 2021-22. No application was moved before this Court for variation of its order or for seeking permission to admit 100 students. [Paras 5-7][523-G-H; 524-A-D]

- G **2.** Notwithstanding the above deficiencies, the High Court, while upholding the withdrawal of the permission to admit 50 students, permitted the Medical College to continue with the admission of 100 students. This order was stayed by this Court on 8 April 2022. Once the order of the High Court permitting the Medical College to admit 100 students for 2021-22 was stayed,

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the Medical College could not have unilaterally chosen to proceed with the admission process. This is plainly in breach of the directions of this Court. The Medical College has made an attempt to overreach the process of the Court. The subsequent inspection conducted in pursuance of the interim order of this Court did not entitle the Medical College to take the law for granted. It plainly acted in defiance of the order of this Court. [Para 11][525-H; 526-A-B]

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3. The issue which now remains is as regards the admission which was granted to 100 students for 2021-22 in breach of the order of stay passed by this Court. On one hand, the Court has due regard to the consequences which will be faced by the students if their admissions are disturbed, at this stage. Equally, the sanctity of the judicial process has to be observed. Therefore, in the exercise of the jurisdiction under Article 142 of the Constitution, the admissions which were granted to 100 students for 2021- 22 should not be disturbed conditional on the Medical College depositing an amount of Rs 2.5 crores within a period of four weeks. The amount shall be deposited with the All India Institute of Medical Sciences, New Delhi. The amount, upon deposit, shall be utilized at the discretion of the Director, AIIMS for meeting the requirements of poor and needy patients. The amount which has been directed to be deposited by the Medical College by way of penalty shall not be recoverable from the students in any manner, whether for the present year or thereafter. [Para 13][526-C-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 966 of 2023.

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From the Judgment and Order dated 04.03.2022 of the High Court of Judicature at Bombay at Aurangabad in WP No.1280 of 2022.

With

Civil Appeal No.967 of 2023.

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Nidhesh Gupta, Sr. Adv., Gaurav Sharma, Dhawal Mohan, Prateek Bhatia, Avijit Mani Tripathi, Mrs. Preeti Sehrawat, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Kirti Dadheech, Advs. for the appearing parties.

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A The Judgment of the Court was delivered by
DR. DHANANJAYA Y CHANDRACHUD, CJI.

1. Leave granted.

2. These appeals arise from a judgment dated 4 March 2022 of a Division Bench at the Aurangabad Bench of the High Court of Judicature at Bombay.

B 3. Annasaheb Chudaman Patil Memorial Medical College¹ was established in 1990 with an annual intake capacity of 100 seats for the MBBS degree course. The MBBS degree granted by the University to which the Medical College was affiliated was recognized under Section 11 of the Indian Medical Council Act 1956 for 100 seats in 1997. The recognition was liable to be renewed every five years. For the academic years 2017-18 and 2018-19, the Medical College was not granted permission to admit students. On 30 November 2020, the Medical College submitted an application for increase of its intake capacity from 100 to 150 seats commencing from the academic year 2021-22. At the same time, the renewal of recognition became due in 2021. During the Covid-19 pandemic, no inspection could be conducted by the appellants. On 10 May 2021, an affidavit was filed on behalf of the Medical College stating that there were no deficiencies. The Undergraduate Medical Education Board of the first appellant, bearing in mind, the onset of the Covid-19 pandemic granted renewal of recognition on 15 July 2021 for the batch of students admitted for the academic session 2016-17. The recognition was for the academic year 2021-22, subject to the condition that the continuance of recognition would be done in accordance with law. The application submitted by the Medical College was thereupon processed and a physical inspection was carried out on 8/9 October 2021 for increase in the intake capacity from 100 to 150 seats. A letter of intent was issued on 16 November 2021 for approving the increase in the intake capacity, subject to the Medical College submitting the requisite undertaking and documents, together with the acceptance letter. The Medical College furnished the requisite documents/ undertaking, together with the letter of acceptance, on 23 November 2021. On 25 November 2021, a letter of permission was issued by which the application submitted by the Medical College for increase in the intake capacity from 100 to 150 MBBS seats for 2021-22 was approved. This was subject to the specific condition that if during the course of surprise inspection, the Medical College was found not maintaining minimum standards, the letter of permission would be withdrawn.

H ¹ “Medical College”

4. In the meantime, certain complaints were received by the Union Ministry of Health and Family Welfare alleging irregularities and deficiencies in the infrastructure of the Medical College. A team of inspectors was deputed to conduct a surprise physical inspection on 14/15 January 2022. During the course of the inspection, gross deficiency of faculty, residents and clinical material, among other aspects, were found by the assessors. After the receipt of the assessor's report, a communication dated 19 January 2022 was addressed to the Medical College withdrawing the letter of permission for increase in the intake capacity from 100 to 150 seats and directing the stoppage of admission for academic year 2021-22 in view of the gross deficiencies found during the course of the surprise inspection.

5. The Medical College instituted a writ petition under Article 226 of the Constitution before the Aurangabad Bench of the High Court of Judicature at Bombay. The petition was disposed of by directing the appellants to conduct an inspection of the Medical College by 30 January 2022 and a final decision was directed to be taken by 3 February 2022. The petition was, thus, disposed of on 25 January 2022, on the first date of hearing, without a counter affidavit being filed by the appellants. This gave rise to the filing of a Special Leave Petition² on 29 January 2022. An application for modification of the order of the High Court was thereafter filed by the Medical College. The High Court having declined to modify its judgment, Special Leave Petitions³ were instituted before this Court by the Medical College. By a judgment dated 14 February 2022, this Court set aside the judgments dated 25 January 2022 and 2 February 2022 and restored the writ petition to the file of the High Court. Thereafter, a counter affidavit was filed on behalf of the appellants. The Division Bench, by its judgment dated 4 March 2022, partially allowed the writ petition. The High Court upheld the order of the appellants dated 19 January 2022 to the extent to which the letter of permission was withdrawn qua 50 MBBS seats. However, the High Court held that the Medical College is entitled to admit students for 100 MBBS seats for 2021-22 as no action was taken by the appellants for withdrawal of recognition. When this Court was moved in these proceedings, an order was passed on 8 April 2022 issuing notice. This Court was apprised of the fact that after the judgment of the High Court, a notice to show cause was issued on 7 March 2022 to the Medical College to show cause as to why the recognition which was granted on 15 July 2021 and

² SLP(C) No 1710 of 2022

³ SLP(C) Nos 2234-2235 of 2022

- A the permission to start and/or conduct post graduate courses should not be withdrawn. In the meantime, the Medical College was directed to stop admissions in pursuance of the deficiencies which were noted during the course of the investigation which was carried out on 14/15 January 2022. This Court stayed the operation of the operative direction contained in paragraph 37 of the judgment of the High Court permitting the Medical College to admit 100 MBBS students for the academic year 2021-22. The National Medical Commission and the Medical Assessment and Rating Board were granted liberty to carry out a fresh inspection within a period of two months for the purpose of determining as to whether any deficiencies in complying with the required norms continue to exist.

- C 6. In pursuance of the directions of this Court, an inspection of the Medical College was carried out on 28/29 April 2022 for 2021-22. In view of the inspection report, the appellants have permitted the Medical College to admit 100 students.

- D 7. The position as it has emerged before this Court is that despite the order of stay granted by this Court, the Medical College continued to admit students for 2021-22. No application was moved before this Court for variation of its order or for seeking permission to admit 100 students.

8. We have heard Mr Gaurav Sharma, counsel appearing on behalf of the appellants and Mr Nidhesh Gupta, senior counsel appearing on behalf of the Medical College.

- E 9. The material which has been placed on the record indicates that serious deficiencies were noted during the course of the inspection which was carried out initially, resulting in the withdrawal of permission by the appellants for the academic year 2021-22.

- F 10. At this stage, it may not be necessary to recapitulate in detail the specific deficiencies which were found, save and except from paragraph 34 of the judgment of the High Court, which is extracted below:

- G “I. Out-patients are only about 22 by 2 PM and in-patients are only about 39% (bed occupancy rate), even the patients admitted appear healthy and without any significant clinical symptoms, most of the patients were sent out of hospital by 5 PM. There are no surgeries and no deliveries conducted. There were only three X-rays and two ultrasounds done in the hospital on the day of assessment.
- H II. The nurses’ charts had pre-recorded vitals of the patients and also treatment instructions as administered in advance till 16.01.2022 (recorded on 14.01.2022).

- III. The patients admitted on 14.01.2022 were not genuine. They were looking healthy and gave evasive replies. Case records of many patients were not available. In the available records case history and treatment in many patients were not signed by any doctor or consultant. Nature of symptoms did not seem to merit admission. Orthopaedic wards had ‘admissions’ for physiotherapy for knee pain. Basic and essential parameters were not recorded in the case files and the assessors suspected the genuineness of the records. Patients were afebrile and no record of fever was found in the files. In some files the temperature was recorded in advance till 16th January; so also the treatment given to have been administered in advance till 16th January. A B C
- IV. The doctor on duty in the surgical ward, Dr. Swati Patil was having BHMS degree, and she was not a regular employee of the hospital.
- V. In the pediatric ward there were 13 admitted patients of whom 10 were admitted on the day of inspection 14.01.2022. Assessors opine that the children were looking apparently well and were having their lunch. Symptoms reported did not match with the records. The children said they were not given medicines though the case files recorded IV fluids and medicines being given. When the assessors revisited this ward at 5 o’clock, nearly all patients admitted on 14.01.2022 were not found in the ward. At 5.00 p.m. the orthopedics ward had no patients who were admitted in the morning for physiotherapy. D E
- VI. Census reports of medical, surgical, pediatric and orthopedic wards had even more serious errors. Daily census reports were entered using pencil. The census report of obstetrics and gynecology ward in the last five days had new admissions ranging between three and thirteen. However, on 14.01.2022, there were already 32 admissions till 5 p.m. In admission list of 14.01.2022 at 11.30 a.m. there were no contact details of the patients with numbers like 111111111, 666666666, etc., suggesting that the patients were not genuine.” F G

11. Notwithstanding the above deficiencies, the High Court, while upholding the withdrawal of the permission to admit 50 students, permitted the Medical College to continue with the admission of 100 students. This H

A order was stayed by this Court on 8 April 2022. Once the order of the High Court permitting the Medical College to admit 100 students for 2021-22 was stayed, the Medical College could not have unilaterally chosen to proceed with the admission process. This is plainly in breach of the directions of this Court. The Medical College has made an attempt to overreach the process of the Court. The subsequent inspection
B conducted in pursuance of the interim order of this Court did not entitle the Medical College to take the law for granted. It plainly acted in defiance of the order of this Court.

12. The position as it obtains at present is that the Medical College was permitted to admit 100 students following the inspection which took
C place and it has accordingly admitted 100 students for the subsequent academic year.

13. The issue which now remains is as regards the admission which was granted to 100 students for 2021-22 in breach of the order of stay passed by this Court. On one hand, the Court has due regard to the consequences which will be faced by the students if their admissions
D are disturbed, at this stage. Equally, the sanctity of the judicial process has to be observed. We are, therefore, of the considered view in the exercise of the jurisdiction under Article 142 of the Constitution that the admissions which were granted to 100 students for 2021-22 should not be disturbed conditional on the Medical College depositing an amount of
E Rs 2.5 crores within a period of four weeks. The amount shall be deposited with the All India Institute of Medical Sciences, New Delhi and a proof of receipt shall be furnished both to the appellants and to the Registry of this Court. The amount, upon deposit, shall be utilized at the discretion of the Director, AIIMS for meeting the requirements of poor and needy patients. The amount which has been directed to be deposited
F by the Medical College by way of penalty shall not be recoverable from the students in any manner, whether for the present year or thereafter.

14. The admission of the students is not being disturbed, particularly having regard to the fact that they were admitted through central counselling in terms of the list which was furnished by the State of Maharashtra.
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15. The appeals are accordingly disposed of.

16. Pending application, if any, stands disposed of.