

Medical Council Of India vs Madhu Singh And Ors on 11 September, 2002

Equivalent citations: AIR 2002 SUPREME COURT 3230, 2002 (7) SCC 258, 2002 AIR SCW 3742, 2002 AIR - JHAR. H. C. R. 1168, 2002 (3) BLJR 2132, 2002 (9) SRJ 228, 2002 (6) SCALE 332, 2002 (4) LRI 88, (2002) 7 JT 1 (SC), 2002 (7) JT 1, (2002) 4 ALLMR 593 (SC), (2003) 1 ALLINDCAS 134 (SC), 2002 (5) SLT 209, 2002 BLJR 3 2132, (2002) 4 SCT 444, (2003) 2 MAD LW 1, (2002) 4 SCJ 211, (2002) 6 SERVLR 180, (2002) 6 SUPREME 256, (2002) 6 SCALE 332, (2002) WLC(SC)CVL 728, (2003) 1 CURLJ(CCR) 225

Author: Arijit Pasayat

Bench: Ruma Pal, Arijit Pasayat

CASE NO. :
Appeal (civil) 5166 of 2001

PETITIONER:
MEDICAL COUNCIL OF INDIA

Vs.

RESPONDENT:
MADHU SINGH AND ORS.

DATE OF JUDGMENT: 11/09/2002

BENCH:
RUMA PAL & ARIJIT PASAYAT.

JUDGMENT:

ARIJIT PASAYAT, J.

This appeal filed by the Medical Council of India (in short the 'MCI') raises important questions regarding desirability of belated admissions to medical colleges in different courses, both pre-graduate and post-graduate. The questions assume importance because filing a large number of petitions before various High Courts and this Court has become an annual feature. When time of admission to medical courses arrives, immediately comes to mind Shakespeares' Othello, where it

was written "Chaos is come again". Inevitable result is that considerable time is lost by candidates chasing vires instead of virus. This Court in Convenor, MBBS/BDS Selection Board and Ors. v. Chandan Mishra and Ors. (1995 Supp. (3) SCC 77) observed as follows:

".....The learned Judges of the High Court, if we may say so in a well-considered opinion expressed their anguish at the insensitivity of the authorities administering medical admission in the State to the need to prevent occasions for repetitive grievances from the student community and had occasion to observe:

"Shakespeare in Othello has written "Chaos is come again". This Court has witnessed chaos almost annually when time for admission to MBBS/BDS courses came...."

Factual position leading to the appeal, which is almost undisputed, needs to be noted in some detail.

For admission into the MBBS course relating to the session 1997-98, combined entrance competitive examination was held in the State of Bihar on 3.8.1997. The examination was conducted by the Bihar Combined Entrance Competitive Examination Board (in short the 'Board'). A combined merit list for the MBBS course and BDS course was published on 7.10.1997 for the aforesaid session. Respondent No.1 was one of the candidates who appeared at the said examination. She was, however, not selected for the MBBS course, but she was given option to join the Dental Course. She accepted the option given and she was admitted. Her serial number was 4 in the general category. After the first counseling which was held between the period 26.12.1997 to 31.12.1997, certain seats fell vacant. The Board decided not to fill up such vacancies, which primarily occurred on account of selected candidates abandoning the course or not taking admission. According to the Board, the approach was necessary to maintain the academic calendar and prevent mid-stream admissions. The admissions for the session 1997-98 were completed by the end of January 1998. Two students who were admitted to the Dental Course like respondent No.1 filed a Writ Petition before the High Court of Judicature at Patna (CWJC No. 5590/98), inter alia, praying for a direction to the Controller of Examination to admit them against the vacant seats in MBBS course. The petition was filed on the ground that second counseling was not done and seats were lying vacant after the first counseling. By order dated 4.12.1998, the Patna High Court directed the Controller of Examination to admit the writ petitioners as per the merit list and as per their choice against the four vacancies existing due to non-joining of students, within a period of fortnight from the date of the order. Five more students filed a Writ Petition (CWJC No.11681/98) making identical prayers as were made in the other writ petition. By order dated 10.3.1999, the High Court directed that all the vacant seats upto 4.12.1998 for the session 1997-98 should be filled up from amongst the eligible candidates as enlisted in the merit list.

In Letters Patent Appeal (LPA.439/99) filed by the Controller of Examination, a Division Bench upheld the order dated 10.3.1999. However, certain modifications were made in the directions. It was observed that if any objection was taken by the MCI to the admissions in MBBS course, such decision should be given binding effect.

It is of relevance to note that the MCI was not a party in the aforesaid writ applications and LPA. The Controller of Examination vide its letter dated 6.8.1999 communicated the directions and intimated the factual position regarding admission of students against "stray vacancies" for the 1997-98 session to MCI. A clarification application was filed in the LPA. By order dated 30.8.1999 it was observed by the High Court that if any direction is issued by the MCI, the parties will be at liberty to seek appropriate remedy.

The Executive Committee of the MCI in its meeting held on 14.9.1999 refused permission to students in respect of vacant seats of 1997- 98 session after 18 months as that would amount to increasing the intake capacity and would be contrary to the provisions of The Indian Medical Council Act, 1956 (in short the 'Act'). By letter dated 22.10.1999, the decision of the Executive Committee was communicated to the Board.

The Controller of Examination of the Board cancelled the admissions of four students (including the respondent No.1) who had got admission. They were shifted back to the BDS course to which they were originally admitted.

Aggrieved by the decision of the Board, which was taken pursuant to MCI's decision, respondent No.1 filed a Writ Application (CWJC No.11100/99) challenging the jurisdiction of MCI under the Act to guide the admission in the colleges. For the first time, MCI was impleaded in the proceedings. It was, inter alia, pleaded by the writ petitioner that MCI had no power and authority in deciding the question of admission of the students. Counter-affidavit was filed by MCI taking the stand that mid-stream admissions would amount to increasing admission capacity which was fixed and that was not permissible. Originally, the matter was listed before a learned Single Judge. Since the earlier order dated 22.9.1999 was passed by a Division Bench in LPA, it was directed that the writ petition should be placed before a Division Bench. By impugned order dated 12.5.2000, writ application was allowed by the Division Bench primarily on the ground that the vacancies remained unfilled due to lapse on the part of the Controller of Examination or MCI and since earlier directions were given to admit the students, the order was to be operative. It was directed that the respondent No.1 should be allowed to complete the MBBS course to which she was admitted as per the directions given in the earlier order. Stand of MCI in this appeal essentially is that the directions given by the High Court are contrary to the scheme of the Act. It would mean that a candidate would be permitted to take admission into a course of a fixed duration just before completion thereof. In reality, the candidate would be pursuing the course with the students of subsequent academic session, and essentially it means increase in the students' strength beyond the prescribed maximum when there is a statutory bar on the increase of the students intake capacity. Directions cannot be given to act contrary to what is statutorily prescribed. It is pointed out that directions for mid-stream admissions have been dis-approved by this Court on several occasions. It was submitted that by admitting students mid-stream, the statutorily prescribed time schedules get affected and it is neither fair to the students getting admission nor the institution. At this juncture, it is to be noted that while issuing notice in this case while granting leave, it was made clear that whatever be the result of the petition, the admission of the first respondent will not be adversely affected. Learned counsel for respondent No.1, therefore, submitted that the result of the appeal would not affect his client. However, his submission was that there was nothing wrong in mid-stream admissions and even if there was fixed

time schedule, extra classes can be taken by the teachers to meet the deficiency in attendance. It was further submitted that leaving seats unfilled is not good for the country as eligible candidates would be deprived of pursuing the medical studies and it will be a loss to the national exchequer.

In order to appreciate the rival stands, it is desirable to take note of few provisions of the Act and Medical Council of India Regulations on Graduate Medical Education, 1997 (in short the 'Regulation').

"Regulation 7(1)- Every student shall undergo a period of certified study extending over 4 academic years divided into 9 semesters, (i.e. of 6 months each) from the date of commencement of his study for the subjects comprising the medical curriculum to the date of completion of examination and followed by one year compulsory rotating internship. Each semester will consist of approximately 120 teaching days of 8 hours each college working time, including one hour of lunch.

7(6) Universities shall organize admission timings and admission process in such a way that teaching in first semester starts by 1st of August each year.

Section 10A - Permission for establishment of new medical college, new course of study, etc. (1) Notwithstanding anything contained in this Act or any other law for the time being in force,-

(a) no person shall establish a medical college; or

(b) no medical college shall-

(i) open a new or higher course of study or training (including a post-

graduate course of study or training) which would enable a student of such course or training to qualify himself for the award of any recognized medical qualification; or

(ii) increase its admission capacity in any course of study or training (including a post-graduate course of study or training), except with the previous permission of the Central Government obtained in accordance with the provisions of this section.

Explanation 1- For the purposes of this section, "person" includes any University or a trust but does not include the Central Government.

(2) (a)- Every person or medical college shall, for the purpose of obtaining permission under sub-section (1), submit to the Central Government a scheme in accordance with the provisions of clause (b) and the Central Government shall refer the scheme to the Council for its recommendations.

(b) The scheme referred to in clause (a) shall be in such form and contain such particulars and be preferred in such manner and be accompanied with such fee as may be prescribed.

10(B)- Non-recognition of medical qualifications in certain cases:

(1) Where any medical college is established except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college shall be a recognized medical qualification for the purposes of this Act.

(2) Where any medical college opens a new or higher course of study or training (including a post-graduate course of student or training) except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of such study or training shall be a recognized medical qualification for the purposes of this Act.

(3) Where any medical college increases its admission capacity in any course of study or training except with the previous permission of the Central Government in accordance with the provisions of section 10A, no medical qualification granted to any student of such medical college on the basis of the increase in its admission capacity shall be a recognized medical qualification for the purposes of this Act.

Explanation For the purposes of this section, the criteria for identifying a student who has been granted a medical qualification on the basis of such increase in the admission capacity shall be such as may be prescribed.

Section 19- Withdrawal of recognition-

(1) When upon report by the Committee or the visitor, it appears to the Council-

(a) that the course of study and examination to be undergone in, or the proficiency required from candidates at any examination, held by, any University or medical institution, or

(b) that the staff, equipment, accommodation, training and other facilities for instruction and training provided in such University or medical institution or in any college or other institution affiliated to that University, do not conform to the standards prescribed by the Council, the Council shall make a representation to that effect to the Central Government.

(2) After considering such representation, the Central Government may send it to the State Government of the State in which the University or medical institution is situated and the State Government shall forward it along with such remarks as it may choose to make to the University or medical institution, with an intimation of the period within which the University or medical institution may submit its explanation to the State Government.

(3) On the receipt of the explanation or, where no explanation is submitted within the period fixed, then on the expiry of that period, the State Government shall make its recommendations to the

Central Government.

(4) The Central Government, after making such further inquiry, if any, as it may think fit, may, by notification in the Official Gazette, direct that an entry shall be made in the appropriate Schedule against the said medical qualification declaring that it shall be a recognized medical qualification only when granted before a specified date (or that the said medical qualification if granted to students of a specified college institution affiliated to any University shall be a recognized medical qualification only when granted before a specified date, or, as the case may be, that the said medical qualification shall be a recognized medical qualification in relation to a specified college or institution affiliated to any University only when granted after a specified date.

(Underlined for emphasis) It is important to note that in respect of certain subjects, the total time for teaching is also fixed. For example, for bio-physics the time schedule is as follows:

(a) Goal and objectives: The broad goal of teaching Biophysics to undergraduate students is that they should understand basic physical principles involved in the functioning of body organs in normal and diseased conditions.

Total time for teaching Biophysics 5 hours Out of which: 1. Didactic lectures 3 hours

2.Tutorial/Group discussion 1 hour

3. Practical 1 hour It may also be noted that under the Medical Council of India Establishment of Medical College Regulations, 1999 (in short the 'Establishment Regulations') certain qualifying criteria have been prescribed. Regulation 2(7) reads as follows:

"Regulation 2(7)- that the person provides two performance bank guarantees from a Scheduled Commercial Bank valid for a period of five years, in favour of the Medical Council of India, New Delhi, one for a sum of rupees one hundred lakhs (for 50 admissions), rupees one hundred and fifty lakhs (for 100 admissions) and rupees two hundred lakhs (for 150 annual admissions) for the establishment of the medical college and its infrastructural facilities and the second bank guarantee for a sum of rupees 350 lakhs (for 400 beds), rupees 550 lakhs (for 500 beds) and rupees 750 lakhs (for 750 beds) respectively for the establishment of the teaching hospital and its infrastructural facilities:

Provided that the above conditions shall not apply to the persons who are State Governments/Union Territories if they give an undertaking to provide funds in their plan budget regularly till the requisite facilities are fully provided as per the time bound programme.

(underlined for emphasis) Part II of Regulation 3 deals with educational programme and sub-parts 4 and 5 read as follows:

(4) Educational programme (a) proposed annual intake of students (b) admission criteria (c) method of admission (d) reservation/preferential allocation of seats (e) department-wise and year-wise curriculum of studies.

(5) Education programme - (a) department-wise and service-wise functional requirements, and (b) area distribution and room-wise seating capability.

(underlined for emphasis) Regulation 7 deals with Report of the MCI which reads as follows:

"Regulation 7(a)- After examining the application and after conducting necessary physical inspections, the Medical Council shall send to the Central Government a factual report stating -

(1) That the applicant fulfils the eligibility and qualifying criteria.

(2) That the person has a feasible and time bound programme to set up the proposed medical college along with required infrastructural facilities including adequate hostels facilities separate for boys and girls, and as prescribed by the Council, commensurate with the proposed intake of students, so as to complete the medical college within a period of four years from the date of grant of permission.

(3) That the person has a feasible and time bound expansion programme to provide additional beds and infrastructural facilities, as prescribed by the Medical Council of India, by way of upgradation of the existing hospital or by way of establishment of new hospital or both and further that the existing hospital has adequate clinical material for starting 1st year course.

(4) That the person has the necessary managerial and financial capabilities to establish and maintain the proposed medical college and its ancillary facilities including a teaching hospital.

(5) That the applicant has a feasible and time bound programme for recruitment of faculty and staff as per prescribed norms of the Council and that the necessary posts stand created.

(6) That the applicant has appointed staff for the 1st year as per MCI norms.

(7) That the applicant has not admitted any students.

(8) Deficiencies, if any, in the infrastructure or faculty shall be pointed out indicating whether these are remediable or not.

(b) The recommendation of the Council whether Letter of Intent should be issued and if so, the number of seats per academic year should also be recommended. The

Council shall recommend a time bound programme for the establishment of the medical college and expansion of the hospital facilities. This recommendation will also include a clear cut statement of preliminary requirements to be met in respect of buildings, infrastructural facilities, medical and allied equipments, faculty and staff before admitting the first batch of students. The recommendation will also define annual targets to be achieved by the person to commensurate with the intake of students during the following years.

(c) Where the Council recommends for not issuing of Letter of Intent, it shall furnish to the Central Government-

(i) its reasons for not granting the Central Government permission;

(ii) documents/facts on the basis of which the Council recommends the disapproval of the scheme.

(d) The recommendation of the Council shall be in Form-4.

(underlined for emphasis) So far as Regulations are concerned, the highlighted aspects are relevant for deciding the question as to the desirability of fixing a time limit for admission and stop any admission thereafter. For the MBBS course as noted above, the total duration is 4 years of 9 semesters. Section 10-A, Explanation 2 defines 'admission capacity' which reads as follows:

"Explanation 2- For the purposes of this section, 'admission capacity' in relation to any course of study or training (including post-graduate course of study or training) in a medical college, means the maximum number of students that may be fixed by the Council from time to time for being admitted to such course or training."

As the definition of "admission capacity" shows it is the maximum number of students that may be fixed by the Council from time to time for being admitted to the course and training. By carrying forward the unfilled seats from one year to the subsequent year, there is necessarily increase in the number of seats i.e. admission capacity. Section 10-B frowns upon such admissions beyond the prescribed limit. In fact, there is a possibility of de-recognition under Section 19.

At this juncture, few decisions of this Court dealing with somewhat similar situations need to be noted.

In Dr. Indu Kant etc.etc. v. State of U.P. and Ors. (1993 Supp (2) SCC 71), it was observed as follows:

"We have given our thoughtful consideration to the entire facts and circumstances of the case. We have already held that the rule laying down the minimum percentage of marks in the entrance examination is valid and no direction can be given to the State Government to fill up any vacant seats by the candidates securing less than the minimum qualifying marks. We had of course, made a recommendation to the State

Government in respect of the vacant seats of post-graduate courses for 1992, but we find no valid justification to make such recommendation in respect of the candidates of the earlier years of 1990 or 1991. The candidates who had not secured the minimum qualifying marks in the years 1990 or 1991 had an opportunity to appear in the entrance examination of 1992 and to make up the deficiency. We find justification in the difficulties pointed out by the State Government in doing so. Granting admission to the candidates of 1990 and 1991 batch now and to allow them to join with the batch of 1992 is bound to increase the total strength of post-graduate students in 1992. This would not only be in violation of the directions of the Medical Council of India, but would also put an additional financial burden on the State Government. In any case, the State Government itself is vehemently opposing such request made on behalf of the candidates of 1990 and 1991 and we cannot give any direction to the State Government in this regard."

(underlined for emphasis) The concept of counseling was noted by this Court in Sharwan Kumar etc.etc v. Director General of Health Services and Anr. (1993 (3) SCC 332). A scheme was formulated so that there would be no difficulty in admitting students at the appropriate time. In that case, an outer limit of 30th September was fixed for 15% of all India quota.

In Dr. Subodh Nautiyal v. State of U.P. and Ors. (1993 supp. (1) SCC

593), it was observed that in respect of a technical course, to admit a student four months after the commencement would not at all be correct.

In State of Uttar Pradesh and Ors. v. Dr. Anupam Gupta and Ors. (1993 Supp (1) SCC 594), the view in Dr. Subodh's case (supra) was re-iterated. It was observed as under:

"It is next contended by Shri Yogeshwar Prasad that the courses were started from October 30, 1990 and in terms of the orders of this Court it shall be deemed to have been commenced from May 2, 1990, the direction as given in the impugned judgments for admission after more than a year, is illegal. To maintain excellence in the academic courses, the delay defeats the claim for admission, though posts are vacant. In Pramod Kumar Joshi v. Medical Council of India (1991 (2) SCC 179) this Court held that the course for the year 1991 is almost completed and it would not be proper to allow admission belatedly. In Dr. Subodh Nautiyal v. State of U.P. there was a delay of four months in giving admission, and this Court held that, "even according to Mr. Pandey the course has started in September for the session. This is technical course and to admit a student four months after the commencement would not at all be correct."

(underlined for emphasis) In para 14, the desirability of commencing the course on schedule and completing the same within the schedule was stressed in the following words:

"Considering from this point of view, to maintain excellence the courses have to be commenced on schedule and be completed within the schedule so that the students would have full opportunity to study full course to reach their excellence and come at par excellence. Admission in the mid- stream would disturb the courses and also work as a handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained."

(underlined for emphasis) In State of Punjab and Ors. v. Renuka Singla and Ors. (1994 (1) SCC

175), this Court disapproved the course adopted by several High Courts directing students to be admitted much after the course had commenced. Though that case was for admissions under the Dentists Act, 1948 (in short the 'Dentists Act'), identical provisions were under consideration. In para 8, it was noted as under:

"The admission in medical course throughout India is governed by different statutory provisions, including regulations framed under different Acts. During last several years efforts have been made to regulate the admissions to the different medical institutions, in order to achieve academic excellence. But, at the same time, a counter- attempt is also apparent and discernible, by which the candidates, who are not able to get admissions against the seats fixed by different statutory authorities, file writ applications and interim or final directions are given to admit such petitioners. We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations, in respect of admissions of students. It cannot be disputed that technical education, including medical education, requires infrastructure to cope with the requirement of giving proper education to the students, who are admitted. Taking into consideration the infrastructure, equipment, staff, the limit of the number of admissions is fixed either by the Medical Council of India or Dental Council of India. The High Court cannot disturb that balance between the capacity of the institution and number of admissions, on "compassionate ground". The High Court should be conscious of the fact that in this process they are affecting the education of the students who have already been admitted, against the fixed seats, after a very tough competitive examination. According to us, there does not appear to be any justification on the part of the High Court, in the present case, to direct admission of respondent 1 on "compassionate ground" and to issue a fiat to create an additional seat which amounts to a direction to violate Section 10-A and Section 10-B(3) of the Dentists Act referred to above.

(underlined for emphasis) In Medical Council of India v. State of Karnataka and Ors. (1998 (6) SCC 131), action of the State Government in increasing number of seats was held to be illegal. In paragraphs 27 and 29 of the judgment, it was held as under:

"The State Acts, namely, the Karnataka Universities Act and the Karnataka Capitation Fee Act must give way to the Central Act, namely, the Indian Medical Council Act, 1956. The Karnataka Capitation Fee Act was enacted for the sole purpose of regulation in collection of capitation fee by colleges and for that, the State Government is empowered to fix the maximum number of students that can be admitted but that number cannot be over and above that fixed by the Medical Council as per the regulations. Chapter IX of the Karnataka Universities Act, which contains provision for affiliation of colleges and recognition of institutions, applies to all types of colleges and not necessarily to professional colleges like medical colleges. Sub-section (10) of Section 53, falling in Chapter IX of this Act, provides for maximum number of students to be admitted to courses for studies in a college and that number shall not exceed the intake fixed by the university or the Government. But this provision has again to be read subject to the intake fixed by the Medical Council under its regulations. It is the Medical Council which is primarily responsible for fixing standards of medical education and overseeing that these standards are maintained. It is the Medical Council which is the principal body to lay down conditions for recognition of medical colleges which would include the fixing of intake for admission to a medical college. We have already seen in the beginning of this judgment various provisions of the Medical Council Act. It is, therefore, the Medical Council which in effect grants recognition and also withdraws the same. Regulations under Section 33 of the Medical Council Act, which were made in 1977, prescribe the accommodation in the college and its associated teaching hospitals and teaching and technical staff and equipment in various departments in the college and in the hospitals. These regulations are in considerable detail. Teacher-student ratio prescribed is 1 to 10, exclusive of the Professor or Head of the Department. Regulations further prescribe, apart from other things, that the number of teaching beds in the attached hospitals will have to be in the ratio of 7 beds per student admitted. Regulations of the Medical Council, which were approved by the Central Government in 1971, provide for the qualification requirements for appointments of persons to the posts of teachers and visiting physicians/surgeons of medical colleges and attached hospitals.

A medical student requires gruelling study and that can be done only if proper facilities are available in a medical college and the hospital attached to it has to be well equipped and the teaching faculty and doctors have to be competent enough that when a medical student comes out, he is perfect in the science of treatment of human beings and is not found wanting in any way. The country does not want half-baked medical professionals coming out of medical colleges when they did not have full facilities of teaching and were not exposed to the patients and their ailments during the course of their study. The Medical Council, in all fairness, does not wish to invalidate the admissions made in excess of that fixed by it and does not wish to take any action of withdrawing recognition of the medical colleges violating the regulation. Henceforth, however, these medical colleges must restrict the number of admissions fixed by the Medical Council. After the insertion of Sections 10-A, 10-B

and 10-C in the Medical Council Act, the Medical Council has framed regulations with the previous approval of the Central Government which were published in the Gazette of India dated 29.9.1993 (though the notification is dated 20.9.1993). Any medical college or institution which wishes to increase the admission capacity in MBBS/higher courses (including diploma/degree/higher specialities), has to apply to the Central Government for permission along with the permission of the State Government and that of the university with which it is affiliated and in conformity with the regulations framed by the Medical Council. Only the medical college or institution which is recognized by the Medical Council can so apply."

(underlined for emphasis) As regards the desirability of commencement and completion of the course according to a fixed schedule, this Court's observations in Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (1987 (4) SCC 122) are relevant. In para 6, it was observed that "in all medical colleges/institutions to which the scheme applies teaching for MBBS or BDS course should start on the first working day of September and even those institutions which are outside the scheme might as well commence their academic sessions from September so that throughout the country there would be uniformity in that regard." Similar directions were given for the post-graduate course. The directions were slightly modified in Dr. Dinesh Kumar and Ors. v. Motilal Nehru Medical College, Allahabad and Ors. (1987 (4) SCC 459) and the announcement for holding the examination in 1988 was directed to be made on 1st October, 1987.

It is to be noted that if any student is admitted after commencement of the course it would be against the intended objects of fixing a time schedule. In fact, as the factual positions go to show, the inevitable result is increase in the number of seats for the next session to accommodate the students who are admitted after commencement of the course for the relevant session. Though, it was pleaded by learned counsel for respondent No.1 that with the object of preventing loss of national exchequer such admissions should be permitted, we are of the view that same cannot be a ground to permit mid- stream admissions which would be against the spirit of governing statutes. His suggestion that extra classes can be taken is also not acceptable. The time schedule is fixed by taking into consideration the capacity of the student to study and the appropriate spacing of classes. The students also need rest and the continuous taking of classes with the object of fulfilling requisite number of days would be harmful to be students' physical and mental capacity to study. In fact such a suggestion was held to be grossly inappropriate in Dr. Dinesh Kumar's case (*supra*). In paragraph 15, it was observed as under:

"The next question is as to when should the examination be held. Learned counsel for the Union of India as also the Indian Medical Council suggested that it could be done in October this year so that the candidates selected at the entrance examination could join the 1987-88 session from November. In most of the colleges, admission in respect of 85 per cent seats has been completed and actual teaching has either begun or is about to begin. By November a substantial part of the course would have been read. To meet the situation, learned counsel for the Union of India suggested that we should direct the colleges and institutions to have a supplementary course for the students admitted against the 15 per cent vacancies. In the absence of consent from

the institutions, it would be difficult to work out that. As it is, there exists a lot of confusion in the field and we do not propose to add to it by giving a direction of the type proposed. On the other hand it would be appropriate to bring the scheme into operation from the coming year so that all the preliminaries can be properly conducted and in regular course the students can seek admission to the 1988-89 session. We accordingly direct the authorities to hold the examination in the manner directed, in June (sic May) 1988. The Union of India, the Medical Council the Dental Council, the several States, Universities and Medical Colleges or institutions who are covered by the scheme are directed to comply with these orders in time so as to give full effect to what has been said here."

(underlined for emphasis) There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the scheduled date, which essentially should be the date for commencement of the course.

In conclusion:

- (i) there is no scope for admitting students mid-tream as that would be against very spirit of statutes governing the medical education;
- (ii) even if, seats are unfilled that cannot be a ground for making mid session admissions;
- (iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;
- (iv) the MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;
- (v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time;
- (vi) no variation of the schedule so far as admissions are concerned shall be allowed;
- (vii) in case of any deviation by the concerned institution, action as prescribed shall be taken by the MCI.

The High Court was obviously in error in directing mid-session admission. The impugned order is, therefore, set aside. But as was earlier directed by this Court, the admission of respondent No.1 would not be affected by allowing the appeal.