[2024] 11 S.C.R. 700 : 2024 INSC 845

Ramkrishna Medical College Hospital & Research Centre
v.
State of Madhya Pradesh & Ors.

(Civil Appeal No. 12235 of 2024)

07 November 2024

[B.R. Gavai and K.V. Viswanathan,* JJ.]

Issue for Consideration

Issue arose as to whether the appellant-colleges made out a case for a direction to the respondent authorities to create a compensatory seat in the ensuing academic year.

Headnotes†

Education/Educational institutions – Medical admission – Creation of compensatory seat in the ensuing academic year – Orders by the Director, Medical Education directing appellants-medical colleges to keep one MBBS seat vacant in the appellant-colleges with a direction that the said seat would not be included in the College Level Counseling Round for the academic year 2023-24 – Said direction issued pursuant to the interim order passed by the High Court in writ petitions filed by the students – Subsequently, both the writ petitions dismissed – Thereagainst, appellants filing SLPs before this Court seeking compensatory seat in the subsequent academic year on the ground that since the seat was kept on hold, they were deprived of the opportunity to fill that seat, and faced losses:

Held: Vacant seat ordered could not be filled because by the time the writ petitions were disposed of, the counselling had concluded and the cut-off date for admissions were also over, and the Colleges would have to carry that vacant seat for the entire duration of the MBBS Course – Interim order directing one seat in the counselling to be kept vacant is a cryptic order where neither the prima facie case nor the balance of convenience and irreparable loss aspects were discussed – High Court wholly ignored these principles – Medical seat has life only in the year it falls due and that too only till the cut-off date fixed – Seat falling vacant in a particular year cannot be carried forward or created in the succeeding year – Keeping vacant seats results in huge financial loss to the college apart from being a national wastage of resources – If provisional admission seats

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are not to be given casually, the said principle should also apply for directions to keep seats vacant – Only if there is a cast iron case for the petitioner and the petitioner is bound to succeed in cases where the error of the authorities is so gross as to negate any other conclusion, interim orders keeping seats vacant could be made, with great caution and circumspection and the petitioner be directed to provide security, to the college-institution as a guarantee in case the matter is dismissed – Furthermore, every endeavor must be made by the Court to dispose of the matter before the counselling for admissions are over – Vacant seat will deprive the college of the fees to that extent, not just for one year but for the whole course, which could be four, five or more years – Principle of restitution is not excluded from its application to interim orders – Court should be mindful to neutralize the effect of wrong interim orders which they have been persuaded to pass – Maxim actus curiae neminem gravabit would apply, and orders of restitution can be passed directing the party which obtained the advantage to compensate the party which suffered the disadvantage – On facts, it is a case of one seat in each college – To meet ends of justice, the appellant colleges granted liberty to make a representation to the Fee Fixation Committee/ Authority of the State pointing out their grievance, which would fix the fees for college (for future batches) as also reckon the deficit in fees that has resulted due to the single vacant seat and fix the fees by adding such amount to the total fees proposed to be fixed which would restitute the colleges monetarily – Considering that it is a single seat and since the fee would be spread over for a period of five years, the financial impact on whom the burden would fall would be marginal, in proportion to the total fee payable – This is the best possible option, to neutralize the effect of interim orders which have operated to the prejudice of the colleges. [Paras 20-33]

Case Law Cited

Faiza Choudhary v. State of J&K & Anr. [2012] 7 SCR 528 **: (2012) 10 SCC 149;** *S. Krishna Sradha v. State of Andhra Pradesh & Ors.* [2019] 15 SCR 93 **: (2020) 17 SCC 465;** *Index Medical College, Hospital & Research Centre v. State of Madhya Pradesh & Ors.* [2021] 1 SCR 647 **: (2023) 11 SCC 570;** *Krishna Priya Ganguly & Ors. v. University of Lucknow & Ors.* [1984] 1 SCR 302 **: (1984) 1 SCC 307;** *Indore Development Authority v. Manoharlal & Ors.* [2020] 3 SCR 1 **: (2020) 8 SCC 129;** *Bhupinder Singh v. Unitech Ltd.* [2023] 4 SCR 950 **: 2023 SCC OnLine SC 321;** *Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.* [2010] 10 SCR 971 **: (2010) 9 SCC 437 – referred to.**

List of Keywords

Compensatory seat in ensuing academic year; Compensatory seat; Vacant seat in MBBS; College Level Counseling Round; Cut-off date for admissions; Cryptic order; Prima facie case; Balance of convenience; Irreparable loss; Interim relief; Carried forward of vacant seat; Creation of additional seat; Huge financial loss; National wastage of resources; Provisional admission seats; Principle of restitution; Maxim actus curiae neminem gravabit; Ordering additional seat in succeeding academic year; Fee Fixation Committee/Fee Fixation Authority; Financial impact; Neutralize the effect of interim orders.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 12235 of 2024

From the Judgment and Order dated 04.03.2024 of the High Court of M.P. at Indore in WP No. 24411 of 2023

With

Civil Appeal No. 12236 of 2024

Appearances for Parties

Harsh Parashar, Piyush Parashar, Chanakya Sharma, Advs. for the Appellant.

Bharat Singh, A.A.G., Harmeet Singh Ruprah, D.A.G., Pashupathi Nath Razdan, Ms. Maitreyee Jagat Joshi, Ms. Akansha Tomar, Argha Roy, Sunny Choudhary, Sarad Kumar Singhania, Ms. Rashmi Singhania, Advs. for the Respondents.

Judgment / Order of the Supreme Court

Judgment

K.V. Viswanathan, J.

1. Leave granted.

2. These cases highlight the complications that may arise if adequate caution and circumspection are not exercised, while passing interim orders in judicial proceedings. The two appellants are colleges to whom the Director, Medical Education (hereinafter referred to as the

'Director') issued orders dated 26.09.2023 directing them to keep one MBBS seat vacant in the appellant-colleges with a direction that the said seat will not be included in the College Level Counseling (CLC) Round for the academic year 2023-24. The direction was issued pursuant to the interim order dated 22.09.2023 passed by the High Court in Writ Petitions filed by the respondent students.

3. In the first matter, the Writ Petition was dismissed on 04.03.2024 denying the relief to the Writ Petitioner-student (R-5 herein). In the second matter also, the Writ Petition was dismissed on 22.12.2023 denying the relief to the student-writ petitioner (R-4 herein). The appellant-colleges have been caught in the crossfire and their attempt to intervene having failed in the High Court, they are before us seeking a compensatory seat in the subsequent academic year. Their case is that because the seat was kept on hold, they have been deprived of the opportunity to fill that seat. Their grievance is that the consequential loss has befallen solely on them due to an act of court.

Facts in SLP (Civil) No. 11785 of 2024 :

4. In the year 2017, the first respondent-State Government introduced the 'Mukhyamantri Medhavi Vidyarthi Yojana' as per which eligible students who were covered under the scheme were entitled to payment of fees for certain courses. One of the conditions was that the income of the parent of the candidate should be less than Rupees six lacs per annum. The respondent no. 5 (Mohammad Eaan Shaikh) herein, who had secured 86% marks in 12th standard, appeared for National Eligibility Cum Entrance Test, 2023 (in short 'NEET') and in the declaration of result of 13.06.2023, he obtained 430 marks out of 750 with an All India Rank of 163660. In the results of the first round of counselling published on 07.08.2023, no college was allotted to him. Equally so, in the second round, results of which were declared on 28.08.2023, no college was allotted to him. Pending the last round of the counselling on 18.08.2023, the State Government notified an amendment to the Mukhyamantri Medhavi Vidyarthi Yojana whereunder the income ceiling of the parent/guardian was increased to Rupees eight lacs and the said amendment was to apply for the academic year 2023-24. Even in the results of MOP-UP Round counselling, which were declared on 15.09.2023, R-5 was not allotted the seat.

5. Setting up a plea that because of the increase in the income ceiling, more students have participated and his chance of getting the college in the last round of counselling was jeopardized, the respondent no. 5 filed a Writ Petition.

6. Reliefs were sought, in the nature of a direction to not apply the amendment notification dated 18.08.2023 to the Mukhyamantri Medhavi Vidyarthi Yojana for the academic year 2023-24 and to set aside the mop-up round allotment list dated 15.09.2023 and conduct fresh mop-up round without considering the amendment notification. Interim relief staying the mop-up round allotment was sought.

7. When the matter came up for hearing, interim order was passed stating that one seat in the mop-up round to be held on 22.09.2023 be kept vacant (if available). This interim order passed on 22.09.2023 was continued on 12.10.2023, 07.11.2023 and 29.11.2023.

8. A reply affidavit by the State was filed clearly pleading as follows:

> "5. That, in reply to the paragraphs 5.8 and 5.9, it is submitted that it is significant to mention that as stated by the petitioner the allotment process in second round was closed at 454 marks whereas the petitioner secured 450 marks and therefore, he was not given the allotment being not placed suitably in the merit. However, it is also relevant to mention that in between from 454 marks to 450 marks (score of the petitioner), there remained as many as 37 candidates of OBC category including sub-categories of OBC, and more specifically in the category of OBC - open as many as 33 candidates were over and above the petitioner in his category i.e. OBC - open in the second round of allotment. Copy of relevant pages of tabulation/chart drawn for second round counselling is annexed herewith as ANNEXURE R/3. However, so far as availability of vacant seat in OBC – open category is concerned then it is only 5 in number. So, in any eventually (sic.), the petitioner would not have been allotted a seat even in Mop-up-Round being placed below in merit. Thus, the grievance raised by the petitioner in present petition is misconceived and in no manner, it is affecting the merit of the petitioner even on account of introduction of amendment on 18.08.2023 (Annexure P/8) implemented on 10.09.2023.

> Copy of chart demonstrating vacant seats in OBC – Open Category is annexed herewith as ANNEXURE R/4."

9. Pursuant to the interim order, on 26.09.2023, the Director, Medical Education (R-4) issued a directive to the appellant-college to keep on hold one MBBS seat for the academic year 2023-24.

10. The appellant college rushed to the High Court seeking intervention and the State filed interlocutory application for vacating the interim order.

11. The appellant pleaded the following in the intervention application:

> "That in the context of the above, it is submitted that the interests of the present-applicant institute are directly aligned with the outcome of this instant petition. While the institute does not contest the keeping of a seat on hold in the interim, as per the interim order passed by the Hon'ble High Court, it is also emphasised that any adverse consequences in the event of the petition being dismissed shall have a direct and adverse effect on the applicant-college, on the ground that the 1 seat being put on hold in the interim as per the Hon'ble Court's order dated 22/9/2023, has been allotted to the instant applicant; and hence in case this petition is dismissed by this Hon'ble Court and if the cut-off date for admission elapses without a resolution of the controversy involved, the applicant shall be left with a vacant seat in MBBS Course, despite being sanctioned by the regulatory authority. Thus, the outcome of this petition shall have a bearing upon the legitimate interests of the applicant, especially in respect of its academic and logistical planning and resource utilization and the foundational infrastructural investments involved, encompassing faculty, infrastructure etc. It is humbly submitted that a vacant seat would result in the resources being underutilized and wastage of resources, which shall not only cause financial hardship upon the applicant, but also lead to loss to the meritorious and eligible candidates as well."

12. The High Court ultimately dismissed the Writ Petition on 04.03.2024 stating that the amendment was the policy decision and that there

were no grounds to hold it unconstitutional. Nothing was said of the intervention application filed by the appellant. Aggrieved, the appellant is before us seeking a compensatory seat for the subsequent academic year.

Facts in SLP (Civil) No. 20267 of 2024:

13. The respondent no. 4-Ms. Tasmiya Khan herein filed a Writ Petition in the High Court of Madhya Pradesh at Indore seeking a mandamus to the official respondents therein to allot a seat to her as per the overall marks in NEET for the MBBS for the academic year 2023-24. Her prayer was to consider her against the unreserved category in the 5% Government School quota. According to R-4, candidates with lesser NEET score have been admitted under the Unreserved Government School Quota while she, though an OBC candidate had secured more marks than those general candidates. An interim order was passed on 22.09.2023 modifying the earlier interim order stating that one seat be kept vacant till the next date of hearing (if not already filled). Based on the interim order of 22.09.2023, the Director of Medical Education on 26.09.2023 issued a direction to the appellant-college to keep on hold one seat in the MBBS course and directed that the said seat will not be included for the College Level Counselling Round.

14. The official respondents opposed the Writ Petition. The State contended that the category of the writ petitioner was OBC-Government School quota (OBC-GS), and in this category there were eight OBC GS candidates above the petitioner. In simple terms, the State did not follow the principle that reserved candidates who qualified on merit ought to be first adjusted against the general seats. On 25.10.2023, the appellant intervened praying that keeping seats vacant will prejudice the college in case the cut-off date expires before the disposal of the Writ Petition.

15. By the judgment of 22.12.2023, the High Court rejected the petition of R-4 accepting the plea of the authorities and held that the appellant would be entitled only for consideration against the OBC GS quota. Coming to the intervention application of the appellant-college it was held that no relief can be granted since timeline for admission was complete. Aggrieved, the college has filed the present appeal by way of Special Leave.

16. It should be pointed out that insofar as this matter is concerned, R-4 herein Ms. Tasmiya Khan filed SLP(C) No. 2311 of 2024 and by the judgment of 20.08.2024, the judgment of the High Court dated 22.12.2023 in Writ Petition No. 23998 of 2023 was set aside and a direction was given to admit R-4 in MBBS course for the academic year 2024-25. This Court, speaking through one of us (B.R. Gavai, J.) held that the candidates who were meritorious and who could have been admitted against the Unreserved-Government Schools category could not have been denied admission on the ground that they belonged to OBC category. This Court held that meritorious candidates belonging to SC, ST and OBC who on their own merit are entitled to be selected against the Unreserved Government School Quota (UR GS) could not have been denied the seats in the open category.

Contentions:

17. We have heard the counsels for the appearing parties and perused the record.

18. Learned counsel for the appellant-colleges contend that the seat which was directed to be kept vacant has gone waste since the Writ Petitions could not be disposed of before the cut-off date for admissions. They contend that the vacant seat would result in underutilization of resources, wastage of resources causing financial harm to them and resulting in meritorious candidates being denied the admission to that seat. Their prayer is that a compensatory additional seat be ordered for the ensuing academic year. The authorities have contended that the authorities have no role in the matter and it was the order of the court which has been duly carried out and no liability can be fastened on them.

Question for consideration:

19. In the above background, the question that arises for consideration is, have the appellant-colleges made out a case for a direction to the respondent authorities to create a compensatory seat in the ensuing academic year?

Reasons and analysis:

20. *Firstly*, the interim order directing one seat in the counselling to be kept vacant (if available) in both these matters is a cryptic order

where neither the prima facie case nor the balance of convenience and irreparable loss aspects have been discussed. This Court had time and again reiterated that in cases where the court is inclined to grant interim relief, at least a brief prima-facie assessment as to why the case warranted an interim protection needs to be discussed. Equally, the balance of convenience and the irreparable harm aspects are also to be briefly discussed in the order. These are well settled principles for adjudication of interim reliefs. The High Court, in both the matters before us, has wholly ignored these principles.

21. *Secondly*, this Court has repeatedly held that a medical seat has life only in the year it falls due and that too only till the cut-off date fixed. Even here, there are stringent regulations of the National Medical Commission providing that admission can only be made by the medical colleges within the sanctioned capacity for which permission/ recognition has been granted. A seat falling vacant in a particular year cannot be carried forward or created in the succeeding year ***(See Faiza Choudhary v. State of J&K & Anr. (2012) 10 SCC 149).*** No doubt, in rare and exceptional circumstances, courts can direct increase in seats for the same academic year not exceeding one or two seats, if it finds that for no fault attributable to the candidate and for the fault on the part of the authorities, the candidate has suffered. This Court has also held that if in the same year, the candidate cannot be accommodated, the Court can mould the relief and direct the admission to be granted in the next academic year. In ***S. Krishna Sradha v. State of Andhra Pradesh & Ors. (2020) 17 SCC 465,*** it was held as under:-

> "13.2. Under exceptional circumstances, if the court finds that there is no fault attributable to the candidate and the candidate has pursued his/her legal right expeditiously without any delay and there is fault only on the part of the authorities and/or there is apparent breach of rules and regulations as well as related principles in the process of grant of admission which would violate the right of equality and equal treatment to the competing candidates and if the time schedule prescribed — 30th September, is over, to do the complete justice, the Court under exceptional circumstances and in rarest of rare cases direct the admission in the same year by directing to increase the

seats, however, it should not be more than one or two seats and such admissions can be ordered within reasonable time i.e. within one month from 30th September i.e. cut-off date and under no circumstances, the Court shall order any admission in the same year beyond 30th October. However, it is observed that such relief can be granted only in exceptional circumstances and in the rarest of rare cases. In case of such an eventuality, the Court may also pass an order cancelling the admission given to a candidate who is at the bottom of the merit list of the category who, if the admission would have been given to a more meritorious candidate who has been denied admission illegally, would not have got the admission, if the Court deems it fit and proper, however, after giving an opportunity of hearing to a student whose admission is sought to be cancelled.

13.3. In case the Court is of the opinion that no relief of admission can be granted to such a candidate in the very academic year and wherever it finds that the action of the authorities has been arbitrary and in breach of the rules and regulations or the prospectus affecting the rights of the students and that a candidate is found to be meritorious and such candidate/student has approached the court at the earliest and without any delay, the court can mould the relief and direct the admission to be granted to such a candidate in the next academic year by issuing appropriate directions by directing to increase in the number of seats as may be considered appropriate in the case and in case of such an eventuality and if it is found that the management was at fault and wrongly denied the admission to the meritorious candidate, in that case, the Court may direct to reduce the number of seats in the management quota of that year, meaning thereby the student/students who was/were denied admission illegally to be accommodated in the next academic year out of the seats allotted in the management quota."

22. However, this is vastly different from directing the creation of an additional seat at the behest of a college.

23. *Thirdly*, this Court has held repeatedly that keeping vacant seats results in huge financial loss to the college apart from being a national wastage of resources (***See Index Medical College, Hospital & Research Centre v. State of Madhya Pradesh & Ors. (2023) 11 SCC 570).***

24. *Fourthly*, this Court has also frowned upon the grant of provisional admission unless the court is fully satisfied that the petitioner has a cast iron case which is bound to succeed or the error is so gross or apparent that no other conclusion is possible. Even there, the court has opined that a short notice to the respondent ought to be given and after hearing the other side, in an exceptional case fulfilling the criteria prescribed necessary orders can be made (***See Krishna Priya Ganguly & Ors. v. University of Lucknow & Ors. (1984) 1 SCC 307***).

25. If provisional admission seats are not to be given casually, the said principle should also apply for directions to keep seats vacant. Only if there is a cast iron case for the petitioner and the petitioner is bound to succeed in cases where the error of the respondent authorities is so gross as to negate any other conclusion, interim orders keeping seats vacant could be made. Though courts have power to make orders directing seats to be kept vacant in such cases, great caution and circumspection should be shown in exercising the power. In appropriate cases, even where the said exceptional criterion as set out above is met, the court will be justified in directing the petitioner to provide security, to the concerned college-institution where the seat is ultimately directed to be kept vacant or on whom ultimately the liability of the vacant seat would fall. The security is to guarantee that in the event of the Writ Petition/Appeal being dismissed and the seat going unfilled for the academic year the Petitioner/Appellant would make good the loss which the college may incur financially. Even in rare and exceptional cases where orders for keeping seats vacant are made, every endeavor must be made by the Court to dispose of the matter before the counselling for admissions are over.

26. Additionally, even if the Writ Petition/Appeal succeeds, but if the matter could not be disposed off before the deadline the seat may still go vacant. It should not be forgotten that while the recurring and non-recurring expenditure for a college remains the same, a vacant seat will deprive the college of the fees to that extent, not

just for one year but for the whole course, which could be four, five or more years.

27. *Lastly*, these safeguards are essential to restitute the colleges which may have suffered for no fault of theirs. It is well settled that if on account of an act of a party persuading the court to pass an order, which at the end has been held not sustainable and if in the process one party has gained an advantage which it would not have otherwise earned or the other party had suffered an impoverishment, restitution can be made. This Court had held that the principle of restitution is not excluded from its application to interim orders.

28. This court has also held that the court should be mindful to neutralize the effect of wrong interim orders which they have been persuaded to pass. ***(See Indore Development Authority v. Manoharlal & Ors. (2020) 8 SCC 129 and Bhupinder Singh v. Unitech Ltd. 2023 SCC OnLine SC 321).***

29. This Court has also held that the maxim *actus curiae neminem gravabit* will apply in such a scenario, and orders of restitution can be passed directing the party which obtained the advantage to compensate the party which suffered the disadvantage ***(See Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors. (2010) 9 SCC 437).***

30. Applying these principles to the facts of the present case, we find the following. The vacant seat ordered could not be filled because by the time the Writ Petitions were disposed of, the counselling had concluded and the cut-off date for admissions were also over. The colleges will have to carry that vacant seat for the entire duration of the MBBS Course. In the first case, the Writ Petition was dismissed. Though, in the second case also, the Writ Petition was dismissed ultimately at the student's behest, the High Court order was set aside and the student was accommodated for the succeeding academic year. The fact remains that even in the case of the second appellant herein (RKDF Homeopathy Medical College), the seat could not be filled and continued to remain vacant. The colleges have been prejudiced for no fault of theirs. In both cases, the Writ Petitions were disposed of after the admissions deadlines were over.

31. Ordering an additional seat in the succeeding academic year is not an option, in view of the pronouncement of this Court referred to hereinabove. Even in the ***S. Krishna Sradha (supra),*** the exception

carved out was to create an additional seat where the student was prejudiced. In this case, it is the college which has been prejudiced. The prejudice is because, with the seat remaining vacant for the entire duration of the course, to that extent they will be deprived of the fees, while their expenditure will remain same.

32. In the special facts of the case and considering that it is a case of one seat in each college, we feel that ends of justice will be served if we grant liberty to the appellant colleges to make a representation to the Fee Fixation Committee/Fee Fixation Authority of the State highlighting the vacancy caused due to the interim order of the High Court. If such a representation is made, the Fee Fixation Committee/ Fee Fixation Authority shall, while fixing the fees for college (for future batches) reckon the deficit in fees that has resulted due to the single vacant seat and fix the fees by adding such amount to the total fees proposed to be fixed which will restitute the colleges monetarily. Considering that it is a single seat and since the fee will be spread over for a period of five years, the financial impact on whom the burden will fall will be marginal, in proportion to the total fee payable. On the current facts, we find that this is the best possible option, to neutralize the effect of the interim orders which have operated to the prejudice of the colleges.

33. In view of what has been discussed hereinabove, we partly allow the appeals and direct that the appellant colleges will be at liberty to make a representation to the Fee Fixation Committee/Fee Fixation Authority pointing out their grievance, as set out above, and the Fee Fixation Committee/Fee Fixation Authority shall pass appropriate orders in terms of the holding rendered in this judgment.

34. The appeals are partly allowed in the above terms. No order as to costs.

Result of the case: Appeals partly allowed.

†*Headnotes prepared by:* Nidhi Jain